



**AUGUST 7, 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

**August 7, 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 LEGAL COUNSEL-- EXISTING LITIGATION (Government Code 54956.9(d)(1))**

- a. **Case Name:** Joseph Leffingwell v. City of Escondido  
**Case No:** WCAB No.: ADJ 11548693

**ADJOURNMENT**





# Council Meeting Agenda

**August 7, 2019  
6:00 P.M. Meeting**

**Escondido City Council  
and as Successor Housing Agency to the CDC**

## **CALL TO ORDER**

**MOMENT OF REFLECTION:**

**FLAG SALUTE**

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

**CLOSED SESSION 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. (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:

- 332541 – 332726 dated July 10, 2019
- 332727 – 332937 dated July 17, 2019
- 332938 – 333144 dated July 24, 2019

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

**3. [APPROVAL OF MINUTES: Regular Meeting of July 17, 2019](#)**

4. **TREASURER'S INVESTMENT REPORT FOR THE QUARTER ENDED JUNE 30, 2019 -**

Request City Council receive and file the Quarterly Investment Report.

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

5. **BID AWARD FOR THE KIA DEALERSHIP GRADING PROJECT -**

Request the City Council approve authorizing the Mayor and City Clerk to execute a Public Improvement Agreement with Whillock Contracting, Inc., the lowest responsive and responsible bidder, in the amount of \$133,059 for construction of the Kia Dealership Grading Project.

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

RESOLUTION NO. 2019-99

6. **BUREAU OF RECLAMATION TITLE XVI FINANCIAL ASSISTANCE AGREEMENT FOR THE MEMBRANE FILTRATION REVERSE OSMOSIS PROJECT -**

Request the City Council approve authorizing the Director of Utilities to execute a Financial Assistance Agreement in the amount of \$11,175,000, with an initial award of \$4,884,000 with the U.S. Department of the Interior, Bureau of Reclamation (BOR). The Title XVI award will assist the City in designing and constructing the Membrane Filtration Reverse Osmosis Facility (MFRO) Project.

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

RESOLUTION NO. 2019-108

7. **NOTICE OF COMPLETION FOR THE BRINE LINE PROJECT - HARMONY GROVE TO BROADWAY -**

Request the City Council approve authorizing the Director of Utilities to file a Notice of Completion for the Brine Line Project - Harmony Grove to Broadway.

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

RESOLUTION NO. 2019-111

8. **ESCONDIDO HISTORY CENTER LICENSE AND OPERATING AGREEMENT -**

Request the City Council approve a License and Operating Agreement for the Escondido History Center.

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

RESOLUTION NO. 2019-53

9. **OCCUPANCY LICENSE FOR 1118 SOUTH CITRUS AVENUE WITH ESCONDIDO HISTORY CENTER -**

Request the City Council approve an Occupancy License Agreement with the Escondido History Center for use of a City-owned storage building at 1118 South Citrus Avenue.

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

RESOLUTION NO. 2019-104

10. **CONTRACT CHANGE ORDER AND NOTICE OF COMPLETION FOR THE TULIP STREET IMPROVEMENTS PHASE IV -**

Request the City Council approve authorizing the City Engineer to approve a Contract Change Order with Southland Paving, Inc. in the amount of \$21,027 to complete additional work and authorize staff to file a Notice of Completion for the Tulip Street Improvements Phase IV.

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

RESOLUTION NO. 2019-112

**11. AMEND ENGINEERING AND TRAFFIC SURVEY (SPEED ZONE) ON ELEVENTH AVENUE AND SEVENTEENTH AVENUE -**

Request the City Council approve amending an Engineering and Traffic Survey (Speed Zone) on Eleventh Avenue between Valley Parkway and Del Dios Road and Seventeenth Avenue between Juniper Street and the City Limits.

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

RESOLUTION NO. 2019-113

**12. SECOND AMENDMENT TO LEASE AGREEMENT - 210 SOUTH BROADWAY -**

Request the City Council approve authorizing the Mayor to execute a Second Amendment to the Lease for the property at 210 South Broadway; and assign and transfer the rights to the Lease from Stanley Schaeffer, DDS to Adil Alhashimi, A Professional Corporation.

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

RESOLUTION NO. 2019-114

**13. LICENSE AGREEMENT WITH MICHAEL S. TAYLOR, D.B.A. DUGOUT SNACKS AT 3333 BEAR VALLEY PARKWAY, FOR ADULT SOFTBALL CONCESSION STAND IN KIT CARSON PARK -**

Request the City Council approve authorizing the Mayor to execute a License Agreement with Michael S. Taylor, D.B.A. Dugout Snacks at 3333 Bear Valley Parkway, for an Adult Softball Concession Stand within Kit Carson Park.

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

RESOLUTION NO. 2019-115

**14. CALIFORNIA FRANCHISE TAX BOARD CITY BUSINESS TAX PROGRAM -**

Request the City Council approve authorizing the Community Development Director to execute an agreement with the State of California Franchise Tax Board (FTB) to renew and continue the City's participation in the FTB City Business Tax Program.

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

RESOLUTION NO. 2019-116

**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**

**15. ZONING CODE AND LAND USE STUDY (AZ 18-0006) -**

Request the City Council approve completing the Zoning Code and Land Use Study; and amend portions of the Municipal Code, Zoning Code, and Specific Plans to improve existing regulations.

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

ORDINANCE NO. 2019-09 (First Reading and Introduction)

**16. ANNUAL CODE CLEAN-UP AND AMENDMENTS TO THE MUNICIPAL AND ZONING CODES (AZ 19-0003) -**

Request the City Council approve amending Chapter 32 (Subdivisions) of the Municipal Code and Articles 1, 6, 9, 16, 26, 39, 56, 61, 65, 67, 70, and 73 of the Escondido Zoning Code to address changes in state laws, correct errors, and improve existing regulations.

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

ORDINANCE NO. 2019-10 (First Reading and Introduction)

**17. SALE OF WINDSOR GARDENS APARTMENTS AND TAX EQUITY AND FISCAL RESPONSIBILITY ACT (TEFRA) HEARING -**

Request the City Council approve the purchase and sale agreement and related financing of Windsor Gardens Apartments, located at 1600 W. Ninth Avenue, to Community HousingWorks (CHW) and its related entity, Windsor Gardens Housing Associates, L.P.; approve an affordable housing loan in support of the acquisition; conduct a public hearing pursuant to the Tax Equity and Fiscal Responsibility Act (TEFRA) to approve the issuance of one or more series of revenue bonds in an aggregate principal amount not to exceed \$26,000,000 by the California Municipal Finance Authority (CMFA) including but not limited to revenue bonds issued as part of a plan to finance the Project; approve CMFA's issuance of revenue bonds; and authorize the execution of a Subscription Agreement for the private placement of tax-exempt bonds.

Staff Recommendation: **Approval (City Manager's Office: Jay Petrek, Community Development Department: Bill Martin, Engineering Services Department: Julie Procopio)**

A) RESOLUTION NO. 2019-117 B) RESOLUTION NO. 2019-118

C) RESOLUTION NO. 2019-119 D) RESOLUTION NO. 2019-120

## **FUTURE AGENDA**

**18. 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)**

## **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

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## ADJOURNMENT

### UPCOMING MEETING SCHEDULE

Date	Day	Time	Meeting Type	Location
August 14	-	-	No Meeting	-
August 21	Wednesday	5:00 & 6:00 PM	Regular Meeting	Council Chambers
August 28	-	-	No Meeting	-
September 4	-	-	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

August 7, 2019

File No. 0400-40

SUBJECT: Approval of Warrants

DEPARTMENT: Finance Department

RECOMMENDATION:

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

332541 – 332726 dated July 10, 2019

332727 – 332937 dated July 17, 2019

332938 – 333144 dated July 24, 2019

FISCAL ANALYSIS:

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

July 4 – July 10, 2019, is \$1,582,207.00

July 11 – July 17, 2019, is \$1,975,365.19

July 18 – July 24, 2019, is \$4,777,867.38

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**  
**July 17, 2019**  
**5:00 P.M. Meeting Minutes**  
**Escondido City Council**

**CALL TO ORDER**

The Regular Meeting of the Escondido City Council was called to order at 5:00 p.m. on Wednesday, July 17, 2019 in the City Council Chambers at City Hall with Mayor McNamara presiding.

**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.

**ORAL COMMUNICATIONS**

**CLOSED SESSION: (COUNCIL/RRB)**

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

**I. CONFERENCE WITH LEGAL COUNSEL-- EXISTING LITIGATION (Government Code 54956.9(d)(1))**

- a.     **Case Name:**             John Fryday v. City of Escondido  
       **Case No:**             ADJ #9018583

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

- a.     **Property:**                 210 South Broadway (APN 233-091-02)  
       **City Negotiator:**     Jeffrey Epp, City Manager  
       **Negotiating Parties:** Dr. Schaeffer  
       **Under Negotiation:** Price and Terms of Agreement
- b.     **Property:**                 480 North Spruce Street (APN 232-091-28-00)  
       **City Negotiator:**     Jeffrey Epp, City Manager  
       **Negotiating Parties:** TransPower  
       **Under Negotiation:** Price and Terms of Agreement
- c.     **Property:**                 455 North Quince Street (APN 232-091-27-00)  
                                      525 North Quince Street (APN 232-091-06-00)  
       **City Negotiator:**     Jeffrey Epp, City Manager  
       **Negotiating Parties:** Meridian Properties Real Estate Inc.  
       **Under Negotiation:** Price and Terms of Agreement

**ADJOURNMENT**

Mayor McNamara adjourned the meeting at 5:15 p.m.

\_\_\_\_\_  
MAYOR

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

**CITY OF ESCONDIDO**  
**July 17, 2019**  
**6:00 P.M. Meeting Minutes**

**Escondido City Council**  
**Mobilehome Rent Review Board**  
**and as Successor Housing Agency to the CDC**

**CALL TO ORDER**

The Regular Meeting of the Escondido City Council was called to order at 6:00 p.m. on Wednesday, July 17, 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**

Councilmember Masson 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: Jeffrey Epp, City Manager; Michael McGuinness, City Attorney; Bill Martin, Director of Community Development; Julie Procopio, Director of Engineering Services; Zack Beck, City Clerk.

**PROCLAMATIONS:**

Robert Martin, Gary Bulman, and Ken Huff, members of the San Diego Rose Society, received the proclamation for San Diego Rose Society Day.

Leslie Mayer and Cindy Peters received proclamations for painting the Escondido Community Child Development Center Mural.

**ORAL COMMUNICATIONS**

**Michael Montgomery, Escondido**, shared concerns regarding the removal of a tree on his property by the City.

**CONSENT CALENDAR**

**MOTION:** Moved by Councilmember Masson and seconded by Councilmember Diaz to approve all Consent Calendar items with the exception of items 4, 10, 12, and 13. Motion carried unanimously.

**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: (File No. 0400-40)

- 331512 – 331657, dated June 12, 2019

- 331658 – 331860 dated June 19, 2019
- 331861 – 332231 dated June 26, 2019
- 332232 – 332540 dated July 3, 2019

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

**3. APPROVAL OF MINUTES: A) Regular Meeting of June 12, 2019 B) Regular Meeting of June 19, 2019**

**4. REQUEST FOR PROPOSALS (RFP) FOR COMMUNITY CHOICE AGGREGATION/ENERGY TECHNICAL FEASIBILITY STUDY (MISC 19-0016) -**

Request the City Council approve the Request for Proposals (RFP) for a joint Community Choice Aggregation/Energy (CCA/CCE) technical feasibility study; authorize the City Manager or his designee to negotiate and execute a cost share agreement between the interested cities of Vista and/or San Marcos; and direct staff to release the RFP document, subject to approval of other partner cities. (File No. 0470-32)

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

RESOLUTION NO. 2019-94

Mike Strong, Assistant Director of Planning, was available to answer questions.

**Patricia Borchmann, representative for Escondido Chamber of Citizens**, spoke in favor of this item.

**MOTION:** Moved by Councilmember Diaz and seconded by Deputy Mayor Martinez to approve the Request for Proposals (RFP) for a joint Community Choice Aggregation/Energy (CCA/CCE) technical feasibility study; authorize the City Manager or his designee to negotiate and execute a cost share agreement between the interested cities of Vista and/or San Marcos; and direct staff to release the RFP document, subject to approval of other partner cities and adopt Resolution No. 2019-94. Motion carried unanimously.

**5. REQUEST FOR AUTHORIZATION TO PROCESS OUT-OF-AGENCY SEWER SERVICE AGREEMENTS AND IRREVOCABLE OFFERS TO ANNEX FOR TWO (2) UNINCORPORATED COUNTY OF SAN DIEGO PROPERTIES EXPERIENCING SEPTIC FAILURE LOCATED AT 903 HAMILTON LANE AND 2517 FELICITA ROAD -**

Request the City Council approve authorizing staff to process Out-of-Agency Sewer Service Agreements for connection to the City's sewer system, and to process Irrevocable Offers to Annex, for two (2) unincorporated county properties experiencing septic failure located at 903 Hamilton Lane (APN 238-360-05-00) and 2517 Felicita Road (APN 238-360-19-00). (File No. 0600-80)

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

RESOLUTION NO. 2019-101

**6. APPROVAL OF CALPERS INDUSTRIAL DISABILITY FOR POLICE OFFICE JOSEPH LEFFINGWELL -**

Request the City Council approve the California Public Employees' Retirement System (CalPERS) Industrial Disability Retirement for Police Officer Joseph Leffingwell. (File No. 0170-57)

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

RESOLUTION NO. 2019-90

**7. SETTING SPECIAL TAX LEVY FOR COMMUNITY FACILITIES DISTRICT NO. 2006-01 (EUREKA RANCH) -**

Request the City Council approve setting the Special Tax Levy for Community Facilities District No. 2006-01 (Eureka Ranch) for Fiscal Year 2019-20. (File No. 0685-20)

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

RESOLUTION NO. 2019-95

**8. SETTING SPECIAL TAX LEVY FOR COMMUNITY FACILITIES DISTRICT NO. 2000-01 (HIDDEN TRAILS) -**

Request the City Council approve setting the Special Tax Levy for Community Facilities District No. 2000-01 (Hidden Trails) for Fiscal Year 2019-20. (File No. 0685-20)

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

RESOLUTION NO. 2019-96

**9. CAL OES AUTHORIZED AGENT SIGNATURE FORM 130 FOR NON-STATE AGENCIES -**

Request the City Council approve authorizing the Mayor and City Clerk to execute a State of California Governor's Office of Emergency Services Designation of Subrecipient's Agent Resolution Form 130 ("Cal OES Form 130") appointing and authorizing the Fire Chief, the Director of Public Works, and the Assistant Director of Finance as authorized agents of the City of Escondido to file and engage with the Federal Emergency Management Agency and the State of California Governor's Office of Emergency Services for grants and disaster assistance applied for by the City. (File No. 0220-05)

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

RESOLUTION NO. 2019-103

**10. NOTICE OF COMPLETION FOR THE ESCONDIDO CREEK BIKEWAY MISSING LINK PROJECT**

Request City Council approve authorizing the City Engineer to file a Notice of Completion for the Escondido Creek Bikeway Missing Link Project. (File No. 0600-95)

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

RESOLUTION NO. 2019-100

**MOTION:** Moved by Councilmember Morasco and seconded by Councilmember Masson to approve authorizing the City Engineer to file a Notice of Completion for the Escondido Creek Bikeway Missing Link Project and adopt Resolution No. 2019-100. Motion carried unanimously.

**11. PAYMENT TO SDG&E FOR UTILITIES DESIGN AND CONSTRUCTION FOR THE CITRACADO PARKWAY EXTENSION PROJECT -**

Request the City Council approve authorizing payment to SDG&E in the amount of \$511,921 for the Citracado Parkway Extension Project utility design and construction. (File No. 0145-90)

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

RESOLUTION NO. 2019-106

**12. FISCAL YEAR 2019 CALIFORNIA IDENTIFICATION SYSTEMS REMOTE ACCESS NETWORK USER AGREEMENT (CAL-ID) -**

Request the City Council approve authorizing the Escondido Police Department to enter into a Cal-ID User Agreement with the County of San Diego and authorize the Chief of Police or his designee to submit agreement documents on behalf of the City. (File No. 0430-80)

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

Craig Carter, Chief of Police, was available to answer questions.

**MOTION:** Moved by Councilmember Morasco and seconded by Councilmember Masson to approve authorizing the Escondido Police Department to enter into a Cal-ID User Agreement with the County of San Diego and authorize the Chief of Police or his designee to submit agreement documents on behalf of the City. Motion carried unanimously.

**13. FISCAL YEAR 2019-2024 COUNTY OF SAN DIEGO CALIFORNIA IDENTIFICATION (CAL-ID) PROGRAM SPECIALIST FUNDING AND BUDGET ADJUSTMENT -**

Request the City Council approve accepting funding from the County of San Diego for the Fiscal Year 2019-2024 California Identification (Cal-ID) Program Specialist; authorize the Chief of Police or his designee to execute contract documents on behalf of the City; and approve budget adjustments related to reimbursement funding. (File No. 0600-10)

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

RESOLUTION NO. 2019-110

Craig Carter, Chief of Police, was available to answer questions.

**MOTION:** Moved by Councilmember Morasco and seconded by Councilmember Diaz to approve accepting funding from the County of San Diego for the Fiscal Year 2019-2024 California Identification (Cal-ID) Program Specialist; authorize the Chief of Police or his designee to execute contract documents on behalf of the City; and approve budget adjustments related to reimbursement funding and Resolution No. 2019-110. Motion carried unanimously.

**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.)

**14. ELECTRONIC AND PAPERLESS FILING OF CAMPAIGN STATEMENTS AND STATEMENTS OF ECONOMIC INTEREST -**

Approved on June 19, 2019 with a vote of 5/0 (File No. 0680-10)

ORDINANCE NO. 2019-07 (Second Reading and Adoption)

**15. DEVELOPMENT AGREEMENT AND MASTER AND PRECISE DEVELOPMENT PLAN FOR "THE IVY" MIXED-USE DEVELOPMENT (PHG 19-0010) -**

Approved on June 19, 2019 with a vote of 5/0 (File No. 0600-15)

ORDINANCE NO. 2019-08 (Second Reading and Adoption)

**PUBLIC HEARINGS**

**16. SHORT-FORM RENT INCREASE APPLICATION FOR CAREFREE RANCH MOBILEHOME PARK**

Request the City Council consider for approval the Carefree Ranch Mobilehome Park short-form rent increase application, and if approved, grant an increase of 75 percent of the change in the Consumer Price Index, or 2.783 percent (an average of \$14.40) for the period of December 31, 2017 to December 31, 2018. The Short-Form Rent Increase Application for Carefree Ranch Mobilehome Park meets all of the eligibility criteria for submittal of a short-form rent increase application. (File No. 0697-20-10201)

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

RRB RESOLUTION NO. 2019-03

Belinda Rojas, Program Administrator, and Monica Pinaglia, Code Enforcement Officer, presented the staff report utilizing a PowerPoint presentation.

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

**Katie Morris, Owner's Representative**, was available to answer questions.

**Wayne Looth, Residents' Representative**, shared comments regarding the history of Carefree Ranch Mobilehome Park and the impacts of a rent increase on residents.

Mayor McNamara asked if anyone else wished to speak on this item in anyway. No asked to be heard; therefore, he closed the public hearing.

**MOTION:** Moved by Councilmember Morasco and seconded by Deputy Mayor Martinez to approve the Carefree Ranch Mobilehome Park short-form rent increase application, granting an increase of 75 percent of the change in the Consumer Price Index, or 2.783 percent (an average of \$14.40) for the period of December 31, 2017 to December 31, 2018 and adopt RRB Resolution No. 2019-03. Motion carried unanimously.

**17. ALLOCATION OF AFFORDABLE HOUSING FUNDS -**

Request the City Council approve authorizing the Director of Community Development to commit federal HOME Investment Partnership Program (HOME) funds, and Low and Moderate Incoming Housing Funds (SHA) (together Affordable Housing Funds); and authorize the Mayor and City Clerk to execute Affordable Housing Loan Agreements and all necessary loan and supporting agreements in forms acceptable to the City Attorney. SHA funds will be committed to Veterans Village of San Diego (VVSD) for the new construction of 54 units at 1540 S. Escondido Boulevard. A conditional commitment for Affordable Housing Funds will be made to National Community Renaissance of California (National CORE) for the acquisition and rehabilitation of 71 units at 1825 East Valley Parkway; when conditions have been met, an Affordable Housing Loan Agreement will be executed. A HOME Habitat for Humanity (San Diego Habitat) for the study of 245 E. El Norte Parkway in order to facilitate a future homebuyer development of up to 10 units. (File No. 0875-21)

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

RESOLUTION NO. 2019-102

**COUNCILMEMBER MASSON ABSTAINED FROM THIS ITEM AND LEFT THE DAIS.**

Karen Youel, Housing & Neighborhood Services Manager, and Paul Mara with Keyser Marston Associates, Inc., presented the staff report utilizing a PowerPoint presentation.

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

**Darren Tune, Representative for Veterans Village of San Diego**, shared information regarding Veterans Village and was available to answer questions.

**John Seymour, Representative for National Community Renaissance**, shared information regarding National Community Renaissance (National CORE) projects in Escondido.

**Lori Pfeiler, Representative for San Diego Habitat for Humanity**, thanked Council for considering their project and shared information regarding the proposed project.

Mayor McNamara asked if anyone else wished to speak on this item in any way. No asked to be heard; therefore, he closed the public hearing.

**MOTION:** Moved by Councilmember Morasco and seconded by Councilmember Diaz to Council approve authorizing the Director of Community Development to commit federal HOME Investment Partnership Program (HOME) funds, and Low and Moderate Incoming Housing Funds (SHA) (together Affordable Housing Funds); and authorize the Mayor and City Clerk to execute Affordable Housing Loan Agreements and all necessary loan and supporting agreements in forms acceptable to the City Attorney and adopt Resolution No. 2019-102. Ayes: Diaz, Martinez, Morasco, McNamara. Noes: None. Abstained: Masson. Motion carried.

**CURRENT BUSINESS**

**18. REPORT AND RECOMMENDATIONS OF THE AD HOC SUBCOMMITTEE ON CITY COUNCIL RULES & POLICIES -**

Request the City Council receive, consider, and adopt the recommendations of the Ad Hoc Subcommittee on City Council Rules and Policies contained in Resolution No. 2019-65 that revise in part and restate in part the Council Rules and Policies adopted in Resolution No. 2014-21. (File No. 0610-55)

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

RESOLUTION NO. 2019-65

Michael R. McGuinness, City Attorney, presented the staff report utilizing a PowerPoint presentation.

**Patricia Borchmann, Escondido**, thanks Councilmember Diaz and Deputy Mayor Martinez for serving on the ad hoc subcommittee and shared comments regarding the proposed changes.

**MOTION:** Moved by Mayor McNamara and seconded by Councilmember Diaz to approve the recommendations of the Ad Hoc Subcommittee on City Council Rules and Policies contained in Resolution No. 2019-65 that revise in part and restate in part the Council Rules and Policies adopted in Resolution No. 2014-21 and adopt Resolution No. 2019-65. Motion carried unanimously.

**19. DESIGNATION OF VOTING DELEGATE - LEAGUE OF CALIFORNIA CITIES CONFERENCE -**

Request the City Council approve designating the Voting Delegate and up to two alternates for the League of California Cities Annual Conference in Long Beach, California on October 16-18, 2019. (File No. 0130-10)

Staff Recommendation: **None (City Clerk's Office: Zack Beck)**

Mayor McNamara designated Councilmember Diaz as the voting delegate to represent the City of Escondido at the League of California Cities Conference and Deputy Mayor Martinez and Councilmember Morasco as the alternate representatives.

**MOTION:** Moved by Councilmember Diaz and seconded by Deputy Mayor Martinez to approve designating Councilmember Diaz and Deputy Mayor Martinez and Councilmember Morasco as the alternate representatives, to represent the City of Escondido at the business meeting to be held during the League of California Cities Annual Conference on October 16-18, 2019, in Long Beach, California. Motion carried unanimously.

## FUTURE AGENDA

**20. 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 Masson reported regarding a San Diego County Water Authority meeting.

Councilmember Morasco reported regarding a Regional Solid Waste Association meeting and shared information regarding proposed state legislation.

Mayor McNamara attended a SANDAG meeting and shared information regarding public transportation.



## 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

**Jesse Quaco, Escondido**, spoke in opposition to bicycle lanes in Escondido and smart cities.

**Diana Balon, Escondido**, spoke in opposition to the installation of 5G towers in Escondido.

## ADJOURNMENT

Mayor McNamara adjourned the meeting at 8:29 p.m.

\_\_\_\_\_  
MAYOR

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

## CITY COUNCIL STAFF REPORT

Consent Item No. 4

August 7, 2019

File No. 0490-55

SUBJECT: Treasurer's Investment Report for the Quarter Ended June 30, 2019

DEPARTMENT: City Treasurer's Office

RECOMMENDATION:

It is requested that the City Council receive and file the Quarterly Investment Report.

PREVIOUS ACTION:

The Investment Report for the quarter ended March 31, 2018, was filed with the City Clerk's Office on April 30, 2019, and presented to the City Council on May 8, 2019.

BACKGROUND:

The City of Escondido's (City) Investment Policy requires the City Treasurer to submit a quarterly investment report to the City Council and City Manager. The quarterly investment report should include the type of investment, issuer, date of maturity, par and dollar amount invested and market value for each security held by the City. Details of the City's investment portfolio are included in the attached reports that are listed below:

- Summary of Investment Allocation as of June 30, 2019 (Attachment 1)
- Summary of Investment Portfolio Yield for the last 12 months (Attachment 2)
- Summary and Detailed Reports of Investment Portfolio – April 2019 through June 2019 (Attachment 3)
- Schedule of Investments Matured – April 2019 through June 2019 (Attachment 4)
- Schedule of Funds Managed by Outside Parties as of June 30, 2019 (Attachment 5)

The first page of the Investment Report is the Summary of Investment Allocation as of June 30, 2019 (Attachment 1). This chart shows that from April 1, 2019, to June 30, 2019, the City's investment portfolio increased from \$148 million to \$163.9 million. The adjusted average annual yield increased from 1.887 percent to 1.997 percent with the portfolio duration at 1.50. An excess of cash payment inflows over cash receipt outflows for the quarter resulted in an increase of \$15.9 million in the book value of the investment portfolio. Major components of the net \$15.9 million increase are:

	<u>In Millions</u>
Sales Tax Allocations	\$8.9
Vehicle License Fees	7
County Property Tax Allocations	9
Project Reimbursements	3.2
San Diego County Water Authority Payments	(2.8)
CALPERS Contributions	(6.2)
Change in Operational Account Balance	(3.2)
Net Increase in Investment Portfolio	<u>\$15.9</u>

There are adequate funds to meet the next six-month's expected expenditures. The Bank of New York Mellon Trust's monthly statement is the source for the market valuation. As of June 30, 2019, the City complies with all requirements of the City's Investment Policy.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

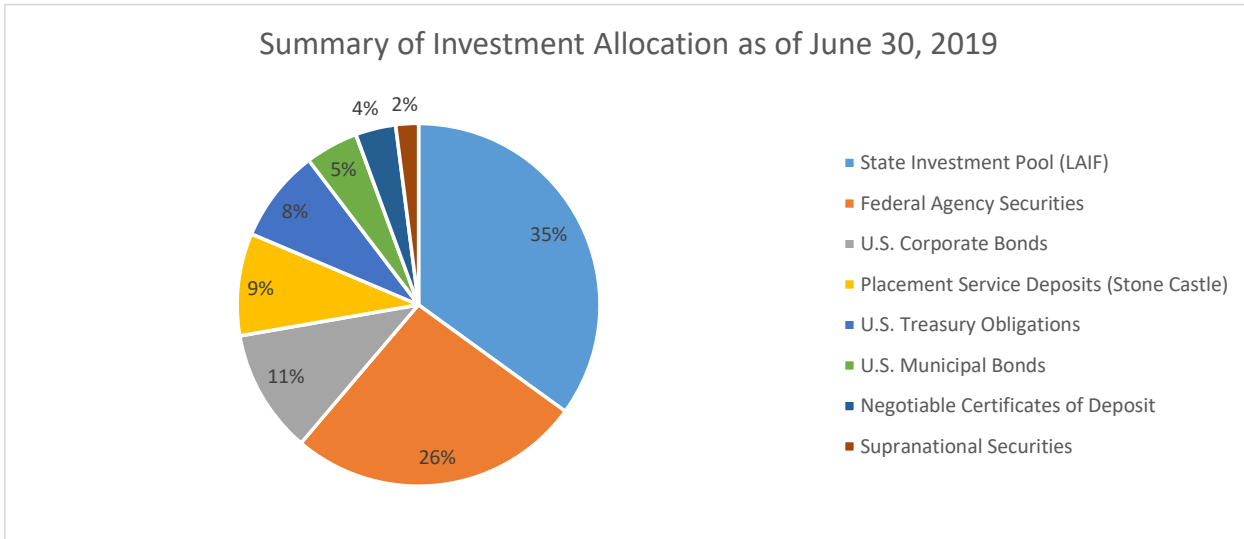
*Douglas W. Shultz*, City Treasurer  
8/1/2019 10:03 a.m.

ATTACHMENTS:

1. Attachment 1 – Summary of Investment Allocation as of June 30, 2019
2. Attachment 2 – Summary of Investment Portfolio Yield for the last 12 months
3. Attachment 3 – Summary and Detailed Reports of Investment Portfolio April - June 2019
4. Attachment 4 – Schedule of Investments Matured April - June 2019
5. Attachment 5 – Schedule of Funds Managed by Outside Parties as of June 30, 2019

**City of Escondido  
Summary of Investment Allocation  
as of June 30, 2019**

Investment Type	Book Value	Market Value	Percent of Portfolio at Market
State Investment Pool (LAIF)	\$ 57,561,063	\$ 57,561,063	34.99%
Federal Agency Securities	43,228,333	43,128,527	26.22%
U.S. Corporate Bonds	17,864,232	18,171,803	11.05%
Placement Service Deposits (Stone Castle)	15,028,396	15,028,396	9.14%
U.S. Treasury Obligations	13,393,775	13,597,084	8.27%
U.S. Municipal Bonds	7,685,153	7,780,897	4.73%
Negotiable Certificates of Deposit	5,912,000	5,923,400	3.60%
Supranational Securities	3,262,985	3,304,481	2.01%
<b>Total Investment Portfolio - June 2019</b>	<b>\$ 163,935,936</b>	<b>\$ 164,495,650</b>	<b>100%</b>
<b>Reported Total Investments - March 2019</b>	<b>\$ 148,000,830</b>	<b>\$ 147,125,238</b>	
<b>Change from Prior Quarter</b>	<b>\$ 15,935,106</b>	<b>\$ 17,370,412</b>	
<b>Portfolio Duration</b>	<b>1.50</b>		



**CITY OF ESCONDIDO  
SUMMARY OF INVESTMENT PORTFOLIO YIELDS  
FOR THE LAST 12 MONTHS  
As of June 30, 2019**

<u>Date</u>	<u>Book Value</u>	<u>Yield</u>
Jun-19	\$163,935,936.23	2.234%
May-19	\$159,528,865.80	2.215%
Apr-19	\$147,858,832.13	2.130%
Mar-19	\$148,000,830.10	2.046%
Feb-19	\$155,746,837.13	2.030%
Jan-19	\$154,254,737.58	2.012%
Dec-18	\$150,668,890.63	1.970%
Nov-18	\$143,772,797.41	1.924%
Oct-18	\$140,389,352.75	1.896%
Sep-18	\$135,984,031.14	1.861%
Aug-18	\$138,992,723.25	1.832%
Jul-18	\$158,123,586.26	1.810%
<b>Average Portfolio Interest Yields</b>		<b>1.997%</b>

Attachment 3

City of Escondido  
 Investment Portfolio - by Asset Class, Summary  
 Report Format: By Totals  
 Portfolio / Report Group: All Portfolios  
 As of 4/30/2019

Description	Face Amount/Shares	Cost Value	Market Value	Book Value	YTM @ Cost	YTM @ Market	Duration To Maturity	Days To Maturity
California Local Agency Investment Fund	58,061,063.19	58,061,063.19	58,061,063.19	58,061,063.19	2.445	2.445	0.00	1
Corporate Bond	10,840,000.00	11,073,475.80	11,056,058.80	11,066,891.18	2.803	2.854	3.75	1,465
Federal Agency Coupon Securities	59,665,000.00	60,160,932.65	59,117,568.70	59,825,130.68	1.650	2.365	1.89	708
Municipal Bond	7,655,000.00	7,705,595.95	7,661,480.95	7,686,990.37	2.673	2.784	3.11	1,190
Negotiable Certificate of Deposit	6,406,000.00	6,406,000.00	6,379,181.99	6,406,000.00	1.957	2.536	1.08	405
Supranational Securities	2,700,000.00	2,657,203.00	2,658,502.00	2,674,349.48	2.067	2.387	2.54	953
Treasury Coupon Securities	2,175,000.00	2,131,541.02	2,140,235.25	2,138,407.23	2.227	2.352	2.40	906
Total / Average	147,502,063.19	148,195,811.61	147,074,090.88	147,858,832.13	2.130	2.462	1.33	504

## Attachment 3

City of Escondido  
Portfolio Holdings  
Investment Portfolio - by Asset Class  
Report Format: By Transaction  
As of 4/30/2019

Description	CUSIP/Ticker	Settlement Date	Face Amount	Market Value	Book Value	YTM @ Cost	YTM @ Market	Duration To Maturity	Days To Maturity	% of Portfolio
California Local Agency Investment Fund										
LAIF LGIP	LGIP7282	05/31/2011	58,061,063.19	58,061,063.19	58,061,063.19	2.445	2.445	0.00	1	39.36
Sub Total / Average California Local Agency Investment Fund			58,061,063.19	58,061,063.19	58,061,063.19	2.445	2.445	0.00	1	39.36
Corporate Bond										
American Express Co 3.7 8/3/2023-23	025816BW8	04/26/2019	800,000.00	822,288.00	821,424.92	3.024	2.997	3.95	1,556	0.54
Apple Inc 2.1 9/12/2022	037833DC1	11/16/2017	950,000.00	936,472.00	938,677.39	2.477	2.544	3.26	1,231	0.64
Bank of America Corp 4.125 1/22/2024	06051GFB0	04/25/2019	1,395,000.00	1,461,764.70	1,456,300.28	3.117	3.030	4.31	1,728	0.95
Bank of New York Mellon 3.5 4/28/2023	06406RAG2	04/26/2019	1,410,000.00	1,445,799.90	1,445,280.18	2.833	2.823	3.77	1,459	0.96
BB&T Corporation 3.75 12/6/2023-23	05531FBF9	04/25/2019	800,000.00	828,592.00	824,854.07	3.021	2.914	4.21	1,681	0.54
Blackrock Inc 3.5 3/18/2024	09247XAL5	04/24/2019	1,420,000.00	1,469,799.40	1,464,438.54	2.809	2.728	4.52	1,784	0.96
Charles Schwab Corp 3.55 2/1/2024-24	808513AY1	04/29/2019	815,000.00	843,296.80	843,304.96	2.765	2.765	4.39	1,738	0.55
Citigroup 2.75 4/25/2022-22	172967LG4	09/25/2017	800,000.00	796,056.00	802,238.08	2.650	2.924	2.89	1,091	0.54
Goldman Sacks 3 4/26/2022-21	38141GWC4	09/20/2017	800,000.00	800,552.00	807,055.40	2.684	2.976	2.88	1,092	0.54
JPMorgan Chase & Co 3.25 9/23/2022	46625HJE1	12/01/2017	600,000.00	607,308.00	610,446.37	2.700	2.871	3.23	1,242	0.41
Morgan Stanley 2.75 5/19/2022	61744YAH1	09/15/2017	800,000.00	795,920.00	803,302.54	2.605	2.926	2.91	1,115	0.54
Oracle Corp 2.5 10/15/2022	68389XAP0	11/16/2017	250,000.00	248,210.00	249,568.45	2.553	2.718	3.33	1,264	0.17
Sub Total / Average Corporate Bond			10,840,000.00	11,056,058.80	11,066,891.18	2.803	2.854	3.75	1,465	7.35
Federal Agency Coupon Securities										
FFCB 1.14 6/29/2020	3133EGJD8	06/29/2016	2,000,000.00	1,971,340.00	1,998,518.77	1.205	2.395	1.16	426	1.36
FFCB 1.4 10/14/2021	3133EGYQ2	10/27/2016	2,000,000.00	1,955,580.00	1,997,156.91	1.460	2.335	2.42	898	1.36
FFCB 1.46 10/28/2020	3133EFLZ8	10/28/2015	1,000,000.00	987,130.00	1,000,000.00	1.460	2.341	1.48	547	0.68
FFCB 1.66 9/20/2021	3133EHZA4	10/11/2017	2,000,000.00	1,968,820.00	1,991,723.71	1.840	2.334	2.35	874	1.36
FFCB 1.7 4/27/2020	3133EAN46	02/01/2018	1,025,000.00	1,018,296.50	1,020,217.74	2.182	2.371	0.99	363	0.69
FFCB 1.8 11/12/2019	3133EEBN9	11/12/2014	5,000,000.00	4,983,300.00	5,000,000.00	1.800	2.433	0.53	196	3.39
FFCB 2.28 10/17/2022-18	3133EHF73	10/26/2017	1,000,000.00	994,880.00	998,181.48	2.335	2.435	3.35	1,266	0.68
FFCB 2.46 8/5/2020	3133ECW91	06/30/2016	1,500,000.00	1,501,995.00	1,526,220.74	1.047	2.351	1.25	463	1.02

## Attachment 3

City of Escondido  
Portfolio Holdings  
Investment Portfolio - by Asset Class  
Report Format: By Transaction  
As of 4/30/2019

Description	CUSIP/Ticker	Settlement Date	Face Amount	Market Value	Book Value	YTM @ Cost	YTM @ Market	Duration To Maturity	Days To Maturity	% of Portfolio
FFCB 4.81 9/1/2020	31331S4M2	06/30/2016	310,000.00	319,951.00	325,115.25	1.080	2.353	1.30	490	0.21
FHLB 1.375 2/18/2021	3130A7CV5	06/24/2016	2,000,000.00	1,966,940.00	2,003,315.53	1.280	2.317	1.78	660	1.36
FHLB 1.61 8/26/2020	3130ABD94	09/25/2017	2,000,000.00	1,980,680.00	1,998,601.58	1.664	2.357	1.30	484	1.36
FHLB 1.75 3/12/2021	313382K69	04/27/2016	1,000,000.00	989,470.00	1,004,482.81	1.500	2.329	1.84	682	0.68
FHLB 1.875 11/29/2021	3130AABG2	12/16/2016	2,000,000.00	1,978,360.00	1,988,999.71	2.100	2.309	2.51	944	1.36
FHLB 1.875 6/11/2021	313379RB7	06/24/2016	2,000,000.00	1,980,540.00	2,021,420.58	1.350	2.349	2.07	773	1.36
FHLB 2.17 8/14/2020	3130ADGL0	02/13/2018	2,000,000.00	1,995,140.00	1,998,242.28	2.240	2.361	1.27	472	1.36
FHLB 2.25 3/11/2022	313378CR0	05/09/2017	2,000,000.00	1,996,800.00	2,013,571.36	2.000	2.308	2.78	1,046	1.36
FHLB 4.625 9/11/2020	3133XD4P3	05/25/2016	2,350,000.00	2,420,359.00	2,449,904.94	1.410	2.379	1.33	500	1.59
FHLMC 1.125 8/12/2021	3137EAEC9	08/17/2016	3,000,000.00	2,922,990.00	2,987,490.13	1.314	2.285	2.26	835	2.03
FHLMC 1.25 10/2/2019	3137EADM8	03/16/2016	1,000,000.00	994,940.00	999,669.29	1.330	2.458	0.42	155	0.68
FHLMC 1.55 8/21/2020	3134G3D64	05/26/2016	1,195,000.00	1,181,197.75	1,197,575.08	1.380	2.452	1.30	479	0.81
FHLMC 1.65 1/29/2021	3134G34D9	07/13/2016	2,410,000.00	2,379,320.70	2,431,619.60	1.123	2.398	1.72	640	1.63
FHLMC 1.65 8/28/2020	3134G3F96	05/26/2016	1,000,000.00	993,000.00	1,003,473.57	1.380	2.187	1.32	486	0.68
FHLMC 1.75 5/21/2021	3134G44H8	07/13/2016	2,000,000.00	1,974,940.00	2,020,724.32	1.230	2.377	2.01	752	1.36
FHLMC 1.875 8/17/2021	3134G92Y2	05/09/2017	2,000,000.00	1,980,540.00	1,998,888.25	1.900	2.312	2.25	840	1.36
FHLMC 2.4 11/28/2022-18	3134GBY63	11/28/2017	1,000,000.00	991,590.00	1,000,000.00	2.400	2.648	3.41	1,308	0.68
FHLMC 2.4 11/28/2022-18	3134GBY63	11/28/2017	1,000,000.00	991,590.00	1,000,000.00	2.400	2.648	3.41	1,308	0.68
FNMA 1 8/28/2019	3135G0P49	01/27/2017	1,875,000.00	1,865,868.75	1,872,282.34	1.447	2.469	0.33	120	1.27
FNMA 1.25 5/6/2021	3135G0K69	05/19/2016	1,000,000.00	980,020.00	995,060.11	1.505	2.269	1.99	737	0.68
FNMA 1.25 8/17/2021	3135G0N82	10/11/2016	3,000,000.00	2,930,670.00	2,988,694.86	1.420	2.288	2.27	840	2.03
FNMA 1.5 11/30/2020	3135G0F73	04/26/2017	2,000,000.00	1,974,160.00	1,995,046.61	1.661	2.335	1.56	580	1.36
FNMA 2 10/5/2022	3135G0T78	10/11/2017	2,000,000.00	1,981,020.00	1,999,986.22	2.000	2.289	3.33	1,254	1.36
FNMA 2 8/26/2022	3136G05L1	09/28/2017	2,000,000.00	1,978,060.00	2,002,505.19	1.960	2.345	3.22	1,214	1.36
FNMA 2.25 10/27/2022-18	3136G4PV9	11/29/2017	2,000,000.00	1,988,080.00	1,996,441.72	2.304	2.429	3.38	1,276	1.36
Sub Total / Average Federal Agency Coupon Securities			59,665,000.00	59,117,568.70	59,825,130.68	1.650	2.365	1.89	708	40.45



## Attachment 3

City of Escondido  
Portfolio Holdings  
Investment Portfolio - by Asset Class  
Report Format: By Transaction  
As of 4/30/2019

Description	CUSIP/Ticker	Settlement Date	Face Amount	Market Value	Book Value	YTM @ Cost	YTM @ Market	Duration To Maturity	Days To Maturity	% of Portfolio
Municipal Bond										
Brea Redev Agency 2.25 8/1/2022	106293CG6	11/01/2017	220,000.00	217,019.00	218,651.37	2.451	2.687	3.14	1,189	0.15
City of Industry CA 2.75 1/1/2022	45656RDV1	09/29/2017	250,000.00	249,960.00	250,939.30	2.600	2.755	2.57	977	0.17
City of Monrovia CA 2.742 5/1/2022	611581AM1	12/13/2017	750,000.00	748,335.00	750,000.00	2.742	2.820	2.86	1,097	0.51
Contra Costa County CA Fire 5.06 8/1/2022	31224RAS5	10/10/2017	850,000.00	910,613.50	915,784.34	2.520	2.752	3.01	1,189	0.58
Contra Costa County Redev Agency 2.25 8/1/2022	212263AS6	09/29/2017	500,000.00	490,320.00	496,941.71	2.450	2.877	3.14	1,189	0.34
Guadalupe CA Cmnty Redev Agency 2.5 8/1/2022	400559AE0	11/29/2017	230,000.00	228,304.90	228,946.84	2.651	2.738	3.13	1,189	0.16
Long Beach CA Tidelands Rev 2.785 11/1/2022	54245HAN4	11/15/2017	825,000.00	822,170.25	825,000.00	2.785	2.889	3.32	1,281	0.56
Murrieta Redev Successor Agency 2.5 8/1/2022	62719PAY2	10/18/2017	250,000.00	248,005.00	249,554.47	2.559	2.758	3.13	1,189	0.17
Norco CA Comm Redev Agency 2.715 3/1/2022	655505BJ3	12/20/2017	320,000.00	320,192.00	320,000.00	2.715	2.692	2.74	1,036	0.22
Palm Springs CA Cmnty Redev Agency 2.25 9/1/2022	69667ABT2	11/15/2017	290,000.00	285,246.90	287,726.87	2.501	2.767	3.22	1,220	0.20
San Diego Redev Agency 2.875 9/1/2021	79730WAX8	09/28/2017	400,000.00	402,592.00	403,589.33	2.470	2.586	2.27	855	0.27
San Francisco City & County 2.5 9/1/2022	79772EAX7	11/09/2017	350,000.00	347,798.50	348,857.77	2.605	2.698	3.21	1,220	0.24
San Francisco City & County 2.5 9/1/2022	79772EAE9	11/09/2017	380,000.00	377,609.80	378,168.82	2.655	2.698	3.21	1,220	0.26
San Marcos CA Redev Agency 2.25 10/1/2022	79876CBS6	12/14/2017	750,000.00	736,695.00	739,362.16	2.695	2.797	3.30	1,250	0.51
Temecula CA Redev Agency 2.5 12/15/2022	87972DBB7	12/15/2017	1,065,000.00	1,052,262.60	1,050,950.57	2.893	2.849	3.45	1,325	0.72
Town of Mammoth Lakes CA Judgement Rev 2.75 10/1/2	56155CAE8	10/25/2017	225,000.00	224,356.50	222,516.82	3.101	2.838	3.28	1,250	0.15
Sub Total / Average Municipal Bond			7,655,000.00	7,661,480.95	7,686,990.37	2.673	2.784	3.11	1,190	5.19
Negotiable Certificate of Deposit										
Ally Bank 1.9 6/22/2020	02006L3N1	06/22/2017	245,000.00	242,791.86	245,000.00	1.900	2.702	1.13	419	0.17
American Exp Fed Svgs Bk 2 7/24/2019	02587CAJ9	07/24/2014	247,000.00	246,684.93	247,000.00	2.000	2.536	0.23	85	0.17
Barclays Bank 2.099 7/23/2019	06740KHK6	07/28/2014	247,000.00	246,745.42	247,000.00	2.099	2.532	0.23	84	0.17
Beneficial Bank 2.15 10/18/2022	08173QBX3	10/18/2017	245,000.00	243,647.55	245,000.00	2.150	2.317	3.36	1,267	0.17
BMW 1.95 6/20/2019	05580AAL8	06/20/2014	247,000.00	246,809.07	247,000.00	1.950	2.486	0.14	51	0.17
Capital One Bank USA NA 2.4 6/1/2022	1404203C2	06/01/2017	245,000.00	245,598.80	245,000.00	2.400	2.317	2.97	1,128	0.17
Capital One NA 2 8/12/2019	14042E5L0	08/12/2015	247,000.00	246,595.59	247,000.00	2.000	2.563	0.29	104	0.17

## Attachment 3

City of Escondido  
Portfolio Holdings  
Investment Portfolio - by Asset Class  
Report Format: By Transaction  
As of 4/30/2019

Description	CUSIP/Ticker	Settlement Date	Face Amount	Market Value	Book Value	YTM @ Cost	YTM @ Market	Duration To Maturity	Days To Maturity	% of Portfolio
Cit Bank 2.2 11/26/2019	17284C4L5	11/26/2014	247,000.00	246,441.19	247,000.00	2.200	2.597	0.57	210	0.17
Comenity Capital Bank 2 10/13/2020	20033AND4	10/13/2015	249,000.00	246,915.15	249,000.00	2.000	2.588	1.43	532	0.17
Discover FS 2 6/18/2019	254671W48	06/18/2014	247,000.00	246,833.03	247,000.00	2.000	2.486	0.13	49	0.17
Enerbank USA 2.05 8/28/2019	29266NB30	08/28/2014	247,000.00	246,576.40	247,000.00	2.050	2.563	0.33	120	0.17
EVERBANK FL 1.6 7/30/2019	29976DZM5	07/30/2015	248,000.00	247,395.67	248,000.00	1.600	2.565	0.25	91	0.17
First Bank of Richmond 1.8 10/19/2020	319267GK0	10/18/2017	245,000.00	242,578.27	245,000.00	1.800	2.489	1.46	538	0.17
FIRST BUSINESS 1.5 10/30/2019	31938QP65	10/30/2015	248,000.00	246,643.74	248,000.00	1.500	2.608	0.50	183	0.17
Focus Bank 2.2 11/24/2022	34415LAP6	11/24/2017	245,000.00	244,039.72	245,000.00	2.200	2.315	3.42	1,304	0.17
Franklin Synergy Bank 1.6 8/30/2019	35471TDK5	05/31/2017	245,000.00	244,190.76	245,000.00	1.600	2.604	0.33	122	0.17
Goldman Sachs Bank USA 2.35 6/21/2022	38148PKX4	06/21/2017	245,000.00	245,232.75	245,000.00	2.350	2.318	3.02	1,148	0.17
Live Oak Banking Co. 1.85 7/30/2019	538036CA0	10/30/2014	247,000.00	246,558.61	247,000.00	1.850	2.568	0.25	91	0.17
Medallion Bank Utah 2.05 6/28/2021	58403B6Y7	06/28/2017	245,000.00	243,288.60	245,000.00	2.050	2.382	2.12	790	0.17
Mercantile Bank of MI 1.8 6/8/2020	58740XZJ2	06/07/2017	245,000.00	242,596.18	245,000.00	1.800	2.705	1.09	405	0.17
Sallie Mae Bank 2.1 8/13/2019	795450SJ5	08/13/2014	247,000.00	246,662.94	247,000.00	2.100	2.563	0.29	105	0.17
SYNCHRONY BANK 2.25 7/17/2020	87165HKM1	07/17/2015	247,000.00	245,766.48	247,000.00	2.250	2.667	1.20	444	0.17
Third Fed S & L 2 11/25/2019	88413QAW8	11/24/2014	247,000.00	246,161.34	247,000.00	2.000	2.604	0.56	209	0.17
Unity Bank 1.65 10/30/2020	91330ABC0	10/30/2015	249,000.00	245,651.62	249,000.00	1.650	2.565	1.48	549	0.17
Venture Bank Bloomington 1.6 9/6/2019	92326XDN8	06/06/2017	245,000.00	244,144.39	245,000.00	1.600	2.601	0.35	129	0.17
WEX Bank 1.8 6/2/2020	92937CFS2	06/02/2017	245,000.00	242,631.93	245,000.00	1.800	2.704	1.08	399	0.17
Sub Total / Average Negotiable Certificate of Deposit			6,406,000.00	6,379,181.99	6,406,000.00	1.957	2.536	1.08	405	4.34
Supranational Securities										
IADB 1.75 9/14/2022	4581X0CZ9	11/06/2017	1,000,000.00	981,190.00	988,177.66	2.120	2.333	3.28	1,233	0.68
IADB 1.75 9/14/2022	4581X0CZ9	11/07/2017	1,000,000.00	981,190.00	988,240.58	2.118	2.333	3.28	1,233	0.68
IBRD 1.2 9/30/2019	459058FQ1	12/11/2017	700,000.00	696,122.00	697,931.24	1.920	2.541	0.42	153	0.47
Sub Total / Average Supranational Securities			2,700,000.00	2,658,502.00	2,674,349.48	2.067	2.387	2.54	953	1.83
Treasury Coupon Securities										

Attachment 3

City of Escondido  
 Portfolio Holdings  
 Investment Portfolio - by Asset Class  
 Report Format: By Transaction  
 As of 4/30/2019

Description	CUSIP/Ticker	Settlement Date	Face Amount	Market Value	Book Value	YTM @ Cost	YTM @ Market	Duration To Maturity	Days To Maturity	% of Portfolio
T-Bond 1.625 5/31/2023	912828R69	04/26/2019	1,200,000.00	1,169,808.00	1,166,153.24	2.353	2.273	3.94	1,492	0.81
T-Note 1.5 10/31/2019	912828F62	01/31/2018	975,000.00	970,427.25	972,253.99	2.071	2.449	0.50	184	0.66
Sub Total / Average Treasury Coupon Securities			2,175,000.00	2,140,235.25	2,138,407.23	2.227	2.352	2.40	906	1.47
Total / Average			147,502,063.19	147,074,090.88	147,858,832.13	2.130	2.462	1.33	504	100

Attachment 3

City of Escondido  
 Investment Portfolio - by Asset Class, Summary  
 Report Format: By Totals  
 Portfolio / Report Group: All Portfolios  
 As of 5/31/2019

Description	Face Amount/Shares	Cost Value	Market Value	Book Value	YTM @ Cost	YTM @ Market	Duration To Maturity	Days To Maturity
California Local Agency Investment Fund	58,061,063.19	58,061,063.19	58,061,063.19	58,061,063.19	2.449	2.449	0.00	1
Corporate Bond	16,770,000.00	17,035,921.65	17,129,958.40	17,024,648.32	2.754	2.604	3.65	1,419
Federal Agency Coupon Securities	49,710,000.00	50,207,960.49	49,556,404.56	49,863,512.99	1.685	2.071	2.04	765
Municipal Bond	7,655,000.00	7,705,595.95	7,745,729.05	7,686,056.65	2.673	2.419	3.03	1,159
Negotiable Certificate of Deposit	6,406,000.00	6,406,000.00	6,401,605.32	6,406,000.00	1.957	2.358	1.00	374
Stone Castle - FICA Account	10,001,287.68	10,001,287.68	10,001,287.68	10,001,287.68	2.350	2.350	0.00	1
Supranational Securities	3,290,000.00	3,251,365.70	3,285,676.70	3,262,285.22	2.170	1.932	3.12	1,173
Treasury Coupon Securities	7,310,000.00	7,220,817.19	7,335,003.85	7,224,011.75	2.304	1.952	4.15	1,588
Total / Average	159,203,350.87	159,890,011.85	159,516,728.75	159,528,865.80	2.215	2.302	1.46	557

## Attachment 3

City of Escondido  
Portfolio Holdings  
Investment Portfolio - by Asset Class  
Report Format: By Transaction  
As of 5/31/2019

Description	CUSIP/Ticker	Settlement Date	Face Amount/Shares	Market Value	Book Value	YTM @ Cost	YTM @ Market	Duration To Maturity	Days To Maturity	% of Portfolio
California Local Agency Investment Fund										
LAIF LGIP	LGIP7282	05/31/2011	58,061,063.19	58,061,063.19	58,061,063.19	2.449	2.449	0.00	1	36.47
Sub Total / Average California Local Agency Investment Fund			58,061,063.19	58,061,063.19	58,061,063.19	2.449	2.449	0.00	1	36.47
Corporate Bond										
ABBOT LABORATORIES 3.4 11/30/2023-23	002824BE9	05/14/2019	825,000.00	850,476.00	846,222.30	2.787	2.667	4.22	1,644	0.52
AMAZON.COM INC 2.4 2/22/2023-23	023135AW6	05/16/2019	880,000.00	878,275.20	873,593.70	2.606	2.455	3.56	1,363	0.55
American Express Co 3.7 8/3/2023-23	025816BW8	04/26/2019	800,000.00	829,968.00	820,998.08	3.024	2.743	3.87	1,525	0.50
Apple Inc 2.1 9/12/2022	037833DC1	11/16/2017	950,000.00	941,706.50	938,962.52	2.477	2.378	3.17	1,200	0.60
Bank of America Corp 4.125 1/22/2024	06051GFB0	04/25/2019	1,395,000.00	1,471,125.15	1,455,200.56	3.117	2.861	4.23	1,697	0.88
Bank of New York Mellon 3.5 4/28/2023	06406RAG2	04/26/2019	1,410,000.00	1,455,712.20	1,444,530.56	2.833	2.621	3.68	1,428	0.89
BB&T Corporation 3.75 12/6/2023-23	05531FBF9	04/25/2019	800,000.00	834,512.00	824,395.73	3.021	2.728	4.13	1,650	0.50
Blackrock Inc 3.5 3/18/2024	09247XAL5	04/24/2019	1,420,000.00	1,485,731.80	1,463,666.35	2.809	2.470	4.44	1,753	0.89
CATERPILLAR FINANCIAL SE 3.75 11/24/2023	14912L5X5	05/10/2019	790,000.00	827,280.10	822,822.40	2.757	2.627	4.17	1,638	0.50
Charles Schwab Corp 3.55 2/1/2024-24	808513AY1	04/29/2019	815,000.00	851,976.55	842,800.10	2.765	2.513	4.30	1,707	0.51
Citigroup 2.75 4/25/2022-22	172967LG4	09/25/2017	800,000.00	800,576.00	802,174.49	2.650	2.724	2.80	1,060	0.50
Goldman Sacks 3 4/26/2022-21	38141GWC4	09/20/2017	800,000.00	802,760.00	806,855.11	2.684	2.875	2.79	1,061	0.50
JOHN DEERE CAPITAL CORP 2.8 3/6/2023	24422ETG4	05/20/2019	835,000.00	842,080.80	838,694.54	2.675	2.562	3.58	1,375	0.52
JPMorgan Chase & Co 3.25 9/23/2022	46625HJE1	12/01/2017	600,000.00	610,956.00	610,185.63	2.700	2.669	3.15	1,211	0.38
Morgan Stanley 2.75 5/19/2022	61744YAH1	09/15/2017	800,000.00	799,600.00	803,210.72	2.605	2.768	2.87	1,084	0.50
Oracle Corp 2.5 10/15/2022	68389XAP0	11/16/2017	250,000.00	249,785.00	249,579.03	2.553	2.526	3.25	1,233	0.16
Toyota Motor Company 2.7 1/11/2023	89236TEL5	05/01/2019	1,090,000.00	1,095,123.00	1,089,712.24	2.707	2.563	3.43	1,321	0.68
VISA INC 2.15 9/15/2022-22	92826CAG7	05/16/2019	1,510,000.00	1,502,314.10	1,491,044.26	2.550	2.311	3.18	1,203	0.95
Sub Total / Average Corporate Bond			16,770,000.00	17,129,958.40	17,024,648.32	2.754	2.604	3.65	1,419	10.53
Federal Agency Coupon Securities										
FFCB 1.14 6/29/2020	3133EGJD8	06/29/2016	2,000,000.00	1,981,020.00	1,998,626.56	1.205	2.034	1.07	395	1.26
FFCB 1.4 10/14/2021	3133EGYQ2	10/27/2016	2,000,000.00	1,971,380.00	1,997,255.06	1.460	2.021	2.33	867	1.26
FFCB 1.46 10/28/2020	3133EFLZ8	10/28/2015	1,000,000.00	992,190.00	1,000,000.00	1.460	2.025	1.40	516	0.63

## Attachment 3

City of Escondido  
Portfolio Holdings  
Investment Portfolio - by Asset Class  
Report Format: By Transaction  
As of 5/31/2019

Description	CUSIP/Ticker	Settlement Date	Face Amount/Shares	Market Value	Book Value	YTM @ Cost	YTM @ Market	Duration To Maturity	Days To Maturity	% of Portfolio
FFCB 1.66 9/20/2021	3133EHZA4	10/11/2017	2,000,000.00	1,984,880.00	1,992,017.26	1.840	1.997	2.26	843	1.26
FFCB 1.7 4/27/2020	3133EAN46	02/01/2018	1,025,000.00	1,020,418.25	1,020,626.14	2.182	2.201	0.90	332	0.64
FFCB 2.28 10/17/2022-18	3133EHF73	10/26/2017	1,000,000.00	1,000,010.00	998,226.00	2.335	2.279	3.26	1,235	0.63
FFCB 2.46 8/5/2020	3133ECW91	06/30/2016	700,000.00	703,234.00	711,417.06	1.047	2.060	1.16	432	0.44
FFCB 4.81 9/1/2020	31331S4M2	06/30/2016	310,000.00	320,533.80	324,158.98	1.080	2.040	1.22	459	0.19
FHLB 1.375 2/18/2021	3130A7CV5	06/24/2016	2,000,000.00	1,977,820.00	2,003,159.80	1.280	2.036	1.69	629	1.26
FHLB 1.61 8/26/2020	3130ABD94	09/25/2017	2,000,000.00	1,987,960.00	1,998,691.14	1.664	2.107	1.23	453	1.26
FHLB 1.75 3/12/2021	313382K69	04/27/2016	1,000,000.00	995,590.00	1,004,279.04	1.500	2.003	1.75	651	0.63
FHLB 1.875 11/29/2021	3130AABG2	12/16/2016	2,000,000.00	1,995,160.00	1,989,360.95	2.100	1.975	2.45	913	1.26
FHLB 1.875 6/11/2021	313379RB7	06/24/2016	2,000,000.00	1,994,500.00	2,020,561.54	1.350	2.014	1.98	742	1.26
FHLB 2.17 8/14/2020	3130ADGL0	02/13/2018	2,000,000.00	2,000,960.00	1,998,357.72	2.240	2.128	1.19	441	1.26
FHLB 2.25 3/11/2022	313378CR0	05/09/2017	2,000,000.00	2,011,820.00	2,013,169.15	2.000	2.030	2.70	1,015	1.26
FHLB 4.625 9/11/2020	3133XD4P3	05/25/2016	2,350,000.00	2,423,884.00	2,443,710.83	1.410	2.116	1.24	469	1.48
FHLMC 1.125 8/12/2021	3137EAEC9	08/17/2016	2,165,000.00	2,124,644.40	2,156,307.21	1.314	1.996	2.17	804	1.36
FHLMC 1.55 8/21/2020	3134G3D64	05/26/2016	1,195,000.00	1,185,224.90	1,197,408.43	1.380	2.231	1.21	448	0.75
FHLMC 1.65 1/29/2021	3134G34D9	07/13/2016	2,410,000.00	2,392,816.70	2,430,572.40	1.123	2.088	1.64	609	1.51
FHLMC 1.65 8/28/2020	3134G3F96	05/26/2016	1,000,000.00	996,200.00	1,003,252.01	1.380	1.959	1.23	455	0.63
FHLMC 1.75 5/21/2021	3134G44H8	07/13/2016	2,000,000.00	1,988,760.00	2,019,870.00	1.230	2.042	1.95	721	1.26
FHLMC 1.875 8/17/2021	3134G92Y2	05/09/2017	2,000,000.00	1,995,760.00	1,998,929.28	1.900	1.973	2.17	809	1.26
FHLMC 2.4 11/28/2022-18	3134GBY63	11/28/2017	1,000,000.00	1,000,390.00	1,000,000.00	2.400	2.388	3.37	1,277	0.63
FHLMC 2.4 11/28/2022-18	3134GBY63	11/28/2017	1,000,000.00	1,000,390.00	1,000,000.00	2.400	2.388	3.37	1,277	0.63
FHLMC K718 A2 2.791 1/25/2022	3137BHXY8	05/21/2019	845,000.00	855,470.31	850,227.36	2.548	2.306	2.54	970	0.53
FNMA 1.25 5/6/2021	3135G0K69	05/19/2016	1,000,000.00	986,370.00	995,267.89	1.505	1.973	1.91	706	0.63
FNMA 1.25 8/17/2021	3135G0N82	10/11/2016	1,710,000.00	1,683,358.20	1,703,793.88	1.420	1.973	2.18	809	1.07
FNMA 1.5 11/30/2020	3135G0F73	04/26/2017	2,000,000.00	1,983,360.00	1,995,311.36	1.661	2.066	1.49	549	1.26
FNMA 2 10/5/2022	3135G0T78	10/11/2017	2,000,000.00	2,002,700.00	1,999,986.56	2.000	1.958	3.24	1,223	1.26
FNMA 2 8/26/2022	3136G05L1	09/28/2017	2,000,000.00	1,999,160.00	2,002,441.22	1.960	2.013	3.13	1,183	1.26

## Attachment 3

City of Escondido  
Portfolio Holdings  
Investment Portfolio - by Asset Class  
Report Format: By Transaction  
As of 5/31/2019

Description	CUSIP/Ticker	Settlement Date	Face Amount/Shares	Market Value	Book Value	YTM @ Cost	YTM @ Market	Duration To Maturity	Days To Maturity	% of Portfolio
FNMA 2.25 10/27/2022-18	3136G4PV9	11/29/2017	2,000,000.00	2,000,440.00	1,996,528.16	2.304	2.243	3.29	1,245	1.26
Sub Total / Average Federal Agency Coupon Securities			49,710,000.00	49,556,404.56	49,863,512.99	1.685	2.071	2.04	765	31.22
Municipal Bond										
Brea Redev Agency 2.25 8/1/2022	106293CG6	11/01/2017	220,000.00	219,425.80	218,686.53	2.451	2.335	3.05	1,158	0.14
City of Industry CA 2.75 1/1/2022	45656RDV1	09/29/2017	250,000.00	252,767.50	250,909.50	2.600	2.306	2.48	946	0.16
City of Monrovia CA 2.742 5/1/2022	611581AM1	12/13/2017	750,000.00	758,272.50	750,000.00	2.742	2.348	2.82	1,066	0.47
Contra Costa County CA Fire 5.06 8/1/2022	31224RAS5	10/10/2017	850,000.00	918,459.00	914,069.19	2.520	2.402	2.93	1,158	0.53
Contra Costa County Redev Agency 2.25 8/1/2022	212263AS6	09/29/2017	500,000.00	495,830.00	497,021.44	2.450	2.525	3.05	1,158	0.31
Guadalupe CA Cmnty Redev Agency 2.5 8/1/2022	400559AE0	11/29/2017	230,000.00	230,791.20	228,974.29	2.651	2.386	3.04	1,158	0.14
Long Beach CA Tidelands Rev 2.785 11/1/2022	54245HAN4	11/15/2017	825,000.00	831,624.75	825,000.00	2.785	2.538	3.28	1,250	0.52
Murrieta Redev Successor Agency 2.5 8/1/2022	62719PAY2	10/18/2017	250,000.00	250,707.50	249,566.08	2.559	2.406	3.04	1,158	0.16
Norco CA Comm Redev Agency 2.715 3/1/2022	655505BJ3	12/20/2017	320,000.00	323,164.80	320,000.00	2.715	2.341	2.65	1,005	0.20
Palm Springs CA Cmnty Redev Agency 2.25 9/1/2022	69667ABT2	11/15/2017	290,000.00	288,503.60	287,784.63	2.501	2.416	3.13	1,189	0.18
San Diego Redev Agency 2.875 9/1/2021	79730WAX8	09/28/2017	400,000.00	405,476.00	403,459.19	2.470	2.247	2.18	824	0.25
San Francisco City & County 2.5 9/1/2022	79772EAX7	11/09/2017	350,000.00	351,666.00	348,886.79	2.605	2.346	3.12	1,189	0.22
San Francisco City & County 2.5 9/1/2022	79772EAE9	11/09/2017	380,000.00	381,808.80	378,215.35	2.655	2.346	3.12	1,189	0.24
San Marcos CA Redev Agency 2.25 10/1/2022	79876CBS6	12/14/2017	750,000.00	745,312.50	739,625.98	2.695	2.446	3.22	1,219	0.47
Temecula CA Redev Agency 2.5 12/15/2022	87972DBB7	12/15/2017	1,065,000.00	1,065,042.60	1,051,279.28	2.893	2.499	3.37	1,294	0.67
Town of Mammoth Lakes CA Judgement Rev 2.75 10/1/2	56155CAE8	10/25/2017	225,000.00	226,876.50	222,578.40	3.101	2.487	3.19	1,219	0.14
Sub Total / Average Municipal Bond			7,655,000.00	7,745,729.05	7,686,056.65	2.673	2.419	3.03	1,159	4.81
Negotiable Certificate of Deposit										
Ally Bank 1.9 6/22/2020	02006L3N1	06/22/2017	245,000.00	243,417.10	245,000.00	1.900	2.520	1.05	388	0.15
American Exp Fed Svgs Bk 2 7/24/2019	02587CAJ9	07/24/2014	247,000.00	246,831.22	247,000.00	2.000	2.449	0.15	54	0.16
Barclays Bank 2.099 7/23/2019	06740KHK6	07/28/2014	247,000.00	246,870.20	247,000.00	2.099	2.441	0.15	53	0.16
Beneficial Bank 2.15 10/18/2022	08173QBX3	10/18/2017	245,000.00	246,916.10	245,000.00	2.150	1.910	3.27	1,236	0.15
BMW 1.95 6/20/2019	05580AAL8	06/20/2014	247,000.00	246,929.93	247,000.00	1.950	2.446	0.05	20	0.16
Capital One Bank USA NA 2.4 6/1/2022	1404203C2	06/01/2017	245,000.00	248,500.61	245,000.00	2.400	1.908	2.88	1,097	0.15

## Attachment 3

City of Escondido  
Portfolio Holdings  
Investment Portfolio - by Asset Class  
Report Format: By Transaction  
As of 5/31/2019

Description	CUSIP/Ticker	Settlement Date	Face Amount/Shares	Market Value	Book Value	YTM @ Cost	YTM @ Market	Duration To Maturity	Days To Maturity	% of Portfolio
Capital One NA 2 8/12/2019	14042E5L0	08/12/2015	247,000.00	246,758.38	247,000.00	2.000	2.473	0.20	73	0.16
Cit Bank 2.2 11/26/2019	17284C4L5	11/26/2014	247,000.00	246,610.93	247,000.00	2.200	2.527	0.49	179	0.16
Comenity Capital Bank 2 10/13/2020	20033AND4	10/13/2015	249,000.00	247,851.89	249,000.00	2.000	2.343	1.35	501	0.16
Discover FS 2 6/18/2019	254671W48	06/18/2014	247,000.00	246,942.99	247,000.00	2.000	2.445	0.05	18	0.16
Enerbank USA 2.05 8/28/2019	29266NB30	08/28/2014	247,000.00	246,737.24	247,000.00	2.050	2.472	0.25	89	0.16
EVERBANK FL 1.6 7/30/2019	29976DZM5	07/30/2015	248,000.00	247,648.81	248,000.00	1.600	2.445	0.17	60	0.16
First Bank of Richmond 1.8 10/19/2020	319267GK0	10/18/2017	245,000.00	243,519.83	245,000.00	1.800	2.245	1.37	507	0.15
FIRST BUSINESS 1.5 10/30/2019	31938QP65	10/30/2015	248,000.00	246,939.82	248,000.00	1.500	2.537	0.42	152	0.16
Focus Bank 2.2 11/24/2022	34415LAP6	11/24/2017	245,000.00	247,392.06	245,000.00	2.200	1.909	3.37	1,273	0.15
Franklin Synergy Bank 1.6 8/30/2019	35471TDK5	05/31/2017	245,000.00	244,463.43	245,000.00	1.600	2.489	0.25	91	0.15
Goldman Sachs Bank USA 2.35 6/21/2022	38148PKX4	06/21/2017	245,000.00	248,192.79	245,000.00	2.350	1.909	2.94	1,117	0.15
Live Oak Banking Co. 1.85 7/30/2019	538036CA0	10/30/2014	247,000.00	246,757.84	247,000.00	1.850	2.440	0.17	60	0.16
Medallion Bank Utah 2.05 6/28/2021	58403B6Y7	06/28/2017	245,000.00	245,298.14	245,000.00	2.050	1.990	2.03	759	0.15
Mercantile Bank of MI 1.8 6/8/2020	58740XZJ2	06/07/2017	245,000.00	243,225.93	245,000.00	1.800	2.522	1.01	374	0.15
Sallie Mae Bank 2.1 8/13/2019	795450SJ5	08/13/2014	247,000.00	246,805.31	247,000.00	2.100	2.472	0.20	74	0.16
SYNCHRONY BANK 2.25 7/17/2020	87165HKM1	07/17/2015	247,000.00	246,390.48	247,000.00	2.250	2.471	1.11	413	0.16
Third Fed S & L 2 11/25/2019	88413QAW8	11/24/2014	247,000.00	246,371.73	247,000.00	2.000	2.532	0.48	178	0.16
Unity Bank 1.65 10/30/2020	91330ABC0	10/30/2015	249,000.00	246,581.84	249,000.00	1.650	2.348	1.40	518	0.16
Venture Bank Bloomington 1.6 9/6/2019	92326XDN8	06/06/2017	245,000.00	244,395.66	245,000.00	1.600	2.535	0.27	98	0.15
WEX Bank 1.8 6/2/2020	92937CFS2	06/02/2017	245,000.00	243,255.06	245,000.00	1.800	2.521	0.99	368	0.15
Sub Total / Average Negotiable Certificate of Deposit			6,406,000.00	6,401,605.32	6,406,000.00	1.957	2.358	1.00	374	4.02
Stone Castle FICA Account										
Stone Castle FICA	104791571599	05/30/2019	10,001,287.68	10,001,287.68	10,001,287.68	2.350	2.350	0.00	1	6.28
Sub Total / Average Stone Castle FICA Account			10,001,287.68	10,001,287.68	10,001,287.68	2.350	2.350	0.00	1	6.28
Supranational Securities										
IADB 1.75 9/14/2022	4581X0CZ9	11/06/2017	1,000,000.00	992,530.00	988,474.90	2.120	1.986	3.20	1,202	0.63
IADB 1.75 9/14/2022	4581X0CZ9	11/07/2017	1,000,000.00	992,530.00	988,536.23	2.118	1.986	3.20	1,202	0.63



Attachment 3

City of Escondido  
 Portfolio Holdings  
 Investment Portfolio - by Asset Class  
 Report Format: By Transaction  
 As of 5/31/2019

Description	CUSIP/Ticker	Settlement Date	Face Amount/Shares	Market Value	Book Value	YTM @ Cost	YTM @ Market	Duration To Maturity	Days To Maturity	% of Portfolio
INTL BK RECON & DEVELOP 2.125 7/1/2022	459058GU1	05/29/2019	1,290,000.00	1,300,616.70	1,285,274.09	2.249	1.849	3.00	1,127	0.81
Sub Total / Average Supranational Securities			3,290,000.00	3,285,676.70	3,262,285.22	2.170	1.932	3.12	1,173	2.07
Treasury Coupon Securities										
T-Bond 1.625 5/31/2023	912828R69	04/26/2019	1,195,000.00	1,181,329.20	1,161,994.59	2.353	1.924	3.89	1,461	0.75
T-Note 1.375 6/30/2023	912828S35	05/09/2019	975,000.00	953,745.00	940,920.82	2.277	1.933	3.96	1,491	0.61
T-Note 1.5 10/31/2019	912828F62	01/31/2018	215,000.00	214,228.15	214,496.49	2.071	2.369	0.42	153	0.14
T-Note 2.125 2/29/2024	912828W48	05/01/2019	1,050,000.00	1,058,536.50	1,040,847.70	2.320	1.945	4.52	1,735	0.66
T-Note 2.25 1/31/2024	912828V80	05/09/2019	2,000,000.00	2,027,040.00	1,996,220.62	2.293	1.945	4.43	1,706	1.26
T-Note 2.25 12/31/2023	912828V23	05/01/2019	1,875,000.00	1,900,125.00	1,869,531.53	2.317	1.943	4.34	1,675	1.18
Sub Total / Average Treasury Coupon Securities			7,310,000.00	7,335,003.85	7,224,011.75	2.304	1.952	4.15	1,588	4.59
Total / Average			159,203,350.87	159,516,728.75	159,528,865.80	2.215	2.302	1.46	557	100

Attachment 3

City of Escondido

Investment Portfolio - by Asset Class, Summary

Report Format: By Totals

Portfolio / Report Group: All Portfolios

As of 6/30/2019

Description	Face Amount/Shares	Cost Value	Market Value	Book Value	YTM @ Cost	YTM @ Market	Duration To Maturity	Days To Maturity
California Local Agency Investment Fund	57,561,063.19	57,561,063.19	57,561,063.19	57,561,063.19	2.428	2.428	0.00	1
Corporate Bond	17,615,000.00	17,880,144.25	18,171,802.60	17,864,231.76	2.729	2.273	3.54	1,375
Federal Agency Coupon Securities	43,110,000.00	43,529,271.89	43,128,526.50	43,228,332.59	1.733	1.912	2.07	776
Municipal Bond	7,655,000.00	7,705,595.95	7,780,897.45	7,685,153.08	2.673	2.255	2.96	1,129
Negotiable Certificate of Deposit	5,912,000.00	5,912,000.00	5,923,400.45	5,912,000.00	1.956	2.173	1.00	374
Stone Castle - FICA Account	15,028,395.65	15,028,395.65	15,028,395.65	15,028,395.65	2.350	2.350	0.00	1
Supranational Securities	3,290,000.00	3,251,365.70	3,304,480.80	3,262,984.79	2.170	1.744	3.04	1,143
Treasury Coupon Securities	13,380,000.00	13,392,221.69	13,597,083.60	13,393,775.17	2.112	1.746	4.08	1,555
Total / Average	163,551,458.84	164,260,058.32	164,495,650.24	163,935,936.23	2.234	2.181	1.50	570

## Attachment 3

City of Escondido  
Portfolio Holdings  
Investment Portfolio - by Asset Class  
Report Format: By Transaction  
As of 6/30/2019

Description	CUSIP/Ticker	Settlement Date	Face Amount/Shares	Market Value	Book Value	YTM @ Cost	YTM @ Market	Duration To Maturity	Days To Maturity	% of Portfolio
California Local Agency Investment Fund										
LAIF LGIP	LGIP7282	05/31/2011	57,561,063.19	57,561,063.19	57,561,063.19	2.428	2.428	0.00	1	35.19
Sub Total / Average California Local Agency Investment Fund			57,561,063.19	57,561,063.19	57,561,063.19	2.428	2.428	0.00	1	35.19
Corporate Bond										
ABBOT LABORATORIES 3.4 11/30/2023-23	002824BE9	05/14/2019	825,000.00	860,153.25	845,835.03	2.787	2.378	4.13	1,614	0.50
AMAZON.COM INC 2.4 2/22/2023-23	023135AW6	05/16/2019	880,000.00	888,536.00	873,734.71	2.606	2.122	3.48	1,333	0.54
American Express Co 3.7 8/3/2023-23	025816BW8	04/26/2019	800,000.00	839,768.00	820,585.00	3.024	2.416	3.79	1,495	0.49
AMERICAN HONDA FINANCE 2.2 6/27/2022	02665WCY5	06/27/2019	845,000.00	843,986.00	844,224.73	2.232	2.242	2.91	1,093	0.52
Apple Inc 2.1 9/12/2022	037833DC1	11/16/2017	950,000.00	952,403.50	939,238.46	2.477	2.018	3.09	1,170	0.58
Bank of America Corp 4.125 1/22/2024	06051GFB0	04/25/2019	1,395,000.00	1,491,994.35	1,454,136.32	3.117	2.502	4.15	1,667	0.85
Bank of New York Mellon 3.5 4/28/2023	06406RAG2	04/26/2019	1,410,000.00	1,470,503.10	1,443,805.13	2.833	2.321	3.60	1,398	0.86
BB&T Corporation 3.75 12/6/2023-23	05531FBF9	04/25/2019	800,000.00	844,336.00	823,952.17	3.021	2.424	4.13	1,620	0.49
Blackrock Inc 3.5 3/18/2024	09247XAL5	04/24/2019	1,420,000.00	1,508,679.00	1,462,919.06	2.809	2.102	4.36	1,723	0.87
CATERPILLAR FINANCIAL SE 3.75 11/24/2023	14912L5X5	05/10/2019	790,000.00	840,441.50	822,221.26	2.757	2.218	4.09	1,608	0.48
Charles Schwab Corp 3.55 2/1/2024-24	808513AY1	04/29/2019	815,000.00	862,653.05	842,311.52	2.765	2.202	4.23	1,677	0.50
Citigroup 2.75 4/25/2022-22	172967LG4	09/25/2017	800,000.00	807,336.00	802,112.95	2.650	2.411	2.72	1,030	0.49
Goldman Sacks 3 4/26/2022-21	38141GWC4	09/20/2017	800,000.00	807,648.00	806,661.28	2.684	2.645	2.71	1,031	0.49
JOHN DEERE CAPITAL CORP 2.8 3/6/2023	24422ETG4	05/20/2019	835,000.00	852,977.55	838,613.94	2.675	2.188	3.50	1,345	0.51
JPMorgan Chase & Co 3.25 9/23/2022	46625HJE1	12/01/2017	600,000.00	616,398.00	609,933.31	2.700	2.366	3.07	1,181	0.37
Morgan Stanley 2.75 5/19/2022	61744YAH1	09/15/2017	800,000.00	808,392.00	803,121.87	2.605	2.371	2.79	1,054	0.49
Oracle Corp 2.5 10/15/2022	68389XAP0	11/16/2017	250,000.00	251,765.00	249,589.28	2.553	2.276	3.17	1,203	0.15
Toyota Motor Company 2.7 1/11/2023	89236TEL5	05/01/2019	1,090,000.00	1,107,505.40	1,089,718.77	2.707	2.224	3.35	1,291	0.67
VISA INC 2.15 9/15/2022-22	92826CAG7	05/16/2019	1,510,000.00	1,516,326.90	1,491,516.97	2.550	2.014	3.10	1,173	0.92
Sub Total / Average Corporate Bond			17,615,000.00	18,171,802.60	17,864,231.76	2.729	2.273	3.54	1,375	10.77
Federal Agency Coupon Securities										
FFCB 1.4 10/14/2021	3133EGYQ2	10/27/2016	2,000,000.00	1,982,080.00	1,997,350.04	1.460	1.801	2.25	837	1.22
FFCB 1.46 10/28/2020	3133EFLZ8	10/28/2015	1,000,000.00	994,200.00	1,000,000.00	1.460	1.904	1.32	486	0.61



## Attachment 3

City of Escondido  
Portfolio Holdings  
Investment Portfolio - by Asset Class  
Report Format: By Transaction  
As of 6/30/2019

Description	CUSIP/Ticker	Settlement Date	Face Amount/Shares	Market Value	Book Value	YTM @ Cost	YTM @ Market	Duration To Maturity	Days To Maturity	% of Portfolio
Brea Redev Agency 2.25 8/1/2022	106293CG6	11/01/2017	220,000.00	220,591.80	218,720.56	2.451	2.159	2.97	1,128	0.13
City of Industry CA 2.75 1/1/2022	45656RDV1	09/29/2017	250,000.00	253,645.00	250,880.66	2.600	2.149	2.40	916	0.15
City of Monrovia CA 2.742 5/1/2022	611581AM1	12/13/2017	750,000.00	761,527.50	750,000.00	2.742	2.179	2.74	1,036	0.46
Contra Costa County CA Fire 5.06 8/1/2022	31224RAS5	10/10/2017	850,000.00	918,603.50	912,409.36	2.520	2.334	2.85	1,128	0.52
Contra Costa County Redev Agency 2.25 8/1/2022	212263AS6	09/29/2017	500,000.00	498,530.00	497,098.61	2.450	2.349	2.97	1,128	0.31
Guadalupe CA Cmnty Redev Agency 2.5 8/1/2022	400559AE0	11/29/2017	230,000.00	231,980.30	229,000.87	2.651	2.210	2.96	1,128	0.14
Long Beach CA Tidelands Rev 2.785 11/1/2022	54245HAN4	11/15/2017	825,000.00	836,277.75	825,000.00	2.785	2.356	3.20	1,220	0.50
Murrieta Redev Successor Agency 2.5 8/1/2022	62719PAY2	10/18/2017	250,000.00	252,002.50	249,577.32	2.559	2.230	2.96	1,128	0.15
Norco CA Comm Redev Agency 2.715 3/1/2022	655505BJ3	12/20/2017	320,000.00	324,425.60	320,000.00	2.715	2.178	2.57	975	0.20
Palm Springs CA Cmnty Redev Agency 2.25 9/1/2022	69667ABT2	11/15/2017	290,000.00	290,110.20	287,840.53	2.501	2.237	3.05	1,159	0.18
San Diego Redev Agency 2.875 9/1/2021	79730WAX8	09/28/2017	400,000.00	406,604.00	403,333.25	2.470	2.092	2.10	794	0.24
San Francisco City & County 2.5 9/1/2022	79772EAX7	11/09/2017	350,000.00	353,538.50	348,914.88	2.605	2.168	3.04	1,159	0.21
San Francisco City & County 2.5 9/1/2022	79772EAE9	11/09/2017	380,000.00	383,841.80	378,260.38	2.655	2.168	3.04	1,159	0.23
San Marcos CA Redev Agency 2.25 10/1/2022	79876CBS6	12/14/2017	750,000.00	749,617.50	739,881.28	2.695	2.266	3.14	1,189	0.46
Temecula CA Redev Agency 2.5 12/15/2022	87972DBB7	12/15/2017	1,065,000.00	1,071,496.50	1,051,597.38	2.893	2.315	3.33	1,264	0.65
Town of Mammoth Lakes CA Judgement Rev 2.75 10/1/2	56155CAE8	10/25/2017	225,000.00	228,105.00	222,638.00	3.101	2.307	3.11	1,189	0.14
Sub Total / Average Municipal Bond			7,655,000.00	7,780,897.45	7,685,153.08	2.673	2.255	2.96	1,129	4.68
Negotiable Certificate of Deposit										
Ally Bank 1.9 6/22/2020	02006L3N1	06/22/2017	245,000.00	244,356.29	245,000.00	1.900	2.173	0.97	358	0.15
American Exp Fed Svgs Bk 2 7/24/2019	02587CAJ9	07/24/2014	247,000.00	246,918.51	247,000.00	2.000	2.495	0.07	24	0.15
Barclays Bank 2.099 7/23/2019	06740KHK6	07/28/2014	247,000.00	246,939.11	247,000.00	2.099	2.465	0.06	23	0.15
Beneficial Bank 2.15 10/18/2022	08173QBX3	10/18/2017	245,000.00	248,466.48	245,000.00	2.150	1.707	3.19	1,206	0.15
Capital One Bank USA NA 2.4 6/1/2022	1404203C2	06/01/2017	245,000.00	249,811.29	245,000.00	2.400	1.708	2.83	1,067	0.15
Capital One NA 2 8/12/2019	14042E5L0	08/12/2015	247,000.00	246,862.15	247,000.00	2.000	2.453	0.12	43	0.15
Cit Bank 2.2 11/26/2019	17284C4L5	11/26/2014	247,000.00	246,902.41	247,000.00	2.200	2.294	0.40	149	0.15
Comenity Capital Bank 2 10/13/2020	20033AND4	10/13/2015	249,000.00	248,734.86	249,000.00	2.000	2.084	1.27	471	0.15
Enerbank USA 2.05 8/28/2019	29266NB30	08/28/2014	247,000.00	246,874.67	247,000.00	2.050	2.346	0.16	59	0.15

## Attachment 3

City of Escondido  
Portfolio Holdings  
Investment Portfolio - by Asset Class  
Report Format: By Transaction  
As of 6/30/2019

Description	CUSIP/Ticker	Settlement Date	Face Amount/Shares	Market Value	Book Value	YTM @ Cost	YTM @ Market	Duration To Maturity	Days To Maturity	% of Portfolio
EVERBANK FL 1.6 7/30/2019	29976DZM5	07/30/2015	248,000.00	247,824.07	248,000.00	1.600	2.441	0.08	30	0.15
First Bank of Richmond 1.8 10/19/2020	319267GK0	10/18/2017	245,000.00	244,410.58	245,000.00	1.800	1.987	1.29	477	0.15
FIRST BUSINESS 1.5 10/30/2019	31938QP65	10/30/2015	248,000.00	247,354.53	248,000.00	1.500	2.281	0.33	122	0.15
Focus Bank 2.2 11/24/2022	34415LAP6	11/24/2017	245,000.00	248,981.25	245,000.00	2.200	1.705	3.29	1,243	0.15
Franklin Synergy Bank 1.6 8/30/2019	35471TDK5	05/31/2017	245,000.00	244,682.95	245,000.00	1.600	2.392	0.16	61	0.15
Goldman Sachs Bank USA 2.35 6/21/2022	38148PKX4	06/21/2017	245,000.00	249,541.10	245,000.00	2.350	1.708	2.89	1,087	0.15
Live Oak Banking Co. 1.85 7/30/2019	538036CA0	10/30/2014	247,000.00	246,884.68	247,000.00	1.850	2.411	0.08	30	0.15
Medallion Bank Utah 2.05 6/28/2021	58403B6Y7	06/28/2017	245,000.00	246,373.94	245,000.00	2.050	1.764	1.96	729	0.15
Mercantile Bank of MI 1.8 6/8/2020	58740XZJ2	06/07/2017	245,000.00	244,146.76	245,000.00	1.800	2.176	0.94	344	0.15
Sallie Mae Bank 2.1 8/13/2019	795450SJ5	08/13/2014	247,000.00	246,891.05	247,000.00	2.100	2.445	0.12	44	0.15
SYNCHRONY BANK 2.25 7/17/2020	87165HKM1	07/17/2015	247,000.00	247,166.26	247,000.00	2.250	2.184	1.03	383	0.15
Third Fed S & L 2 11/25/2019	88413QAW8	11/24/2014	247,000.00	246,698.09	247,000.00	2.000	2.305	0.40	148	0.15
Unity Bank 1.65 10/30/2020	91330ABC0	10/30/2015	249,000.00	247,784.95	249,000.00	1.650	2.021	1.32	488	0.15
Venture Bank Bloomington 1.6 9/6/2019	92326XDN8	06/06/2017	245,000.00	244,633.82	245,000.00	1.600	2.414	0.18	68	0.15
WEX Bank 1.8 6/2/2020	92937CFS2	06/02/2017	245,000.00	244,160.65	245,000.00	1.800	2.176	0.92	338	0.15
Sub Total / Average Negotiable Certificate of Deposit			5,912,000.00	5,923,400.45	5,912,000.00	1.956	2.173	1.00	374	3.61
Stone Castle FICA Account										
Stone Castle FICA	104791571599	05/30/2019	15,028,395.65	15,028,395.65	15,028,395.65	2.350	2.350	0.00	1	9.19
Sub Total / Average Stone Castle FICA Account			15,028,395.65	15,028,395.65	15,028,395.65	2.350	2.350	0.00	1	9.19
Supranational Securities										
IADB 1.75 9/14/2022	4581X0CZ9	11/06/2017	1,000,000.00	998,520.00	988,762.55	2.120	1.797	3.12	1,172	0.61
IADB 1.75 9/14/2022	4581X0CZ9	11/07/2017	1,000,000.00	998,520.00	988,822.35	2.118	1.797	3.12	1,172	0.61
INTL BK RECON & DEVELOP 2.125 7/1/2022	459058GU1	05/29/2019	1,290,000.00	1,307,440.80	1,285,399.89	2.249	1.661	2.92	1,097	0.79
Sub Total / Average Supranational Securities			3,290,000.00	3,304,480.80	3,262,984.79	2.170	1.744	3.04	1,143	2.01
Treasury Coupon Securities										
T-Bond 1.625 5/31/2023	912828R69	04/26/2019	1,195,000.00	1,190,291.70	1,162,672.32	2.353	1.729	3.81	1,431	0.73
T-Note 1.375 6/30/2023	912828S35	05/09/2019	975,000.00	961,476.75	941,606.51	2.277	1.735	3.90	1,461	0.60

Attachment 3

City of Escondido  
 Portfolio Holdings  
 Investment Portfolio - by Asset Class  
 Report Format: By Transaction  
 As of 6/30/2019

Description	CUSIP/Ticker	Settlement Date	Face Amount/Shares	Market Value	Book Value	YTM @ Cost	YTM @ Market	Duration To Maturity	Days To Maturity	% of Portfolio
T-Note 1.625 4/30/2023	912828R28	06/18/2019	250,000.00	249,015.00	248,102.21	1.831	1.731	3.72	1,400	0.15
T-Note 1.75 3/31/2022	912828J76	06/20/2019	245,000.00	245,154.35	244,848.39	1.773	1.726	2.69	1,005	0.15
T-Note 1.875 4/30/2022	912828X47	06/05/2019	465,000.00	466,869.30	464,911.32	1.881	1.729	2.77	1,035	0.28
T-Note 2 4/30/2024	912828X70	06/05/2019	2,500,000.00	2,527,250.00	2,507,992.33	1.930	1.764	4.62	1,766	1.53
T-Note 2.125 2/29/2024	912828W48	05/01/2019	1,050,000.00	1,067,304.00	1,041,005.96	2.320	1.756	4.44	1,705	0.64
T-Note 2.25 1/31/2024	912828V80	05/09/2019	2,000,000.00	2,043,360.00	1,996,287.08	2.293	1.756	4.35	1,676	1.22
T-Note 2.25 12/31/2023	912828V23	05/01/2019	1,875,000.00	1,915,425.00	1,869,629.48	2.317	1.749	4.31	1,645	1.15
T-Note 2.75 4/30/2023	9128284L1	06/05/2019	2,825,000.00	2,930,937.50	2,916,719.57	1.868	1.734	3.65	1,400	1.73
Sub Total / Average Treasury Coupon Securities			13,380,000.00	13,597,083.60	13,393,775.17	2.112	1.746	4.08	1,555	8.18
Total / Average			163,551,458.84	164,495,650.24	163,935,936.23	2.234	2.181	1.50	570	100

**CITY OF ESCONDIDO**  
**Transactions Summary**  
**Investment Maturities**  
**From 03/31/2018 to 06/30/2019**

<u>Issuer</u>	<u>Investment Type</u>	<u>CUSIP Number</u>	<u>Settlement Date</u>	<u>Maturity Date</u>	<u>Coupon Rate</u>	<u>Principal Matured</u>	<u>Custodian</u>
<b>Matured</b>							
BMW	CD	05580AAL8	06/20/2014	06/20/2019	1.95	247,000	BNY Mellon
Discover	CD	254671W48	06/18/2014	06/18/2019	2	247,000	BNY Mellon
<b>Total</b>						<b>494,000</b>	



**CITY OF ESCONDIDO**  
**FUNDS MANAGED BY OUTSIDE PARTIES**  
As of June 30, 2019

<u>Type of Funds / Institution</u>	<u>Market Value</u>	<u>Interest Rate</u>	<u>Type of Investment</u>
<b><u>BOND FUNDS</u></b>			
<b>BANK OF NEW YORK:</b>			
1998-1 Rancho San Pasqual Assessment District	\$ 348,597.78	2.260%	Treasury
2007 COP - Water Project	182.48	1.850%	Treasury
2012 JPFA Revenue Bonds (Water System Financing)	192.25	2.260%	Treasury
2012 JPFA Revenue Bonds (Wastewater System Financing)	320,868.92	2.260%	LAIF/Treasury
2013 JPFA Reidy Creek Lease Revenue Bonds (2001 Refunding)	15.32	2.150%	Treasury
2013 Community Facility District - Hidden Trails (2001 Refunding)	15.09	2.130%	Treasury
2015 Community Facility District - Eureka Ranch (2006 Refunding)	167.27	2.150%	Treasury/Cash
2015A Wastewater Bond (2004A Refunding)	553,335.36	2.260%	Dreyfus Cash Management Fund
2015B Wastewater Bond (2004B Refunding)	221,310.09	2.260%	Dreyfus Cash Management Fund
	<u>\$ 1,444,684.56</u>		
<b><u>SECTION 115 TRUST FUNDS</u></b>			
<b>PUBLIC AGENCY RETIREMENT SERVICES:</b>			
PARS Post-Employment Benefits Trust	\$ 7,013,035.77		Moderately Conservative HighMark PLUS
<b>TOTAL FUNDS MANAGED BY OUTSIDE PARTIES</b>	<b><u><u>\$ 8,457,720.33</u></u></b>		

## CITY COUNCIL STAFF REPORT

**Consent Item No. 5**

**August 7, 2019**

**File No. 0600-10, A-3305**

SUBJECT: Bid Award for the Kia Dealership Grading Project

DEPARTMENT: Utilities Department, Construction and Engineering Division

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2019-99, authorizing the Mayor and the City Clerk to execute a Public Improvement Agreement with Whillock Contracting, Inc., the lowest responsive and responsible bidder, in the amount of \$133,059 for construction of the Kia Dealership Grading Project.

FISCAL ANALYSIS:

This project will be funded from Capital Improvement Program (CIP) No. 801601 (Brine Line Broadway to HARRF).

BACKGROUND:

The Kia Dealership Grading Project will install a stabilized decomposed granite (DG) surface on a 0.5-acre portion of City-owned property that was disturbed during the construction of the Brine Line Project. This property is currently being leased by the adjacent Kia Dealership and is used for additional vehicle parking. The work will include: grading, installing decomposed granite stabilized with a pervious binder, and adjusting existing valve cans and manhole rings to finished grade. The installation of a stabilized DG surface is labor intensive. After the area is excavated, decomposed granite is mixed with a liquid binder, then installed in multiple lifts approximately 2-inches high. Each layer must be compacted and leveled before the next layer is installed. Stabilized DG surfaces look almost identical to regular DG surfaces, however, they are less susceptible to rutting, and they minimize weed growth and reduce dust.



Several site visits were performed during the design and pre-construction phases of the Brine Line Project. During the site visits, it was not apparent that the DG at the site had a binder in it. After construction of the Brine Line Project started, Kia Dealership staff informed the City that they had paid a specialty contractor to install a stabilized DG surface several years prior. After receiving this information, the City requested a quote from the Brine Line Project contractor to install a stabilized DG surface in place of the compacted DG. Since the contractor for the Brine Line Project did not have experience installing stabilized DG surfaces, a subcontractor was needed to perform this work. The quote received from the Brine Line Project contractor was much higher than what is typically seen in the industry for this type of work. In addition, a change order would have been required to perform the work as a part of the Brine Line Project. Staff evaluated options and determined that it would be in the best interest of the ratepayers to competitively bid this work separately from the Brine Line Project.

The Engineer's estimate for this project was \$250,000. Competitive bids were opened by a representative of the City Clerk's Office on July 11, 2019, with the following results:

1)	Whillock Contracting, Inc., La Mesa, CA	\$ 133,059.00
2)	Dick Miller Inc., San Marcos, CA	\$ 137,500.00
3)	Wright Construction Engineering Corporation, San Marcos, CA	\$ 178,252.00
4)	West-Tech Contracting, Inc., Escondido, CA	\$ 178,449.89
5)	Southland Paving, Inc., Escondido, CA	\$ 182,986.75
6)	DMC Enterprises, Vista, CA	\$ 183,925.00
7)	L.B. Civil Construction, Escondido, CA	\$ 194,200.00
8)	Tri-Group Construction and Development, Inc., San Diego, CA	\$ 215,000.00
9)	AToM Engineering Construction, Inc., Hemet, CA	\$ 227,722.00
10)	Blue Pacific Engineering & Construction, San Diego, CA	\$ 234,250.00
11)	California Building Evaluation & Construction, Inc., Buena Park, CA	\$ 236,786.50
12)	A.M. Ortega Construction, Inc., Lakeside, CA	\$ 249,425.00

Staff thoroughly reviewed the low bid submitted by Whillock Contracting, Inc., and has determined that they are the lowest responsive and responsible bidder.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Angela Morrow*, Deputy Director of Utilities/Construction & Engineering  
7/31/2019 4:45 p.m.

ATTACHMENTS:

1. Resolution No. 2019-99
2. Resolution No. 2019-99 - Exhibit A: Bid Award Kia Dealership Grading Project

RESOLUTION NO. 2019-99

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
AUTHORIZING THE MAYOR AND CITY CLERK  
TO EXECUTE, ON BEHALF OF THE CITY, A  
PUBLIC IMPROVEMENT AGREEMENT WITH  
WHILLOCK CONTRACTING, INC., FOR THE  
CONSTRUCTION OF THE KIA DEALERSHIP  
GRADING PROJECT

WHEREAS, an invitation for bids for the construction of the Kia Dealership Grading Project (“Project”) was publicly advertised; and

WHEREAS, the Project will restore a 0.5-acre portion of City-owned property that was disturbed during the construction of the Brine Line Project; and

WHEREAS, the Project will include grading, installing decomposed granite stabilized with a pervious binder, and adjusting existing valve cans and manhole rings to finished grade; and

WHEREAS, the City of Escondido opened sealed bids for the Project on July 11, 2019; and

WHEREAS, Utilities staff thoroughly reviewed the low bid submitted by Whillock Contracting, Inc., and have determined that they are the lowest responsive and responsible bidder; and

WHEREAS, the Director of Utilities has determined Whillock Contracting, Inc., to be the lowest responsive and responsible bidder and recommends awarding the bid in the amount of \$133,059 to Whillock Contracting, Inc.; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to award this contract to Whillock Contracting, Inc.

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

1. That the above recitations are true.
2. That the City Council accepts the recommendation of the Director of Utilities.
3. That the Mayor and City Clerk are authorized to execute, on behalf of the City, a Public Improvement Agreement (“Agreement”) with Whillock Contracting, Inc. A copy of the Agreement is attached as Exhibit “A” and is incorporated by this reference.

## PUBLIC IMPROVEMENT AGREEMENT

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

### KIA DEALERSHIP GRADING 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 One Hundred Thirty-Three Thousand Fifty-Nine Dollars (\$133,059).
4. The work shall be commenced on or before the twenty-first (21st) day after receiving the CITY'S Notice to Proceed and shall be completed within **sixty (60) calendar days** from the date specified in the Notice to Proceed.
5. Time is of the essence. If the work is not completed in accordance with Paragraph 4 above, it is understood that the CITY will suffer damage. It being impractical and infeasible to determine the amount of actual damage(s), in accordance with Government Code Section 53069.85, it is agreed that CONTRACTOR shall pay to CITY as fixed and liquidated damages, and not as a penalty, the sum(s) indicated in the LIQUIDATED DAMAGES SCHEDULE below for each calendar day of delay until work is completed and accepted. This amount shall be deducted from any payments due



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: \_\_\_\_\_  
Zack 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

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

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

(Second signature required only for corporation)

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

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

\_\_\_\_\_  
Title

(CORPORATE SEAL OF CONTRACTOR, if  
corporation)

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

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

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

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

**SECTION A-00610 - FAITHFUL PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENT,

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

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

**KIA DEALERSHIP GRADING 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, attorneys fees and consultant costs, as well as actual costs incurred by OWNER for the

increased dedication/commitment of time of OWNER employees to the Project. 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 \_\_\_\_\_ 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,

**KIA DEALERSHIP GRADING 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:**

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

**KIA DEALERSHIP GRADING 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 any of the following:
  - a. Foreman on the job. The name and phone number of the contractor are given below.
  - b. Utilities Field Inspector – Sam Lopez 442-777-8842
  - c. Senior Engineer – Nelson Nuezca 760-839-6290 ext. 7034

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

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

## CITY COUNCIL STAFF REPORT

**Consent Item No. 6**

**August 7, 2019**

**File No. 0600-10, A-3310**

**SUBJECT:** Bureau of Reclamation Title XVI Financial Assistance Agreement for the Membrane Filtration Reverse Osmosis Project

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

**RECOMMENDATION:**

It is requested that the City Council adopt Resolution No. 2019-108, authorizing the Director of Utilities to execute a Financial Assistance Agreement in the amount of \$11,175,000, with an initial award of \$4,884,000 with the U.S. Department of the Interior, Bureau of Reclamation (BOR). The Title XVI award will assist the City of Escondido (City) in designing and constructing the Membrane Filtration Reverse Osmosis Facility (MFRO) Project.

**FISCAL ANALYSIS:**

The cost of constructing the planned Membrane Filtration/Reverse Osmosis Project is expected to be \$44,700,000. In addition to the BOR funding assistance under consideration today, other sources of Project funding are:

- pending \$29,000,000 State Revolving Fund (SRF) loan;
- \$2,000,000 state grant awarded to the City from Prop 84 Integrated Regional Water Management (IRWM);
- and Wastewater Fund Capital Improvement Plan (CIP) Reserves.

**PREVIOUS ACTIONS:**

On August 8, 2018, the City Council adopted Resolution No. 2018-130, verifying the City of Escondido's financial capability and commitment to meet established deadlines upon entering into a grant or cooperative agreement, should the City receive a financial award from the Bureau of Reclamation's WaterSMART: Title XVI funding program.

**BACKGROUND:**

The MFRO Project originally was conceived as part of the City's Potable Water Reuse Program, as identified in the Recycled Water Master Plan. The City is constructing this phase of the Reuse Program to achieve two primary goals:

1. To direct water away from the Escondido Land Outfall, which has insufficient capacity to meet the City's long-term needs, and
2. To expedite a new, high-quality water supply that can be used by local agricultural growers, thus reducing the City's dependence on imported water.

The MFRO facility will further treat recycled water using membrane filtration (MF) and reverse osmosis (RO) technologies, providing high-quality water that is low in total dissolved solids and chlorides to high-water-demand avocado growers who serve a vital role in the City of Escondido's economy.

This agreement covers the activities necessary for planning, design, and construction of water reclamation and reuse facilities for the City to reclaim and reuse water in the San Diego metropolitan service area. Activities include environmental compliance, obtaining permits, preparing preliminary and final designs, and construction.

The activities to be funded through this agreement include the following tasks to be performed by the City of Escondido:

1. California Environmental Quality Act (CEQA) Documentation
2. Completion of the 60 percent design for the facility
3. Completion of the 100 percent design for the facility
4. Mobilization and Insurance
5. Yard piping and Site Work
6. MFRO Process Building
7. Chemical Storage Building
8. Inter-process Storage Tank
9. MF Feed and Product Water Storage Tanks
10. Startup, Testing, and Project Closeout

As stated earlier, the cost of constructing the planned Membrane Filtration/Reverse Osmosis Project is expected to be \$44,700,000. Though the initial amount of funding provided to the City is \$4,884,000, the total estimated amount of federal funding allocated to this agreement is \$11,175,000, a figure representing the allowed 25 percent of the Project's total cost.

Subject to future Congressional appropriations, subsequent funds may be made available for the City to claim the balance of the federal funding (\$6,291,000) in this agreement. To claim those funds, the City would be required to submit a new application when the Bureau of Reclamation announces that additional Title XVI funding is available.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Angela Morrow*, Deputy Director of Utilities/Construction & Engineering  
7/31/2019 4:45 p.m.

ATTACHMENTS:

1. Resolution No. 2019-108
2. Resolution No. 2019-108 – Exhibit "A" – BOR Assistance Agreement No. R19AC00023

RESOLUTION NO. 2019-108

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA, TO  
ACCEPT A FINANCIAL AWARD AND TO  
ENTER INTO A FINANCIAL ASSISTANCE  
AGREEMENT WITH THE BUREAU OF  
RECLAMATION

WHEREAS, the City of Escondido (“City”) submitted an application to the Bureau of Reclamation’s WaterSMART: Title XVI Water Reclamation and Reuse Projects funding program requesting \$11.175 million in financial assistance to design and construct the proposed Membrane Filtration Reverse Osmosis (“MFRO”) Facility; and

WHEREAS, the Bureau of Reclamation awarded \$4.884 million in initial funding to assist the City in designing and constructing the MFRO Facility; and

WHEREAS, the Bureau of Reclamation’s estimated amount of total federal funding for this agreement is \$11,175,000, which is 25 percent of the estimate project cost; and

WHEREAS, the City’s Wastewater Enterprise Fund is capable of providing the amount of funding and/or in-kind contributions specified in the funding plan for the MFRO Project; and

WHEREAS, Christopher W. McKinney, Director of Utilities, has been identified as the City’s authorized representative with legal authority to enter into an agreement; and

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

1. That the above recitations are true.

2. That the City Council authorizes the Director of Utilities, on behalf of the City, to execute a Financial Assistance Agreement with the United States Department of the Interior Bureau of Reclamation in substantially similar form as set forth in Exhibit "A", which is attached to this Resolution and incorporated by this reference, and approved by the City Attorney.

**UNITED STATES DEPARTMENT OF THE INTERIOR  
 BUREAU OF RECLAMATION  
 ASSISTANCE AGREEMENT**

1A. AGREEMENT NUMBER R19AC00023		1B. MOD NUMBER N/A		2. TYPE OF AGREEMENT <input type="checkbox"/> GRANT <input checked="" type="checkbox"/> COOPERATIVE AGREEMENT		3. CLASS OF RECIPIENT City or Township Government									
4. ISSUING OFFICE  Bureau of Reclamation Lower Colorado Region P.O. Box 61470 Boulder City, NV 89006-1470				5. RECIPIENT  City of Escondido, Utilities Department 201 N. Broadway Escondido, California 92025-2798				EIN #:		95-6000708		County:		San Diego	
								DUNS #:		078727211		Congress. Dist:		50	
				6. RECIPIENT PROJECT MANAGER  Angela Morrow City of Escondido, Utilities Department 201 N. Broadway Escondido, California 92025-2798 Phone: 760-839-6290 x7030; E-Mail: amorrow@escondido.org				7A. INITIAL AGREEMENT EFFECTIVE DATE:  See Block 13a				7B. MODIFICATION EFFECTIVE DATE:  N/A			
				8. COMPLETION DATE  December 31, 2022											
9A. PROGRAM STATUTORY AUTHORITY Section 1612, Title XVI of P.L. 102-575, as amended								9B. CFDA Number 15.504							
10. FUNDING INFORMATION		NON-FEDERAL		RECLAMATION		TOTAL PROJECT COSTS									
Total Estimated Amount of Agreement		\$39,816,000.00		\$11,175,000.00		\$44,700,000.00									
This Obligation		\$39,816,000.00		\$4,884,000.00		\$44,700,000.00									
Previous Obligation		\$0.00		\$0.00		\$0.00									
Total Obligation		\$39,816,000.00		\$4,884,000.00		\$44,700,000.00									
11. PROJECT TITLE Membrane Filtration Reverse Osmosis Facility Project															
12a. Acceptance of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the above-named recipient  BY: _____  DATE: _____				13a. Award of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the United States of America, Department of the Interior, Bureau of Reclamation  BY: _____  DATE: _____											
12b. NAME AND TITLE OF SIGNER Christopher W. McKinney Director of Utilities, City of Escondido 760-839-4662				13b. NAME OF GRANTS OFFICER Diana Blake Grants Officer 702-293-8550											

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## TABLE OF CONTENTS

I. OVERVIEW AND SCHEDULE .....	4
1. AUTHORITY .....	4
2. PUBLIC PURPOSE OF SUPPORT OR STIMULATION .....	4
3. BACKGROUND AND OBJECTIVES .....	5
4. PERIOD OF PERFORMANCE AND FUNDS AVAILABILITY .....	5
5. SCOPE OF WORK AND MILESTONES .....	6
6. RESPONSIBILITY OF THE PARTIES .....	8
7. BUDGET .....	8
8. KEY PERSONNEL .....	11
9. LIMITATION OF AUTHORITIES .....	12
10. REPORTING REQUIREMENTS AND DISTRIBUTION.....	12
11. REGULATORY COMPLIANCE .....	15
II. RECLAMATION STANDARD TERMS AND CONDITIONS.....	15
1. REGULATIONS.....	15
2. PAYMENT .....	16
3. PROCUREMENT STANDARDS (2 CFR 200.317 through 200.326) .....	20
4. EQUIPMENT (2 CFR 200.313) .....	29
5. SUPPLIES (2 CFR 200.314) .....	32
6. INSPECTION .....	32
7. AUDIT REQUIREMENTS (2 CFR 200.501) .....	32
8. REMEDIES FOR NONCOMPLIANCE (2 CFR 200.338).....	34
9. TERMINATION (2 CFR 200.339).....	34
10. DEBARMENT AND SUSPENSION (2 CFR 1400) .....	35
11. DRUG-FREE WORKPLACE (2 CFR 182 and 1401) .....	35
12. ASSURANCES AND CERTIFICATIONS INCORPORATED BY REFERENCE .....	35
13. COVENANT AGAINST CONTINGENT FEES .....	36
14. TRAFFICKING VICTIMS PROTECTION ACT OF 2000 (2 CFR 175.15) .....	36
15. NEW RESTRICTIONS ON LOBBYING (43 CFR 18).....	38
16. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (URA) (42 USC 4601 <i>et seq.</i> ).....	39
18. PROHIBITION ON TEXT MESSAGING AND USING ELECTRONIC EQUIPMENT SUPPLIED BY THE GOVERNMENT WHILE DRIVING.....	41
19. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (2 CFR 170 APPENDIX A).....	42
20. RECIPIENT EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013).....	46
21. RECIPIENT INTEGRITY AND PERFORMANCE MATTERS (APPENDIX XII to 2 CFR Part 200) .....	46
22. CONFLICTS OF INTEREST .....	48
23. DATA AVAILABILITY .....	49



**Financial Assistance Agreement  
Between  
Bureau of Reclamation  
And  
City of Escondido  
For  
Membrane Filtration Reverse Osmosis Facility Project**

**I. OVERVIEW AND SCHEDULE**

**1. AUTHORITY**

This Financial Assistance Agreement (Agreement) is entered into between the United States of America, acting through the Department of the Interior, Bureau of Reclamation (Reclamation) and City of Escondido, acting through Utilities Department, hereinafter referred to as the “Recipient”, “Grantee”, or “City”, pursuant to Section 1612, Title XVI of P.L. 102-575, as amended. The following section, provided in full text, authorizes Reclamation to award this financial assistance agreement:

**SEC. 1612. SAN DIEGO AREA WATER RECLAMATION PROGRAM**

(a) The Secretary, in cooperation with the City of San Diego, California, or its successor agency in the management of the San Diego Area Wastewater Management District, shall participate in the planning, design, and construction of demonstration and permanent facilities to reclaim and reuse water in the San Diego metropolitan service area.

(b) The Federal share of the costs of the facilities authorized by subsection (a) of this section shall not exceed 25 per centum of the total. The Secretary shall not provide funds for the operation or maintenance of the project.

**2. PUBLIC PURPOSE OF SUPPORT OR STIMULATION**

Section 1612 of Public Law 102-575, as amended, specifically authorizes the Secretary of the Interior to participate in the planning, design, and construction of demonstration and permanent facilities to reclaim and reuse water in the San Diego metropolitan service area.

The City of Escondido will use the funds provided by this agreement to complete the designs and to construct the facilities to reclaim and reuse water in the San Diego metropolitan service area.

### **3. BACKGROUND AND OBJECTIVES**

The Membrane Filtration and Reverse Osmosis (MFRO) Project will provide an additional water supply source for the City of Escondido. The MFRO facility will further treat recycled water using membrane filtration (MF) and reverse osmosis (RO) technologies. The MFRO facility will produce high-quality water that is low in total dissolved solids (TDS) and chlorides to high water demand avocado growers who serve a vital role in the City of Escondido's economy. The MFRO project site is located in the northeast region within the City of Escondido, CA. This water source will offset imported water and private ground water and is higher quality than the existing groundwater source.

The objectives of this MFRO facility project are to:

- Reduce dependency on imported raw water.
- Increased domestic potable water supply for Disadvantaged Communities (DACs) as well as fire emergency preparedness.
- Removes the need for private ground water extraction and for private onsite RO treatment.
- Increase local economy.
- Drought resilient supply to agriculture (AG) users.
- Reduces and improves discharge water quality for storm water discharges to waters of the U.S.
- Reduces Escondido Land Outfall (ELO) and San Elijo Ocean Outfall (SEOO) discharges and moves closer to the Federal zero discharge goal.
- Improves groundwater quality

### **4. PERIOD OF PERFORMANCE AND FUNDS AVAILABILITY**

This Agreement becomes effective on the date shown in Block 13a of Page 1 of this agreement, United States of America, Department of the Interior, Bureau of Reclamation, Assistance Agreement. The Agreement shall remain in effect until the date shown in Block 8 of Page 1 of this agreement, United States of America, Department of the Interior, Bureau of Reclamation, Assistance Agreement. The period of performance for this Agreement may only be modified through written modification of the Agreement by a Reclamation Grants Officer (GO).

No legal liability on the part of the Government for any payment may arise until funds are made available, in writing, to the Recipient by the Grants Officer. The total estimated amount of federal funding for this agreement is \$11,175,000.00 of which the initial amount of federal funds available is limited to \$4,884,000.00 as indicated by "this obligation" within Block 10 of Page 1 of this agreement, United States of America, Department of the Interior, Bureau of Reclamation, Assistance Agreement. Subject to the availability of Congressional appropriations, subsequent funds will be made available through a competitive process. If successful, the funds will be provided through written modifications to this agreement by a Reclamation Grants Officer.

It is recognized and agreed that all costs incurred by Reclamation related to the development and administration of this Agreement are considered part of the total costs of the Project, and therefore the Recipient agrees to provide 75 percent of these costs in accordance with the authorization. These costs include, but are not limited to, salary, overhead, travel, and other costs directly or indirectly related to the Agreement, as determined by Reclamation. Following the completion of each quarter of the fiscal year, Reclamation shall provide the Recipient with a statement of Reclamation's costs for the previous quarter. The Recipient may request explanations or a review of the costs included in the statement; however, Reclamation's determination as to the validity of the costs is final. The Recipient's 75 percent share of Reclamation's costs will be deducted from payments processed by Reclamation under this Agreement.

## **5. SCOPE OF WORK AND MILESTONES**

This agreement covers the activities necessary for planning, design, and construction of water reclamation and reuse facilities for the City to reclaim and reuse water in the San Diego metropolitan service area. Activities include planning and environmental compliance, obtaining permits, preparing preliminary and final designs, and construction.

The activities to be funded through this Agreement include the following tasks to be performed by the City of Escondido:

- 1.** California Environmental Quality Act (CEQA) Documentation - Prepare and circulate an Initial Study/Mitigated Negative Declaration (IS/MND). The IS/MND will be drafted to meet CEQA and CEQA plus requirements, circulated for public review, and adopted by the City of Escondido. All required Tribal notifications will be completed during the IS/MND process. All associated CEQA mitigation measures will be addressed and incorporated into the final design. File Notice of Determination with State Clearinghouse.
- 2.** Complete the 60% design for the facility.
- 3.** Complete the 100% design for the facility.
- 4.** Mobilization and Insurance – Submit required insurance documents and mobilize on site for construction activities.
- 5.** Yard Piping and Site Work - A surge tank, process valves, various pipes and fittings, and magnetic flow meters will be installed. Site work includes grading; excavation for yard piping; construction of driveways, pavement, fencing, and a storm water pond; and landscaping.
- 6.** MFRO Process Building – Construct an estimated 21,700 square foot (SF) pre-engineered metal building to house the Membrane Filtration (MF) and Reverse Osmosis (RO) process units. Plumbing, HVAC, thermal and moisture protection, and electrical connections will be provided to the building. Approximately two skids of MF will be provided.

Approximately four RO transfer pumps will pump MF filtrate from the inter-process storage tank through cartridge filters to the section side of the RO feed pumps. An estimated four RO feed pumps will be installed to boost the pressure of the RO feed water to the RO membranes. Approximately four RO trains will be installed. Instrumentation including: flow meters; temperature and pressure transmitters; pressure switches; and turbidity, pH, Cl<sub>2</sub>, and NH<sub>3</sub> analyzers will be installed.

**7. Chemical Storage Building** – Construct an estimated 14,040 SF pre-engineered metal building to house the chemical storage tanks and feed system for the MF and RO processes.

The chemical storage building will include approximately four tanks, one for each of the following chemicals: sodium hypochlorite, sulfuric acid, sodium hydroxide, and calcium chloride; and totes for the following chemicals: liquid ammonium sulfate, sodium bisulfate, antiscalant, citric acid, and proprietary RO Base. Chemical transfer pumps will also be included.

**8. Inter-process Storage Tank** – Construct a concrete inter-process storage tank for MF effluent flow equalization. The inter-process tank will be sized for a 60-minute retention time between the MF and RO processes. Storage capacity of the tank will be approximately 159,000 gallons.

**9. MF Feed and Product Water Storage Tanks** - Construct a concrete MF feed water storage tank that will store and send Title 22 recycled water to the MF system at a consistent flow and pressure. Storage capacity of the MF feed tank will be approximately 300,000 gallons. Construct an approximately 800,000-gallon concrete storage tank for the product water produced by the MFRO facility. A product water pump station will be installed to convey water from the MFRO facility to the Hogback Reservoir and recycled water agriculture distribution system. The pump station will consist of approximately five pumps.

**10. Startup, Testing, and Project Closeout** – Startup and testing of the MFRO facility's performance before delivering water to the end users. Complete all activities for overall project closeout, such as final inspections, construction checklists, site clean-up, and demobilization.

The project schedule is shown below.

<b>Milestone / Task / Activity</b>	<b>Planned Start Date</b>	<b>Planned Completion Date</b>
1. CEQA Documentation	2/11/19	12/2/19
2. 60% Design	4/3/19	6/1/20
3. 100% Design	6/2/20	12/31/20
4. Mobilization and Insurance	8/1/20	10/1/20
5. Yard Piping and Site Work	10/2/20	7/31/22
6. MFRO Process Building	3/1/21	7/31/22
7. Chemical Storage Building	4/1/21	7/31/22
8. Inter Process Storage Tank	5/1/21	12/31/21
9. MF Feed and Product Water Storage Tanks	6/1/21	3/31/22
10. Startup, Testing, and Project Closeout	8/1/22	12/31/22

## **6. RESPONSIBILITY OF THE PARTIES**

### **6.1 Recipient Responsibilities**

**6.1.1** The Recipient shall carry out the Scope of Work (SOW) in accordance with the terms and conditions stated herein. The Recipient shall adhere to Federal, state, and local laws, regulations, and codes, as applicable, and shall obtain all required approvals and permits. If the SOW contains construction activities, the Recipient is responsible for construction inspection, oversight, and acceptance. If applicable, the Recipient shall also coordinate and obtain approvals from site owners and operators.

**6.1.2** The Recipient shall provide copies of all business systems policies, records and financial data applicable to this award, if requested by Reclamation, to complete a financial review.

### **6.2 Reclamation Responsibilities**

**6.2.1** Reclamation will monitor and provide Federal oversight of activities performed under this Agreement. Monitoring and oversight includes review and approval of financial status and performance reports, payment requests, and any other deliverables identified as part of the SOW. Additional monitoring activities may include site visits, conference calls, and other on-site and off-site monitoring activities. At the Recipient's request, Reclamation may also provide technical assistance to the Recipient in support of the SOW and objectives of this Agreement.

**6.2.2** Substantial involvement by Reclamation is anticipated during the performance of activities funded under this cooperative agreement.

In support of this Agreement, Reclamation will be responsible for the following:

(a) Provide financial contribution not to exceed the available funding in accordance with Section I.4 (Period of Performance and Funds Availability), or 25 percent of the total project costs for the activities identified in the Scope of Work of this Agreement, whichever is less.

(b) Shall work with the Recipient as necessary to ensure that the Recipient adheres to the specified work plan and meets specified project goals as set forth in this Agreement.

(c) Shall not continue to advance funds nor award subsequent cooperative agreements to the Recipient for work on the project unless the Recipient is in full compliance with the requirements of the work plan and project goals that are included in this Agreement and has obtained Reclamation concurrence for any deviations therefrom.

(d) Shall provide scientific or administrative advice on the development of the project. Such advice will take into consideration factors such as: (1) the scientific complexities of the project; (2) the Recipient's progress in meeting project goals; and (3) the Recipient's ability to meet the proposed time schedule.

**7. BUDGET**

**7.1 Budget Estimate.** The following is the estimated budget for this Agreement. As Federal financial assistance agreements are cost-reimbursable, the budget provided is for estimation purposes only. Final costs incurred under the budget categories listed may be either higher or lower than the estimated costs. All costs incurred by the Recipient under this agreement must be in accordance with any pre-award clarifications conducted between the Recipient and Reclamation, as well as with the terms and conditions of this agreement. Final determination of the allowability, allocability, or reasonableness of costs incurred under this agreement is the responsibility of the Grants Officer. Recipients are encouraged to direct any questions regarding allowability, allocability or reasonableness of costs to the Grants Officer for review prior to incurrence of the costs in question.

The project budget is shown below.

BUDGET ITEM DESCRIPTION	COMPUTATION			TOTAL COST
	Price/Rate	Unit	Quantity	
<b>CONTRACTUAL/ CONSTRUCTION</b> - Explain any contracts or sub-Agreements that will be awarded, why needed. Explain contractor qualifications and how the contractor will be selected.				
Contractual/ CONSTRUCTION - Subtotal			1.00	\$41,130,000
Contingency to Construction (assumed to be 8.5%)			1.00	\$ 3,570,000
			<b>Subtotal</b>	<b>\$44,700,000</b>
<b>TOTAL DIRECT COSTS:</b>				
				\$44,700,000
<b>INDIRECT COSTS -</b>				
<b>TOTAL ESTIMATED PROJECT/ACTIVITY COSTS:</b>				<b>\$44,700,000</b>

## **7.2 Cost Sharing Requirement**

At least 75% non-Federal cost-share is required for costs incurred under this Agreement. If pre-award costs are authorized, reimbursement of these costs is limited to federal cost share percentage identified in this agreement.

The Federal share of allowable costs shall not be expended in advance of the Recipient's non-Federal share. It is expected that expenditure of Federal and non-Federal funds based upon the cost share percentage above shall occur concurrently. If a bona fide need arises which requires the expenditure of Federal funds in advance of the Recipient share, then the Recipient must request written approval from the Grants Officer prior to the expenditure. Recipient's may expend their agreed upon share of costs in advance of the expenditure of Federal funds without prior written approval.

## **7.3 Pre-Award Incurrence of Costs**

The Recipient shall be entitled to reimbursement for costs incurred on or after February 10, 2019, which if had been incurred after this Agreement was entered into, would have been allowable, allocable, and reasonable under the terms and conditions of this Agreement.

## **7.4 Allowable Costs**

Costs incurred for the performance of this Agreement must be allowable, allocable to the project, and reasonable. The following regulations, codified within the Code of Federal Regulations (CFR), governs the allowability of costs for Federal financial assistance:

2 CFR 200 Subpart E, "Cost Principles"

Expenditures for the performance of this Agreement must conform to the requirements within this CFR. The Recipient must maintain sufficient documentation to support these expenditures. Questions on the allowability of costs should be directed to the GO responsible for this Agreement.

The Recipient shall not incur costs or obligate funds for any purpose pertaining to operation of the program or activities beyond the expiration date stated in the Agreement. The only costs which are authorized for a period of up to 90 days following the project performance period are those strictly associated with closeout activities for preparation of the final reports.

## **7.5 Revision of Budget and Program Plans**

In accordance with 2 CFR 200.308(g) the recipient must request prior written approval for any of the following changes:

- (a) A change in the approved scope of work or associated tasks, even if there is no associated budget revisions.
- (b) Revisions which require additional Federal funds to complete the project.

- (c) Revisions which involve specific costs for which prior written approval requirements may be imposed consistent with OMB cost principles listed in 2 CFR 200 Subpart E “Cost Principles”.

## **7.6 Modifications**

Any changes to this Agreement shall be made by means of a written modification. Reclamation may make changes to the Agreement by means of a unilateral modification to address changes in address, no-cost time extensions, changes to Key Personnel, the addition of previously agreed upon funding, or administrative corrections which do not impact the terms and conditions of this agreement. Additionally, a unilateral modification may be utilized by Reclamation if it should become necessary to suspend or terminate the Agreement in accordance with 2 CFR 200.338.

All other changes shall be made by means of a bilateral modification to the Agreement. No oral statement made by any person, or written statement by any person other than the GO, shall be allowed in any manner or degree to modify or otherwise effect the terms of the Agreement.

All requests for modification of the Agreement shall be made in writing, provide a full description of the reason for the request, and be sent to the attention of the GO. Any request for project extension shall be made at least 45 days prior to the expiration date of the Agreement or the expiration date of any extension period that may have been previously granted. Any determination to extend the period of performance or to provide follow-on funding for continuation of a project is solely at the discretion of Reclamation.

## **7.7 Prior Approval Required for Use of Contingency Cost Line-Item**

Prior approval is required, in writing, from the GO to transfer funds (of any amount) from the contingency cost line-item to other cost categories in the budget.

The request for approval from the Recipient must be in writing and identify the reason(s) why the transfer is necessary and identify the cost overruns in other budget line-items. If there are no cost-overruns during the performance of construction under the agreement, funds obligated under the contingency cost line-item may be deobligated by the GO.

## **8. KEY PERSONNEL**

### **8.1 Recipient’s Key Personnel.**

The Recipient's Project Manager for this Agreement shall be:

Angela Morrow  
Deputy Director of Utilities / Construction and Engineering  
201 N. Broadway  
Escondido, California 92025-2798  
Phone: 760-839-6290 x7030  
E-Mail: amorrow@escondido.org



## **9. LIMITATION OF AUTHORITIES**

### **9.1 Grants Officer (GO).**

The Grants Officer is the only official with legal delegated authority to represent Reclamation. The GO's responsibilities include, but are not limited to, the following:

- (a) Formally obligate Reclamation to expend funds or change the funding level of the Agreement;
- (b) Approve through formal modification changes in the scope of work and/or budget;
- (c) Approve through formal modification any increase or decrease in the period of performance of the Agreement;
- (d) Approve through formal modification changes in any of the expressed terms, conditions, or specifications of the Agreement;
- (e) Be responsible for the overall administration, management, and other non-programmatic aspects of the Agreement including, but not limited to, interpretation of financial assistance statutes, regulations, circulars, policies, and terms of the Agreement; Where applicable, ensures that Reclamation complies with the administrative requirements required by statutes, regulations, circulars, policies, and terms of the Agreement.

### **9.2 Grants Management Specialist (GMS).**

The Grants Management Specialist is the primary administrative point of contact for this agreement and should be contacted regarding issues related to the day-to-day management of the agreement. Requests for approval regarding the terms and conditions of the agreement, including but not limited to modifications and prior approval, may only be granted, in writing, by a Reclamation Grants Officer. Please note that for some agreements, the Grants Officer and the Grants Management Specialist may be the same individual.

## **10. REPORTING REQUIREMENTS AND DISTRIBUTION**

**10.1 Noncompliance.** Failure to comply with the reporting requirements contained in this Agreement may be considered a material noncompliance with the terms and conditions of the award. Noncompliance may result in withholding of payments pending receipt of required reports, denying both the use of funds and matching credit for all or part of the cost of the activity or action not in compliance, whole or partial suspension or termination of the Agreement, recovery of funds paid under the Agreement, withholding of future awards, or other legal remedies in accordance with 2 CFR 200.338.

**10.2 Financial Reports.** Federal Financial Reports shall be submitted by means of the SF-425 and shall be submitted according to the Report Frequency and Distribution schedule below. All financial reports shall be signed by an Authorized Certifying Official for the Recipient's organization.

### **10.3 Monitoring and Reporting Program Performance (2 CFR 200.328).**

- (a) Monitoring by the non-Federal entity. The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also 200.331 Requirements for pass-through entities.
- (b) Non-construction performance reports. The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).
  - (1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity.

Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.
  - (2) The non-Federal entity must submit performance reports using OMB-approved governmentwide standard information collections when providing performance information.

As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:

    - (i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.
    - (ii) The reasons why established goals were not met, if appropriate.
    - (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

- (c) Construction performance reports. For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.
- (d) Significant developments. Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:
- (1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
  - (2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

Reclamation requires Performance reporting for all financial assistance awards, both Construction and non-Construction. Performance reports for Construction agreements shall meet the same minimum requirements outlined in 2 CFR 200.328(b)(2) above.

**10.4 Report Frequency and Distribution.** The following table sets forth the reporting requirements for this Agreement. Please note the first report due date listed for each type of report.

Required Reports	Interim Reports	Final Report
<b>Performance Report</b>		
Format	No specific format required. See content requirements within Section 10.3 (2 CFR 200.328) above.	Summary of activities completed during the entire period of performance is required. See content requirements within Section 10.3 (2 CFR 200.328) above.
Reporting Frequency	<b>Quarterly</b>	Final Report due within 90 days after the end of the period of performance.
Reporting Period	Federal fiscal quarters ending: December 31, March 31, June 30, September 30	Entire period of performance
Due Date	For Quarterly Reporting: Within 30 days after the end of the Reporting Period.	Final Report due within 90 days after the end of the period of performance <b>or</b> completion of the project.
First Report Due Date	The first performance report is due for reporting period ending September 30, 2019.	N/A
Submit to:	Grants Officer	LCFA@usbr.gov

<b>Federal Financial Report</b>		
Format	SF-425 (all sections must be completed)	SF-425(all sections must be completed)
Reporting Frequency	<b>Semi-Annual</b>	Final Report due within 90 days after the end of the period of performance.
Reporting Period	October 1 through March 31 and April 1 through September 30.	Entire period of performance
Due Date	Semi-Annual Reporting: Within 30 days after the end of the Reporting Period.	Final Report due within 90 days after the end of the period of performance <b>or</b> completion of project.
First Report Due Date	The first Federal financial report is due for reporting period ending September 30, 2019.	N/A
Submit to:	Grants Officer	LCFA@usbr.gov

## **11. REGULATORY COMPLIANCE**

The Recipient agrees to comply or assist Reclamation with all regulatory compliance requirements and all applicable state, Federal, and local environmental and cultural and paleontological resource protection laws and regulations as applicable to this project. These may include, but are not limited to, the National Environmental Policy Act (NEPA), including the Council on Environmental Quality and Department of the Interior regulations implementing NEPA, the Clean Water Act, the Endangered Species Act, consultation with potentially affected Tribes, and consultation with the State Historic Preservation Office. If the Recipient begins project activities that require environmental or other regulatory compliance approval prior to receipt of written notice from the Grants Officer that all such clearances have been obtained, then Reclamation reserves the right to initiate remedies for non-compliance as defined by 2 CFR 200.338 up to and including unilateral termination of this agreement.

## **II. RECLAMATION STANDARD TERMS AND CONDITIONS**

### **1. REGULATIONS**

The regulations at 2 CFR Subtitle A, Chapter II, Part 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, are hereby incorporated by reference as though set forth in full text. Failure of a Recipient to comply with any applicable regulation or circular may be the basis for withholding payments for proper charges made by the Recipient and/or for termination of support.

## 2. PAYMENT

### 2.1 Payment (2 CFR 200.305).

- (a) For states, payments are governed by Treasury-State CMIA agreements and default procedures codified at 31 CFR Part 205 “Rules and Procedures for Efficient Federal-State Funds Transfers” and TFM 4A-2000 Overall Disbursing Rules for All Federal Agencies.
- (b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also 200.302 Financial management paragraph (b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved standard governmentwide information collection requests to request payment.
  - (1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part.

Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.
  - (2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.
    - (i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.
    - (ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).

- (3) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per 200.207 Specific conditions, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.
- (4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements.

The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.

- (5) Use of resources before requesting cash advance payments. To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.
- (6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of 200.207 Specific conditions, Subpart D—Post Federal Award Requirements of this part, 200.338 Remedies for Noncompliance, or one or more of the following applies:
  - (i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.

- (ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Guidance A-129, "Policies for Federal Credit Programs and Non-Tax Receivables." Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.
  - (iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with 200.342 Effects of suspension and termination.
  - (iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.
- (7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.
- (i) The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for the receipt, obligation and expenditure of funds.
  - (ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.
- (8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply.
- (i) The non-Federal entity receives less than \$120,000 in Federal awards per year.
  - (ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.
  - (iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
  - (iv) A foreign government or banking system prohibits or precludes interest bearing accounts.

(9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment. Remittances must include pertinent information of the payee and nature of payment in the memo area (often referred to as “addenda records” by Financial Institutions) as that will assist in the timely posting of interested earned on federal funds. Pertinent details include the Payee Account Number (PAN) if the payment originated from PMS, or Agency information if the payment originated from ASAP, NSF or another federal agency payment system. The remittance must be submitted as follows:

(i) For ACH Returns:

Routing Number: 051036706

Account number: 303000

Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN

(ii) For Fedwire Returns\*:

Routing Number: 021030004

Account number: 75010501

Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY

(\* Please note organization initiating payment is likely to incur a charge from your Financial Institution for this type of payment)

(iii) For International ACH Returns:

Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)

Bank: Citibank N.A. (New York)

Swift Code: CITIUS33

Account Number: 36838868

Bank Address: 388 Greenwich Street, New York, NY 10013 USA

Payment Details (Line 70): Agency

Name (abbreviated when possible) and ALC Agency POC: Michelle Haney,  
(301) 492-5065

(iv) For recipients that do not have electronic remittance capability, please make check\*\* payable to: “The Department of Health and Human Services.”

Mail Check to Treasury approved lockbox:

HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231

(\*\* Please allow 4-6 weeks for processing of a payment by check to be applied to the appropriate PMS account)

(v) Any additional information/instructions may be found on the PMS Web site at

<http://www.dpm.psc.gov/>.



## **2.2 Payment Method.**

Recipients must utilize the Department of Treasury Automated Standard Application for Payments (ASAP) payment system to request advance or reimbursement payments. ASAP is a Recipient-initiated payment and information system designed to provide a single point of contact for the request and delivery of Federal funds. ASAP is the only allowable method for request and receipt of payment. Recipient procedures must minimize the time elapsing between the drawdown of Federal funds and the disbursement for agreement purposes.

In accordance with 2 CFR 25.200(b)(2) the Recipient shall “Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by an agency”. If the Recipient allows their SAM registration to lapse, the Recipient’s accounts within ASAP will be automatically suspended by Reclamation until such time as the Recipient renews their SAM registration.

## **3. PROCUREMENT STANDARDS (2 CFR 200.317 through 200.326)**

### **200.317 Procurements by States.**

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with 200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section 200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow 200.318 General procurement standards through 200.326 Contract provisions.

### **200.318 General procurement standards.**

- (a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.
- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c)
  - (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

- The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
- (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also 200.212 Suspension and debarment.
- (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

- (j)
- (1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:
    - (i) The actual cost of materials; and
    - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
  - (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

#### **200.319 Competition.**

- (a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
  - (2) Requiring unnecessary experience and excessive bonding;
  - (3) Noncompetitive pricing practices between firms or between affiliated companies;
  - (4) Noncompetitive contracts to consultants that are on retainer contracts;
  - (5) Organizational conflicts of interest;

- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
  - (7) Any arbitrary action in the procurement process.
- (b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- (c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
  - (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

## **200.320 Methods of procurement to be followed.**

The non-Federal entity must use one of the following methods of procurement.

- (a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.
- (b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
- (c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

- (i) A complete, adequate, and realistic specification or purchase description is available;
- (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
- (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

- (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publically advertised;
- (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

- (iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
  - (v) Any or all bids may be rejected if there is a sound documented reason.
- (d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
- (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
  - (2) Proposals must be solicited from an adequate number of qualified sources;
  - (3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
  - (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
  - (5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.
- (e) [Reserved]
- (f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
- (1) The item is available only from a single source;

- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

**200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
  - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

### **200.322 Procurement of recovered materials.**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

### **200.323 Contract cost and price.**

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

### **200.324 Federal awarding agency or pass-through entity review.**

- (a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.



This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

- (b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
  - (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
  - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
  - (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
  - (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
  - (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- (c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
  - (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;
  - (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

### **200.325 Bonding requirements.**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### **200.326 Contract provisions.**

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

## **4. EQUIPMENT (2 CFR 200.313)**

See also 200.439 Equipment and other capital expenditures.

- (a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further obligation to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:
  - (1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.
  - (2) Not encumber the property without approval of the Federal awarding agency or pass-through entity.

(3) Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section.

(b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.

(c) Use.

(1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:

(i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then

(ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.

(2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in 200.307 Program income to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.

(4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

(d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

- (1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
- (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
- (3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
- (4) Adequate maintenance procedures must be developed to keep the property in good condition.
- (5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) Disposition. When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:

- (1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.
- (2) Except as provided in 200.312 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase.

If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

- (3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.
- (4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75884, Dec. 19, 2014]

## **5. SUPPLIES (2 CFR 200.314)**

See also 200.453 Materials and supplies costs, including costs of computing devices.

- (a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See 200.313 Equipment, paragraph (e)(2) for the calculation methodology.
- (b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

## **6. INSPECTION**

Reclamation has the right to inspect and evaluate the work performed or being performed under this Agreement, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If Reclamation performs inspection or evaluation on the premises of the Recipient or a sub-Recipient, the Recipient shall furnish and shall require sub-recipients to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

## **7. AUDIT REQUIREMENTS (2 CFR 200.501)**

- (a) Audit required. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

- (b) Single audit. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with 200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.
- (c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with 200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.
- (d) Exemption when Federal awards expended are less than \$750,000. A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).
- (e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.
- (f) Subrecipients and Contractors. An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section 200.330 Subrecipient and contractor determinations sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.
- (g) Compliance responsibility for contractors. In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors.

However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) For-profit subrecipient. Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility.

Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also 200.331 Requirements for pass-through entities.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

## **8. REMEDIES FOR NONCOMPLIANCE (2 CFR 200.338)**

### **200.338 Remedies for noncompliance.**

If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in 200.207 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- (a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate the Federal award.
- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- (e) Withhold further Federal awards for the project or program.
- (f) Take other remedies that may be legally available.

## **9. TERMINATION (2 CFR 200.339)**

(a) The Federal award may be terminated in whole or in part as follows:

- (1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;

- (2) By the Federal awarding agency or pass-through entity for cause;
  - (3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or
  - (4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety.
- (b) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in 200.343 Closeout and 200.344 Post-closeout adjustments and continuing responsibilities.

#### **10. DEBARMENT AND SUSPENSION (2 CFR 1400)**

The Department of the Interior regulations at 2 CFR 1400—Governmentwide Debarment and Suspension (Nonprocurement), which adopt the common rule for the governmentwide system of debarment and suspension for nonprocurement activities, are hereby incorporated by reference and made a part of this Agreement. By entering into this grant or cooperative Agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 1400, Subpart C, and agrees to include a similar term or condition in all lower-tier covered transactions. These regulations are available at <http://www.gpoaccess.gov/ecfr/>.

#### **11. DRUG-FREE WORKPLACE (2 CFR 182 and 1401)**

The Department of the Interior regulations at 2 CFR 1401—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), which adopt the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq, as amended) applicable to grants and cooperative agreements, are hereby incorporated by reference and made a part of this agreement. By entering into this grant or cooperative agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 182.

#### **12. ASSURANCES AND CERTIFICATIONS INCORPORATED BY REFERENCE**

The provisions of the Assurances, SF 424B or SF 424D as applicable, executed by the Recipient in connection with this Agreement shall apply with full force and effect to this Agreement.



All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, and cooperative Agreements, loans, and other forms of Federal assistance. The Recipient shall comply with Title VI or the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and any program-specific statutes with anti-discrimination requirements. The Recipient shall comply with civil rights laws including, but not limited to, the Fair Housing Act, the Fair Credit Reporting Act, the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act.

Such Assurances also include, but are not limited to, the promise to comply with all applicable Federal statutes and orders relating to nondiscrimination in employment, assistance, and housing; the Hatch Act; Federal wage and hour laws and regulations and work place safety standards; Federal environmental laws and regulations and the Endangered Species Act; and Federal protection of rivers and waterways and historic and archeological preservation.

### **13. COVENANT AGAINST CONTINGENT FEES**

The Recipient warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide offices established and maintained by the Recipient for the purpose of securing Agreements or business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement amount, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

### **14. TRAFFICKING VICTIMS PROTECTION ACT OF 2000 (2 CFR 175.15)**

Trafficking in persons.

(a) *Provisions applicable to a recipient that is a private entity.*

- (1) You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not
  - (i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
  - (ii) Procure a commercial sex act during the period of time that the award is in effect;  
or
  - (iii) Use forced labor in the performance of the award or subawards under the award.
- (2) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
  - (i) Is determined to have violated a prohibition in paragraph a.1 of this award term; or

- (ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either:
  - (A) Associated with performance under this award; or
  - (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 *CFR part 1400*.
- (b) *Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
  - (1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
  - (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:
    - (i) Associated with performance under this award; or
    - (ii) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 *CFR part 1400*.
- (c) *Provisions applicable to any recipient.*
  - (1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
  - (2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
    - (i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
    - (ii) Is in addition to all other remedies for noncompliance that are available to us under this award.
  - (3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- (d) *Definitions.* For purposes of this award term:

- (1) "Employee" means either:
  - (i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
  - (ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- (2) "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- (3) "Private entity":
  - (i) Means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
  - (ii) Includes:
    - (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
    - (B) A for-profit organization.
- (4) "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

## **15. NEW RESTRICTIONS ON LOBBYING (43 CFR 18)**

The Recipient agrees to comply with 43 CFR 18, New Restrictions on Lobbying, including the following certification:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and 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.

- (b) 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- (c) The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**16. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (URA) (42 USC 4601 *et seq.*)**

- (a) The Uniform Relocation Assistance Act (URA), 42 U.S.C. 4601 *et seq.*, as amended, requires certain assurances for Reclamation funded land acquisition projects conducted by a Recipient that cause the displacement of persons, businesses, or farm operations. Because Reclamation funds only support acquisition of property or interests in property from willing sellers, it is not anticipated that Reclamation funds will result in any "displaced persons," as defined under the URA.
- (b) However, if Reclamation funds are used for the acquisition of real property that results in displacement, the URA requires Recipients to ensure that reasonable relocation payments and other remedies will be provided to any displaced person. Further, when acquiring real property, Recipients must be guided, to the greatest extent practicable, by the land acquisition policies in 42 U.S.C. 4651.
- (c) Exemptions to the URA and 49 CFR Part 24
  - (1) The URA provides for an exemption to the appraisal, review and certification rules for those land acquisitions classified as "voluntary transactions."  
" Such "voluntary transactions" are classified as those that do not involve an exercise of eminent domain authority on behalf of a Recipient, and must meet the conditions specified at 49 CFR 24.101(b)(1)(i)-(iv).
  - (2) For any land acquisition undertaken by a Recipient that receives Reclamation funds, but does not have authority to acquire the real property by eminent domain, to be exempt from the requirements of 49 CFR Part 24 the Recipient must:

- (i) provide written notification to the owner that it will not acquire the property in the event negotiations fail to result in an amicable agreement, and;
  - (ii) inform the owner in writing of what it believes to be the market value of the property
- (d) Review of Land Acquisition Appraisals. Reclamation reserves the right to review any land appraisal whether or not such review is required under the URA or 49 CFR 24.104. Such reviews may be conducted by the Department of the Interior's Appraisal Services Directorate or a Reclamation authorized designee. When Reclamation determines that a review of the original appraisal is necessary, Reclamation will notify the Recipient and provide an estimated completion date of the initial appraisal review.

## **17. SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS (2 CFR 25, APPENDIX A)**

### **A. Requirement for System for Award Management**

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

### **B. Requirement for unique entity identifier**

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
2. May not make a subaward to an entity unless the entity has provided its unique identifier to you.

### **C. Definitions**

For purposes of this award term:

1. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).

2. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.
3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
  - a. A Governmental organization, which is a State, local government, or Indian Tribe;
  - b. A foreign public entity;
  - c. A domestic or foreign nonprofit organization;
  - d. A domestic or foreign for-profit organization; and
  - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
4. Subaward:
  - a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
  - b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.330).
  - c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
5. Subrecipient means an entity that:
  - a. Receives a subaward from you under this award; and
  - b. Is accountable to you for the use of the Federal funds provided by the subaward.

## **18. PROHIBITION ON TEXT MESSAGING AND USING ELECTRONIC EQUIPMENT SUPPLIED BY THE GOVERNMENT WHILE DRIVING**

Executive Order 13513, *Federal Leadership On Reducing Text Messaging While Driving*, was signed by President Barack Obama on October 1, 2009 (ref: <http://edocket.access.gpo.gov/2009/pdf/E9-24203.pdf>). This Executive Order introduces a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. Additional guidance enforcing the ban will be issued at a later date.

In the meantime, please adopt and enforce policies that immediately ban text messaging while driving company-owned or rented vehicles, government-owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government.

## **19. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (2 CFR 170 APPENDIX A)**

### **I. Reporting Subawards and Executive Compensation.**

#### **a. Reporting of first-tier subawards.**

1. *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
2. *Where and when to report.*
  - i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.
  - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

#### **b. Reporting Total Compensation of Recipient Executives.**

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
  - i. the total Federal funding authorized to date under this award is \$25,000 or more;
  - ii. in the preceding fiscal year, you received—
    - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

- (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
  - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
2. *Where and when to report.* You must report executive total compensation described in paragraph b.1. of this award term:
- i. As part of your registration profile at <http://www.ccr.gov>.
  - ii. By the end of the month following the month in which this award is made, and annually thereafter.
- c. *Reporting of Total Compensation of Subrecipient Executives.*
1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
- i. in the subrecipient's preceding fiscal year, the subrecipient received—
    - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
  - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)



2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
  - i. To the recipient.
  - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.
  
- d. *Exemptions*

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

  - i. Subawards, and
  - ii. The total compensation of the five most highly compensated executives of any subrecipient.
  
- e. *Definitions.* For purposes of this award term:
  1. *Entity* means all of the following, as defined in 2 CFR part 25:
    - i. A Governmental organization, which is a State, local government, or Indian tribe;
    - ii. A foreign public entity;
    - iii. A domestic or foreign nonprofit organization;
    - iv. A domestic or foreign for-profit organization;
    - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
  2. *Executive* means officers, managing partners, or any other employees in management positions.
  3. *Subaward:*
    - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

- ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. \_\_ .210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).
  - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
4. *Subrecipient* means an entity that:
- i. Receives a subaward from you (the recipient) under this award; and
  - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
- i. *Salary and bonus*.
  - ii. *Awards of stock, stock options, and stock appreciation rights*. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. *Earnings for services under non-equity incentive plans*. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. *Change in pension value*. This is the change in present value of defined benefit and actuarial pension plans.
  - v. *Above-market earnings on deferred compensation which is not tax-qualified*.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

## **20. RECIPIENT EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)**

- (a) This award and employees working on this financial assistance agreement will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub.L. 112-239).
- (b) The Award Recipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C 4712.
- (c) The Award Recipient shall insert the substance of this clause, including this paragraph (c), in all subawards or subcontracts over the simplified acquisition threshold. 48 CFR 52.203-17 (as referenced in 48 CFR 3.908-9).

## **21. RECIPIENT INTEGRITY AND PERFORMANCE MATTERS (APPENDIX XII to 2 CFR Part 200)**

### **A. Reporting of Matters Related to Recipient Integrity and Performance**

#### **1. General Reporting Requirement**

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

#### **2. Proceedings About Which You Must Report**

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five year period; and

c. Is one of the following:

- (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
- (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
- (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
- (4) Any other criminal, civil, or administrative proceeding if:
  - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
  - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
  - (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

### 3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

### 4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report.

Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

## 5. Definitions

For purposes of this award term and condition:

- a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
  - (1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
  - (2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

## 22. CONFLICTS OF INTEREST

### (a) Applicability.

- (1) This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
- (2) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.

### (b) Requirements.

- (1) Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.

(2) In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.

(3) No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.

(c) Notification.

(1) Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of Interest.

(2) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.

(d) Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.

(e) Review Procedures. The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.

(f) Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

## **23. DATA AVAILABILITY**

(a) Applicability. The Department of the Interior is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.

- (b) Use of Data. The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
  
- (c) Availability of Data. The recipient shall make the data produced under this award and any subaward(s) available to the Government for public release, consistent with applicable law, to allow meaningful third party evaluation and reproduction of the following:
  - (i) The scientific data relied upon;
  
  - (ii) The analysis relied upon; and
  
  - (iii) The methodology, including models, used to gather and analyze data.

## CITY COUNCIL STAFF REPORT

**Consent Item No. 7**

**August 7, 2019**

**File No. 0600-10, A3235**

SUBJECT: Notice of Completion for the Brine Line Project – Harmony Grove to Broadway

DEPARTMENT: Utilities Department, Construction and Engineering Division

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2019-111, authorizing the Director of Utilities to file a Notice of Completion for the Brine Line Project – Harmony Grove to Broadway.

FISCAL ANALYSIS:

The Brine Line Project was completed for \$5,894,669.63. This amount exceeded the originally approved contract amount by 5.5 percent, which is within the 10 percent contingency permitted for construction projects.

PREVIOUS ACTION:

On February 14, 2018, the City Council adopted Resolution No. 2018-23, authorizing the Mayor and City Clerk to execute a Public Improvement Agreement with CCL Contracting, Inc., the lowest responsive and responsible bidder, in the amount of \$5,587,420 for construction of the Brine Line Project – Harmony Grove to Broadway. The City Council also approved a budget adjustment, in the amount of \$7,000,000, to fund Capital Improvement Project No. 801601.

BACKGROUND:

Title 22 recycled water will be conveyed from the Hale Avenue Resource Recovery Facility to the future Membrane Filtration Reverse Osmosis facility (MFRO) for advanced treatment. Brine is a byproduct from the MFRO process. This pipeline will convey brine from the future MFRO Facility to the outfall. This project installed approximately 12,200 lineal feet (2.3-miles) of 16-inch high-density polyethylene (HDPE) and 15-inch polyvinyl chloride (PVC) brine gravity pipeline using a combination of open trench and jack-and-bore methods. This project also included the construction of manholes and small diameter fiber optic conduits.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Angela Morrow*, Deputy Director of Utilities/Construction & Engineering  
7/31/2019 4:45 p.m.

ATTACHMENTS:

1. Resolution No. 2019-111



RESOLUTION NO. 2019-111

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
AUTHORIZING THE DIRECTOR OF  
UTILITIES TO FILE A NOTICE OF  
COMPLETION FOR THE BRINE LINE  
PROJECT – HARMONY GROVE TO  
BROADWAY

WHEREAS, on February 14, 2018, the City Council adopted Resolution No. 2018-23, authorizing execution of the Public Improvement Agreement for the construction of the Brine Line Project – Harmony Grove to Broadway in the amount of \$5,587,420; and

WHEREAS, on February 14, 2018, the City Council approved a budget adjustment in the amount of \$7,000,000 to the Capital Improvement Project No. 801601; and

WHEREAS, the construction for the Brine Line Project – Harmony Grove to Broadway was completed by CCL Contracting, Inc.; and

WHEREAS, the City of Escondido staff and the Director of Utilities deems the filing of the Notice of Completion to be valid and recommends approval; and

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

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.

3. That the City Council hereby approves the request to file a Notice of Completion for the Brine Line Project – Harmony Grove to Broadway.



## CITY COUNCIL STAFF REPORT

**Consent Item No. 8**

**August 7, 2019**

**File No. 0600-10, A-3307**

SUBJECT: Escondido History Center License and Operating Agreement

DEPARTMENT: Engineering Services Department

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2019-53 approving a License and Operating Agreement for the Escondido History Center.

PREVIOUS ACTION:

On June 25, 2003, the City Council approved Resolution No. 2003-136 authorizing a Facility Use Agreement with the Escondido Historical Society (now Escondido History Center).

BACKGROUND:

The City of Escondido (City) owns several historic buildings located in Grape Day Park, consisting of Escondido's first library building, a 1900's barn with attached storage shed, an outhouse, two (2) windmills, a tank house, a Victorian house, the Bandy Blacksmith Shop, a Mesoamerican Metate, and the 1888 Santa Fe Depot with attached platform and a railroad car.

The City previously held a Facility Agreement (Agreement) with the Escondido History Center to operate a community museum at the City's Heritage Walk within Grape Day Park. The Agreement expired on June 30, 2016, and continued on a month-to-month basis. The proposed License and Operating Agreement will serve to replace the Facility Agreement and allow the History Center to continue to operate and maintain the interior of the historic structures along Heritage Walk.

The Agreement will be for a term of three (3) years, will be at no charge to the History Center, and may be terminated at any time, without case, by providing a thirty-day advance written notice.

The Escondido History Center agrees to maintain and repair the non-structural components of the interior buildings and structures and the City is responsible for the care and maintenance of all buildings and structures, including painting, landscaping, A/C and heating units, water heaters, windows, doors, roof fire protection, electrical, plumbing and security systems. The City's contribution for the various service, including building maintenance, landscaping, electrical and water is approximately \$125,000. The City was also able to secure a grant to cover costs associated with repairs to the structures, including reroofing, exterior siding replacement and painting of the Train Depot and train car.

Escondido History Center License and Operating Agreement  
August 7, 2019  
Page 2

The History Center receives revenue from car show events, membership fees, donations, blacksmith classes, photo use fees and grants; however, they are looking for additional ways to cover costs. The City is exploring ways to assist the History Center in repairing and improving the existing structures and works with the History Center to apply for grants to secure funding.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Owen Tunnell*, Assistant City Engineer  
7/31/2019 6:28 p.m.

ATTACHMENTS:

1. Resolution No. 2019-53
2. Resolution No. 2019-53 – Exhibit A – License and Operating Agreement

RESOLUTION NO. 2019-53

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
AUTHORIZING THE MAYOR TO EXECUTE,  
ON BEHALF OF THE CITY, A LICENSE AND  
OPERATING AGREEMENT WITH THE  
ESCONDIDO HISTORY CENTER FOR USE  
OF THE HISTORIC BUILDINGS IN GRAPE  
DAY PARK

WHEREAS, the City of Escondido owns several historic buildings located in Grape Day Park, consisting of Escondido's first library building, a 1900's barn with attached storage shed, an outhouse, two windmills, a tank house, a Victorian house, the Bandy Blacksmith Shop, an Indian metate, the 1888 Santa Fe Depot with attached platform and a railroad car; and

WHEREAS, the Escondido History Center (EHC) is a nonprofit California corporation whose purpose is to collect, preserve, exhibit, and interpret artifacts; research materials such as books, diaries, journals, maps, and material objects and structures relative to the past history of the City of Escondido; and

WHEREAS, City desires that the Museum be managed with special expertise, to lessen the burdens of City with respect to the Museum, while affording proper accountability to the citizens of Escondido on a long-term basis.

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve the License and Operating Agreement for the Escondido History Center.

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 Mayor is authorized to execute, on behalf of the City, the License and Operating Agreement for the Escondido History Center, which is attached hereto as Exhibit "A" and incorporated by this reference.

**LICENSE  
AND  
OPERATING AGREEMENT  
FOR THE  
ESCONDIDO HISTORY CENTER**

This License and Operating Agreement ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_ 2019 ("Date of Execution").

Between: CITY OF ESCONDIDO  
A California General Law City  
201 North Broadway  
Escondido, California 92025  
("City")

And: Escondido History Center  
Entity Number: C0323187  
A California Nonprofit Public Benefit Corporation  
Po Box 263  
Escondido, California 92033  
("EHC")

**RECITALS**

A. The Escondido History Center (EHC) is a nonprofit California corporation whose purpose is to collect, preserve, exhibit, and interpret artifacts; research materials such as books, diaries, journals, maps, and material objects and structures relative to the past history of the City of Escondido.

B. The City owns several historic buildings located in Grape Day Park that have traditionally been used as a community museum, as identified in Attachment A ("Museum").

C. City desires that the Museum be managed with special expertise, to lessen the burdens of City with respect to the Museum, while affording proper accountability to the citizens of Escondido on a long-term basis.

NOW, THEREFORE, the parties agree as follows:

### **LICENSE AND OPERATION**

1. City hereby grants to EHC the right to use and operate the Museum, as identified in Attachment A, and EHC agrees to operate such facilities, subject to the terms and conditions set forth in this Agreement.

2. Escondido History Center Nonprofit Corporation Status. EHC warrants that it is a validly existing corporation in good standing with the State of California, and that it has provided the City with a copy of the resolution of the Board of Directors of the corporation, authorizing the execution of this Agreement on behalf of EHC. EHC also warrants that it has, in conjunction with its execution of this Agreement, provided City with copies of its Articles of Incorporation, its Bylaws, and a list of names of the current members of its Board of Directors and any other officers of the corporation. EHC agrees that it will provide City with copies of any of the above documents which change in form or scope at any time during the term of this Agreement, and with any other documents which may be reasonably required by City.

3. Operation of the Facilities.

a. The EHC hereby agrees to use and operate the Museum for the benefit of the City and community, as provided in this Agreement. To further the purposes of the City, EHC shall use the Museum to exhibit, display and interpret historical artifacts, to disseminate information about the history of the community and manage the Museum for community use. EHC shall not use the Museum for activities that interfere with or detract from the primary purpose.

b. EHC shall have the exclusive right to operate the Museum. EHC shall also have the exclusive right to sell or to contract for the right to sell beverages, food,



confections, clothing, novelties, and publications within the Museum as appropriate. EHC shall assemble, safeguard, preserve and conserve objects of art for display at the Museum.

c. EHC understands that the City needs the availability of the Museum, on twenty-four (24) hours prior notice, if those facilities are not scheduled for other use by EHC. The City Manager or his designee shall be the City's designated agent to coordinate with EHC staff for City use of these facilities.

d. The Museum shall not be utilized directly by EHC for the purpose of working or campaigning for the nomination or election to any public office, whether partisan or non-partisan.

e. EHC may develop reasonable restrictions for the use of the facilities which are consistent with the rights of the general public, and which are designed to enable EHC to use the facilities for the purposes of this Agreement.

4. City Property. At all times during the term of this Agreement, the Museum shall remain the absolute property of the City. No legal title or leasehold interest in the Museum shall be deemed or construed to have been created or vested in EHC by anything contained in this Agreement. Because EHC is an operator organized for the purpose of reducing the burden on government, the parties intend that EHC shall have no liability for payment of property taxes.

5. Escondido History Center Property. City agrees that all furniture, equipment, and other similar property of a personal nature which is acquired by EHC solely with its own resources, or with distributions from the EHC Endowment Fund, shall be and remain the property of EHC. All fixtures, i.e. items which are attached to, affixed or otherwise become part of the Museum shall be property of the City.

6. Improvements and Alterations. EHC agrees to care for all alterations, additions and improvements made by the City to the Museum. EHC agrees not to alter any existing improvements, except in accordance with plans and specifications previously submitted and approved in writing by City's designated representative. Interior decoration and alterations for the accommodation of the ongoing operation of the Museum shall be the responsibility of EHC and shall be subject to the reasonable prior approval of the City.

7. Waste, Damage or Destruction of Center. EHC shall take all reasonable measures to assure that any tenants, users, or licensees of the Museum avoid any form of waste, damage, destruction of the facilities, or make any permanent alterations of the facilities without the City's prior written consent. Such measures shall include use of written agreements, provision of insurance, and if necessary, on-site monitoring, events, and other uses of the Museum. In the event of any waste, damage or destruction, EHC shall give prompt notice to the City of any damage to the facilities within five (5) days of such damage occurring. EHC shall not itself commit or allow any waste or damage to the Museum, or permit any public or private nuisance. EHC shall keep the Museum clean and clear of refuse and obstructions, and shall assure that either itself or all licensees or users dispose of all garbage, trash, and rubbish and return the Museum to the condition prior to use, in a manner satisfactory to City.

8. Maintenance and Repair. EHC agrees to maintain and repair the nonstructural components of the interior buildings and structures identified on Attachment A. City will be responsible for the care and maintenance of all buildings and structures, including painting and landscaping. City will be responsible for the maintenance of items of a permanent nature associated with the structures, including A/C units, heating units,

water heaters, windows, doors, roof, fire protection, electrical, plumbing and security systems.

9. Utilities. City will provide normal operational utility service to Museum, at no cost to EHC. Those utility services shall include electricity, natural gas, sewer and water service.

10. Obligation of Diligent Use. EHC covenants to diligently perform all of its obligations under this Agreement, and to use the Museum solely for the purposes described in this Agreement.

11. Provision of Services.

a. EHC will collect artifacts, arrange displays, and manage the buildings as a community museum, pursuant to such operational rules and regulations as the CITY may promulgate from time to time.

b. EHC will be solely responsible for the maintenance of the interior of all of the buildings and structures identified on Attachment A, including regular cleaning of said buildings.

c. EHC will utilize the barn as an exhibit/storage area as identified on Attachment B. Any modifications to the usage of the barn as identified on Attachment B must be approved by the City and EHC and must be in compliance with the fire and building codes as they apply to the barn. Maximum occupancy for the assembly area of the barn is forty-nine (49), standing room only.

d. EHC may present or provide exhibits or special events, subject to the requirement that the presentations or events provide no financial risk to the City and full funding is secured by agreement before the event(s) or presentation(s). Revenue

received from EHC events or presentations that exceeds expenses shall be retained by EHC.

e. EHC will be solely responsible for the conduct and operations of all events sponsored by EHC and programs or events in which EHC is involved. All such events shall conform to City regulations and ordinances.

12. Entry and Inspection. City reserves the right to enter the Museum for the purpose of viewing and ascertaining its condition, or to protect City's interests in the facilities, or to inspect the operations conducted thereon, after reasonable prior notice to EHC. All electrical panels and irrigation clocks shall be accessible to City at all times.

13. Acceptance and Maintenance.

EHC hereby acknowledges that EHC has inspected the Premises and EHC accepts said Premises "as is" and "where is." EHC acknowledges that the City makes no representations as to the condition or suitability of the Premises or any improvements on the Premises.

14. Nondiscrimination. EHC agrees that it shall not discriminate in any manner against any person or persons on account of age, race, marital status, gender, religious creed, color, ancestry, national origin, physical handicap or medical condition in EHC's use of the Museum.

15. Provision of Insurance. It is the objective of EHC and City to cooperate and manage risks associated with the entire Museum in the most efficient and fiscally prudent manner. The parties each desire to purchase such insurance and cooperate in the management of risk and claims to properly address the risks associated with the ownership and operation of the entire Museum. To that extent, the parties agree as follows:

a. EHC shall provide and maintain in full force and effect while operating under this Agreement a comprehensive liability insurance policy with limits of One Million Dollars (\$1,000,000), combined single limit, automobile liability insurance with limits of One Million Dollars (\$1,000,000) and Workers' Compensation insurance with limits of coverage as prescribed by law. All policies, except the Worker's Compensation, shall name the CITY as additional insured on a separate endorsement. Insurance coverage must be provided by a Best's A or A- rated, Class V carrier or better, admitted in California, or if non-admitted, acceptable to the Department of Insurance. All non-admitted carriers will be required to provide a service of suit endorsement, in addition to the additional insured endorsement. All evidence of insurance shall be in a form satisfactory to the City Attorney. The failure to provide and maintain insurance shall be a material breach of this Agreement.

16. Indemnification. EHC shall indemnify, defend and hold harmless the City and its officers, employees and agents, from all liability or claim of liability arising by reason of injury or damage to property and/or persons, including death, arising out of this Agreement, including any damage or liability arising out of the actions of EHC's agents or employees, or arising out of any condition of EHC property, or the conduct of EHC. However, EHC shall not be responsible for any claims caused by the City's gross negligence or unlawful conduct as established by judgement in a court of law.

17. Coordination of Activities. EHC shall coordinate all activities that occur at the Museum. In order to avoid conflicts, EHC will notify the City and the City will notify EHC within a reasonable time after the scheduling of events in Grape Day Park. City will consult with EHC and EHC will consult with the City in the planning of improvements or additions to park facilities.

18. Term of Agreement. The Agreement shall commence upon the date executed by the City and EHC, and shall expire three years from the date of execution.

a. Holding Over. At the expiration of the term of this Agreement in the event the City permits EHC to continue to operate the Center, all other terms and conditions of this Agreement shall continue in full force and effect, on a month to month basis.

b. Termination. This Agreement may be terminated at any time without cause, by providing thirty (30) days advance written notice. Any notifications to this agreement shall be made in writing and shall not be effective until signed by both parties.

19. Promotion. City shall profile the EHC, its programs, exhibits, activities, and the Museum complex, in its regular posting of activities which are provided by the City to Cox Communications and televised on the government access programming channel.

20. City's use of Historical Photos. EHC hereby grants the City a limited, non-exclusive license to use historical photos of the EHC for display at City facilities. The City shall display the EHC name with any photos and any materials the City will no longer use must be returned to EHC. The EHC shall provide digital copies for the City's use of the license in accordance with this Agreement.

#### **GENERAL PROVISIONS**

21. No Right to Assign or Transfer. As the City has relied on the particular expertise of EHC in entering into this Agreement, EHC shall not assign, delegate, or transfer any duty or right under this Agreement, except as specifically authorized, and any such purported assignment, delegation, or subletting shall be void, unless the City has approved such action in writing in advance.

22. Amendment of Agreement. All additions or changes to this Agreement shall be made in writing, and shall be executed by both parties.

23. 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.

24. Merger Clause. This Agreement and its Attachments 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 its Attachments the provisions of this Agreement shall prevail.

25. Anti-Waiver Clause. None of the provisions contained herein shall be waived because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived, in whole or in part.

26. 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.

27. Costs and Attorney's Fees. In the event that either party should bring suit against the other party to enforce any provisions of this Agreement, the prevailing party in such litigation shall pay the other party's costs and reasonable attorneys' fees incurred pursuant to said litigation.

28. No Agency Relationship. Nothing in this Agreement shall be construed to create an agency relationship, either express or implied, between the parties to this Agreement, and at all times relevant to this Agreement.

29. Force Majeure. The time within which the parties hereto shall be required to perform any act under this Agreement, other than the payment of money, shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, or any other similar cause beyond the control of either of the parties.

30. Choice of Law. This Agreement shall be governed by the laws of the State of California. Venue for any action arising from this Agreement, including but not limited to matters concerning validity, construction, performance or enforcement shall be exclusively in the state located in north San Diego County, California or federal courts located in San Diego County.

31. Notice to Parties. Any statements, communications or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated below, until such time as notice of any changes of person to be notified or change of address is forwarded to both parties:

Escondido History Center  
PO Box 263  
Escondido, CA 92033

City of Escondido  
201 N. Broadway  
Escondido, CA 92025  
Attn: Jeffrey R. Epp  
760-839-4897

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

32. Business License. EHC shall be required to maintain a City of Escondido Business License during the term of this Agreement.



IN WITNESS WHEREOF, the Agreement has been executed on behalf of the City by its Officer thereunto authorized and by Escondido History Center, the date and year first above written.

**CITY OF ESCONDIDO**

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

\_\_\_\_\_  
Paul McNamara, Mayor

**ESCONDIDO HISTORY CENTER**

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

\_\_\_\_\_  
June Rady, President, Board of Directors

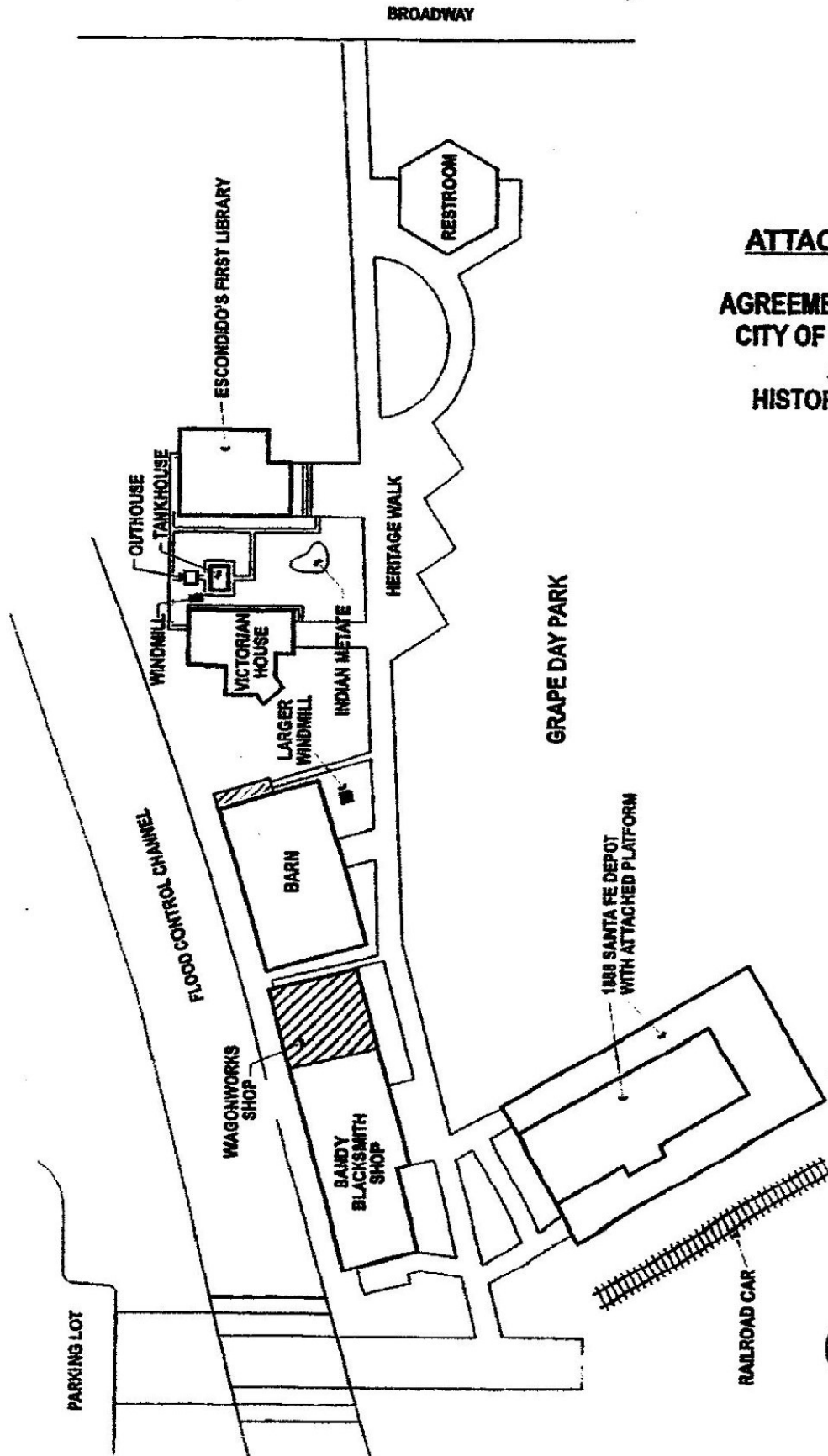
Date: \_\_\_\_\_

\_\_\_\_\_  
Robin Fox, Executive Director

APPROVED AS TO FORM:

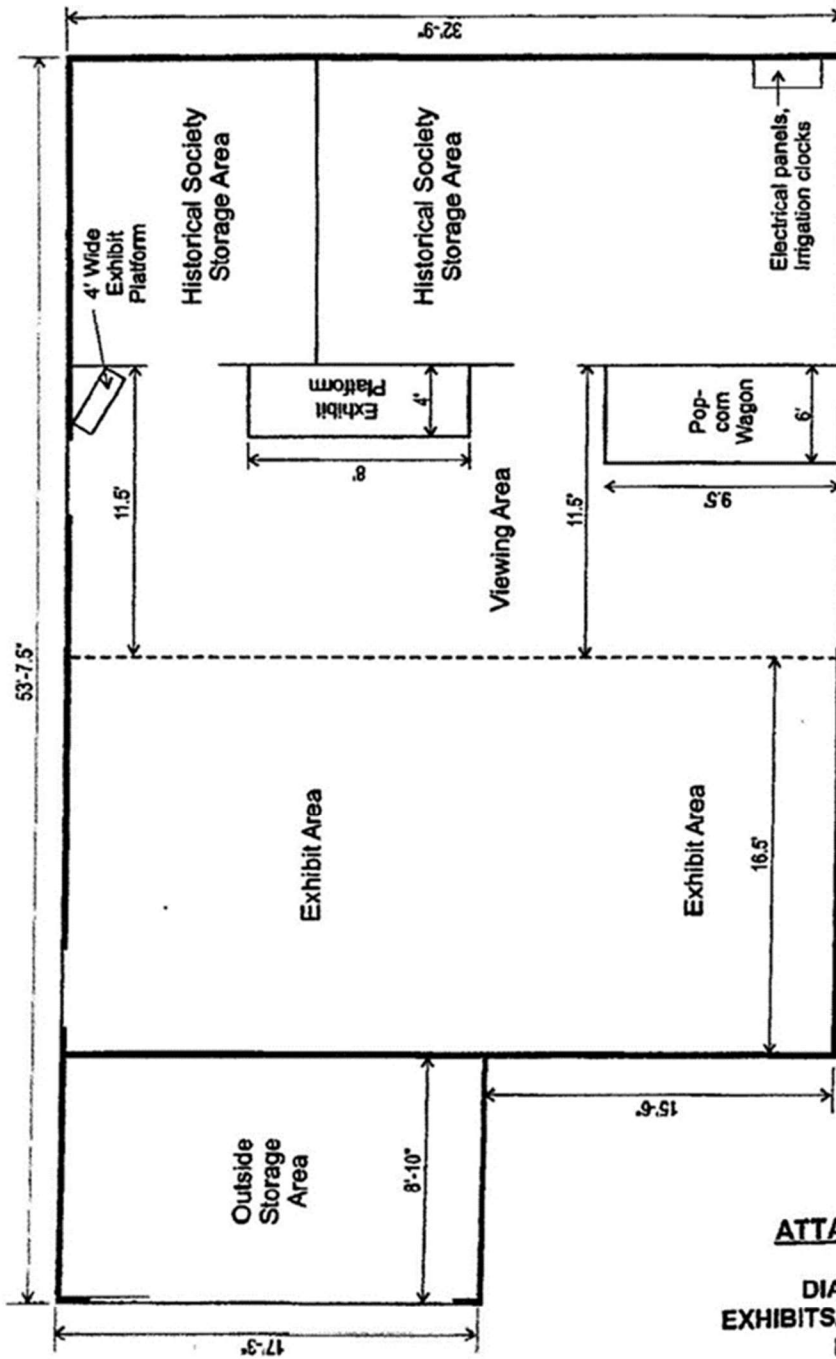
OFFICE OF THE CITY ATTORNEY  
Michael McGuinness, City Attorney

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



**ATTACHMENT A**

**AGREEMENT BETWEEN  
CITY OF ESCONDIDO  
AND  
HISTORY CENTER**



**ATTACHMENT B**  
**DIAGRAM OF**  
**EXHIBITS/STORAGE AREA**  
**IN BARN**



## CITY COUNCIL STAFF REPORT

**Consent Item No. 9**

**August 7, 2019**

**File No. 0600-10, A-3308**

**SUBJECT:** Occupancy License Agreement for 1118 South Citrus Avenue with Escondido History Center

**DEPARTMENT:** Engineering Services Department

**RECOMMENDATION:**

It is requested that the City Council adopt Resolution No. 2019-104, approving an Occupancy License Agreement ("Agreement") with the Escondido History Center for use of a City-owned storage building at 1118 South Citrus Avenue.

**PREVIOUS ACTION:**

On June 25, 2003, the City Council approved Resolution No. 2003-136 authorizing a Facility Use Agreement with the Escondido Historical Society (now Escondido History Center). While the Occupancy License for the storage building was not specific to this action, the use is tied to the Escondido Historical Society's current License and Operating Agreement.

**BACKGROUND:**

The City of Escondido has had an Occupancy License Agreement with the Escondido History Center since 2013, to use a building located at 1118 South Citrus Avenue for storage of historical artifacts. The previous Agreement expired on June 30, 2019, and continued on a month-to-month basis. The proposed Occupancy License is for a three (3) year period, at no cost to the History Center, which will allow their continued use of the building for their storage needs. Either party may terminate the Agreement by providing written notice at least thirty (30) days in advance of the desired termination date.

The use of the storage building is in association with the License and Operating Agreement, which allows the Escondido History Center to operate a community museum at the City's Heritage Walk within Grape Day Park. The items contained within the storage building are larger items, such as wagons, tractors and other pieces of equipment that do not fit within the buildings along Heritage Walk. The building allows the items to be kept in a place that keeps them out of the weather and allows more room for the Escondido History Center to restore them.

**APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:**

*Owen Tunnell*, Assistant City Engineer  
7/31/2019 6:28 p.m.

**ATTACHMENTS:**

1. Resolution No. 2019-104
2. Resolution No. 2019-104 – Exhibit "A" - Occupancy License Agreement

RESOLUTION NO. 2019-104

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, AN OCCUPANCY LICENSE AGREEMENT WITH THE ESCONDIDO HISTORY CENTER FOR USE OF THE STORAGE BUILDING AT 1118 SOUTH CITRUS AVENUE

WHEREAS, the City of Escondido (“City”) owns the parcel at 1118 South Citrus Avenue, which has improvements consisting of a small one-story farmhouse that is listed on the Escondido Historic Resources Inventory, a windmill and barn; and

WHEREAS, the Escondido History Center is a nonprofit California corporation whose purpose is to collect, preserve, exhibit, and interpret artifacts; research materials such as books, diaries, journals, maps, and material objects and structures relative to the past history of the City; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve the Occupancy License Agreement with the Escondido History Center.

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 Mayor is authorized to execute, on behalf of the City, the Agreement with the Escondido History Center, which is attached hereto as Exhibit “A” and incorporated by this reference.



## **CITY OF ESCONDIDO**

**Escondido, CA 92025**

### **OCCUPANCY LICENSE FOR**

1118 S. Citrus Ave., Escondido, CA

Term: \_\_\_\_\_, 2019 - \_\_\_\_\_, 2022

License Holder:

Escondido History Center

CITY OF ESCONDIDO

Occupancy License for Escondido History Center

This License Agreement ("License") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF ESCONDIDO ("City") and Escondido History Center ("Licensee"), for the purpose of awarding an Occupancy License for a storage building at 1118 S. Citrus Avenue, Escondido, CA.

*Part One of this Agreement is a License for a storage facility use ("**Occupancy License**").  
Part Two of this Agreement sets forth general terms applying to the Occupancy License.*

**I. OCCUPANCY LICENSE**

*This Occupancy License is awarded subject to the following terms, conditions and limitations:*

1. Location. The area to be governed by this **Occupancy License** is a building located at 1118 Citrus Avenue in Escondido, CA (see attached Exhibit "A").
2. Use of License Premises.
  - (a) The Licensee shall use the License Premises for the purpose of the storage of artifacts in a safe and organized manner pursuant to such operational rules and regulations as the CITY may promulgate from time to time. The Licensed Premises shall not be used by Licensee for any other purpose.
3. License Premises Improvements. No alterations shall be made to the License Premises.
4. Term of License. This Occupancy License is awarded for a period of three (3) years (the "Occupancy License Term"), starting \_\_\_\_\_, 2019 through \_\_\_\_\_, 2022.
5. Rent. Not applicable to this License.
6. Utilities. Not applicable to this License.
7. Maintenance of the License Premises. Licensee hereby agrees that it accepts the License Premises as is/where is. Licensee shall maintain the License Premises and shall keep it in clean, safe, orderly and sanitary condition at all times throughout the License Term.
8. Access. The City shall have a right to access the License Premises at any time, and may do so from time to time without providing notification to Licensee and without causing disruption to Licensee's rights under this License Agreement.
9. Surrender of Premises. Upon termination of this Occupancy License, Licensee shall vacate and deliver the License Premises to the City in the same condition it was found, except for ordinary wear and

tear. Licensee shall contact the City to arrange for a walk through of the property and return of all keys and access cards on or before \_\_\_\_\_, 2022

10. Termination and Revocation of Occupancy License.

(a) This Occupancy License may be terminated by either party by providing written notice to the other party at least thirty (30) days in advance of the desired termination date.

(b) This Occupancy License may be revoked by the City at any time after a written notice to Licensee that City has determined that Licensee has done any of the following, and if Licensee has not cured the noticed breach within five (5) business days after the notice:

- Failed to confine use of the License Premises as stated in Section 2 above.
- Failed to work cooperatively with City staff.
- Taking actions to the detriment of the Licensee or the City.

(c) Upon termination or revocation of this Occupancy License, Licensee agrees to vacate the License Premises within five (5) working days, and to surrender this Occupancy License.

**II. GENERAL LICENSE TERMS**

1. Indemnification. Licensee (which in this paragraph includes its employees, agents, or subcontractors) shall indemnify, defend and hold harmless the City of Escondido, its officers, agents and employees from any and all loss, damage, liability, cost or expenses, including attorneys' fees, for any of the following: 1) Any personal injuries, property damage or death that Licensee may sustain while using CITY-controlled property or equipment, while participating in any activity sponsored by the CITY, or from any dangerous condition of property; or 2) Any injury or death which Licensee suffers or which is increased by any action taken to medically treat Licensee; or 3) Any claim of liability arising out of Licensee's negligence or acts or omissions.
2. Insurance. Licensee shall have insurance in the following amounts at all times during this License term:
  - a. General liability insurance with at least \$1 Million combined single-limit coverage per occurrence for bodily injury and property damage; and
  - b. Automobile liability insurance of \$1 Million combined single-limit per accident for bodily injury and property damage; and
  - c. Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended, or certificate of sole proprietorship.
  - d. Each insurance policy required above must be acceptable to the City Attorney:
    - i. Each policy must name the CITY specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation policy.



ii. 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.

iii. All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.

e. Certificates of Insurance for each policy must be received and deemed acceptable by the City prior to commencement of the License term.

3. Anti-Assignment Clause. Licensee shall not assign, delegate, transfer or sublicense any duty or right under this Occupancy License, or any portion of the Licensee's use of License Premises.

4. Licensee not a Lessee. No legal title or leasehold interest in the License Premises or appurtenances thereto shall be deemed or construed to have been created or vested in the Licensee by anything contained in this Occupancy License.

5. 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.

6. Merger Clause. This Occupancy License and its Attachments 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 Occupancy License and its Attachments, the provisions of this Occupancy License shall prevail.

7. Anti-Waiver Clause. None of the provisions contained herein shall be waived because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived, in whole or in part.

8. 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 Occupancy License.

9. Notices to Parties. Any statements, communications or notices to be provided pursuant to this Occupancy License shall be sent to the attention of the persons indicated below, until such time as notice of any changes of person to be notified or change of address is forwarded to all parties:

Licensee:

Escondido History Center  
PO Box 263  
Escondido, CA 92033  
Attn: Robin Fox

City:

City of Escondido  
201 N. Broadway  
Escondido, CA 92025  
Attn: Vince McCaw  
(760) 839-4034

10. Choice of Law. This Occupancy License shall be governed by the laws of the State of California. Venue for any action arising from this Occupancy License, including but not limited to matters concerning validity, construction, performance or enforcement shall be exclusively in the state or federal courts located in San Diego County, California.

IN WITNESS WHEREOF, this Occupancy License has been executed on behalf of the City by its Officer thereunto authorized and by Licensee, the date and year first above written.

**CITY OF ESCONDIDO**

Date: \_\_\_\_\_  
Paul McNamara, Mayor

**ESCONDIDO HISTORY CENTER**

Date: \_\_\_\_\_  
June Rady, President, Board of Directors

Date: \_\_\_\_\_  
Robin Fox, Executive Director

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY  
Michael McGuinness, City Attorney

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

EXHIBIT A



## CITY COUNCIL STAFF REPORT

**Consent Item No. 10**

**August 7, 2019**

**File No. 0600-10, A-3280**

SUBJECT: Contract Change Order and Notice of Completion for the Tulip Street Improvements Phase IV

DEPARTMENT: Engineering Services Department

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2019-112, authorizing the City Engineer to approve a Contract Change Order with Southland Paving, Inc. in the amount of \$21,027 to complete additional work and authorize staff to file a Notice of Completion for the Tulip Street Improvements Phase IV ("Project")

FISCAL ANALYSIS:

The Project is funded through a Community Development Block Grant (CDBG). Funds for the requested change order are available in the project budget. The final Project cost of \$1,284,699.11 is three (3) percent less than the Engineer's cost estimate of \$1,330,000.

PREVIOUS ACTION:

On January 16, 2019, the City Council adopted Resolution No. 2019-01, authorizing the Mayor and City Clerk to execute a Public Improvement Agreement with Southland Paving, Inc. (Contractor), the lowest responsible bidder, in the amount of \$1,148,793.75 for construction of the project.

BACKGROUND:

This Project is the fourth and final phase of improvements to Tulip Street between Third Avenue and W. Valley Parkway/Grand Avenue. The first phase, completed in 2008, improved Tulip Street between Ninth and Seventh Avenues. Subsequent phases to improve Tulip Street between Seventh Avenue and Third Avenue were completed in 2009 and 2012, respectively. The remaining scope of work for this project was similar to previous projects and included installation of sidewalk, curb and gutter, pedestrian ramps, retaining walls, tree wells and landscape from Second Avenue to W. Valley Parkway/Grand Avenue. Before and after pictures highlighting the improvements have been provided in Attachment 1.

City Council's approval of a Contract Change Order in the amount of \$21,027 is requested for the paving of Grand Court and clean-up of parkways along the Tulip corridor. Staff approved contract change orders within the allowable ten percent contingency (\$114,880) for work performed by the contractor on a time and materials basis. This included relocation of six sewer laterals that were

shallower than anticipated, reconnection of buried private drain lines found during construction and removal of unsuitable soils. Additional fencing was added to address resident security concerns and mulch was added along the parkways. Due to the expedited timeframe for this project, it was necessary to continue work to avoid costly delays.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Owen Tunnell*, Assistant City Engineer  
7/31/2019 6:28 p.m.

ATTACHMENTS:

1. Attachment 1 – Before and After Pictures
2. Resolution No. 2019-112



# Attachment "1"













RESOLUTION NO. 2019-112

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE CITY ENGINEER, ON BEHALF OF THE CITY, TO APPROVE A CONTRACT CHANGE ORDER AND FILE A NOTICE OF COMPLETION FOR THE TULIP STREET IMPROVEMENTS PHASE IV PROJECT

WHEREAS, on January 16, 2019, the City Council adopted Resolution No 2019-01, authorizing execution of the Public Improvement Agreement for the construction of the Tulip Street Improvements Phase IV Project ("Project") in the amount of \$1,148,793.75; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to authorize a Contract Change Order to the Public Improvement Agreement with Southland Paving, Inc. in the amount of \$21,027 to resurface Grand Court.

WHEREAS, the construction for Tulip Street Improvements Phase IV Project was completed by Southland Paving, Inc.; and

WHEREAS, the City of Escondido staff and the City Engineer deems the filing of the Notice of Completion to be valid and recommends approval; and

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

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 City Engineer.
3. That the City Council approve a Contract Change Order in the amount of \$21,027.
4. That the City Council hereby approves the request to file a Notice of Completion for the Tulip Street Improvements Phase IV Project.

## CITY COUNCIL STAFF REPORT

**Consent Item No. 11**

**August 7, 2019**

**File No. 1050-45**

**SUBJECT:** Amend Engineering and Traffic Survey (Speed Zone) on Eleventh Avenue and Seventeenth Avenue

**DEPARTMENT:** Engineering Services Department, Traffic Engineering Division

**RECOMMENDATION:**

It is requested that the City Council adopt Resolution No. 2019-113, to amend an Engineering and Traffic Survey (Speed Zone) on Eleventh Avenue between Valley Parkway and Del Dios Road and Seventeenth Avenue between Juniper Street and the City Limits.

**FISCAL ANALYSIS:**

Funds are available in the Traffic Infrastructure Budget for signage fabrication and installation costs.

**PREVIOUS ACTION:**

The Transportation and Community Safety Commission voted to recommend approval of this speed limit at their meeting on July 11, 2019.

**BACKGROUND:**

To satisfy the requirements of Section 40802(b) of the California Vehicle Code, Engineering and Traffic Surveys are required by the State of California to establish speed limits and to enforce those limits using radar or other speed measuring devices. These surveys must be updated periodically (every five, seven, or ten years, depending upon specific criteria), to ensure the speed limits reflect current conditions as dictated by the 2019 California Vehicle Code. The surveys must be conducted following the procedures outlined in the California Manual on Uniform Traffic Control Devices (CA-MUTCD) dated November 7, 2014, and in accordance with applicable provisions of the California Vehicle Code Section 627, titled "Engineering and Traffic Survey."

The CA-MUTCD guidelines state that 85 percent of drivers are traveling at a safe and reasonable speed, and that this 85th percentile speed is the parameter of a speed survey that should be used to determine a legally enforceable posted speed limit. Based on this principle, and other speed survey standards, staff is recommending the amendment of two (2) speed surveys that are an update of the current posted speed limits.

The results of the speed survey and recommended speed limits are listed in Table 1. The last column shows the recommended speed limit, per the Traffic Engineer’s judgment in matching existing conditions with the traffic safety needs of the community.

**Table 1: Speed Surveys and Recommended Speed Limits for August 7, 2019**

Street Name	Segment		Existing Posted Limit (MPH)	85th Percentile Speed (MPH)	Recommended Speed Limit (MPH)*
	From	To			
Eleventh Avenue	Valley Parkway	Del Dios Road	35	32	30
Seventeenth Avenue	Juniper Street	City Limits	40	38	35(25WCAP)

*\*To be posted per Traffic Engineer*

Staff recommends approval of one (1) speed survey to post a speed limit of 30 mph on Eleventh Avenue between Valley Parkway and Del Dios Road. This speed limit is based on an 85th percentile speed of 32 mph. The 85th percentile speed indicates that 30 mph is the safe and appropriate speed for this roadway.

Staff also recommends approval of speed survey to post a speed limit of 35 mph, with a speed limit of 25mph when children are present (WCAP) within the school zone, on Seventeenth Avenue between Juniper Street and City Limits. This speed limit is based on 85th percentile speed of 38 mph and is rounded down based on high number of residential driveways with need to maintain sight distance and Vehicle Pace Speed of 29-38 mph. Speed limits are normally set to fall within the 10-mph pace. The 85th percentile speed and pace speed indicate that 35 mph is the safe and appropriate speed for this roadway.

Staff recommendations for the segment are consistent with the results of the current speed surveys and in compliance with requirements of the California Vehicle Code and the Caltrans - California Manual on Uniform Traffic Control Devices.

**APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:**

*Owen Tunnell*, Assistant City Engineer  
 7/31/2019 6:28 p.m.

**ATTACHMENTS:**

1. Resolution No. 2019-113

RESOLUTION NO. 2019-113

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
TO AMEND THE TRAFFIC SCHEDULE FOR  
SPEED ZONES AT TWO LOCATIONS

WHEREAS, Escondido Municipal Code Section 28-5(12) provides that the City Council shall establish a Traffic Schedule for Speed Zones; and

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

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 approves Resolution No. 2019-113 amending the

Traffic Schedule for Speed Zones to reflect the speed limit as follows:

Street Name	Segment		Existing Posted Limit (MPH)	85th Percentile Speed (MPH)	Recommended Speed Limit (MPH)*
	From	To			
Eleventh Avenue	Valley Parkway	Del Dios Road	35	32	30
Seventeenth Avenue	Juniper Street	City Limits	40	38	35(25WCAP)

*\*To be posted per Traffic Engineer*



## CITY COUNCIL STAFF REPORT

**Consent Item No. 12**

**August 7, 2019**

**File No. 0600-10, A-2517**

**SUBJECT:** Second Amendment to Lease Agreement - 210 South Broadway

**DEPARTMENT:** Engineering Services Department

**RECOMMENDATION:**

It is requested that the City Council adopt Resolution No. 2019-114, authorizing the Mayor to execute a Second Amendment to the Lease for the property at 210 South Broadway and assign and transfer the rights to the Lease from Stanley Schaeffer, DDS to Adil Alhashimi, A Professional Corporation.

**FISCAL ANALYSIS:**

Rental revenue, in the amount of \$27,485.04 per year, will be deposited into the General Fund.

**PREVIOUS ACTION:**

Resolution No. 2014-68 was adopted by the City Council on June 11, 2014, authorizing a First Amendment to the Lease Agreement.

**BACKGROUND:**

The City of Escondido acquired the subject property for its Library Expansion Project in 2000, and inherited Stanley Schaeffer, DDS as a tenant. The lease is for approximately 1,700 square feet of office space at 210 South Broadway, which is used as a dental practice. The current lease was effective as of September 27, 2010, and was amended on July 1, 2014, establishing a lease term of four (4) years and included two (2) options to extend the lease for another three (3) years each. Each option requires a written request from the Lessee to the Lease Administrator at least 30 days in advance of the then current lease term. The term is subject to both parties' right to terminate early, with or without cause, upon a 120-day notice to the other party.

Stanley Schaeffer, DDS is selling his dental practice and wants to assign and transfer the rights and interest in his lease with the City of Escondido to Adil Alhashimi, A Professional Corporation, subject to all the conditions and terms contained in the lease. Adil Alhashimi, A Professional Corporation, has requested an extension of the existing term to include an additional three (3) year option, to meet lender requirements, outlined as follows:

- July 1, 2014 – June 30, 2018 – Original Lease term per First Amendment
- July 1, 2019 – June 30, 2021 – First three-year option per First Amendment
- July 1, 2021 – June 30, 2024 – Second three-year option per First Amendment
- July 1, 2024 – June 30, 2027 – Third three-year option per Second Amendment

Second Amendment to Lease Agreement - 210 South Broadway  
August 7, 2019  
Page 2

The property is being leased at market rate and includes a provision to adjust the rent annually to reflect a three percent increase over the previous year's rent.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Owen Tunnell*, Assistant City Engineer  
7/31/2019 6:28 p.m.

ATTACHMENTS:

1. Resolution No. 2019-114
2. Resolution No. 2019-114 - Exhibit A – Lease Agreement

RESOLUTION NO. 2019-114

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
AUTHORIZING THE MAYOR TO EXECUTE,  
ON BEHALF OF THE CITY, A SECOND  
AMENDMENT TO LEASE AGREEMENT  
WITH STANLEY SCHAEFFER, DDS AND  
ADIL ALHASHIMI, A PROFESSIONAL  
CORPORATION

(210 South Broadway)

WHEREAS, the City of Escondido owns certain real property at 210 South Broadway which was acquired for the Library Expansion Project; and

WHEREAS, the City inherited a lease with Stanley Schaeffer upon property acquisition in the year 2000 and entered into the current lease on September 27, 2010 (“Original Lease”), for the continued operation of a dental practice as an interim use until the property was needed for the Library Expansion; and

WHEREAS, the First Amendment to the Lease Agreement (Original Agreement and First Amendment collectively called “Lease”) was effective on July 1, 2014, establishing a lease term of four (4) years and also included two (2) options to extend the lease for another three (3) years each. Each option requires a written request from the Lessee to the Lease Administrator at least 30 days in advance of the then current lease term; and

WHEREAS, Dr. Schaeffer wishes to assign and transfer to Adil Alhashimi, A Professional Corporation, all of Dr. Schaeffer’s right and interest in and to the Lease and Premises, subject to all the conditions and terms contained in the Lease; and



WHEREAS, Adil Alhashimi, A Professional Corporation, desires to extend the term of the Lease for another three (3) years with an option to 2027, subject to early termination rights for both parties upon a 120 day notice and to revise the rent schedule to adjust to fair market rent.

WHEREAS, the Library Expansion Project does not require the property at this time; and

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

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

1. That the above recitations are true.
2. The Mayor is authorized to execute, on behalf of the City, the Second Amendment to Lease Agreement with Stanley Schaeffer, DDS and Adil Alhashimi, A Professional Corporation, which is attached hereto as Exhibit "1" and incorporated by this reference.

**SECOND AMENDMENT TO LEASE AGREEMENT  
(210 S. Broadway)**

This SECOND AMENDMENT TO LEASE AGREEMENT is effective as of August 7, 2019

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

And: Stanley Schaeffer, DDS  
210 S. Broadway  
Escondido, CA 92025  
("ASSIGNOR")

And: Adil Alhashimi, A Professional Corporation  
210 S. Broadway  
Escondido, CA 92025  
("ASSIGNEE / LESSEE")

WITNESSESS THAT WHEREAS:

- A. CITY and ASSIGNOR entered into a Lease Agreement dated September 27, 2010 ("Original Agreement") for the lease of approximately 1700 square feet at 210 South Broadway, Escondido, California 92025 ("Premises") for the purpose of operating a dental practice; and
- B. The First Amendment to the Lease Agreement (Original Agreement and First Amendment collectively called "Lease") was effective on July 1, 2014, establishing a lease term of four (4) years and also included two options to extend the lease for another three (3) years each. Each option requires a written request from the Lessee to the Lease Administrator at least 30 days in advance of the then current lease term; and
- C. ASSIGNOR wishes to assign and transfer to the ASSIGNEE all of ASSIGNOR's right and interest in and to the Lease and Premises, subject to all the conditions and terms contained in the Lease.
- D. ASSIGNEE desires to extend the term of the Lease for another three years with an option to 2027, subject to early termination rights for both parties upon a 120 day notice and to revise the rent schedule to adjust to fair market rent.

NOW THEREFORE, it is mutually agree by and between City and LESSEE as follows:

- 1. From and after date hereof, ASSIGNEE hereby assumes, covenants and agrees to keep and perform each and every obligation of Assignor under the

Lease. Assignee agrees to be bound by each and every provision of the Lease as if it had executed the same.

2. Section 5 of the Original Lease is deleted in its entirety and replaced as follows:

“July 1, 2014 – June 30, 2018 – Original Lease term per 1<sup>st</sup> Amendment

July 1, 2019 – June 30, 2021 – First three-year option

July 1, 2021 – June 30, 2024 – Second three-year option

July 1, 2024 – June 30, 2027 – Third three-year option

In order to exercise each option, LESSEE shall deliver a written request to the Lease Administrator at least 30 days in advance of the then current lease term.”

3. Section 10 of the Original Lease is deleted in its entirety and replaced as follows:

“Lessee shall pay a security deposit in the amount of \$2,300.00 prior to execution of the Lease.”

4. Section 13 of the Original Lease is deleted in its entirety and replaced as follows:

“13.1 Lessee hereby acknowledges that Lessee has inspected the Premises and Lessee accepts said Premises "as is" and "where is." Lessee acknowledges that the City makes no representations as to the condition or suitability of the Premises or any improvements on the Premises.

13.2 Pursuant to the noticing requirements of California Civil Code Section 1938, Lessee acknowledges that the Premises being leased has not undergone inspection by a certified access specialist. A certified access specialist can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require an inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining an inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the inspection, the payment of the fee for the inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises. **The Lessee hereby expressly agrees that the cost for any such inspection and any repairs or modifications necessary to correct violations of construction-related accessibility standards that are noted in a certified access specialist's inspection report are the sole responsibility of the Lessee.**

13.3 Lessee agrees to maintain the Premises in good condition and in compliance with all applicable property maintenance and related laws. Lessee

releases the City from the obligation to maintain any portion of the Premises. Said release is part of the consideration for the rental of the Premises, and Lessee therefore waives all rights it may otherwise have under Sections 1941 and 1942 of the Civil Code.

13.4 In the event Lessee fails to properly maintain the premises as required by City, City may notify Lessee in writing of said failure. In the event Lessee fails to perform said maintenance within 30 days after such notice by City, City may perform such maintenance, and any costs including, but not limited to, the cost of labor, material, and equipment, shall be paid by Lessee to City within 10 days from receipt by Lessee of an invoice from City”

5. Section 22.1.1 shall be deleted in its entirety and replaced with the following:  
“General liability insurance with at least \$2 Million combined single-limit coverage per occurrence for bodily injury and property damage.”
6. All other terms and condition of the Lease shall remain in full force and effect.
7. This Second Amendment, the ORIGINAL AGREEMENT and FIRST AMENDMENT, together with their respective attachments, are the entire understanding of the parties, and there are no other terms or conditions, written or oral, controlling this matter.
8. In the event that any terms conflict with this Second Amendment, this Second Amendment shall control.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and date written below.

**STANLEY SCHAEFFER, DDS  
(ASSIGNOR)**

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

By: \_\_\_\_\_  
Stanley Schaeffer

**ADIL ALHASHIMI, A PROFESSIONAL  
CORPORATION (ASSIGNEE / LESSEE)**

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

By: \_\_\_\_\_  
Adil Alhashimi

**CITY OF ESCONDIDO**

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

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

APPROVED AS TO FORM:

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

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

## CITY COUNCIL STAFF REPORT

**Consent Item No. 13**

**August 7, 2019**

**File No. 0600-10, A-3309**

**SUBJECT:** License Agreement with Michael S. Taylor, D.B.A. Dugout Snacks at 3333 Bear Valley Parkway, for an Adult Softball Concession Stand in Kit Carson Park

**DEPARTMENT:** Engineering Services Department

**RECOMMENDATION:**

It is requested that the City Council adopt Resolution No. 2019-115 authorizing the Mayor to execute a License Agreement (“Agreement”) with Michael S. Taylor, D.B.A. Dugout Snacks at 3333 Bear Valley Parkway, for an Adult Softball Concession Stand within Kit Carson Park.

**FISCAL ANALYSIS:**

Rental revenue, in the amount of \$500 per month, will be deposited into the General Fund.

**PREVIOUS ACTION:**

Resolution No. 2016-41 was adopted by the City Council on March 23, 2016, authorizing a Lease Agreement with Mike’s BBQ Inc. for the Kit Carson Adult Softball Field. The vendor ultimately decided that the facility was not suitable for their desired use and the stand has been vacant since early 2017.

**BACKGROUND:**

A Request for Proposal (RFP) was released on May 22, 2019, to solicit responses from parties that may be interested in operating the concession. The RFP was sent directly to vendors that had previously expressed an interest in running the concession, posted to the City of Escondido website and was distributed to the various users of the park, including American Little League, National Little League, Escondido Girls Softball, Escondido Youth Baseball, Pop Warner Football, and Escondido Soccer Club.

The City of Escondido received one response to the RFP from Michael S. Taylor, D.B.A. Dugout Snacks, a husband and wife team that has worked very closely with the Escondido Girls’ Softball for many years and is familiar with the activities at Kit Carson Park. The proposed license will allow the vendor to operate the stand serving food items for Adult Softball patrons, subject to obtaining all applicable County and City permits necessary to operate the stand.

License Agreement with Michael S. Taylor, D.B.A Dugout Snacks  
August 7, 2019  
Page 2

The Agreement is for a period of two (2) years, and may be renewed for three (3) additional one (1) year periods, upon mutual written Agreement. The License may be terminated with 90 days advanced written notice. The operator will pay \$500 per month, which is consistent with rent paid by another concessionaire in a similar setting. The operator will provide minimum hours of operation, in coordination with the Director of Community Services.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Owen Tunnell*, Assistant City Engineer  
7/31/2019 6:28 p.m.

ATTACHMENTS:

1. Resolution No. 2019-115
2. Resolution No. 2019-115 - Exhibit "A" – Lease Agreement

RESOLUTION NO. 2019-115

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
AUTHORIZING THE MAYOR TO EXECUTE,  
ON BEHALF OF THE CITY, A LICENSE  
AGREEMENT WITH MICHAEL S. TAYLOR,  
D.B.A. DUGOUT SNACKS FOR THE ADULT  
SOFTBALL CONCESSION STAND AT KIT  
CARSON PARK

(3333 Bear Valley Parkway)

WHEREAS, the concession stand in the Adult Softball Fields of Kit Carson Park, located at 3333 Bear Valley Parkway, is owned by the City of Escondido ("City"); and

WHEREAS, the concession stand is available for lease to an operator and a Request for Proposals was released by the City to solicit responses from interested parties; and

WHEREAS, Michael S. Taylor, D.B.A. Dugout Snacks, responded to the Request for Proposals and desires to lease the concession stand; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve the License Agreement ("Agreement") with Michael S. Taylor, D.B.A. Dugout Snacks for the operation of the Adult Softball Fields concession stand in Kit Carson Park.

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 Mayor is authorized to execute, on behalf of the City, a License Agreement, in substantially the form attached to this Resolution as Exhibit "A" and incorporated by this reference, and subject to final approval as to form by the City Attorney.



# Kit Carson Park Adult Softball Field Concession Stand License Agreement

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Licensee: \_\_\_\_\_

**Term: Two (2) Years**

**Premises: 3333 Bear Valley Parkway, Escondido, CA 92025  
Kit Carson Park, Softball Field Concession Stand**

**Date: \_\_\_\_\_, 2019**

Concession Stand License Agreement between the City of Escondido and Michael S. Taylor dba Dugout Snacks, for use of the concession stand located at 3333 Bear Valley Parkway Escondido, CA 92025 for specific purposes as set forth below.

**TABLE OF CONTENTS**

**SECTION 1 DEFINITION OF TERMS ..... 1**

**SECTION 2 ADMINISTRATION ..... 1**

**SECTION 3 TERM..... 2**

**SECTION 4 TERMINATION OF LICENSE ..... 2**

**SECTION 5 OPTIONS TO RENEW..... 2**

**SECTION 6 VACATION OF PREMISES ..... 2**

**SECTION 7 RENT ..... 2**

**SECTION 8 SECURITY DEPOSIT ..... 3**

**SECTION 9 LATE PAYMENT..... 3**

**SECTION 10 UTILITIES PAYMENTS ..... 3**

**SECTION 11 TAXES, ASSESSMENTS AND FEES ..... 3**

**SECTION 12 ACCEPTANCE AND MAINTENANCE ..... 3**

**SECTION 13 ALTERATIONS ..... 4**

**SECTION 14 USE..... 5**

**SECTION 15 OCCUPANCY, ASSIGNMENT AND SUBLETTING ..... 6**

**SECTION 16 CONDUCT ..... 6**

**SECTION 17 PETS ..... 6**

**SECTION 18 NOTICES ..... 6**

**SECTION 19 RIGHT OF INSPECTION ..... 6**

**SECTION 20 INSURANCE ..... 6**

**SECTION 21 INDEMNIFICATION ..... 8**

**SECTION 22 ATTORNEY’S FEES, COSTS AND EXPENSES ..... 8**

**SECTION 23 NON-DISCRIMINATION ..... 8**

**SECTION 24 SUPERSEDURE ..... 9**

**SECTION 25 HAZARDOUS AND/OR CONTAMINATED SOIL AND MATERIAL ..... 9**

**SECTION 26 LAW TO GOVERN; VENUE..... 9**

**SECTION 27 SPECIAL PROVISIONS..... 9**

**SECTION 28 COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS ..... 9**

**SECTION 29 AMENDMENT ..... 9**

**SECTION 30 WAIVER..... 9**

## CITY OF ESCONDIDO CONCESSION STAND LICENSE AGREEMENT

This License Agreement is made as of \_\_\_\_\_, 2019 between the **City of Escondido ( City)** and **Michael S. Taylor, dba Dugout Snacks**.

### **Section 1 Definition of Terms**

The following words in this License shall have the significance attached to them in this Section unless otherwise apparent from their context.

- 1.1 **City.** The City means the City of Escondido, a California general law City.
- 1.2 **License.** License means this license agreement.
- 1.3 **License Administrator.** The License Administrator means the City of Escondido Real Property Agent or, upon written notice to Licensee, such other person as shall be designated from time to time by City.
- 1.4 **Licensee.** Licensee means Michael S. Taylor, dba Dugout Snacks and does not include its heirs, assigns, or successors-in-interest.
- 1.5 **Party.** Licensee or City may be referred to individually as Party or collectively as Parties.
- 1.6 **Premises.** Premises means the real property commonly known as Kit Carson Park Adult Softball Field Concession Stand, located at 3333 Bear Valley Parkway, Escondido, CA 92025, as depicted on **EXHIBIT A**.

### **Section 2 Administration**

This License will be administered on behalf of City by the License Administrator, whose address is:

City of Escondido  
Attn: Real Property Manager  
201 North Broadway  
Escondido, CA 92025

And on behalf of Licensee by Michael S. Taylor dba Dugout Snacks whose address is:

Michael S. Taylor dba Dugout Snacks  
555 W. Country Club Lane  
PO Box C250  
Escondido, CA 92026  
530-701-0326  
mtaylor@michaeltaylor.com

### **Section 3 Term**

- 3.1 The term of this License shall be two (2) years, commencing on November 1, 2019 or the first of the month following the issuance of a San Diego County Health Department Food permit, whichever comes first.
- 3.2 Hold Over. The occupancy of the Premises by Licensee, after the expiration of the Term shall be construed as a month-to-month license, and all other terms and conditions of this License shall continue in full force and effect, on a month-to-month basis. The City shall have the right to terminate the month-to-month license without cause and for any reason by giving 30 days prior notice to Licensee.

### **Section 4 Termination of License**

- 4.1 City may terminate this License at any time, at its sole discretion, by providing the other Party with 90 days written notice.
- 4.2 Default. If the City discovers at any time that the Licensee has violated any provision of this License, City may notify Licensee of the violation and immediately terminate the License upon written notice.

### **Section 5 Options to Renew**

- 5.1 At the end of the Term, this License may be renewed for three additional one year periods, upon mutual written agreement by the City and Licensee.

### **Section 6 Vacation of Premises**

- 6.1 Upon termination of this License for any reason, Licensee shall peaceably vacate and deliver the Premises to City in the same condition as Licensee found them upon its acceptance of the Premises hereunder, excepting ordinary wear and tear and conditions caused by acts of God.
- 6.2 Upon such termination, Licensee shall immediately:
  - A. Provide a written statement to the License Administrator of Licensee's new address for purpose of refunding monies, if any, due Licensee under this License; and
  - B. Deliver any keys for the Premises to the Administrator or send said keys by certified mail to the City.

### **Section 7 Rent**

- 7.1 Rental Rate. In consideration of the possession and use of the Premises, Licensee shall deliver and pay rent to City **\$500** per month on or prior to the

first day of each month. Rent payments will commence on the 1<sup>st</sup> day of the month after Licensee acquires a San Diego County Health Department Food permit or November 1, 2019, whichever comes first.

- 7.2 Annual Financial Statements. At City's request, Licensee shall submit to City a financial statement, which shows all revenues and expenditures for the previous year within 7 days.
- 7.3 Hold Over Rental Rate. The rent payments for any hold over will be equal to the previous year's Rental Rate plus ten percent (10%).

## **Section 8 Security Deposit**

Licensee shall pay a security deposit in the amount of \$500 prior to execution of the License.

## **Section 9 Late Payment**

Rent payments received after the 5<sup>th</sup> day of any month will be charged an additional 20% late payment fee.

## **Section 10 Utilities Payments**

Licensee agrees to provide and pay a flat fee of \$50 per month for utilities and services necessary for the occupancy and use of the Premises, including, but not limited to: gas, water, electricity, sewage charges or septic service, trash and any telecommunications services. Said payment shall be included with the rent check each month.

## **Section 11 Taxes, Assessments and Fees**

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

## **Section 12 Acceptance and Maintenance**

- 12.1 Lessee hereby acknowledges that Lessee has inspected the Premises and

Lessee accepts said Premises "as is" and "where is." Lessee acknowledges that the City makes no representations as to the condition or suitability of the Premises or any improvements on the Premises.

- 12.2 Pursuant to the noticing requirements of California Civil Code Section 1938, Lessee acknowledges that the Premises being leased has not undergone inspection by a certified access specialist. A certified access specialist can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require an inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining an inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the inspection, the payment of the fee for the inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises. **The Lessee hereby expressly agrees that the cost for any such inspection and any repairs or modifications necessary to correct violations of construction-related accessibility standards that are noted in a certified access specialist's inspection report are the sole responsibility of the Lessee.**
- 12.3 Lessee agrees to maintain the Premises in good condition and in compliance with all applicable property maintenance and related laws. Lessee releases the City from the obligation to maintain any portion of the Premises. Said release is part of the consideration for the rental of the Premises, and Lessee therefore waives all rights it may otherwise have under Sections 1941 and 1942 of the Civil Code.
- 12.4 In the event Lessee fails to properly maintain the premises as required by City, City may notify Lessee in writing of said failure. In the event Lessee fails to perform said maintenance within 30 days after such notice by City, City may perform such maintenance, and any costs including, but not limited to, the cost of labor, material, and equipment, shall be paid by Lessee to City within 10 days from receipt by Lessee of an invoice from City.

### **Section 13 Alterations**

Licensee shall not paint, alter, cut, add to, or otherwise change the appearance, structure, or condition of the Premises without the prior written consent of the License Administrator and only after obtaining applicable permits. Any tenant improvements and additional improvements made with the consent of the License Administrator shall become a fixture to the realty and shall remain on and be surrendered with the Premises

upon termination of this License. Any improvement made without written consent of Lessor, or without applicable permits, shall be removed at Lessee's sole cost.

## **Section 14 Use**

- 14.1 Use. Licensee is hereby provided a limited license to use the Premises for operating a concession stand for public use and consumption during, but not limited to, sporting events and/or exhibitions at the Premises in accordance with the provisions and requirements contained in any permits required by the City of Escondido. Additionally, Licensee agrees to obtain all San Diego County permits necessary to properly and legally operate a concession stand. Licensee agrees to abide and enforce all San Diego County food handling laws, codes and regulations regarding food handling, preparation, service and distribution. Licensee shall not use, nor permit the use of, the Premises other than as described. In any case where Licensee is, or should reasonably be, in doubt as to the propriety of any particular use, Licensee may request, and will not be in breach or default if Licensee abides by, the written determination of the License Administrator that such use is or is not permitted.
- 14.2 Alcohol. The sale or consumption of alcoholic beverages of any kind is prohibited.
- 14.3 Operating Hours. Hours of operation may vary based upon seasons and weather, but Licensee shall operate the concession stand year-round. Minimum hours shall include (2-3) hours per week night, Monday through Friday, and weekends from 8:00 a.m. to dusk, or until the conclusion of the scheduled activity, whichever occurs later. A schedule will be determined by the Director of Community Services or designee. Licensee is responsible for posting operating hours to inform the public. Additional hours may be required for special events and tournaments.
- 14.4 Staffing. The Licensee will be responsible for hiring the necessary personnel to conduct the daily operation of the concession in accordance with all Health Department regulations, and California and Federal Labor codes, and laws.
- 14.5 Signage. Licensee shall be allowed to place a limited amount of signage, as approved in advance by City.
- 14.6 Common Areas. As part of the Premises, Licensee has access to certain common areas which impact other community uses in the same area. In order to provide for the efficient use of the common areas for Licensee and the City's Community Services Department, and in order to enable the City to preserve the common areas for the use of the general public, Licensee agrees to abide by the rules and regulations of Kit Carson Park and City's



Community Services Department regarding use of the common areas.

## **Section 15 Occupancy, Assignment and Subletting**

The Premises shall only be occupied by Licensee except with prior written consent of the License Administrator. Licensee may not assign or sublease any interest in this License to any other Party, at any time, including a transferee of a controlling interest in Licensee without written consent from the License Administrator.

## **Section 16 Conduct**

- 16.1 Licensee and guests of Licensee shall conduct themselves in accordance with the rules and regulations of Kit Carson Park, the City's Community Services Department Code of Conduct or any other City regulation.
- 16.2 Licensee shall not violate, or permit the violation of, any City or County ordinance, or state or federal law, in or about the Premises.

## **Section 17 Pets**

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

## **Section 18 Notices**

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

## **Section 19 Right of Inspection**

City reserves the right for its agents or employees to enter upon and inspect the Premises at any reasonable time to ascertain if Licensee is complying with the provisions of this License, to conduct necessary maintenance, or in the case of any emergency. Licensee shall provide City with keys and alarm code to all concession areas.

## **Section 20 Insurance**

- 20.1 Licensee must have insurance in the following amounts at all times during this License:
  - A. General liability insurance with at least \$2 Million combined single-limit coverage per occurrence for bodily injury and property damage.
  - B. Automobile liability insurance of \$1 Million combined single-limit per accident for bodily injury and property damage for any and all vehicles that are owned by the Licensee (if applicable).

- C. Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended, or certificate of sole proprietorship.
  - D. Commercial property insurance in an amount commensurate with the value of the improvements on the Premises.
- 20.2 Each insurance policy required above must be acceptable to the City Attorney:
- A. Each policy must name the City specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation policy.
  - B. 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.
  - C. All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
- 20.3 Licensee agrees to deposit with City, on or before the effective date of this License, one certificate of insurance for each of the policy or policies necessary to satisfy the insurance provisions of this License and to keep such insurance in effect during the entire term of this License. This certificate must be reviewed by, and acceptable to, the City Attorney, prior to commencement of the License Term. Licensee will also deposit with the City within 60 days of the Effective Date of this License, an additional insured endorsement naming City specifically and separately as an "additional insured", with the exception of the worker's compensation policy. The appropriate endorsements described above shall follow within 60 days.
- 20.4 City shall retain the right at any time to review the coverage, form and amount of the insurance required hereby. If, in the opinion of the License Administrator, the insurance provisions in this License do not provide adequate protection for City and for members of the public using the Premises, City may require Licensee to obtain insurance sufficient in coverage, form and amount to provide adequate protection from and against the kind and extent of risks which exist or are foreseeable at the time a change in insurance is required. City's requirements shall be reasonable, but shall be designed to assure adequate protection of the City's interests. The License Administrator shall notify Licensee in writing

of changes in the insurance requirements and, if Licensee does not deposit with City within 60 days of receipt of such notice a new Certificate of Insurance for each policy or policies of insurance incorporating such changes, this License shall be deemed in default without further notice to Licensee and may be forthwith terminated by the License Administrator.

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

### **Section 21 Indemnification**

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

### **Section 22 Attorney's Fees, Costs and Expenses**

In the event legal action is brought to enforce the terms of or to declare a termination of this License for reason of breach thereof, the unsuccessful Party shall pay all of the successful Party's costs of such action, together with reasonable attorney's fees, in an amount to be fixed by the court.

### **Section 23 Non-Discrimination**

Licensee covenants that this License is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of physical or mental disabilities, race, color, creed, religion, sex, marital status, national origin or ancestry in the use, occupancy, tenure or enjoyment of the licensed premises. Licensee shall not establish or permit any such practice of discrimination or segregation with reference to the selection, location, number, or use of occupancy by customers, tenants or vendees in the licensed premises.

## **Section 24 Supersedure**

This License, upon becoming effective, shall supersede any licenses or rental agreements heretofore made or issued for the Premises between the City and Licensee.

## **Section 25 Hazardous and/or Contaminated Soil and Material**

Licensee will not place or permit to be placed materials and/or contaminated soils on the premises which under federal, state, or local law, statute, ordinance, or regulations require special handling in collection, storage, treatment, and/or disposal. Licensee also hereby covenants and agrees that, if at any time it is determined there are materials and/or contaminated soils located on the premises which under any environmental requirement require special handling in collection, storage, treatment, or disposal, Licensee shall notify City. Within thirty (30) days after written notice to City or from City, Licensee shall commence to take and thereafter diligently complete, at Licensee's sole expense, such actions as may be necessary to comply with environmental requirements.

## **Section 26 Law to Govern; Venue**

This License is governed by the laws of the State of California. Venue for all actions arising from this License must be exclusively in the North County Division of the San Diego County Superior Court or federal courts located in San Diego County, California.

## **Section 27 Special Provisions**

Licensee hereby acknowledges that Licensee waives all rights to any form of relocation assistance provided for by local, state, or federal law to which Licensee may be entitled by reason of this License.

## **Section 28 Compliance with Federal, State, and Local Laws**

It is the duty of the Licensee while operating under this License to comply with all local, state, and federal laws, and to indemnify City from any violation of any such law. Failure to comply with a provision of local, state, or federal law is grounds for the License Administrator's immediate termination of this License.

## **Section 29 Amendment**

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

## **Section 30 Waiver**

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

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

**MICHAEL S. TAYLOR dba DUGOUT SNACKS**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Michael S. Taylor, Sole Proprietor

**CITY OF ESCONDIDO**

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

\_\_\_\_\_  
Paul McNamara, Mayor

APPROVED AS TO FORM:

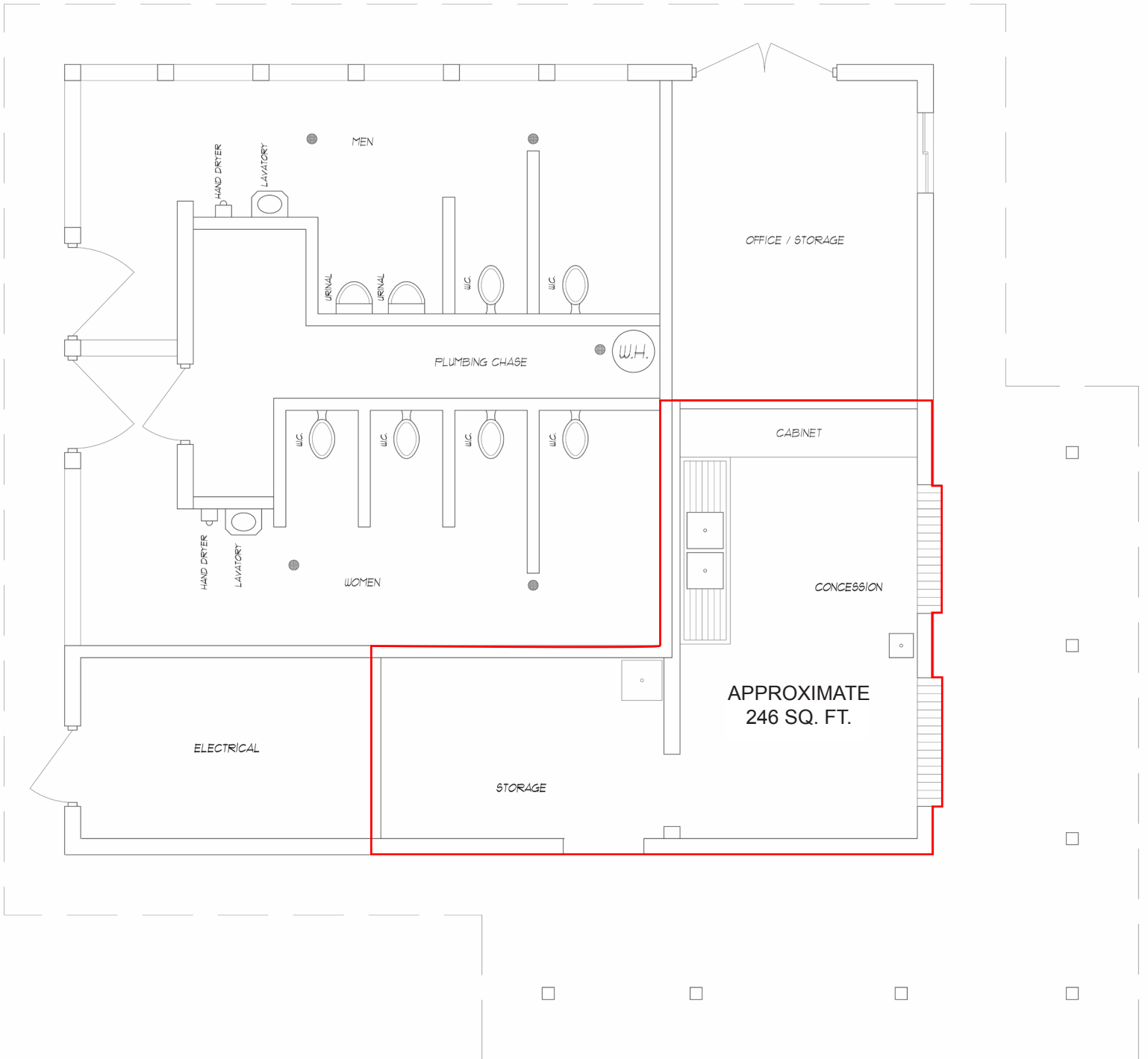
OFFICE OF THE CITY ATTORNEY  
MICHAEL R. MCGUINESS, City Attorney

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

EXHIBIT A



EXHIBIT A



**KIT CARSON PARK  
ADULT SOFTBALL CONCESSION / BATHROOM  
FLOOR PLAN - NOT TO SCALE**





## CITY COUNCIL STAFF REPORT

Consent Item No. 14

August 7, 2019

File No. 0600-10, MISC.

SUBJECT: California Franchise Tax Board City Business Tax Program

DEPARTMENT: Community Development Department

RECOMMENDATION:

It is requested that the City Council approve Resolution No. 2019-116 authorizing the Community Development Director to execute an agreement with the State of California Franchise Tax Board (FTB) to renew and continue the City's participation in the FTB City Business Tax Program.

PROJECT DESCRIPTION:

The FTB City Business Tax Program authorizes the State and the City of Escondido to exchange data related to business activity within the City limits to prevent business license revenue loss and sales tax leakage from occurring.

FISCAL IMPACT:

There is no cost to the City to enter into an agreement with the FTB. The City may receive additional General Fund revenue through this information exchange by identifying incorrectly allocated sales tax or business license filings.

PREVIOUS ACTION:

On April 20, 2016, the City Council voted unanimously to authorize the Director of Community Development to sign an agreement with the Franchise Tax Board to participate in the City Business Tax Program to exchange sales tax data pertaining to businesses operating within the city limits.

BACKGROUND AND ANALYSIS:

The Franchise Tax Board (FTB) has established the City Business Tax Program that benefits both the State and local cities by exchanging business tax data collected independently. The information exchange provides both agencies the ability to cross-reference data to ensure compliance with State and local business and income/sales reporting laws. The program calls for the City to provide information to the State of California annually in June and the State to provide reciprocal information from their database the following December for the previous tax year.

The Franchise Tax Board data from 2016 indicated that there were 13,740 businesses operating in the City of Escondido. The City's business license data listed 9,784 businesses for the same period. That's potentially 3,956 businesses that have an unmet business tax filing requirement with the City.



The FTB's City Business Tax Program could help to close that gap by identifying businesses that are operating without the City's knowledge. Though participation in the data exchange program is voluntary at this point, California Revenue and Taxation Code (R&TC) Section 19551.5 mandates that cities provide business tax data to the FTB when requested. The FTB would waive cost-reimbursement requirements which would otherwise apply, if the City enters into the proposed reciprocal data exchange agreement.

The agreement covers a three (3) year period with the first data transmitted to the State within 30 days of executing the agreement and subsequently in June 2020 and June 2021. In return, the FTB will provide data in December 2019 for tax year 2018; December 2020 for tax year 2019; and December 2021 for tax year 2020. The FTB is authorized to send information only on taxpayers reporting income from a trade or business with an address inside the jurisdictional boundaries of the City. The City must also submit a safeguard questionnaire prior to receiving FTB data, and each employee having access to FTB data shall sign a Confidentiality Statement.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Bill Martin*, Director of Community Development  
8/1/2019 8:48 p.m.

*Mike Strong*, Assistant Director of Planning  
8/1/2019 9:02 a.m.

ATTACHMENTS:

1. Resolution 2019-116
2. Resolution 2019-116 – Exhibit 1 – Scope (Exhibits A, D, E, F, G)

RESOLUTION NO. 2019-116

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE COMMUNITY DEVELOPMENT DIRECTOR AND CITY CLERK, TO EXECUTE, ON BEHALF OF THE CITY, AN AGREEMENT WITH THE CALIFORNIA FRANCHISE TAX BOARD TO PARTICIPATE IN THE CITY BUSINESS TAX PROGRAM

WHEREAS, the Franchise Tax Board (“FTB”) has established a program, called the City Business Tax Program, that helps agencies exchange local business tax data. The information exchange provides an ability to cross-reference independently-collected data to ensure compliance with State and local business and income/sales reporting laws; and

WHEREAS, on August 7, 2019, the City of Escondido considered a proposal from the California FTB to participate in the City Business Tax Program to exchange data pertaining to businesses operating in the City limits; and

WHEREAS, the information developed through this program could provide a database and useful inventory of local business activity that may allow the City of Escondido to confirm that the correct revenue is being remitted to the City, through its Business Licensing Division, to prevent business license revenue loss and sales tax leakage from occurring; and

WHEREAS, the City Council desires at this time and deems it to be in the best public interest to approve said Agreement for a three (3) year period.

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 Director of Community Development and City Clerk are hereby authorized to execute, on behalf of the City, an Agreement with the California Franchise Tax Board, in substantial conformance to that as set forth in Exhibit "1," which is incorporated herein by this reference as though fully set forth herein.

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 10/2018)

AGREEMENT NUMBER 0000000000000000000000000035483	PURCHASING AUTHORITY NUMBER (if applicable)
-----------------------------------------------------	---------------------------------------------

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Franchise Tax Board

CONTRACTOR NAME

City of Escondido

2. The term of this Agreement is:

START DATE

June 1, 2019 or date of approval, whichever is later

THROUGH END DATE

December 31, 2021

3. The maximum amount of this Agreement is:

\$0.00 (NON-FINANCIAL AGREEMENT)

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

EXHIBITS	TITLE	PAGES
Exhibit A	Scope of Work	3
Exhibit C *	General Terms and Conditions	GTC417
Exhibit D	Special Terms and Conditions	3
Exhibit E	City and County Record Format Specifications	2
Exhibit F	FTB Record Layout Specifications	1
Exhibit G	Confidentiality Statement	1

Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at [www.dgs.ca.gov/ols/resources/standardcontractlanguage.aspx](http://www.dgs.ca.gov/ols/resources/standardcontractlanguage.aspx)

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

**CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

City of Escondido

CONTRACTOR BUSINESS ADDRESS

201 N Broadway

CITY

Escondido

STATE

CA

ZIP

92025

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTOR AUTHORIZED SIGNATURE

James A. Kurupas

DATE SIGNED

Digitally signed by James A. Kurupas  
 DN: cn=James A. Kurupas, o=City of Escondido, ou=City of Escondido, email=jkurupas@escondido.org  
 Date: 2019.06.28 16:51:27 -0700

**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

Franchise Tax Board

CONTRACTING AGENCY ADDRESS

P.O. Box 2086

CITY

Rancho Cordova

STATE

CA

ZIP

95741

PRINTED NAME OF PERSON SIGNING

Michael A. Banuelos

TITLE

Procurement and Contracting Officer or Designee

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED



## EXHIBIT A SCOPE OF WORK

This agreement is entered into by and between the Franchise Tax Board, herein after referred to as (FTB), and the City of Escondido, herein after referred to as the City.

### **Purpose:**

This agreement provides for the reciprocal exchange between FTB and the City tax data specific to city business license information for tax administration purposes. By entering into a reciprocal agreement, each party agrees to bear its own costs of providing the data, and the City is precluded from obtaining reimbursement.

Both parties will abide by the legal and confidential provisions of this agreement. Exhibits A, C, D, E, F, and G, attached hereto and incorporated by reference herein, set forth additional terms to which the parties agree to be bound.

No Federal Tax Information will be exchanged.

### **Legal Authority:**

California Revenue and Taxation Code (R&TC) Section 19551.1 authorizes a reciprocal agreement for the exchange of specified tax information between a city/county and FTB. R&TC Section 19551.5 mandates cities/counties to provide city/county business licensing and tax information to FTB upon request.

### **City Responsibilities:**

1. The City agrees that the information provided by FTB will be used exclusively to administer the City/County Business Tax program.
2. The City agrees that information obtained under this agreement will not be reproduced, published, sold, or released in original or in any other form for any purpose; and will only be accessed or used by city employees whose duties are to administer the City/County Business Tax program.
3. The City agrees to provide FTB with tax information pursuant to Format Specifications, Exhibit E, which shall include, but not be limited to, the following:
  - Business or owner's name
  - Business or residence address
  - Federal Employer Identification Number (FEIN) or Social Security Number (SSN)
  - Ownership type
  - North American Industry Classification Code or Standard Industry Classification Code
  - Business start and cessation dates
  - City Business Tax Number, to be assigned to the City by FTB

## EXHIBIT A SCOPE OF WORK

4. The City agrees to extract and provide city data to FTB annually in June for each tax year that the agreement is in place: June 2019, 2020, and 2021. If the agreement is executed after June 30, 2019, the City will have 30 days after execution to provide FTB with the first year's data.
5. The City agrees to submit the records to FTB electronically using FTB's Secure Web Internet File Transfer (SWIFT) system.
6. The City agrees to submit the records to FTB in ASCII fixed-length format, .txt, per Exhibit E, Format Specifications.
7. The City agrees to resubmit data in the event data is initially submitted with errors. The resubmission of data must be within 30 days of notification. If data is not submitted accurately and timely, the City will forfeit its rights to FTB data for that year.
8. The City agrees that each city employee having access to FTB data shall sign City/County Business Tax Program Confidentiality Statement, Exhibit G, and FTB 712. The signed statement is to be retained by the City and produced to FTB upon request.
9. The City agrees to submit to FTB a completed Safeguard Review Questionnaire prior to receiving any FTB data. The Safeguard Review Questionnaire is valid for the duration of the agreement.
10. The City agrees to provide a copy of the resolution, order, minutes reflecting passage of a motion, or ordinance of the local governing body authorizing the execution of the agreement.

### **FTB Responsibilities:**

1. FTB agrees that information provided by the City will be used for tax administration and non-tax programs that FTB administers and may be shared with other state or federal agencies as authorized by law.
2. FTB agrees that information obtained under this agreement will not be reproduced, published, sold, or released in original or in any other form for any purpose, except as provided in paragraph 1 or otherwise authorized by law.
3. FTB agrees to provide the City with data extracted from the Taxpayer Information (TI) system and Business Entities Tax System (BETS). FTB will provide the City with records for taxpayers within the City's jurisdiction who indicate a business on their personal or business entity income tax return. The Record Layout, Exhibit F, FTB 909A shall include:
  - Taxpayer name
  - Taxpayer address
  - Taxpayer SSN or FEIN
  - Principal Business Activity code

EXHIBIT A  
SCOPE OF WORK

4. FTB agrees to match the data provided by the City using the SSN or FEIN against FTB's data with a "Yes" or "No" indicator on the Record Layout, Exhibit F, FTB 909A. The first year's data match is at the discretion of FTB based on when the data is received from the City and processed.
5. FTB agrees to provide the City with an annual data extract in December 2019 for tax year 2018, in December 2020 for tax year 2019, and in December 2021 for tax year 2020 via SWIFT.
6. FTB agrees to register the City for a SWIFT account allowing for the secure electronic transmission of data.
7. FTB agrees to provide the City with a unique city/county business tax number to be used for reporting purposes only.
8. FTB agrees to allow the City to resubmit data within 30 days of notification, in the event data is initially submitted with errors.

**Project Coordinators:**

The project coordinators during the term of this agreement will be:

**Franchise Tax Board**

Whitney Lake  
City/County Business Tax Program Lead  
Data Resources and Services Unit  
P.O. Box 1468, Mailstop A181  
Sacramento, CA 95812-1468  
Phone: (916) 845-6304  
Email: [FTBCCBT@ftb.ca.gov](mailto:FTBCCBT@ftb.ca.gov)

**City of Escondido**

James A. Kurupas  
Senior Code Enforcement Officer  
201 N Broadway  
Escondido, CA 92025  
Phone: 760-839-6376  
Email: [jkurupas@escondido.org](mailto:jkurupas@escondido.org)

Return executed agreement to:

**Franchise Tax Board**

Eric Helm-Tillman  
Business Acquisitions Analyst  
P.O. Box 2086, Mailstop A-374  
Rancho Cordova, CA 95741-2086  
Phone: (916) 845-3618  
Fax: (916) 845-9310



## EXHIBIT D SPECIAL TERMS AND CONDITIONS

1. DATA OWNERSHIP: The confidential tax information or sensitive information being provided under this agreement remains the exclusive property of the FTB. Confidential tax and sensitive data/information are not open to the public and require special precautions to protect from loss and unauthorized use, disclosure, modification, or destruction. The City (or County) shall have the right to use and process the disclosed information for the purposes stated in the Scope of Work of Exhibit A of this agreement, which right shall be revoked and terminated immediately upon termination of this agreement.
2. STATEMENT OF CONFIDENTIALITY: The FTB has tax returns and other confidential data in its custody. Unauthorized inspection or disclosure of federal returns and other confidential data is a misdemeanor or a felony (R&TC Sections 19542, 19542.1, 19542.3 and 19552 and Government Code Section 90005).

Upon the approval of this agreement and prior to any access to the confidential or sensitive data of the FTB, each City (or County) employee who may have access to the confidential data of FTB will be required to sign a City/County Business Tax Program Confidentiality Statement, Exhibit G, FTB 712, attesting to the fact that he/she is aware of the confidentiality of the data and the penalties for unauthorized disclosure thereof under applicable state and federal law. The signed statement(s) shall be retained by the City (or County) and furnished to FTB upon request.

3. USE OF INFORMATION: The City (or County) agrees that the information furnished or secured pursuant to this agreement shall be used solely for the purposes described in the Scope of Work of Exhibit A. The City (or County) further agrees that information obtained under this agreement will not be reproduced, published, sold or released in original or in any other form for any purpose other than as identified in this section.
4. EMPLOYEE ACCESS TO INFORMATION: Both FTB and the City (or County) receiving data agree that the information obtained will be kept in the strictest confidence and shall make information available to its own employees only on a "need to know" basis. The "need to know" standard is met by authorized employees who need information to perform their official duties in connection with the uses of the information authorized by this agreement. Each party receiving data recognize(s) their responsibility to protect the confidentiality of the information in its custody as provided by law and ensure that such information is disclosed only to those individuals and for such purposes as authorized by law and this agreement.
5. PROTECTING CONFIDENTIAL INFORMATION/ INCIDENT REPORTING: Both agencies, receiving data, in recognizing the confidentiality of the information to be exchanged, agree to take all appropriate precautions to protect the confidential information obtained pursuant to this agreement from unauthorized disclosure. Both agencies receiving data will conduct oversight of its users with access to the confidential information provided under this agreement and will immediately notify the FTB's Information Security Audit Unit ([SecurityAuditMail@ftb.ca.gov](mailto:SecurityAuditMail@ftb.ca.gov)) of any

## EXHIBIT D SPECIAL TERMS AND CONDITIONS

unauthorized or suspected unauthorized accesses, uses and/or disclosures (incidents). For purposes of this section, immediately is defined as within 24 hours of the discovery of the breach. The notification must describe the incident in detail and identify responsible personnel (name, title, and contact information). The City (or County) with an incident will comply with the incident reporting requirements in accordance with R&TC Section 19542.1, Civil Code Section 1798.29, SAM Chapter 5300, and SAM

Section 20080 to facilitate or fulfill the required reporting to the taxpayers or state oversight agencies.

6. INFORMATION SECURITY: Information security is defined as the preservation of the confidentiality, integrity, and availability of information. A secure environment is required to protect the confidential information obtained from FTB pursuant to this agreement. The City (or County) receiving data will store information so that it is physically secure from unauthorized access. The records received by the City (or County) will be securely maintained and accessible only by employees of the City (or County) business license or tax programs who are committed to protect the data from unauthorized access, use, or disclosure. All FTB electronic data must be encrypted when in transit using FIPS 140-2 approved encryption technology and be password protected and secure at all times when in storage. Confidential information obtained from the FTB must be secured in accordance with the State Administrative Manual, Chapters 5100 (EDP Standards) and 5300 (Information Security); National Institute of Standards and Technology (NIST) Special Publication 800-53 (moderate); and additional security requirements provided by FTB.
7. CLOUD COMPUTING ENVIRONMENT: A Cloud Computing Environment cannot be used to receive, transmit, store or process FTB's confidential data without prior written approval from FTB's Chief Security Officer.
8. DESTRUCTION OF RECORDS: All records received by the City (or County) y from FTB, and any database(s) created, copies made, or files attributed to the records received, will be returned or destroyed within three years of receipt or upon termination of the agreement due to a breach of its terms, whichever occurs earlier. The records shall be destructed in a manner to be deemed unusable or unreadable, and to the extent that an individual record can no longer be reasonably ascertained. The City (or County) will notify FTB City/County Business Tax program manager annually in writing at [FTBCCBT@FTB.CA.GOV](mailto:FTBCCBT@FTB.CA.GOV) that proper destruction methods have been applied. FTB will destroy city/county data in accordance with the department's data retention policies.
9. DISPUTE RESOLUTION: In the event of a dispute, the City (or County) shall file a "Notice of Dispute" with the Chief Financial Officer of the FTB within ten (10) days of discovery of the problem. Within ten (10) days, the Chief Financial Officer or his/her

## EXHIBIT D SPECIAL TERMS AND CONDITIONS

designee shall meet with the City (or County) for purposes of resolving the dispute. The decision of the Chief Financial Officer shall be final.

10. SAFEGUARD REVIEW QUESTIONNAIRE AND REVIEW: Prior to sending data to the City (or County), FTB requires the City (or County) to submit a Safeguard Review Questionnaire certifying the protection and confidentiality of FTB data. The City (or County) will be provided a minimum of seven (7) days' notice prior to an on-site safeguard review being conducted by FTB. FTB retains the right to conduct on-site safeguard reviews of the City (or County) use of FTB information and security controls established. The safeguard reviews may include, but are not limited to an examination of the adequacy of information security controls, "need to know," and use justifications established by the City (or County) to ensure compliance with the terms and conditions of this agreement. The City (or County) will take appropriate disciplinary actions against any user determined to have violated security or confidentiality requirements.
11. LIMITED WARRANTY: Neither party represents or warrants the accuracy or content of the material available through this agreement, nor each expressly disclaims any express or implied warranty, including any implied warranty of fitness for a specific purpose.
12. CANCELLATION: Either party may terminate this agreement, in writing for any reason, upon thirty (30) days' prior written notice. This agreement may be terminated immediately by either party in the event of any breach of the terms of this agreement.
13. NO THIRD PARTY LIABILITY: Nothing contained in or related to this agreement shall create any contractual relationship between either of the Parties and any other party, except between FTB and the City (or County); and no other party shall relieve the City (or County) or FTB of its responsibilities and obligations hereunder. Each of the parties agrees to be fully responsible for the acts and omissions of its third party contractors and agents, and of persons either directly or indirectly employed by the party. Neither of the parties shall have any obligation to pay, or to see to the payment of, any monies to any party or persons either directly or indirectly employed by the other.

EXHIBIT E  
 CITY AND COUNTY RECORD FORMAT SPECIFICATIONS (FTB 909)

Data Element Name	Start Pos.	End Pos.	Field Size	Usage	Description
SOCIAL SECURITY NUMBER (SSN)	1	9	9	AN	Must be present unless FEIN is provided. Fill unused field with zeros.
FEDERAL EMPLOYER ID NUMBER (FEIN)	10	18	9	AN	Must be present unless SSN is provided. Fill unused field with zeros.
OWNERSHIP TYPE	19	19	1	AN	Must be present. S = Sole Proprietorship P = Partnership C = Corporation T = Trust L = Limited Liability Company
OWNER'S LAST NAME	20	34	15	AN	Must be present if Ownership Type in position 19 = S.
OWNER'S FIRST NAME	35	45	11	AN	Must be present if Ownership Type in position 19 = S.
OWNER'S MIDDLE INITIAL	46	46	1	AN	May be left blank.
BUSINESS NAME	47	86	40	AN	Enter if business is operating under a fictitious name (Doing Business As (DBA)).
BUSINESS ADDRESS NUMBER AND STREET	87	126	40	AN	Address of the business location or the residence of the owner if sole proprietorship.
CITY	127	166	40	A	Must be present.
STATE	167	168	2	A	Enter standard state abbreviation.
ZIP CODE	169	177	9	AN	Enter the five- or nine-digit ZIP Code assigned by the U.S. Postal Service. If only the first five-digits are known, left-justify information and fill the unused fields with zeros.
BUSINESS START DATE	178	185	8	N	Enter the eight-digit date (MMDDYYYY). Zero fill if not known.
BUSINESS CEASE DATE	186	193	8	N	Enter the eight-digit date (MMDDYYYY) if out of business. Zero fill if unknown or still in business.

**EXHIBIT E**  
**CITY AND COUNTY RECORD FORMAT SPECIFICATIONS (FTB 909)**

Data Element Name	Start Pos.	End Pos.	Field Size	Usage	Description
CITY BUSINESS TAX NUMBER	194	196	3	N	Enter three-digit number assigned by FTB.
NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS)	197	202	6	N	Enter the two- to six-digit NAICS code. Left justify. (example 99 will be 9900). Fill unused fields with zeros.
STANDARD INDUSTRIAL CLASSIFICATION (SIC)	203	206	4	N	Enter the 2-4 digit SIC code. Left justify (example 99 will be 9900). Fill unused fields with zeros.
TOTAL RECORD LENGTH		206			

**EXHIBIT F**  
**FRANCHISE TAX BOARD RECORD LAYOUT SPECIFICATIONS (FTB 909A)**

<b>Field Name</b>	<b>Length</b>	<b>Start Pos.</b>	<b>Description</b>
ENTITY TYPE	1	1	"P" – personal income tax record; "B" – business entity tax record.
SSN or FEIN	9	2	For "P" records, primary taxpayer's social security number; For "B" records, federal employer identification number.
LAST NAME	40	11	For "P" records, the primary taxpayer's last name; For "B" records, business name.
FIRST NAME	11	51	For "P" records ONLY.
MIDDLE INITIAL	1	62	For "P" records ONLY.
SPOUSE SSN	9	63	For "P" records filed with a joint return.
SPOUSE LAST NAME	17	72	For "P" records filed with a joint return.
SPOUSE FIRST NAME	11	89	For "P" records filed with a joint return.
SPOUSE MIDDLE INITIAL	1	100	For "P" records filed with a joint return.
PBA CODE	6	101	Principal Business Activity code.
ADDRESS NUMBER	10	107	
PRE-DIRECTIONAL DIRECTOR	2	117	Postal Service term (i.e., N, S, E, W, NE, NW, SE, SW).
STREET NAME	28	119	
STREET SUFFIX	4	147	e.g., ST, WAY, HWY, BLVD, etc.
POST-DIRECTIONAL INDICATOR	2	151	Postal Service term (i.e., N, S, E, W, NE, NW, SE, SW).
STREET SUFFIX 2	4	153	
APARTMENT/SUITE NUMBER	10	157	e.g., APT, UNIT, FL, etc.
CITY	13	167	
STATE	2	180	Standard state abbreviation.
ZIP CODE	5	182	The five-digit ZIP Code assigned by the U.S. Postal Service.
ZIP CODE SUFFIX	4	187	Provided if known.
CBT MATCH	1	191	"N" – No match per CBT data. "Y" – Yes: CBT matched to state tax return filed.

EXHIBIT G  
**CONFIDENTIALITY STATEMENT (FTB 712)**

**State of California Franchise Tax Board**

**City/County Business Tax Program Confidentiality Statement**

Confidential tax data is protected from disclosure by law, regulation, and policy. Information security is strictly enforced; violators may be subject to disciplinary, civil, and/or criminal action. Protecting confidential tax data is in the best interest of the city, county, and state.

As a city/county employee, you are required to protect all information received from the Franchise Tax Board (FTB). To protect confidential tax data, you must:

- **Access or modify tax data solely to perform official duties.**
- **Never access or inspect tax data for curiosity or personal reasons.**
- **Never show or discuss confidential tax data with anyone who does not have a need to know.**
- **Never remove confidential tax data from your worksite without authorization.**
- **Place confidential tax data in approved locations only.**

Unauthorized inspection, access, use, or disclosure of confidential tax data is a crime under state laws including, but not limited to, California Revenue and Taxation Code Sections 19542 and 19552 and Penal Code Section 502. Unauthorized access, inspection, use, or disclosure may result in either or both of the following:

- **State criminal action.**
- **Taxpayer civil action.**

*I certify that I have read the confidentiality statement printed above. I further certify and understand that unauthorized access, inspection, use, or disclosure of confidential information may be punishable as a crime and may result in disciplinary and/or civil action against me.*

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Dat

Each city/county employee accessing FTB data must retain a signed copy of this form and provide it to FTB upon request.  
FTB 712 (REV 06-2016)

## CITY COUNCIL STAFF REPORT

**Public Hearing Item No. 15**

**August 7, 2019**

**File No. 0680-50**

SUBJECT: Zoning Code and Land Use Study (AZ 18-0006)

DEPARTMENT: Community Development Department, Planning Division

RECOMMENDATION:

It is requested that the City Council introduce Ordinance No. 2019-09, which includes a series of actions to complete the Zoning Code and Land Use Study and amends portions of the Municipal Code, Zoning Code, and Specific Plans to improve existing regulations.

PROJECT DESCRIPTION:

The Project involves a proposed update to the City ordinances and planning documents to enhance regulation of over-saturated or potentially objectionable non-residential land uses, and determine which uses should be reviewed for consideration of additional discretionary criteria. No development project is proposed.

PREVIOUS ACTION:

Based on research, best practices, and community feedback, a comprehensive set of preliminary recommendations were presented to City Council on March 20, 2019. The presentation with the City Council included a review of all the land use activities anticipated to be covered by the study and the degree in which changes could be made to strengthen local regulations. In general, the City Council majority (through Minute Action) confirmed and endorsed the results of the study and directed City staff to prepare ordinances to complete the study. The City Council also provided direction to staff to develop stricter land use policies for tobacco and vaping product retailing. It is anticipated that a tobacco retail license will be presented to the City Council for review and consideration at a future meeting within the next few months.

PLANNING COMMISSION ACTION:

The Planning Commission makes recommendations to the City Council as authorized by the Escondido Municipal Code (Chapter 20) for potential amendments to the Zoning Code (Chapter 33). The Planning Commission reviewed and considered the Zoning Code and Land Use Study on two separate occasions. The land use activities covered during the May 28, 2019 presentation consisted of new use regulation and standards for car dealerships and sales; auto repair services and shops; fleet maintenance and storage yards; tattoo parlors; laundromats and dry-cleaning; lodging, motels, and hotels; thrift, pawn, consignment and second-hand dealers; discount/bargain stores; banks; check-cash and payday establishments; drive-through services/restaurants; and off-site beer/liquor sales. The discussion continued, in part, at their June 25, 2019 meeting where the Planning



Commission reviewed and considered thrift stores in the downtown area and the regulation of smoke, e-cigarette, and vape shops. The Commission adopted Resolution No. 2019-10 with a 7-0 vote on May 28, 2019, and later adopted Resolution No. 2019-11 with a 5-0 vote on June 25, 2019. The June 25, 2019 Planning Commission meeting concluded the Commission's overall work on the Zoning Code and Land Use Study. The Planning Commission staff reports and meeting minutes are included for reference as Attachment 1 and Attachment 2 to this report, respectively.

### BACKGROUND AND ANALYSIS:

On June 20, 2018, the City Council helped kick-off a planning process to address various non-residential land uses that tend to negatively impact surrounding properties. The overall work program, called the "Zoning Code and Land Use Study," was created to comprehensively examine the degree to which various land use activities are permitted in each zoning district. The land use activities covered by the Zoning Code and Land Use Study consist of car dealerships and sales; auto repair services and shops; fleet maintenance and storage yards; smoke, e-cigarette, and vape shops; tattoo parlors; laundromats and dry-cleaning; lodging, motels, and hotels; thrift, pawn, consignment and second-hand dealers; discount/bargain stores; banks; check-cash and payday establishments; drive-through services/restaurants; and off-site beer/liquor sales. These land uses or topics areas were identified because of their propensity to generate potential health hazards, poor aesthetics, reduction in home values, urban form consistency issues, over-concentration issues, or create neighborhood compatibility issues.

Preliminary recommendations on potential Zoning Code and Specific Plan Amendments were provided to the City Council on March 20, 2019. Direction from the City Council on March 20, 2019, was utilized to create draft Planning Commission Resolution Nos. 2019-10 and 2019-11, which has been consolidated into draft Ordinance No. 2019-09. The series of actions contained within draft Ordinance No. 2019-09 involves:

- Municipal Code Amendments to Chapter 15 (Secondhand Dealers) and Chapter 17 (Tattoo Parlors);
- Zoning Code (Chapter 33) Amendments to Article 1, Article 16, Article 26, Article 57, and Article 63; and
- Ancillary and conforming amendments to Downtown Specific Plan, East Valley Specific Plan, and South Centre City Specific Plan.

As mentioned previously in this report, the land use activities covered by the Zoning Code and Land Use Study consist of car dealerships and sales; auto repair services and shops; fleet maintenance and storage yards; smoke, e-cigarette, and vape shops; tattoo parlors; laundromats and dry-cleaning; lodging, motels, and hotels; thrift, pawn, consignment and second-hand dealers; discount/bargain stores; banks; check-cash and payday establishments; drive-through services/restaurants; and off-site beer/liquor sales. Codifying the results of the Zoning Code Land Use Study leads to significant modifications to the physical structure of our Municipal Code, Zoning Code, and Specific Plans.

Zoning, locational, site and building design, and operational regulations for the different establishments covered by the Zoning Code and Land Use Study are necessary to: 1) protect the City's retail trade, maintain property values, protect and preserving the quality of the City's neighborhoods and the City's commercial districts; and 2) restore community value and prevent commercial deterioration and/or degradation of the vitality of the community before the problem exists, rather than waiting for problems to be created. Land use allowance control and/or buffer requirements are a legitimate and reasonable means of balancing the various land uses in order to minimize and control problems associated with such businesses and thereby protect the health, safety and welfare of Escondido residents, preserve the quality of life, and preserve the character of surrounding neighborhoods. The proposed requirements of the City do not unreasonably restrict the establishment or operation of constitutionally protected businesses nor do they preclude reasonable siting alternatives.

## **1. General Plan Consistency**

The proposed Municipal Code, Zoning Code, and Specific Plan Amendments would be consistent with the existing General Plan goals and policies. Goal 2 et. seq. policies of the Land Use and Community Form portion of the General Plan addresses the need for regulations that clearly and effectively implement land use development goals and objectives. The basis of establishing and updating, as necessary, local standards and guidelines for land use activities in non-residential areas ensures land use compatibility is achieved. The proposed modifications are based on best practices, facilitated by community input and refined according to zoning and planning standards. The proposed Zoning Code and Specific Plan Amendments are also consistent with Policy 4.2 for neighborhood maintenance and preservation since the project seeks to protect neighborhoods and community character from the encroachment of incompatible activities or land uses. Land use authority is maintained in key areas of the City so that more economically prosperous and well-designed commercial districts can be developed over time through the implementation of the project (Goal 8 of the Land Use and Community Form Element). The project is intended to support and strengthen the important role that land use and design play in creating a city that is characterized by attractive and functionally efficient commercial support services and development.

## **2. Zoning Code / Specific Plans Definitions**

The existing list of Zoning Code definitions are incomplete and outdated. The City's current Zoning Code takes a one-size fits all approach to different land use classifications. The project proposes an update to definitions and making sure land use category references are internally consistent. New definitions to Section 33-8 address banking, bargain basement stores, consignment shops, fleet storage, junk yards, pawnshop, secondhand store, tattoo parlors, thrift shop, tow yard storage, vehicle repair services, and vehicle sales. The project proposes these new definitions to be integrated, horizontally and internally consistent throughout the various codes and plans. As necessary, it also differentiates between different types of businesses and would facilitate different degrees of new land

use regulation or control. The universal approach would assist City staff in administering the Zoning Code and Specific Plans.

### 3. Regulation of Use

The Zoning Code includes permitted use tables listing descriptions of what land uses may occur in each zoning district in the city. The zoning district is located on the vertical column and the use is located on the horizontal row of this matrix. Some uses will be permitted (often referred to as an “outright permitted use”), which means that the approval of the use is not subject to approval subjective criteria. Other uses will be listed as “conditional” or “special” uses. These are subject to discretionary criteria and a local government may deny the land use or place conditions on approval of the use. Conditional use (a project based permit) is typically allowed subject to public notice and permit hearing procedure in front of the Zoning Administrator or Planning Commission. In addition, some uses may also be listed as prohibited, whereby the use is not allowed in the applicable zoning designation.

Since zoning regulations and restrictions are used by cities and counties to control and direct the development of property, this portion of the Zoning Code and Land Use Study proposes changes to our existing land use controls for certain land use activities (i.e. principally permitted, conditionally permitted, or prohibited land uses), as summarized below.

- Vehicle sales – require a Conditional Use Permit in areas where the use is currently permitted by-right. Create a new category for boutique vehicles sales and permit the use in the CG Zone.
- Auto repair shops – Require Conditional Use Permits for “limited repair” in commercial areas where permitted by-right; “general repair” in commercial and industrial zones; and “commercial vehicle repair” in the M-2 Zone.
- Fleet maintenance and storage yards – Require a Conditional Use Permit in the CG, M-1, and M-2 Zones.
- Tattoo parlors – Require a Conditional Use Permit in the CG Zone and prohibit parlors within 1,000 feet of any other parlor and 500 feet from any licensed alcoholic beverage dispensing operation.
- Laundromats and dry-cleaning – Limit on-site pressing through a Conditional Use Permit. Commercial laundry or pressing only allow in industrial zones.
- Lodging, motels, and hotels – No proposed change.
- Thrift, pawn, consignment and second-hand dealers – Require a Conditional Use Permit in areas where currently permitted. Prohibit pawnshops citywide. Conditionally allow thrift stores in the CCU District of the Downtown Specific Plan.
- Discount/bargain stores - Require a Conditional Use Permit in areas where currently permitted.

- Banks – Require drive-through establishments to obtain a Conditional Use Permit. Prohibit banks on the corner lots of the retail core area of the downtown.
- Check-cash and payday establishments – Prohibit use citywide.
- Drive-through services/restaurants – Require drive-through establishments to obtain a Conditional Use Permit.
- Liquor stores – Require a Conditional Use Permit where the use is permitted now by-right.
- Smoke shops, e-cigarette, and vape shops (called “tobacco product store”) – Prohibit use citywide.

In the development and execution of this Ordinance, it is recognized that there are certain land uses, including pawn shops; check-cash/payday establishments; and smoke shops, e-cigarette, and vape shops which create conditions harmful to the public health, welfare, and safety when such uses are allowed to become numerous or concentrated within a limited geographical area, or when such uses exist near residential neighborhoods, family-oriented uses or sites commonly used by minors. The negative secondary effects from these types of land use activities constitute a harm in which the City has a substantial government interest in preventing and/or abating. Special prohibitions on these land use activities are therefore necessary to protect the community from consequent blight, depreciated property values, predatory lending, law enforcement problems, and interference with residential neighborhoods as well as interference with activities oriented toward families or minors.

#### **4. Development and Performance Standards**

To complement new land use allowances, development and performance standards have been proposed to ensure land use compatibility of new projects. New development and performance standards are intended to supplement the existing development concepts of the underlying zone and help provide design professionals, property owners, commissioners, staff, and residents with a clear and common understanding of the City’s expectations for the planning, design, and review of development proposals in Escondido, and to increase the community’s awareness and appreciation of design considerations. While the City of Escondido promotes diversity and variety, there is a desire for consistency in the quality of development, enjoined with the maintenance and enhancement of public health, safety, and general welfare.

The Zoning Code Land Use Study concluded that some land use activities can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition. However, some forms of development — covering industrial, commercial, and other non-residential activities may carry potentially specific, direct and/or indirect impacts that can be detrimental to both neighboring properties and the community as a whole. These may include impacts related to socioeconomic and social equity; public health; environmental justice; urban design and visual; hazardous material storage, solid waste, and sanitation services; energy; transportation and mobility; air quality; noise; and

neighborhood character. The proposed project seeks to establish and update local standards and guidelines for land use activities in non-residential areas to ensure land use compatibility is achieved, neighborhoods are preserved, and community character is protected.

## PUBLIC OUTREACH

During the course of developing and finalizing the study, City staff engaged the public on different occasions to advertise the process and/or to solicit input. City staff published two (2) print display advertisements in the Union Tribune and sent direct mailers to the businesses covered and involved in the study (approximately received by 500+ businesses). These notices identified the land use activities covered by the study and created notice of potential input opportunities. City staff also hosted two (2) stakeholder meetings on January 15, 2019 and January 31, 2019 to hear directly from interested parties on the subject study. At these meetings, participants spoke of personal experiences, desired values, and commented on specific issues with the existing Zoning Code. The feedback received at these meetings, and with follow-up communications, formed the steering guidance necessary to move forward with the study. The findings of the first phase of the study was presented to the City Council at their meeting on March 20, 2019. The presentation with the City Council included a review of all the land use activities anticipated to be covered by the study and the degree in which changes could be made to strengthen local regulations. The presentation also provided an overview of the preliminary outreach activities and all input received to date.

City staff also facilitated an additional stakeholder meeting on May 16, 2019. The focus of this outreach event was to solely discuss potential tobacco and vaping product regulation, including potentially developing a tobacco retail license. Notices were sent to every tobacco and vaping product operator in the city. Although fourteen (14) stakeholders attended the meeting, most represented community health support groups or advocates. Only one (1) store owner was present. All supported some form of additional regulation, inclusive of delineations for vaping products (like e-cigarettes) and drug paraphernalia.

## ENVIRONMENTAL REVIEW

The proposed Zoning Code Amendments are exempt from environmental review in conformance with California Environmental Quality Act Guidelines (“CEQA” and “CEQA Guidelines”) Section 15061(b)(3) since there would be no possibility of a significant effect on the environment because the amendments will not directly result in development. Any future project or development as defined by CEQA that may occur as a result of the amended language would be subject to CEQA review and analysis.

Zoning Code and Land Use Study (AZ 18-0006)  
August 7, 2019  
Page 7

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Bill Martín*, Director of Community Development  
8/1/2019 9:41 p.m.

*Mike Strong*, Assistant Director of Planning  
8/1/2019 9:02 a.m.

ATTACHMENTS:

1. Attachment 1 – May 28, 2019 and June 25, 2019 Planning Commission staff report
2. Attachment 2 – May 28, 2019 Planning Commission Meeting Minutes
3. Ordinance No. 2019-09
4. Ordinance No. 2019-09 – Exhibits “A” and “B”

## **ATTACHMENT 1**

### **PLANNING COMMISSION STAFF REPORT**

**AZ 18-0006**

Due to the number of pages of Attachment 1, the following link has been provided to review the document electronically on the City's web site:

<https://www.escondido.org/Data/Sites/1/media/agendas/PC/2019/05.28.19PCAgendaPacket.pdf>

<https://www.escondido.org/Data/Sites/1/media/agendas/PC/2019/06.25.19PCAgendaPacket.pdf>

A hardcopy of the Attachment is available for review in the Office of the Planning Division during normal business hours. To obtain a copy, please contact the City Clerk at (760) 839-4617 or Planning Division at (760) 839-4671.

**CITY OF ESCONDIDO**

**ACTION MINUTES OF THE REGULAR MEETING OF THE  
ESCONDIDO PLANNING COMMISSION**

**May 28, 2019**

The meeting of the Escondido Planning Commission was called to order at 7:00 p.m. by Chairman Spann, in the City Council Chambers, 201 North Broadway, Escondido, California.

**Commissioners present:** James Spann, Chairman; Don Romo, Vice-chairman; Michael Cohen, Commissioner; Joe Garcia, Commissioner; James McNair, Commissioner; Mark Watson, Commissioner; and Stan Weiler, Commissioner.

**Commissioners absent:** None.

**Staff present:** Bill Martin, Director of Community Development; Mike Strong, Assistant Planning Director, Owen Tunnell, Principal Engineer; Adam Phillips, Senior Deputy City Attorney; Adam Finestone, Principal Planner; Peggy Chapin, Contract Consultant; and Kirsten Peraino, Minutes Clerk.

**MINUTES:**

Moved by Commissioner Watson, seconded by Commissioner Cohen to approve the Action Minutes of the April 23, 2019 meeting. Motion carried unanimously (7-0-0)

**WRITTEN COMMUNICATIONS:** – Received.

**FUTURE NEIGHBORHOOD MEETINGS:** – None.

**ORAL COMMUNICATIONS:** – None.



**PUBLIC HEARINGS:****1. MASTER AND PRECISE DEVELOPMENT PLAN FOR A 127-UNIT MIXED-USE DEVELOPMENT WITHIN THE DOWNTOWN SPECIFIC PLAN – PHG 19-0010:**

REQUEST: A Master and Precise Development Plan to construct a 187,808 square foot, five-story mixed-use structure within the Historic District of the Downtown Specific Plan containing 127 apartment units, 1,175 sf of commercial space, underground parking, recreation areas for residents, and adjacent street improvements. The project will provide studios, 1-bedroom and 2-bedroom units ranging in size from 550 sf to 995 sf and 157 garage spaces including 26 tandem spaces. Public and guest parking spaces will be constructed on E. 2nd Avenue, Ivy Street and E. 3rd Avenue. Zoning provisions allow 76 units at the site. The request includes a Density Bonus of 35% or 27 units (including 9 units for Very Low Income households) for providing affordable housing and a 24-unit increase allocated from the Density Transfer Program for the Downtown Specific Plan area through a Development Agreement. The project also includes a request to adopt a Class 32 Exemption in accordance with the California Environmental Quality Act (CEQA).

PROPERTY SIZE AND LOCATION: The 1.002 acre site is located between East 2nd Avenue and East 3rd Avenue bordering on South Ivy Street addressed as 343 E. 2nd Avenue.

ENVIRONMENTAL STATUS: Exempt pursuant to a CEQA Section 15332, Class 32 In-fill development project prepared by Harris & Associates, February 2019.

**PUBLIC SPEAKERS:**

**Carol Rea, Historic Preservation Commission and Old Escondido Neighborhood**, spoke in opposition to the project.

**Maya Rosas, Circulate San Diego**, spoke in favor of the project.

**Dan Forster, Downtown Business Association**, spoke in favor of the project.

**Nicole Purvis, Historic Preservation Commission**, spoke in opposition to the project.

**Kerry Garza, Applicant**, President of Touchstone Communities, project proponent.

**Addison Garza, Applicant**, Vice-President of Touchstone Communities, project proponent.

COMMISSIONER DISCUSSION AND QUESTIONS

The Commissioners discussed various aspects of the project.

**COMMISSION ACTION:**

Moved by Commissioner Weiler, seconded by Commissioner Watson to approve the staff's recommendation with the modifications as recommended by staff. Motion carried unanimously (7-0-0).

**2. ZONING CODE AND SPECIFIC PLAN AMENDMENTS – AZ 18-0006:**

REQUEST: A Zoning Code and Specific Plan Amendment to various sections of the Zoning Code and Specific Plans. In 2018, the City Council initiated a planning process to address various nonresidential land uses that tend to negatively impact surrounding properties. The overall work program, called the "Zoning Code and Land Use Study," was created to comprehensively examine the degree to which various land use activities are permitted within each zoning district. With the study complete, the results have been compiled into a draft ordinance, involving a series of Escondido Zoning Code and Specific Plan Amendments. Most of the proposed amendments consist of changes to Articles 1, 16, 26, 56, and 57 of the Escondido Zoning Code; and the land use tables of the Downtown, East Valley, and South Centre City Specific Plans. The proposal also includes the adoption of the environmental determination prepared for the project.

PROPERTY SIZE AND LOCATION: Citywide

ENVIRONMENTAL STATUS: Exemption under the General Rule, CEQA Section 15061(b)(3).

**PUBLIC SPEAKERS:**

**David Kubly, Director of Projects with Goodwill Industries**, provided a presentation regarding a potential relocation of their store and spoke in favor of changing use allowances for thrift stores.

**Toni Griffin, President and CEO of Goodwill Industries**, spoke in favor of changing use allowances for thrift stores.

**COMMISSIONER DISCUSSION AND QUESTIONS**

The Commissioners discussed various aspects of the project.

**COMMISSION ACTION:**

Moved by Commissioner Weiler, seconded by Commissioner Watson to approve the staff's recommendation with directions to staff to return with options on how to regulate thrift stores within the Downtown Specific Plan. Motion carried unanimously (7-0-0).

**ADJOURNMENT:**

Chairman Spann adjourned the meeting at 9:17 p.m. The Planning Commission meeting scheduled for June 11, 2019 has been cancelled. The next regularly scheduled Planning Commission meeting will be held at 7:00 p.m. on Tuesday, June 25, 2019 in the City Council Chambers, 201 North Broadway Escondido, California.



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Mike Strong, Secretary to the  
Escondido Planning Commission



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Kirsten Peraino, Minutes Clerk

ORDINANCE NO. 2019-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING CHAPTERS 15 and 17 OF THE ESCONDIDO MUNICIPAL CODE; AMENDING ARTICLES 1, 16, 26, 57, AND 63 OF THE ESCONDIDO ZONING CODE; AND AMENDING THE DOWNTOWN SPECIFIC PLAN, EAST VALLEY SPECIFIC PLAN, AND SOUTH CENTRE CITY SPECIFIC PLAN TO IMPROVE EXISTING REGULATIONS.

APPLICANT: City of Escondido  
PLANNING CASE NO.: AZ 18-0006

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

SECTION 1. That proper notices of a public hearing have been given and public hearings have been held before the Planning Commission and City Council on this issue.

SECTION 2. The Planning Commission conducted public hearings on May 28, 2019, and June 25, 2019, to discuss and consider proposed amendments to the Municipal Code, Zoning Code, and Specific Plans; considered public testimony; and made a recommendation to the City Council.

SECTION 3. The City Council has duly reviewed and considered all evidence submitted at said hearings, including, without limitation:

- a. Written information;
- b. Oral testimony from City staff, interested parties, and the public;
- c. The staff report, dated August 7, 2019, which along with its attachments is incorporated herein by this reference as though fully set forth herein; and
- d. Additional information submitted during the Public Hearing.

SECTION 4. That upon consideration of the staff report, Planning Commission recommendation, Planning Commission staff report, all public testimony presented at the hearing held on this project, and the “Findings of Fact,” attached as Exhibit “A” to this Ordinance and incorporated herein by this reference as though fully set forth herein, this City Council finds the Municipal Code, Zoning Code, and Specific Plan Amendments are consistent with the General Plan.

SECTION 5. This action is exempt from environmental review pursuant to California Environmental Quality Act Guidelines (“CEQA” and “CEQA Guidelines”) Section 15061(b)(3) since there would be no possibility of a significant effect on the environment because the amendments will not directly result in development. Any future project or development as defined by the CEQA that may occur as a result of the amended language would be subject to CEQA review and analysis.

SECTION 6. That the specified sections of the Municipal Code, Zoning Code, and Specific Plans are amended as set forth in Exhibit “B” to this Ordinance and incorporated herein by this reference as though fully set forth herein

SECTION 7. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 8. That as of the effective date of this Ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 10. That the City Clerk is hereby directed to certify to the passage of this Ordinance and to cause the same or a summary to be prepared in accordance with

Government Code Section 36933, to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the County and circulated in the City of Escondido.

## **EXHIBIT "A"**

### **FACTORS TO BE CONSIDERED / FINDINGS OF FACT**

#### Municipal Code and Zoning Code Amendment(s) Determinations:

1. The City Council's decision is based on factors pursuant to Section 33-1263 of the Escondido Zoning Code. The action to which the City Council takes action on helps conclude a Zoning Code and Land Use Study, which comprehensively examined the degree to which various land use activities are permitted in each zoning district. The land uses or topics areas that comprise the Zoning Code and Land Use Study were included because of propensity of these uses to generate potential health hazards, poor aesthetics, reduction in home values, urban form consistency issues, over-concentration issues, or create neighborhood compatibility issues.
2. Cities from time to time make significant efforts to tailor their city's ordinances to create a local community that develops in a way that the local policy-makers desire. Cities use its "police power" to create laws that promote the general health, safety, and welfare of its citizens. The public health, safety, and welfare of the City of Escondido would not be adversely affected by the proposed batch of Municipal Code, Zoning Code and Specific Plan Amendments because the project establishes and updates, as necessary, local standards and guidelines for land use activities in non-residential areas to ensure land use compatibility is achieved, neighborhoods are preserved, and community character is protected. The adoption of the ordinances utilized to support and complete the Zoning Code and Land Use Study would enable City officials and City staff to effectively implement selected long-term objectives.
3. The proposed batch of amendments would be consistent with the goals and policies of the General Plan because they address they advance a number of land use goals and policies. Goal 2 et. seq. policies of the Land Use and Community Form Element addresses the need for regulations that clearly and effectively implement land use development goals and objectives. This project is based on establishing and updating, as necessary, local standards and guidelines for land use activities to reflect current values. The proposed project is also consistent with Policy 4.2 of the same element for neighborhood maintenance and preservation since the project seeks to protect neighborhoods and community character from the encroachment of incompatible activities or land uses. Land use authority is maintained in key areas of the city so that more economically prosperous and well-designed commercial districts can be developed over time through the implementation of the project (Goal 8 of the Land Use and Community Form Element).
4. Land use regulation must strike a balance between private property rights and the public interests. The City Council finds that land use compatibility and its goals should be promoted through proactive planning and zoning techniques to promote and protect the public health, safety, and general welfare. The Zoning Code Land Use Study concluded

that some land use activities can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition. However, some forms of development — covering industrial, commercial, and other non-residential activities may carry potentially specific, direct and/or indirect impacts that can be detrimental to both neighboring properties and the community as a whole. These may include impacts related to socioeconomic and social equity; public health; environmental justice; urban design and visual; hazardous material storage, solid waste, and sanitation services; energy; transportation and mobility; air quality; noise; and neighborhood character.

5. The City of Escondido has certain provisions found in its Zoning Code relating to zoning and buffer requirements for businesses that are in need of refinement. The City Council Commission finds that it is necessary and appropriate to amend various provisions of the Zoning Code to add, refine, and update the provisions relating to planning and zoning standards for these businesses operating within Escondido. The public health, safety and welfare of the City and its residents require the enactment of this ordinance in order to: (1) mitigate and reduce the potential adverse secondary effects of some businesses, including but not limited to crime and the prevention of blight in neighborhoods; (2) protect the quality of life and neighborhoods in the City, the City's retail and commercial trade, and local property values, and minimize the potential for nuisances; and (3) protect the peace, welfare and privacy of persons who own, operate and/or patronize these businesses. This project provides new criteria by which future development will proceed, ensuring that the design and operation of such uses effectively mitigate the aforementioned associated problems.
  - A. New levels of use authorization addressed by this ordinance (i.e. locations for principally permitted, conditionally permitted, or prohibited land uses), provides a means to enhance the community's identity and relatively high standard of living with associated quality of life. Through its Zoning Code provisions, the City of Escondido seeks to maintain property values, protect tax revenues, provide neighborhood social and economic stability, attract business and industry, and encourage conditions that make the City of Escondido a pleasant place to live and work.
  - B. The City Council has a reasonable basis to believe that there are land use compatibility issues relating the siting of certain facilities and their customers. Locational criteria are a legitimate and reasonable means of ensuring that certain businesses are conducted in a manner so as to minimize their adverse secondary effects and thereby protect the health, safety, and welfare of the City's residents, protect citizens from increased crime, preserve the quality of life, preserve property values and the character of surrounding neighborhoods and businesses, and deter the spread of urban blight.
  - C. New development and performance standards are intended to supplement the existing development concepts of the underlying zone and help provide design professionals, property owners, commissioners, staff, and residents with a clear and common understanding of the City's expectations for the planning, design, and review of



development proposals in Escondido, and to increase the community's awareness and appreciation of design considerations.

6. In the development and execution of this ordinance, it is recognized that there are certain land uses including pawn shops and check-cash / payday establishments, which create conditions harmful to the public health, welfare, and safety when such uses are allowed to become numerous or concentrated within a limited geographical area, or when such uses exist near residential neighborhoods, family-oriented uses or sites commonly used by minors. The negative secondary effects from pawn shops and check-cash / payday businesses constitutes a harm which the City has a substantial government interest in preventing and/or abating. Special prohibitions on these land use activities are therefore necessary to protect the community from consequent blight, depreciated property values, predatory lending, law enforcement problems, and interference with residential neighborhoods as well as interference with activities oriented toward families or minors.
7. In the development and execution of this ordinance, it is recognized that tattoo parlors are subject of comprehensive state licensing and regulation requirements that address floor plan requirements, rules for furnishings, guidelines for sterilization and sanitation, guidelines during and after tattoo procedure, and guidelines for waste disposal. All tattoo parlors must adhere to rules set by the Occupational Safety and Health Administration and Centers for Disease Control and Prevention.

Tattoos, tattooing, and the business of tattooing are considered a form of artistic expression. Cities must ensure that there are sufficient locations in which tattoo parlors may operate. The project proposes changes to Chapter 17 (Tattoo Parlors) of the Municipal Code to provide a uniform set of standards for the body art industry to protect the health and safety of body art practitioners, their customers and the public. The project also proposes changes to Chapter 33 (Zoning Code) to address land use authorization. Special regulations separating such uses from each other and from alcohol serving establishments is necessary to protect the community from consequent blight, depreciated property values, law enforcement problems, and interference with residential neighborhoods.

Body art is an invasive process that includes piercing, tattooing, application of permanent cosmetics, and branding. These practices present the potential for spreading blood-borne diseases, such as Hepatitis B. The proposed project does not violate any freedom of speech protections and offers new operator obligations to ensure the preservation of public health, safety, and general welfare. The buffer requirements of the City do not unreasonably restrict the establishment or operation of constitutionally protected tattoo businesses. The City Council recognizes that these buffer requirements do not preclude reasonable siting alternatives and that there are several hundred potentially available sites for tattoo establishments.

8. In the development and execution of this ordinance, it is presumed that establishing or preserving an appropriate and balanced mix of commercial businesses will more effectively serve to achieve this purpose as a strategy to maintain the economic health of the community's business districts and its suburban ambiance, and will promote the redevelopment of the city's downtown area. The proliferation of smoke, e-cigarette, and vape shops in the commercial areas of the city has a deleterious effect on the vitality of a strong central business corridors, neighborhood centers, and the development of the downtown area.

The negative effects from smoke, e-cigarette, and vape shops as detailed in the June 25, 2019 Planning Commission staff report and attachments, incorporated herein by this reference as though fully set forth herein, constitute a harm which the City has a substantial government interest in preventing and/or abating. Cigarette smoking harms nearly every organ in the body, causes many diseases, and reduces the health of smokers in general. Although an e-cigarette is different from a traditional cigarette in that it does not use tobacco, there are still a significant number of physical, social, and psychological health effects of nicotine use. The e-liquids used to refill electronic smoking devices usually contain liquid nicotine, which may be toxic if ingested or absorbed through the skin at relatively low quantities.

There is no scientific evidence that e-cigarettes help smokers to successfully quit traditional cigarettes or that they reduce consumption of traditional cigarettes. A number of recent studies show that e-cigarette users are no more likely to quit than regular smokers. Most commonly, abusers are using a cartridge with a liquid solution of THC, the main psychoactive substance found in marijuana.

The Family Smoking Prevention and Tobacco Control Act gives the U.S. Food and Drug Administration (FDA) comprehensive authority to regulate the manufacturing, marketing, and sale of tobacco products. The language of the Act also retains significant regulatory authority of State and local governments. Many communities in California have started regulating the use of electronic smoking devices by prohibiting vaping where smoking is prohibited, requiring tobacco retailer licenses, requiring special use permits, or prohibiting retail establishments. These jurisdictions have found that proximity and density of smoke, e-cigarette, and vape shops within communities' influences smoking behaviors through greater exposure to advertisements and increased availability of price promotions at the point of sale.

As the use of tobacco retail and electronic smoking devices in the City of Escondido continues to grow, smoke, e-cigarette, and vape shops are likely to proliferate in the absence of local regulation. In order to protect public health and prohibit the renormalizing of tobacco use, local governments are in a unique position to regulate whether and where smoke, e-cigarette, and vape shops are allowed to open. Special prohibitions on smoke, e-cigarette, and vape shops are therefore necessary to maintain and improve the city's

character, the diversity and vitality of the community's commercial areas, and the quality of life of residents.

9. The City Council finds that the revisions to the City's Municipal Code and Zoning Code implemented by this ordinance are necessary in order to respond to recent developments within the marketplace, community interest, regulation of uses, and case law. The City Council desires to protect residents, businesses, and other community members from various retail and service based land use activities and to minimize their potential adverse primary and secondary effects including crime, the protection of the City's retail trade, maintenance of property values, protecting and preserving the quality of the City's neighborhoods and the City's commercial districts, and the protection of the City's quality of life. The basis of such desire is based on the totality of the referenced Zoning Code Land Use Study, the whole record, and the findings set forth therein. Specifically, the revisions and amendments to the City's Municipal Code and Zoning Code included in this ordinance are essential and necessary to ensure the orderly land use regulation as to uses within the City and thereby protect the public peace, safety and general welfare in the City of Escondido.
10. The proposed Zoning Code Amendments do not conflict with any Specific Plan as the project embodies several ancillary and conforming Specific Plan Amendments. The portion of the project that consists of Specific Plan Amendments meet the minimum requirements of Section 65451 of the Government Code.
11. There are no assurances to residents and project proponents that the affected chapters and sections of this project will not be subject to future revisions.

## EXHIBIT "B"

### PROPOSED MUNICIPAL CODE, ZONING CODE, AND SPECIFIC PLAN AMENDMENTS AZ 18-0006

#### SECTION I.

##### CHAPTER 15

Insert "**Article 3. SECONDHAND DEALERS**" to Chapter 15 after "Sections 15-22 –15-31. Reserved" and prior to "Section 15-32" to delineate article organization.

#### SECTION II.

Amend the Chapter 17, Article 13 of the Escondido Municipal Code to read as specified below. The changes are listed in order by section number, with ~~strikeout~~ typeface illustrating deletions and underline typeface illustrating new text.

##### CHAPTER 17

#### ARTICLE 13. TATTOO PARLORS AND MOBILE TATTOO VEHICLES

##### DIVISION 2. TATTOO PARLORS

###### Section 17-268. Customers.

- (a) No tattooing shall be done on skin surfaces which have rash, pimples, boils, or infections or manifest any evidence of unhealthful conditions.
- (b) No tattoo shall be administered to any person under the age of eighteen (18) years of age.
- (c) No tattooing shall be performed on any person who has given a history of jaundice or hepatitis infection within the previous thirty (30) days.
- (d) Specified anatomical areas shall not be exposed in publicly accessible areas of the tattoo parlor business or viewable from the public right-of-way.

##### CHAPTER 17

#### ARTICLE 13. TATTOO PARLORS AND MOBILE TATTOO VEHICLES

## DIVISION 2. TATTOO PARLORS

### Section 17-269. Operator.

- (a) The operator shall be free of communicable diseases and have no pustular skin lesions.
- (b) The operator shall not smoke during the tattoo operation.
- (c) The operator shall wear a clean, light-colored, short-sleeved smock during the tattoo operation.
- (d) The operator shall wear disposable gloves during the tattooing operation.
- (e) No tattoo parlor shall be operated in conjunction with nor share any operating space with any other business. Service of alcohol, marijuana/cannabis based substances, or other controlled substance shall not be permitted in conjunction with a tattoo parlor.
- (f) The entrance door shall be 100 percent clear and free of obstructions such as signs, window tinting, shelving, or racks. Storefront window openings shall provide an unobstructed view of the interior of the premises.
- (g) The operator shall ensure that specified anatomical areas of customers shall not be exposed in publicly accessible areas of the business or viewable from the public right-of-way.
- (h) The operator of a tattoo parlor shall prevent loitering and loud noises around the subject site during and after the hours of business operations.
- (i) The property shall be developed and maintained in a neat, quiet, and orderly condition and operated in a manner so as not to be detrimental to adjacent properties and occupants. This shall encompass the maintenance of exterior facades of the building, designated parking areas serving the use, walls and fences and the perimeter of the site (including all public parkways).
- (j) The operator of the tattoo parlor shall comply with all applicable state and local laws as they may be amended from time to time, including Health and Safety Code Sections 119300 et seq. (California Safe Body Art Act), Penal Code Section 653, and County of San Diego Department of Environmental Health regulations.

## CHAPTER 17

### ARTICLE 13. TATTOO PARLORS AND MOBILE TATTOO VEHICLES

#### DIVISION 2. TATTOO PARLORS

##### Section 17-281. Permit required.

(a) It shall be unlawful for any person to engage in the business of operating a tattoo parlor establishment, or a mobile tattoo vehicle, without first applying for and receiving approval of a permit from the deputy director of environmental health services.

(b) No tattoo parlor shall be located within 1,000 feet of any other tattoo parlor, as measured from the nearest walls of the buildings within which the tattoo parlors are established.

(c) No tattoo parlor shall be located within 500 feet of any licensed alcoholic beverage dispensing operation offering said beverages for on-site consumption.

#### SECTION III.

Amend the Chapter 33 of the Escondido Municipal Code to read as specified below. The changes are listed in order by section number, with ~~strikeout~~ typeface illustrating deletions and underline typeface illustrating new text.

### ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS

#### Section 33-8. Definitions.

##### Banking.

(1) ATM kiosk is an electronic telecommunications devise or electronic banking outlet that allows customers to complete basic financial transactions without the aid of a bank teller or chartered financial institution representative.

(2) Bank means a State or Federally chartered financial institution, credit union, mortgage lender, savings and loan association, or industrial loan company which offers financial services that include lending money, collecting deposits, issuing currencies and debit cards, and transaction processing, and other typical banking services, with or without a teller.

(3) Check-cash / pay day means fringe bank institution or uses defined as other than a State or Federally chartered institution, credit union, mortgage lender, savings and loan association or industrial loan company, that offers deferred deposit transaction services or check cashing services and loans for payment of a percentage fee. The term included,

but is not limited to, deferred deposit transaction (payday loan) businesses that make loans upon assignment of wages received, check cashing businesses that charge a percentage fee for cashing a check or negotiable instrument, and vehicle title lenders who offer a short-term loan secured by the title to a vehicle. Non-profit financial institutions are not included in this definition.

*Bargain basement store* means any for-profit or non-profit store including any establishment, operation, or enterprise with one or more of the following characteristics: 1) a majority of the store's merchandise is offered for sale at a price equal to or below \$5.00; 2) merchandise priced at or below \$5.00 occupies at least one-half of the store's floor area which is devoted to retail sales; 3) used items represent a majority of the merchandise offered for sale in the store; or 4) used merchandise occupies at least one-half of the floor area in the store devoted to retail sales. Used merchandise herein is defined as all forms of used items including without limitation items that were formerly used but have been repaired, refurbished, and /or repackaged. The bargain basement store definition excludes: 1) bona fide antique stores; 2) thrift stores, second-hand dealers, and pawn shops; 3) stores which primarily engage in the sale of used books, periodicals, videos, or DVDs; 4) stores specializing in the sale of highly collectible items such as used coins, stamps, baseball cards, and other similar collectibles; and 5) a store where the majority of the items sold, measured by receipts or number of items sold, consist of food and/or beverage items.

*Consignment shop* is a retail establishment primarily engaged in the retail sale of non-donated, second-hand merchandise, and the merchandise is placed for sale with the establishment by the owner of the merchandise. Upon sale of the merchandise the purchase price is divided between the consignment shop owner and the owner of the merchandise. The establishment shall be limited to one type of merchandise, including but not limited to, clothing and related accessories, children's apparel and furniture, sporting equipment, or furniture and related home furnishings. This use does not include the sale of guns, appliances, mattresses, or vehicles.

*Fleet storage* means storage or parking of one or more vehicles used regularly in business operations. Where the parking of vehicles constitutes the principal use on the site, the use activity is considered a principal use. Typical fleet storage uses include taxi fleets, mobile catering trucks, car or truck (service delivery) storage, or delivery truck fleets. Excluded are car dealerships and vehicle junkyard or vehicle dismantling services.

*Junk yards* mean any space of two hundred (200) square feet or more of area of any lot used for the storage, sale, keeping or abandonment of inoperable vehicles, wrecking yards or salvage yards, junk or waste material, including scrap metal or other scrap materials, or for the dismantling, demolition or abandonment of automobiles, other vehicles, machinery or parts thereof, other than an impound yard.

*Liquor store* means any store designed and operated for the selling of alcoholic beverages with the selling of any other merchandise being incidental to the primary operation of selling liquor.

Pawn shop means a pawnbroker or business establishment that loans money, either for himself or herself, or for any other person, upon any personal property or personal security being purchased and resold to the vendor or other assignee at prices previously agreed upon. This use does not include the sale of guns, appliances, mattresses, or vehicles.

Secondhand store (or second-hand dealer) means conducting, managing, or carrying on the business of buying and selling used merchandise, such as jewelry, watches, diamonds, clothing, musical instruments, luggage, sporting goods, furniture, etc. This use does not include the sale of guns, appliances, mattresses, or vehicles.

Tattoo parlor means any permanent premises where a tattoo artist does tattooing for a fee or for other consideration. Tattoo parlor establishments also include body piercing and other body art services, but do not include beauty salons including cosmetology involving ear piercing, permanent eye and lip lining.

Thrift shop is a retail establishment or non-profit organization primarily engaged in selling used merchandise which has been obtained through bulk-purchases, or through donations or gifts and where the donor receives no value upon the sale of such merchandise, and where the use is designed to sell donated merchandise at a price below reasonable market value. The second-hand sale of guns, appliances, mattresses, or vehicles is prohibited under this classification. This use does not include establishments which sell used merchandise on consignment

Tow yard storage means a business or offering the services of a vehicle towing service, whereby disabled motor vehicles are towed or otherwise removed from the place where they are disabled by a truck; automobile; or other vehicle so adapted to that purpose, such as tow truck dispatch centers; or in the business of storing disabled motor vehicles. Excluded are sales/rentals of vehicles (i.e. car dealerships) and junkyard or dismantling services.

Vehicle repair services.

(1) Commercial vehicle repair includes uses that repair and maintain the mechanical components of the bodies of large trucks, mass transit vehicles, large construction or agricultural equipment, aircraft or boats. Commercial vehicle repair may also include general auto repair-type functions.

(2) General vehicle repair includes major repair of automobiles, motorcycles, recreational vehicles, or light trucks. Examples of use include body and fender shops; brake shops; full-service motor vehicle repair garages; machine shops; painting shops; towing services; and transmission shops. Does not include vehicle dismantling or salvage and tire retreading or recapping. General vehicle repair may also include limited vehicle repair-type functions.

(3) Limited vehicle repair includes minor repair of automobiles, motorcycles, recreational vehicles, or light trucks, vans, or similar size vehicles. Examples of use



include brake adjustments and repairs; installation of electronic equipment (e.g., alarms, stereos, etc.); servicing of cooling, electrical, fuel, and exhaust systems; oil and lube shops; tire sales and installation shops; wheel alignment and balancing; auto glass installation and services.

Vehicle sales.

(1) *Boutique car sales* means a business associated with sales of automobiles, light trucks, vans, small trailers, and small recreational vehicles subject to registration, licensed by the Department of Motor Vehicles (DMV) with or without on-site vehicle inventory. Boutique car sales would allow a licensed dealer, that functions primarily as an office or broker, to store no more than two (2) vehicles on site at any given time.

(2) *Car dealership* means a well-defined sales and service area or car lot primarily engaged in the sale, long term storage, or rental or leasing of automobiles, light trucks, vans, small trailers, and small recreational vehicles to the public with a vehicle dealers permit or rental company permit licensed by the Department of Motor Vehicles (DMV). A car dealership may engage in auto retail sales, auto wholesales, auto broker sales, rental leasing, or any other DMV business partnership. Sales and leasing of heavy trucks and tractors are included within the category of "tractor or heavy truck sales, storage, rental."

(3) *Parts and accessories sale and supply* means an auto supply store or retailer specializing in new and rebuilt, package vehicle supplies, parts, and accessories, including the incidental assembling of customized items or parts onto vehicles.

(4) *Tractor or heavy truck sales* means an establishment primarily engaged in the sale, long term storage, or rental or leasing of tractor or heavy trucks, aircraft, marine crafts, large recreational vehicles and campers, equipment rental and leasing dealerships.

**ARTICLE 16. COMMERCIAL ZONES**

**Section 33-332. Principal land uses.**

**Table 33-332. Permitted and conditionally permitted principal uses.**

Use Title	CG	CN	CP
<b>Retail Trade</b>			
<b>Automotive and marine craft</b>			
<u>Boutique car sales*</u> <u>(subject to Article 57)</u>	<u>P</u>	---	---
<u>Car dealership*</u> <u>(subject to Article 57)</u>	<u>C</u>	---	---

<del>Sales lots and parts</del> <del>Parts and accessories sale and supply (including autos, motorcycles, trailers, campers, recreational vehicles and marine craft vehicles) excluding farm and construction vehicles, three-axle trucks, and buses)</del>	P	---	---
<del>Parts and accessories sale and supply (farm and construction vehicles, three-axle trucks, and buses)</del>	---	---	---
<del>Tractor or heavy truck sales, storage, or rental* (subject to Article 57)</del>	C	---	---
<b>Services</b>			
<b>Automotive services (including motorcycles, marine craft, and recreational vehicles)</b>			
<del>Rental and leasing* (Article 57 and Council Resolution #73-264-R) with or without drivers, taxicab service</del>	P	---	---
<del>Repair and related services, except tire retreading and auto body</del> <del>Limited vehicle repair* (subject to Article 57)</del>	PC#	---	---
<del>Auto body</del> <del>General vehicle repair* (subject to Article 57)</del>	C	---	---

<u>Commercial vehicle repair*</u> (subject to Article 57)	==	==	==
<u>Tire retreading*</u> (subject to Article 57)	==	==	==
<u>Junkyard and wrecking yard*</u> (subject to Chapter 15 and Article 57)	==	==	==
<u>Fleet storage*</u> (subject to Article 57)	C	==	==
<u>Tow yard storage*</u> (subject to Article 57)	==	==	==

**ARTICLE 16. Commercial Zones.**

**Section 33-332. Principal land uses.**

**Table 33-332. Permitted and conditionally permitted principal uses.**

Use Title	CG	CN	CP
<b>Retail Trade</b>			
<b><u>Used Merchandise</u></b>			
<u>Consignment shop*</u> (subject to Chapter 15 and Article 57)	C	==	==
<u>Pawn shop*</u> (subject to Chapter 15 and Article 57)	==	==	==
<u>Secondhand store*</u> (subject to Chapter 15 and Article 57)	C	==	==
<u>Thrift shop*</u> (subject to Chapter 15 and Article 57)	C	==	==
<b>Retail Trade</b>			
<b><u>General Retail</u></b>			
<u>Bargain basement store</u>	C	==	==
<u>Drugstores with drive-through*</u> (subject to section 33-341)	C	C	C

<u>Pharmacies with drive-through*</u> (subject to section 33-341)	<u>C</u>	<u>C</u>	<u>C</u>
<u>Florists, gifts, cards, newspapers, and magazines with drive-through*</u> (subject to section 33-341)	<u>C</u>	<u>C</u>	<u>C</u>
<u>General retail with drive-through*</u> (subject to section 33-341)	<u>C</u>	<u>C</u>	<u>C</u>
<u>Tobacco product store</u>	---	---	---
<b>Food and Liquor</b>			
Liquor stores, packaged (off-sale)	<u>PC</u>	<u>PC</u>	---
<b>Eating and Drinking Establishments</b>			
<b>Restaurants, cafés, delicatessens, sandwich shops, etc.</b>			
Auto oriented (drive-in,* drive-through*) (section 33-341)	<u>PC</u>		
<b>Services</b>			
<b>Financial Services</b> (including banks, securities brokers, credit offices, real estate services)	<u>P</u>	<u>P</u>	<u>P</u>
<u>Bank</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Bank with drive-through*</u> (subject to section 33-341)	<u>C</u>	<u>C</u>	<u>C</u>
<u>Check-cash/pay day</u>	---	---	---
<u>Real estate service or security broker</u>	<u>P</u>	<u>P</u>	<u>P</u>
<b>Services</b>			
<b>Other Services</b>			

Laundry and dry cleaning services			
Self-service, coin-operated* (section 33-343)	P	P	---
Pick-up service only* (section 33-343)	P	P	P
Dry cleaning, laundering, pressing and dyeing for on-site retail customers only* (section 33-343)	<u>PC</u>	---	---
Commercial laundry or pressing* (section 33-343)	---	---	---
Private smokers' lounge	---	---	---
<del>Barber, beauty, nail, and tanning services</del>	<u>P</u>	<u>P</u>	<u>P</u>
<del>Personal services, NEC (including clothing and costume rental, tattooing, marriage bureaus, baby-sitting services, etc.)</del>	<u>P</u>	---	---
<b><u>Personal services</u></b>			
<u>Barber, beauty, nail, and tanning services</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Clothing and costume rental, marriage bureaus, baby-sitting services, etc.</u>	<u>P</u>	---	---
<u>Tattoo parlor and body piercing* (subject to Chapter 17)</u>	<u>C</u>	---	---

**ARTICLE 16. COMMERCIAL ZONES**

**Section 33-333. Permitted accessory uses and structures.**

**Table 33-333. Permitted accessory uses and structures.**

<b>Use Title</b>	<b>CG</b>	<b>CN</b>	<b>CP</b>
<u>ATM kiosk</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>ATM kiosk (drive-in,* drive-through*) (section 33-341)</u>	<u>C</u>	<u>C</u>	<u>C</u>
<u>Drive-in,* drive-through* (section 33-341)</u>	<u>C</u>	<u>C</u>	<u>C</u>
<u>Fleet storage* (subject to Article 57)</u>	<u>P</u>	---	---
<u>Tow truck operation incidental to repair* (subject to Article 57)</u>	<u>P/C</u>	---	---

**ARTICLE 16. COMMERCIAL ZONES**

**Section 33-341. Commercial drive-through facilities requirements.**

(a) ~~Plot Plan~~Conditional Use Permit Required. ~~A plot plan application shall be required for all drive through facilities not associated with a project requiring a discretionary application.~~Conditional Use Permit approval shall be required for the establishment of any use that offers drive-in or drive-through facilities. This shall include drive-through uses in conjunction with, but not limited to, washing/detailing automotive services (automated or hand-washed), retail trades, eating and drinking establishments, banks and other financial institutions, pharmacies, and other services.

(b) Development Standards. The following development standards shall apply to all drive-through commercial facilities to ensure that such developments do not have negative impacts on traffic, safety, air quality and visual character of the area in which they are located:

- (1) Pedestrian walkways that intersect the drive-through drive aisles, shall have clear visibility, and be emphasized by enriched paving or striping.
- (2) Drive-through aisles shall have a minimum twelve (12) foot width on curves and a minimum eleven (11) foot width on straight sections.
- (3) The drive-through stacking lane shall be situated so that any overflow from the stacking lane shall not spill out onto public streets or major aisles of any parking lot. Sufficient vehicle stacking room shall be provided on-site behind the speaker area where orders are taken to accommodate a minimum of six (6) vehicles or greater if determined necessary by the director of community development. The drive-through stacking lane

shall be separated physically from the user's parking lot and shall have a capacity of twenty (20) linear feet per vehicle.

(4) Drive-through aisles shall be constructed with (PCC) concrete.

(5) Drive-through aisles and associated structures should be oriented away from public streets and surrounding land uses unless significant screening is provided to the satisfaction of the director of community development by means of heavy landscaping, decorative walls, and sound attenuating devices. A five (5) foot-wide planter between the drive-through aisle and the parking area that includes shade trees consistent with those used in the parking areas.

(6) No ingress and egress points shall conflict with turning movements at nearby street intersections. The design of the site and placement of structures shall be done in a manner that: 1) minimizes the number of driveway cuts; and 2) provides adequate and safe queuing and maneuvering of vehicles to prevent interference with circulation of the site, adjacent uses, or queuing within/onto public right-of-way.

(7) Buildings with drive-through facilities shall be located with a minimum separation of two hundred (200) feet from any other structure containing a drive-through facility. Certain types of drive-through services may require less separation if substantiated by acceptable data

(8) Canopy. A canopy should be provided at the drive through pick-up window area (i.e. covered with a trellis or open-air canopy) to cover the area of service exchange and the drive aisle. In the design of the covered drive-through space, applicants shall take positive steps to protect employees of the drive-through facility from emissions caused by idling cars and "tunneling" effects. "Tunneling" will be deemed to occur where a roof/wall structure encloses a space of more than thirty (30) feet. Such situations are discouraged unless air quality analyses performed by the applicant shows that unusual pollutant concentrations will not occur.

(9) The architecture of drive-through canopies, building fenestration, and other structures used to support the drive-through shall be compatible and harmonize with that of the building, shopping center, and/or structures within the immediate area in terms of building color, materials, mass, scale, and form. All building elevations should be architecturally enhanced. High quality building materials are encouraged. Reflective, glossy, and fluorescent surfaces are discouraged.

(10) When located on a site within one hundred (100) feet of any residential zone or use (measured from the nearest property lines), hours of operation for the drive-through service shall be limited from 7:00 a.m. to 10:00 p.m. daily. If the use is located greater than one hundred (100) feet from a residential use, then there are no restrictions on the hours of operation, unless regulated pursuant to Conditional Use Permit. The designated Review Authority may grant limitations or exceptions through a Conditional Use Permit after preparation of a qualified noise study. Drive-through speakers shall not be audible from adjacent residentially zoned or used properties.

**ARTICLE 16. COMMERCIAL ZONES**

**Section 33-343. Reserved Laundry and dry cleaning services.**

(a) No new dry-cleaning with on-site cleaning or commercial laundry establishment shall be located within two hundred (200) feet of a residential zone or residential use unless the establishment utilizes a high-trans fluorinated alternative rather than using carbon Trichloroethylene (TCE) and Perchloroethylene (PERC).

(b) The operator of the approved "self-service laundromats" use shall prevent loitering and loud noises around the subject site during and after the hours of business operations. Management or a staff representative (e.g. attendant) must be present during hours of operation.

(c) No liquid or solid waste or similar material that may contaminate water supplies, interfere with bacterial process in sewage treatment, or otherwise cause the emissions of dangerous or offensive elements shall be discharged into the public sewer or private disposal system, except as determined by the permit decision-maker in accordance with applicable regulations.

**ARTICLE 26. INDUSTRIAL ZONES**

**Section 33-564. Land-Principal land uses.**

**Table 33-564. Permitted and conditionally permitted principal uses.**

<b>Use Title</b>	<b>I-O</b>	<b>M-1</b>	<b>M-2</b>	<b>I-P</b>
<del>Auto, RV and boat sales** (subject to Article 57)</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>
<del>Automotive services (excluding gasoline service stations and car- wash related uses)</del>	<del>---</del>	<del>P</del>	<del>P</del>	<del>---</del>
<del>Boat repair</del>	<del>---</del>	<del>P</del>	<del>P</del>	<del>---</del>
<b><u>Automotive services (including motorcycles, marine craft, and recreational vehicles)</u></b>				
<u>Gasoline sales or services</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>
<u>Fleet fueling</u>	<u>---</u>	<u>P</u>	<u>P</u>	<u>---</u>
<u>Car-wash, polishing, vacuuming, or detailing (primary or accessory use)</u>	<u>---</u>	<u>C</u>	<u>C</u>	<u>---</u>



<u>Limited vehicle repair*</u> (subject to Article 57)	---	P	P	---
<u>General vehicle repair*</u> (subject to Article 57)	---	C#	C#	---
<u>Commercial vehicle repair*</u> (subject to Article 57)	---	---	C	---
<u>Tire retreading*</u> (subject to Article 57)	==	---	---	---
<u>Junkyard and wrecking yard*</u> (subject to Chapter 15 and Article 57)	==	---	C	---
<u>Fleet storage*</u> (subject to Article 57)	---	C	C	---
<u>Tow yard storage*</u> (subject to Article 57)	==	---	C	--
<b>Fleet fueling</b>	---	P	P	---
<b>Vehicle Sales</b>				
<u>Boutique car sales*</u> (subject to Article 57)	---	---	---	---
<u>Car dealership*</u> (subject to Article 57)	C	C	C	C
<u>Parts and accessories sale and supply</u>	---	P	P	P
<u>Tractor or heavy truck sales, storage, or rental*</u> (subject to Article 57)	---	C	C	---

**ARTICLE 26. INDUSTRIAL ZONES**

**Section 33-564. ~~Land~~Principal land uses.**

**Table 33-564. Permitted and conditionally permitted principal uses.**

Use Title	I-O	M-1	M-2	I-P
Banks/automated-teller machines	—	<u>P</u>	<u>P</u>	—
<b><u>Financial Services</u></b>				
<u>Bank</u>	—	<u>P</u>	<u>P</u>	—
<u>Bank (drive-in,* drive-through*) (section 33-341)</u>	—	<u>C</u>	<u>C</u>	—
<u>Check-cash/pay day</u>	—	—	—	—
<u>Real estate service or security broker</u>	<u>P</u>	—	—	<u>P</u>
<b><u>Laundry and Dry Cleaning Services</u></b>				
<u>Self-service, coin-operated</u>	—	—	—	—
<u>Pick-up service only</u>	—	—	—	—
<u>Dry cleaning, laundering, pressing and dyeing for on-site retail customers only</u>	—	—	—	—
<u>Commercial laundry or pressing</u>	—	<u>C</u>	<u>C</u>	—

**ARTICLE 26. INDUSTRIAL ZONES**

**Section 33-565. ~~Accessory~~Permitted accessory uses and structures.**

**Table 33-565. Permitted accessory uses and structures.**

Use Title	I-O	M-1	M-2	I-P
<u>ATM kiosk</u>				
<u>ATM kiosk (drive-in,* drive-through*) (section 33-341)</u>				
<u>Fleet storage* (subject to Article 57)</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

<u>Tow truck operation incidental to repair* (subject to Article 57)</u>	---	<u>P/C</u>	<u>P/C</u>	---
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**ARTICLE 57. MISCELLANEOUS USE RESTRICTIONS**

**Section 33-1114. ~~Motor vehicle, aircraft, marine craft, trailer and camper, motorcycle, equipment rental and leasing dealerships. Vehicle sales, vehicle repair services, fleet storage and tow yard storage, and junkyards and wrecking yards~~**

~~The city council shall, after recommendation by the city planning commission, adopt a resolution setting forth site development standards for motor vehicle, aircraft, marine craft, trailer and camper, motorcycle, equipment rental and leasing dealerships in the industrial zones.~~

~~The standards and criteria established by said resolution shall be applied as conditions for approval of all plot plans falling within the above categories of uses unless specific findings are made and enumerated by the director of community development stating unique circumstances and undue hardship which would require a modification of the standards and criteria.~~

(a) General requirements. The following requirements and standards apply to boutique car sales, car dealerships, tractor and heavy truck sales, vehicle repair services, fleet storage and tow yard storage, and junkyards and wrecking yards.

(1) Required building. A permanent structure or building with a minimum of three hundred (300) square feet shall be maintained on-site to support the land use activity. The building shall be a permanent structure. The quality of architecture and building materials of all on-site structures shall meet or exceed surrounding structures. Modular or portable buildings, trailers, or mobile homes for this purpose are prohibited.

(2) Amplified sound. The use or installation of a public address system or amplified sound system is prohibited. No loud or boisterous noises are allowed to emanate from the place of business, either by persons congregating there or by the playing of recording instruments, radios, and/or television sets or other sound-producing equipment.

(3) Parking areas. Customer and employee parking areas shall be easily accessible and located separately from vehicle display or storage areas. Ground markings and signs shall clearly indicate the location of customer and employee parking. All storage/display spaces shall be clearly lined, numbered and designated.

(4) The property shall be developed and maintained in a neat, quiet, and orderly condition and operated in a manner so as not to be detrimental to adjacent properties and occupants. This shall encompass the maintenance of exterior facades of the building, designated parking areas serving the use, walls and fences and the perimeter of the site (including all public parkways).

(5) Lighting. All outdoor lights shall be served by underground wiring and shall be shielded from adjacent properties.

(b) Boutique car sales. Boutique car sales shall be allowed as provided in any Permitted and Conditionally Permitted Principal Use Matrix and shall comply with the development standards of the zoning district, general development standards of Section 33-1114(a), and this section. No boutique car sales project shall be granted a permit unless the following requirements are satisfied:

(1) That the area controlled by the business is of sufficient size to allow storage or display on-site of no more than two (2) cars in paved, lined and numbered spaces no smaller than eight and one-half (8 1/2) feet in width and eighteen (18) feet in length.

(2) Display. Vehicles shall not be displayed on any above ground apparatus. The use of temporary structures and/or devices to elevate vehicles above the average grade of the site for display is specifically prohibited. All vehicle inventory must be stored on-site and not in the public right-of-way.

(3) No boutique car sales establishment shall be operated in conjunction with nor share any operating space with any other boutique car sales or car dealership business.

(4) Any lights provided to illuminate any car sales area permitted by this section shall be comparable and of the same intensity to that of the rest of the commercial or industrial area or premises and so arranged to reflect the light away from adjacent properties.

(c) Car dealerships and tractor or heavy truck sales, storage, or rental. Car dealerships and tractor or heavy truck sales shall be allowed as provided in any Permitted and Conditionally Permitted Principal Use Matrix and shall comply with the development standards of the zoning district, general development standards of Section 33-1114(a), and this section. No dealership project shall be granted a permit unless the following requirements are satisfied:

(1) That the area controlled by the business is of sufficient size to allow storage or display of on-site of vehicles in paved, lined and numbered spaces no smaller than eight and one-half (8 1/2) feet in width and eighteen (18) feet in length. Employee and customer parking of no fewer than three (3) spaces shall be provided at a minimum, provided that one (1) additional employee/customer parking space shall be required for each additional twenty (20) spaces used for storage or display.

(2) Display. Elevating vehicles above the average grade of the site for display purposes shall be limited to the use of landscaped earthen berms or mounds, or permanent structures designed so as to be architecturally compatible with existing structures or buildings on the project site and/or adjacent thereto. The use of temporary structures or devices for such purposes is specifically prohibited. All vehicle inventory must be stored on-site and not in the public right-of-way.

(3) Screening. The vehicles and other display materials shall be set back five (5) feet from a street and shall not be located in required parking areas. Wheel stops or some other type of protective device shall be provided as necessary to prevent vehicles from damaging fences, walls, buildings or landscaped areas, or from extending across any public or private property lines. Display of vehicles along street frontages shall be screened by compact evergreen hedge or alternate landscaping in a manner which screens the undersides of vehicles from public view. Display of other equipment and materials shall be screened by a solid fence or wall of at least six (6) feet in height, with enhanced landscaping along the perimeter.

(4) Landscaping Required. A landscape planter a minimum of five (5) feet wide shall be provided along all street frontages, subject to Water Efficient Landscape Standards and street tree planting standards. Said landscaping shall be continuous and include a decorative planter area at the corner of intersecting streets unless a building is located at the corner or otherwise prevents continuity.

(d) Vehicle repair services. Vehicle repair services shall be allowed as provided in any Permitted and Conditionally Permitted Principal Use Matrix and shall comply with the development standards of the zoning district, general development standards of Section 33-1114(a), and this section. No vehicle repair services project shall be granted a permit unless the following requirements are satisfied.

(1) All tires, barrels, new or discarded auto parts, vehicles under repair and other storage of materials used or sold on the premises must be stored and maintained inside the building if in a CG commercial zone (Section 33-337), M-1 industrial zone (Section 33-571), or similar zone district; or screened from view from adjacent properties and streets by a solid screen barrier in the M-2 industrial zone (Section 33-571). Outdoor storage of non-operational vehicles is prohibited in all zones, unless authorized as a permitted or conditionally permitted use (refer to "tow yard and storage") and reviewed and approved for code compliance.

(2) Residential and Street Adjacency. All new structures shall be oriented to face building, workstation, and service bay entrances, away from abutting residential properties and the public right-of-way to the extent practicable.

(3) Service bays shall be screened from adjacent properties and public view by a wall, fence, hedge or other appropriate plant or landscape material between the service bay and the property line to the extent practicable. Solid fencing or walls shall be constructed of brick, block, stone or frame-stucco. An ornamental masonry wall shall be provided along all property lines that abut property used or zoned for residential purposes. Screening shall minimize the visual impact to the extent appropriate, through means of placement, barrier, or camouflage. Screening shall be designed to blend into the surrounding architecture or landscape so that the object or land use is not apparent to the

casual observer. The face of all screen walls facing public right-of-ways shall be landscaped with shrubs, trees, and climbing vines. Use of walls and screening techniques shall meet crime prevention standards and provide graffiti deterrence elements.

(4) Landscaping Required. A landscape planter a minimum of five (5) feet wide shall be provided along all street frontages, subject to Water Efficient Landscape Standards and street tree planting standards. Said landscaping shall be continuous and include a decorative planter area at the corner of intersecting streets unless a building is located at the corner or otherwise prevents continuity.

(5) Automobiles that are drivable in their present condition and are awaiting repairs are not considered to constitute "storage." Transported automobiles must be repairable and may be stored on the site if they are intended to be repaired. Vehicles or equipment parked or stored on the site shall not be used as a source of parts and shall not be sold unless the business is also licensed for vehicle or equipment sales. A vehicle that is not in working order shall not be stored on such premises for more than forty-eight (48) hours, excluding days when business transactions do not take place such as public holidays or the weekend. Vehicles shall not be wrecked or dismantled; shall have hoods, trunks and doors closed.

(6) Tow truck operation incidental to repair. No commercial tow truck, tractor, trailer or semi-trailer, designed to pull or transport passenger automobiles, may be parked on the premises of a "auto supply stores with incidental installations" or "limited auto repair" station or service garage for more than four (4) hours within any twenty-four (24) hour period, except in case of emergency. Exceptions to exceed the four (4) hour limitation may be granted for "general repair" and "commercial vehicle repair" facilities as determined by the permit decision-maker. The storage of these trucks must be within an enclosed building or service bay of a commercial or industrial zone (CG, M-1, or M-2); or be located in the rear half of the lot of an industrial zone (M-1 or M-2 Zone) and be enclosed by a six (6) foot high solid wall or fence with solid gates.

(e) Fleet storage and tow yard storage. Fleet storage and tow yard storage shall be allowed as provided in any Permitted and Conditionally Permitted Principal Use Matrix and shall comply with the development standards of the zoning district, general development standards of Section 33-1114(a) unless specified herein, and this section. No fleet storage or tow yard storage project shall be granted a permit unless the following requirements are satisfied:

(1) A vehicle that is not in working order shall not be stored on such premises for more than forty-eight (48) hours. Vehicles shall not be wrecked or dismantled; shall have hoods, trunks and doors closed; shall not be dirty or dusty; and shall not be parked or stored on public property or public rights-of-way. Junkyards and dismantling services is regulated by Chapter 15 of the Municipal Code.

(2) Sale Prohibited. No vehicle or any component of a vehicle shall be parked on public or private property advertising the vehicle or any other service or merchandise for sale.

(3) Required Building. A building shall be required to support tow yard storage services, if the use is maintained as a principal use, consistent with the general development standards of Section 33-1114(a); however, a building is not required to support fleet storage as a principal use.

(4) Screening. Perimeter screening shall be by a solid, uniform fence or wall with a maximum height as specified in the ordinance of the zoning district. Solid fencing or walls shall be constructed of brick, block, stone or frame-stucco. An ornamental masonry wall shall be provided along all property lines that abut property used or zoned for residential purposes. Screening shall minimize the visual impact to the extent appropriate, through means of placement, barrier, or camouflage. Screening shall be designed to blend into the surrounding architecture or landscape so that the object or land use is not apparent to the casual observer. The face of all screen walls facing public right-of-ways shall be landscaped with shrubs, trees, and climbing vines. Use of walls and screening techniques shall meet crime prevention standards and provide graffiti deterrence elements.

(5) Landscaping Required. A five (5) foot wide planting area with trees shall be provided along the interior sides of screen wall. A separate landscaped planter shall be provided on-site with a minimum of five (5) feet wide dimensions along all street frontages, subject to Water Efficient Landscape Standards and street tree planting standards.

(6) Tow trucks for tow yard storage – Storage or tow trucks is considered an integral part of the tow truck dispatching service which is the main permitted use. When subject to the conditions of the M-2 Zone or the WM General district of the South Centre City Specific Plan, the storage of these trucks must be located in the rear half of the lot and be enclosed by a six (6) foot high solid wall or fence with solid gates.

(7) Fleet storage as a principal use. Demand analysis and mitigation as specified in section 33-1125 of this article.

(8) Fleet storage as an accessory use. Accessory fleet storage areas must be incidental to a principal land use activity, and the accessory storage is located on the same site or lot as the primary use, and is considered an integral part of that business. Accessory outdoor fleet storage and must be located in a manner that minimizes the visual impact of the fleet storage through means of placement, barrier, or landscape screening to the extent appropriate. Accessory fleet storage shall not include any of the following: 1) a tow truck, tractor, trailer or semi-trailer, designed to pull or transport passenger automobiles; or 2) accessory display of rental, leasable, or for-sale vehicles or equipment. The accessory storage or display of such is permitted only if they are otherwise permitted in the zone in which the facility is located.

(f) Junkyards. Junkyards and wrecking yards shall be allowed as provided in any Permitted and Conditionally Permitted Principal Use Matrix and shall comply with the development standards of the zoning district, general development standards of Section 33-1114(a) unless specified herein, and this section. No junkyards or wrecking yards project shall be granted a permit unless the following requirements are satisfied:

(1) Required Building. A building is not required to support junkyards and wrecking yard uses.

(2) Screening and Landscaping Required. Perimeter screening shall be placed along the perimeter of the property by a solid, uniform fence or wall with a maximum height as specified in the ordinance of the zoning district. A five (5) foot wide planting area with trees shall be provided along the interior sides of solid screen wall. A separate landscaped planter shall be provided on-site with a minimum of five (5) feet wide dimensions along all street frontages, subject to Water Efficient Landscape Standards and street tree planting standards.

(3) Demand analysis and mitigation as specified in section 33-1125 of this article.

## **ARTICLE 57. MISCELLANEOUS USE RESTRICTIONS**

### **Section 33-1127. ~~Reserved.~~Used merchandise sales.**

(a) All consignment shops, secondhand stores, and thrift shops shall provide or satisfy the following criteria:

(1) A designated area inside the building shall be established for the receipt, sorting and processing of goods. Donated goods or received merchandise shall be accepted only during regular business hours.

(2) No more than thirty (30) percent of the floor area shall be utilized for receiving, sorting and storage of donated and traded goods. The area devoted to receiving, sorting and storage may be increased to forty (40) percent if the store/shop occupies more than 15,000 square feet of building space.

(3) Signs advising patrons that the merchandise/goods within the store are primarily preowned.

(4) Enclosed Activities. All activities shall be completely enclosed within the building for the use.

(5) Property Maintenance. The subject property shall be maintained free of trash and debris at all times. Management shall be responsible for the removal of litter from the subject property, adjacent property, and streets that results from the thrift store (with adjacent property owner consent). The property shall be developed and maintained in a neat, quiet, and orderly condition and operated in a manner so as not to be detrimental to adjacent properties and occupants. This shall include the maintenance of exterior facades



of the building, designated parking areas serving the use, walls and fences and the perimeter of the site (including all public parkways).

(6) The storefront windows shall be permanently maintained as displays of merchandise in a professional and attractive manner (i.e., unsightly clothing racks and displays shall not be placed adjacent to the windows).

(7) Thrift shop. All goods donated for sale at the thrift shop must be accepted through the rear of the store. Adequate directional signage shall be provided from the main entrance to the use to direct individuals to the collection area. The collection area shall be noticed to prohibit depositing goods during nighttime hours or when the store is closed. Signage should include daytime collection hours for donated goods.

(8) All secondhand dealers are subject to the limitations and restrictions of Chapter 15 (Secondhand Dealer Ordinance).

(b) Pawn shops are prohibited use. Any existing pawn shop store or proprietor with a duly issued permit may continue to operate subject to the limitations and restrictions of Chapter 15 (Secondhand Dealer Ordinance) and Article 61 of Chapter 33.

## **ARTICLE 63. TRANSIENT LODGING FACILITIES**

### **Section 33-1344. Design Guidelines.**

#### **I. TYPES OF TRANSIENT LODGING FACILITIES**

A. Definitions and Expected Features. Transient lodging covers a wide spectrum of facilities from budget motels to resort destinations. Economy class, business/convention facilities and bed and breakfast establishments are also included. A customer chooses a facility to serve a particular need. While features of one type of establishment may be found in another, the following is a breakdown of facilities into three types:

1. Economy. Hotels and motels located on or near major arterials that serve the more budget-minded tourist and business clientele. Facilities can be generalized as being one or two stories with 200 rooms or fewer and having outdoor corridors and basic recreational amenities such as a pool and/or spa. Adjacent surface parking is typical.

2. Full Service. Hotels and motels located near business centers, downtowns or other major arterials convenient to major attractions. They generally provide a broader range of amenities and may include health clubs or other recreational facilities, restaurants, lounges, conference and convention facilities, laundry, secretarial and taxi services and business-oriented shopping facilities.

3. Resort. Hotels and lodgings typically sited on a prominent or otherwise attractive location and/or providing recreational amenities either on-site or within close proximity. They are treated as a destination point and offer a relaxing or vacation-type climate. They often include amenities similar to full service hotels such as restaurants, lounges, meeting facilities and shopping to attract conventions and other businesses.

B. Minimum Parcel Size. The site for a proposed facility shall meet the minimum lot size requirement for the underlying zone. Refer to the Zoning Ordinance for the minimum setback, height and floor area ratio requirements.

C. Businesses space and restaurants. Full service and resort hotels and lodging designed, constructed or used for 25 or more guest rooms or more may include a business supportive space use conducted therein for the convenience of the occupants and their guests, a boutique retail space, or a restaurant for use primarily by the hotel occupants and their guests.

1. The entrance to the business or restaurant shall be from the inside of the hotel.

2. The floor area used for all the businesses and restaurants in the facility shall not exceed thirty (30) percent of the total ground floor area of all the buildings comprising the hotel which are on a single lot or contiguous lots.

## II. SITE DESIGN

A. Develop the project design in a manner which is consistent with the established City of Escondido Design Review Guidelines.

B. Provide site planning that accomplishes a desirable transition with the streetscape and adequate landscaping, parking and safe pedestrian movement.

C. Utilize setbacks in excess of zoning restrictions.

D. Preserve and respect the existing topography by integrating buildings with the hillsides. When grading is required, create several smaller pads rather than one large one.

E. Utilize building height and scale which is compatible with the site and existing or anticipated adjoining buildings. Cluster buildings to attain village scale. Break up long building expanses with plazas and landscaping.

F. Maximize view opportunities of distant hills and mountains and other natural and manmade landmarks from the complex.

G. Ensure that full architectural treatment is provided on all building elevations, particularly those fronting major Circulation Element Streets.

H. Centrally locate the lobby and office for easy access from streets and hotel units.

I. Provide buffer areas between guest rooms and public amenities such as restaurants, lounges and game rooms. This may be accomplished with lobby areas, landscape areas or passive recreation areas.

J. Create an individual theme for the project site which is reinforced through architectural, landscaping, signage and streetscape treatments.

K. Create a sense of arrival with unique focus to the project. Create sense of place and individual identity for each project by appropriate utilization of design treatments.

L. Provide outdoor-oriented areas and activities such as cafes, kiosks, booths, benches, etc.

M. Orient buildings around courtyards, arcades and plazas whenever possible.

N. Avoid parking areas between street and building. Provide parking in rear of buildings.

O. Consider crime prevention design and ease of surveillance in site planning and access design. Exemplary measures include visual corridors into the project from major

roadways, landscaping to maintain views of pedestrian areas from drive aisles, and sufficient night lighting of pedestrian and parking areas.

P. Exterior corridors on multi-level buildings are strongly discouraged and should not be located adjacent to residential uses.

### III. RELATIONSHIP TO COMMUNITY

- A. Maintain a sense of community. Integrate projects with adjacent development.
- B. Provide an attractive landscape tradition to adjoining properties.
- C. Provide buffers for any project features which may have negative impacts upon adjacent properties.
- D. The property shall be developed and maintained in a neat, quiet, and orderly condition and operated in a manner so as not to be detrimental to adjacent properties and occupants. This shall include the maintenance of exterior facades of the building, designated parking areas serving the use, walls and fences and the perimeter of the site (including all public parkways), subject to section 33-1344(X).

### VII. PARKING AREAS AND ACCESS (Refer to Article 39 of this chapter for specific parking regulations.)

- A. Provide the parking and loading space requirements as found in the Zoning Ordinance.
- B. Locate loading spaces away from the front and exterior side of the facility or otherwise screen them from view. Loading spaces shall operate in a safe and efficient manner so as to not interfere with vehicular circulation and parking.
- C. Provide valet parking or adequate loading and unloading as part of the design and operating standards of the facility. Short term parking should be provided in close proximity to the office/check-in areas. Delivery and loading areas should be screened to minimize adverse visual and noise-related impacts to adjacent uses.
- D. Coordinate project access with adjacent intersection design and median cuts in abutting arterial and major highways.
- E. Design the pads as close to the street elevations as possible where the development abuts a major road to facilitate vehicular access, project visibility and drainage.
- F. Lay out car and pedestrian flow patterns carefully within the site, to minimize auto/pedestrian conflicts and insure adequate fire and delivery vehicle access.
- G. Soften the visual impact of parking areas on- and off-site by using landscaped islands; landscape screening, berms, walls; breaking up parking into sub-lots or into areas associated with particular uses; utilizing textured paving and walkways; or similar design measures.
- H. Coordinate the design of projects and associated expanded parkways with the parkways and medians of adjacent roadways including landscaping, project entries, street furniture and fencing.
- I. Coordinate site planning with transit stops.

- J. Use shading devices extensively in parking and pedestrian areas, such as canopy trees, arcades, decorative awnings and porticos.
- K. Orient buildings to provide parking through rear entrances where possible.

## **ARTICLE 63. TRANSIENT LODGING FACILITIES**

### **Section 33-1347. ~~Reserved.~~ Operator obligations.**

- (a) A manager and a minimum of one (1) additional employee shall be on duty at all times.
- (b) Guest registration requirements per Chapter 16-D of the Municipal Code.
- (c) Operator has duties and obligations to their guests to furnishing proper accommodations and to exercise proper care for the guest's safety. The duty is fulfilled when reasonable care is taken to promote the guest's safety, morals, comfort convenience, and general welfare; and to prevent a guest's exposure to dangers.
- (d) The operator of the approved use shall prevent loitering and loud noises around the subject site during and after the hours of business operations.
- (e) Extended stay. No room shall be made available for extended stay or be provided to guests to occupy for more than 30 consecutive days.
- (f) Every manager or person in control of a transient lodging facility in Escondido shall post in a conspicuous place in each room which is for rent or hire a printed statement of the specific charge or rate of charges by the day, week or month to be charged for said room or rooms. No charge or sum shall be collected or received for any greater sum than entitled to under the statement of charges or rates posted.
- (g) Transient occupancies are subject to the transient occupancy tax requirements of Chapter 25 of the Municipal Code.





<u>Thrift shop (subject to Article 57 of the Zoning Code)</u>	---	---	<u>C<sup>14</sup></u>	---	---	---	---
<b>FOOD AND LIQUOR SALES</b>							
<u>Liquor stores, packaged (off-sale)</u>	---	---	---	---	---	---	---
<b>GENERAL OFFICE AND FINANCIAL SERVICES</b>							
<u>ATM kiosk</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>ATM kiosk with drive-through</u>	---	<u>C<sup>12</sup></u>	<u>C<sup>12</sup></u>	<u>C<sup>12</sup></u>	<u>C<sup>12</sup></u>	<u>C<sup>12</sup></u>	<u>C<sup>12</sup></u>
<u>Financial institutions, banks, savings and loans<sup>13</sup> (excluding check-cashing and/or payday loans as a primary use), visitor and information center (including Downtown Business Association), governmental services, police and fire stations, etc. that provide direct contact with the public</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Financial institutions, banks, savings and loans with drive-through</u>	---	<u>C<sup>12</sup></u>	<u>C<sup>12</sup></u>	<u>C<sup>12</sup></u>	<u>C<sup>12</sup></u>	<u>C<sup>12</sup></u>	<u>C<sup>12</sup></u>
<u>Check cash / pay day</u>	---	---	---	---	---	---	---
<b>HEALTH AND PERSONAL SERVICES</b>							
<u>Tattoo parlor and body piercing* (subject to Chapter 17 of the Municipal Code)</u>	---	---	---	---	---	---	---
<b>SPECIALTY SERVICES</b>							
<u>Private smokers' lounge</u>	---	---	---	---	---	---	---

- 3 Only permitted on Escondido Boulevard.
- 6 Only permitted on Pennsylvania Avenue and the north side of Valley Parkway between Kalmia and Ivy Streets.
- 12 Drive-through eating and drinking establishments shall be permitted with a Conditional Use Permit, subject to the provisions in Article 16, Section 33-341
- 13 Prohibited on corner lots of the retail core area.
- 14 Use shall have a minimum building floor area of 15,000 square feet.

**SECTION V.**

Amend the East Valley Specific Plan to read as specified below. The changes are listed in order by section number, with ~~strikeout~~ typeface illustrating deletions and underline typeface illustrating new text.

**SECTION 4. LAND USE**

**TABLE 4.1**

**Permitted and Conditional Permitted Principal Uses**

<b>Land Use</b>	<b>CG</b>	<b>CP</b>	<b>HP</b>
<b>RETAIL TRADE</b>			
<b><u>Food and Drink Sales</u></b>			
<ul style="list-style-type: none"> <li><u>Liquor stores, packaged (off-sale)</u></li> </ul>	---	---	---
<b>General Retail</b>			
<ul style="list-style-type: none"> <li><u>Bargain basement stores</u></li> </ul>	---	---	---
<ul style="list-style-type: none"> <li><u>Consignment shop (Section 33-1127 of the Zoning Code*)</u></li> </ul>	<u>P</u>	---	---
<ul style="list-style-type: none"> <li><u>Drug stores with drive-through (Section 33-341 of the Zoning Code*)</u></li> </ul>	<u>C</u>	<u>C</u>	---
<ul style="list-style-type: none"> <li><u>Florists, gifts, cards, newspapers and magazines with drive-through (Section 33-341 of the Zoning Code*)</u></li> </ul>	<u>C</u>	<u>C</u>	<u>C</u>
<ul style="list-style-type: none"> <li><u>General retail of new merchandise, NEC (with drive-through (Section 33-341 of the Zoning Code*))</u></li> </ul>	<u>C</u>	---	---
<b>SERVICES:</b>			
<b>Automotive services</b>			
<ul style="list-style-type: none"> <li><u>Automobile supply stores with incidental installation</u></li> </ul>	<u>P</u>	---	---
<ul style="list-style-type: none"> <li><u>Boutique car sales or car dealership</u></li> </ul>	---	---	---
<ul style="list-style-type: none"> <li><u>Limited vehicleAuto-repair and service in freestanding or single tenant building</u></li> </ul>	<u>C</u>	---	---



<ul style="list-style-type: none"> <li>Limited vehicle repair and service in multi-tenant center which were comprehensively designed and approved for automotive repair prior to Area Plan</li> </ul>	P	---	---
<ul style="list-style-type: none"> <li>General vehicle repair</li> </ul>	<u>C</u>	---	---
<ul style="list-style-type: none"> <li>Commercial vehicle repair</li> </ul>	---	---	---
<ul style="list-style-type: none"> <li>Junkyard and wrecking yard</li> </ul>	---	---	---
<ul style="list-style-type: none"> <li>Tow yard storage</li> </ul>	---	---	---
<ul style="list-style-type: none"> <li>Tractor or heavy truck sales, storage, or rental</li> </ul>	<u>C</u>	---	---
<b>Financial services and institutions</b>			
<ul style="list-style-type: none"> <li>Check-cash / pay day</li> </ul>	---	---	---
<b>Other services</b>			
<ul style="list-style-type: none"> <li>Laundry and dry cleaning services (Section 33-343 of the Zoning Code*)</li> </ul>			
<ul style="list-style-type: none"> <li>o Commercial laundry</li> </ul>	---	---	---

**SECTION 4. LAND USE**

**TABLE 4.2**

**Permitted Accessory Uses and Structures**

Use Title	CG	CP	HP
<u>ATM kiosk</u>	<u>P</u>	<u>P</u>	---
<u>ATM kiosk with drive-through (Section 33-341 of the Zoning Code*)</u>	<u>C</u>	---	---
<u>Drive-through (Section 33-341 of the Zoning Code*)</u>	<u>C</u>	<u>C</u>	<u>C</u>
<u>Fleet storage (as an accessory use)</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Tow truck operation incidental to repair</u>	<u>P/C</u>	---	---

## SECTION 4. LAND USE

### Section 4.7

#### Prohibited Uses

All uses not listed as permitted primary or accessory uses, or conditionally permitted uses shall be prohibited. Such prohibited uses include but are not limited to those which for a special emphasis are listed below:

(a) Automobile, motorcycle, truck and trailer rentals

(b) Boat sales and rentals

(c) Check cashing as a primary use

(d) Commercial vehicle repair

~~(d)~~(e) Equipment rental and leasing services

~~(e)~~(f) Motor vehicle sales and car dealerships (new or used), including boutique car sales, recreational vehicles, motorcycles and other motorized vehicles

~~(f)~~(g) Pawn shops

~~(g)~~(h) Retail uses with across the board maximum pricing or "everything under" pricing

~~(h)~~(i) Social services and charitable organizations involving the direct distribution of goods or services to the ultimate client at this location

~~(i)~~(j) Swap meets (interior or exterior), involving the rental or leasing of numerous small, delineated spaces to separate, unrelated proprietors which collectively sell a wide variety of goods and services, within a building, location or business, as a single entity

~~(j)~~(k) Tattoo parlors

~~(k)~~(l) Thrift stores

(m) Tobacco store and private smoker's lounge

(n) Tow yard storage, junkyards, and fleet storage as a primary use

~~(l)~~(o) Used or secondhand merchandise, excluding consignment sales

~~(m)~~(p) All uses and structures not listed as permitted primary or accessory uses, or conditionally permitted uses shall be prohibited. However, the Director of Community Development may approve a use, after study and deliberation, which is found to be consistent with the purposes of this article, similar to the uses listed as permitted uses, and not more detrimental to the zone than those uses listed as permitted uses

~~(n)~~(q) Any existing residential structure shall not be used for both residential and commercial purposes at the same time.

**SECTION VI.**

Amend the South Centre City Specific Plan to read as specified below. The changes are listed in order by section number, with ~~strikeout~~ typeface illustrating deletions and underline typeface illustrating new text.

**CHAPTER 4.**

**TABLE 4.2**

**Permitted Land Uses for Specified Districts/Subareas**

Land Uses	WM General	WM Com m.	9 <sup>th</sup> Overla y	13 <sup>th</sup> District	Felicita District	EB MU Overla y	EB Com m	SE Com m	SE MU Overla y
<b>RETAIL TRADE</b>									
Automotive related retail									
<ul style="list-style-type: none"> <li>Automobile <u>supply stores with incidental installation</u></li> </ul>	<u>P</u>	<u>P</u>	---	<u>P</u>	<u>P</u>	---	<u>P</u>	<u>P</u>	---
<ul style="list-style-type: none"> <li>Automotive, trailer, motor-home, recreational vehicle, or marine craft sales, <del>NO SALES LOT</del> (office only) <u>Boutique car sales (subject to Article 57 of the EZC)</u></li> </ul>	P	<del>P</del>	---	---	P	---	P	P	---

<ul style="list-style-type: none"> <li>Tractor or heavy truck sales, storage, rental* (subject to Article 57)</li> </ul>	CUP	---	---	---	---	---	---	---	---	---
<ul style="list-style-type: none"> <li>Fleet or car storage as a primary use (subject to Article 57 of the EZC)</li> </ul>	CUP# CUP	---	---	---	---	---	---	---	---	---
<ul style="list-style-type: none"> <li>Tobacco, smoke, and/or electronic vapor substance inhalation shop</li> <li>Tobacco product store or private smoker's lounge</li> </ul>	---	---	CUP#	---	---	---	--	---	---	---
<b>TRANSPORTATION RELATED SERVICES</b>										
Automotive services										
<ul style="list-style-type: none"> <li>Tire retreading and recapping</li> </ul>	P---	---	---	---	---	---	--	---	---	---
<ul style="list-style-type: none"> <li>Tow yard storage (subject to Article 57 of the EZC)</li> </ul>	CUP#	---	---	---	---	---	--	---	---	---
<ul style="list-style-type: none"> <li>Vehicle repair, commercial (subject to 57 of EZC)</li> </ul>	CUP	---	---	---	---	---	--	---	---	---
<ul style="list-style-type: none"> <li>Vehicle repair, general (see definition) (subject to 57 of EZC)</li> </ul>	PCU P#	---	---	---	CUP	---	--	---	---	---
<ul style="list-style-type: none"> <li>Vehicle repair, limited (see definition) (subject to 57 of EZC)</li> </ul>	P	---	---	---	CUP#	---	CUP#	---	---	---

**CHAPTER 4. TABLE 4.2**

**Permitted Land Uses for Specified Districts/Subareas**

Land Uses	WM General	WM Comm.	9 <sup>th</sup> Overlay	13 <sup>th</sup> District	Felicita District	EB MU Overlay	EB Comm	SE Comm	SE MU Overlay
<b>BUSINESS, OFFICE, GOVERNMENT &amp; FINANCIAL (EXCLUDING MEDICAL)</b>									
<u>Check-cash / pay day</u>	---	---	---	---	---	---	---	---	---
<b>PERSONAL &amp; OTHER SERVICES</b>									
Laundry and dry cleaning services <u>(Subject to Section 33-342 of the EZC):</u>									
• <u>Dry-cleaning with on-site pressing</u>	<u>P</u>	---	---	---	---	---	---	---	---
Tattoo parlor or body piercing <u>(subject to Chapter 17 of Municipal Code)</u>	<u>CUP#</u>	---	---	---	---	---	---	---	---
<b>RETAIL TRADE</b>									
<u>General Retail</u>									
• <u>Bargain basement store</u>	---	---	---	<u>CUP</u>	---	---	---	---	---

<ul style="list-style-type: none"> <li>Second hand and thrift stores, <u>and</u> consignment shops—<u>and</u> pawn shops (Subject to Article 57 of the EZC)</li> </ul>	---	---	<u>CUP#</u>	---	---	---	<u>CUP#</u>	---	---
<ul style="list-style-type: none"> <li><u>Pawn shop</u> (Subject to Article 57 of the EZC)</li> </ul>	---	---	---	---	---	---	---	---	---
<u>Food and liquor</u>									
<ul style="list-style-type: none"> <li>Liquor store, packaged (off-sale alcoholic beverages)</li> </ul>	---	---	---	CUP	CUP	<u>PCUP</u>	CUP	CUP	CUP
<b>SPECIAL USES</b>									
Drive-through facilities, including drive-through banks, dairies, drug stores/pharmacies, grocery stores, cleaners, etc., which are either an incidental use to the primary use or constitute the primary use (Subject to Section 33-341 of the EZC)	---	CUP	---	---	CUP	---	---	---	---
<b>ACCESSORY USES AND STRUCTURES</b>									
<u>ATM kiosk</u>	---	---	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>ATM kiosk with drive-through</u>	---	<u>CUP</u>	---	<u>CUP</u>	<u>CUP</u>	---	---	---	---

## CHAPTER 10. APPENDICES

### Definitions.

**Bargain basement store** means any for-profit or non-profit store including any establishment, operation, or enterprise with one or more of the following characteristics: 1) a majority of the store's merchandise is offered for sale at a price equal to or below \$5.00; 2) merchandise priced at or below \$5.00 occupies at least one-half of the store's floor area which is devoted to retail sales; 3) used items represent a majority of the merchandise offered for sale in the store; or 4) used merchandise occupies at least one-half of the floor area in the store devoted to retail sales. Used merchandise herein is defined as all forms of used items including without limitation items that were formerly used but have been repaired, refurbished, and /or repackaged. The bargain basement store definition excludes: 1) bona fide antique stores; 2) thrift stores, pawn shops, second-hand dealers, and pawn shops; 3) stores which primarily engage in the sale of used books, periodicals, videos, or DVDs; 4) stores specializing in the sale of highly collectible items such as used coins, stamps, baseball cards, and other similar collectibles; and 5) a store where the majority of the items sold, measured by receipts or number of items sold, consist of food and/or beverage items.

**Fleet storage** means storage or parking of one or more vehicles used regularly in business operations. Where the parking of vehicles constitutes the principal use on the site, the use activity is considered a principal use. Typical fleet storage uses include taxi fleets, mobile catering trucks, car or truck (service delivery) storage, or delivery truck fleets. Excluded are car dealerships and vehicle junkyard or vehicle dismantling services.

**Junk yards** mean any space of two hundred (200) square feet or more of area of any lot used for the storage, sale, keeping or abandonment of inoperable vehicles, wrecking yards or salvage yards, junk or waste material, including scrap metal or other scrap materials, or for the dismantling, demolition or abandonment of automobiles, other vehicles, machinery or parts thereof, other than an impound yard.

**Tobacco, smoke, and/or electronic/vapor substance inhalation shop.**

~~Any store, stand, booth, concession, or other place that either devotes a substantial portion of its display area (i.e., fifteen (15) percent or more of floor space) to tobacco products and/or electronic/vapor inhalation substance products, and/or drug paraphernalia or similar products, or devotes more than sixteen (16) cubic feet of shelf space, for the display or sale of tobacco products and/or electronic/vapor inhalation substance products or similar products or drug paraphernalia to purchasers for consumption or use.~~

**Tow yard storage** means a business or offering the services of a vehicle towing service, whereby disabled motor vehicles are towed or otherwise removed from the place where they are disabled by a truck; automobile; or other vehicle so adapted to that purpose, such as tow truck dispatch centers; or in the business of storing disabled motor vehicles. Excluded are sales/rentals of vehicles (i.e. car dealerships) and junkyard or dismantling services.

**Vehicle repair—general.**

Major repair of automobiles, motorcycles, recreational vehicles, or trucks. Examples of use include body and fender shops; brake shops; full service motor vehicle repair garages; machine shops; painting shops; towing services; and transmission shops. Does not include vehicle dismantling or salvage and tire retreading or recapping.

**Vehicle repair—limited.**

Minor repair of automobiles, motorcycles, recreational vehicles, or light trucks, vans, or similar size vehicles. Examples of use include brake adjustments and repairs; installation of electronic equipment (e.g., alarms, stereos, etc.); servicing of cooling, electrical, fuel, and exhaust systems; oil and lube shops; tire sales and installation shops; wheel alignment and balancing; auto glass installation and services.

**Vehicle repair services.**

(1) Commercial vehicle repair includes uses that repair and maintain the mechanical components of the bodies of large trucks, mass transit vehicles, large construction or agricultural equipment, aircraft or boats. Commercial vehicle repair may also include general auto repair-type functions.

(2) General vehicle repair includes major repair of automobiles, motorcycles, recreational vehicles, or light trucks. Examples of use include body and fender shops; brake shops; full-service motor vehicle repair garages; machine shops; painting shops; towing services; and transmission shops. Does not include vehicle dismantling or salvage and tire retreading or recapping. General vehicle repair may also include limited vehicle repair-type functions.

(3) Limited vehicle repair includes minor repair of automobiles, motorcycles, recreational vehicles, or light trucks, vans, or similar size vehicles. Examples of use include brake adjustments and repairs; installation of electronic equipment (e.g., alarms, stereos, etc.); servicing of cooling, electrical, fuel, and exhaust systems; oil and lube shops; tire sales and installation shops; whe



## CITY COUNCIL STAFF REPORT

**Public Hearing Item No. 16**

**August 7, 2019**

**File No. 0810-20, 0680-50**

**SUBJECT:** Annual Code Clean-Up and Amendments to the Municipal and Zoning Codes (AZ 19-0003)

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

**RECOMMENDATION:**

It is requested that the City Council introduce Ordinance No. 2019-10, which amends Articles 1, 6, 9, 16, 26, 39, 57, 61, 65, 66, 67, 70, and 73 of the Escondido Zoning Code to address changes in state laws, correct errors, and improve existing regulations.

**PROJECT DESCRIPTION:**

The Project involves an annual review and update of various City codes and regulations to ensure that they stay current and up-to-date. The City proposes to amend the Zoning Code to correct minor errors in the text, incorporate code interpretations, and improve existing regulations to eliminate uncertainty for staff, customers, and the public.

**PLANNING COMMISSION ACTION:**

The Planning Commission makes recommendations to the City Council as authorized by the Escondido Municipal Code (Chapter 20) for potential amendments to the Zoning Code (Chapter 33). On June 25, 2019, the Planning Commission adopted Planning Commission Resolution No. 2019-12, recommending that the City Council approve the proposed Zoning Code Amendment, by a 5-0 vote (Commissioners McNair and Romo were absent). The June 25, 2019, Planning Commission staff report and draft-meeting minutes are included for reference as Attachment 1 and Attachment 2 to this report, respectively.

**ENVIRONMENTAL REVIEW**

The proposed Zoning Code Amendments are exempt from environmental review in conformance with California Environmental Quality Act Guidelines ("CEQA" and "CEQA Guidelines") Section 15061(b)(3) since there would be no possibility of a significant effect on the environment because the amendments will not directly result in development. Any future project or development as defined by CEQA that may occur as a result of the amended language would be subject to CEQA review and analysis. The scope of the changes being considered through this action includes corrective clerical errors or clarification of ambiguities.

**BACKGROUND:**

The Planning Division of the Community Development Department initiated a process and schedule for maintaining City codes and regulations through an annual omnibus code clean-up. The proposed

amendments affect many different sections of the Municipal Code and Zoning Code. The annual omnibus code clean-up is not intended to be a comprehensive update to the codes or to be utilized to change land use designations or zoning districts. Instead, the annual code clean-up process is meant to focus on relatively minor changes to the codes and regulations to make it easier for the public to understand and for staff to administer.

A number of code clean-up amendments have been combined into a single clean-up batch proposal, which helps promote organizational streamlining and efficiency to facilitate customer-based services.

### ANALYSIS:

For this year's cycle of the code clean-up, the suggested amendment list includes amendments to various articles of the Municipal Code and Zoning Code. Many of the proposed changes are self-explanatory consisting of grammar and punctuation corrections or simple updates to position titles to reflect those currently used by the City. The explanation for the proposed changes that require further explanation can be found below.

#### **1. New or revised definitions.**

These proposed amendments add or revise definitions for "building height," "flag lots," "horse stables," and "vending machines." These changes are necessary to establish parameters to understanding the term throughout the Zoning Code, as words that have common meanings in everyday usage may have different definitions in terms of zoning regulation.

#### **2. Setback standards for accessory structures that enclose animals.**

The absence of special regulation for animal enclosures means that such buildings and structures are regulated the same as all other buildings and structures. However, residential land uses involving animals, which are kept and bred primarily for personal use and recreation, may create unwanted impacts on surrounding properties. In consideration of the foregoing, the proposed Zoning Code Amendments help align animal enclosures so that there is equal protection, citywide, regardless of zone category type. Additional regulations are also proposed to ensure that the keeping and care of animals and the setbacks of animal enclosures achieves varying objectives of land use compatibility as well as the individual needs of neighborhoods regarding the quality of the environment. Such provisions can significantly impact the size and nature of principal and accessory uses, which are permitted within such districts.

It should be noted at the outset that this is not a recommendation that the keeping of livestock, even on a small domestic scale, is appropriate in all residential areas. It is not. Considering development density and open space, some large lots on rural or estate residential zones in outlying areas have greater potential to accommodate domestic livestock uses than urban fringe or suburban areas. Even so, conflicts can and have occurred between the residents of adjacent dwellings and existing or proposed small-scale livestock uses in rural areas of

relatively low density. It is essential that the City consider the nature of the zone in which a domestic livestock use would be permitted and the quantities allowed. For this reason, the quantities and types of animals permitted in each residential zone would return for Planning Commission discussion through a separate process at a later date when the issue can be more thoroughly analyzed and public can be more effectively engaged. The Planning Commission's recommendation would be forwarded to the City Council for final decision.

### **3. Off-street parking.**

Article 39 of the Escondido Zoning Code sets forth minimum number and minimum size requirements for individual parking spaces. With new land use development applications, City staff reviews the plans to ensure compliance with all City Zoning and engineering standards and regulations, including review and other applicable local and state regulations. Design standards for handicapped parking (stalls shall be provided in compliance with current requirements of the California Building Code and the American Disabilities Act (ADA). Often, when retrofitting spaces to accommodate ADA compliance, the number of parking spaces provided is reduced, which has caused some confusion among people responsible for providing parking. Furthermore, updates to standards to accommodate new recycling requirements (upsizing trash enclosure areas) and/or electric vehicle charging infrastructure will further frustrate property owners and provide a constraint to those seeking compliance. While standards for these improvements in parking lots are well known and clear standards exist, cities have not addressed what is required to be done where the parking is insufficient or when requirements do not exist. The proposed amendments create flexibility and allows minor reductions of parking at an administrative level.

### **4. Retail vending machines.**

The City currently lacks guidance regarding the minimum standards for the design, construction, and maintenance of retail vending machine equipment. The purpose of this amendment is to provide standards relative to the accessibility, appearance, and safety in regards to commercial vending.

The proposed Zoning Code Amendments would be consistent with the existing General Plan goals and policies. Goal 2 et seq. policies of the Land Use and Community Form portion of the General Plan addresses the need for regulations that clearly and effectively implement land use development goals and objectives. The basis of establishing and updating, as necessary, local standards and guidelines for land use activities ensures land use compatibility is achieved. The batch of amendments relate to organizational effectiveness and efficiency and are considered a housekeeping measure. The proposed Zoning Code changes would make the code more internally consistent and easier to understand and apply. The amendments make corrections, clarifications, and updates to improve the application process or how the codes are administered.

Annual Code Clean-Up and Amendments to the Zoning Code (AZ 19-0003)  
August 7, 2019  
Page 4

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Bill Martín*, Director of Community Development  
8/1/2019 8:48 p.m.

*Mike Strong*, Assistant Director of Planning  
8/1/2019 9:02 a.m.

ATTACHMENTS:

1. Attachment 1 – June 25, 2019 Planning Commission staff report
2. Attachment 2 – June 25, 2019 Draft Planning Commission Meeting Minutes
3. Ordinance No. 2019-10
4. Ordinance No. 2019-10 – Exhibits “A” and “B”

**ATTACHMENT 1**

**PLANNING COMMISSION STAFF REPORT**

**AZ 19-0003**

Due to the number of pages of Attachment 1, the following link has been provided to review the document electronically on the City's web site:

<https://www.escondido.org/Data/Sites/1/media/agendas/PC/2019/06.25.19PCAgendaPacket.pdf>

A hardcopy of the Attachment is available for review in the Office of the Planning Division during normal business hours. To obtain a copy, please contact the City Clerk at (760) 839-4617 or Planning Division at (760) 839-4671.

**CITY OF ESCONDIDO**

**ACTION MINUTES OF THE REGULAR MEETING OF THE  
ESCONDIDO PLANNING COMMISSION**

**June 25, 2019**

The meeting of the Escondido Planning Commission was called to order at 7:00 p.m. by Chairman Spann, in the City Council Chambers, 201 North Broadway, Escondido, California.

**Commissioners present:** James Spann, Chairman; Michael Cohen, Commissioner; Joe Garcia, Commissioner; Mark Watson, Commissioner; and Stan Weiler, Commissioner.

**Commissioners absent:** Don Romo, Vice-chairman; and James McNair, Commissioner.

**Staff present:** Mike Strong, Assistant Planning Director, Owen Tunnell, Principal Engineer; Adam Phillips, Senior Deputy City Attorney; and Kirsten Peraino, Minutes Clerk.

**MINUTES:**

Moved by Commissioner Weiler, seconded by Commissioner Cohen to approve the Action Minutes of the May 28, 2019 meeting. Motion carried (5-0-0). Ayes: Cohen, Garcia, Spann, Watson and Weiler. Noes: None. Absent: McNair and Romo.

**WRITTEN COMMUNICATIONS:** – None.

**FUTURE NEIGHBORHOOD MEETINGS:** – None.

**ORAL COMMUNICATIONS:** – None.

**PUBLIC HEARINGS:****1. ZONING CODE AMENDMENT – AZ 19-0001 (Continue to a date uncertain):**

REQUEST: A proposed amendment to Article 34 (Communication Antennas Ordinance) of the Escondido Zoning Code to update the requirements for wireless communication facilities within the right-of-way. The amendment includes an update to the entitlement process to streamline deployment of 5G networks and simplified language to be consistent with Federal Communications Commission Order. The proposal also includes new guidelines for wireless communications facilities in the right-of-way, as well as the environmental determination prepared for the project. No development project is proposed.

PROPERTY SIZE AND LOCATION: Citywide

ENVIRONMENTAL STATUS: Exemption under the General Rule, CEQA Section 15061(b)(3).

PUBLIC SPEAKERS: None.

**COMMISSION ACTION:**

Moved by Commissioner Garcia, seconded by Commissioner Watson to approve the staff's request for a continuance to a future date. Motion carried (5-0-0). Ayes: Cohen, Garcia, Spann, Watson and Weiler. Noes: None. Absent: McNair and Romo.

**2. ZONING CODE AND SPECIFIC PLAN AMENDMENTS – AZ 18-0006:**

REQUEST: A Zoning Code and Specific Plan Amendment to various sections of the Zoning Code and Specific Plans. In 2018, the City Council initiated a planning process to address various nonresidential land uses that tend to negatively impact surrounding properties. The overall work program, called the "Zoning Code and Land Use Study," was created to comprehensively examine the degree to which various land use activities are permitted within each zoning district. With the study complete, the first phase of the results were presented to the Planning Commission on May 28, 2019. The second phase of the results will be presented to the Planning Commission on June 25, 2019, involving a series of changes to Articles 1, 16, 26, 56, and 57 of the Escondido Zoning Code; and the land use tables of

the Downtown, East Valley, and South Centre City Specific Plans. The proposal also includes the adoption of the environmental determination prepared for the project.

PROPERTY SIZE AND LOCATION: Citywide

ENVIRONMENTAL STATUS: Exemption under the General Rule, CEQA Section 15061(b)(3).

**PUBLIC SPEAKERS:**

**Hailey Guiffrida**, (Vista Community Clinic) spoke in support of tobacco regulation

**MaryAnne Dijak**, spoke in support of tobacco/paraphernalia regulation.

**Yeraldin Montiel**, spoke in support of tobacco regulation.

**Lynda Barbour**, (American Cancer Society) spoke in support of tobacco regulation.

**Gene Knutson**, spoke in support of tobacco & other harmful products regulation.

**David Kubly**, (Director of Projects with Goodwill Industries) asked questions about the Land Use Codes and spoke in support of thrift stores in the Downtown Specific Plan.

**COMMISSIONER DISCUSSION AND QUESTIONS**

The Commissioners discussed various aspects of the project.

**COMMISSION ACTION:**

Moved by Commissioner Weiler, seconded by Commissioner Watson to approve the staff's recommendation with the modification to Section 33-1127 of the Escondido Zoning Code to increase the allowable amount of storage/sorting space. Motion carried (5-0-0). Ayes: Cohen, Garcia, Spann, Watson and Weiler. Noes: None. Absent: McNair and Romo.

**3. ZONING CODE AMENDMENT – AZ 19-0003:**

REQUEST: A series of Escondido Zoning Code Amendments to address changes in state laws, correct errors, and improve existing regulations. The proposal involves minor amendments to Articles 1, 6, 9, 16, 26, 39, 61, 65, 67, 70, and 73



of the Escondido Zoning Code. The proposal also includes the adoption of the environmental determination prepared for the project.

PROPERTY SIZE AND LOCATION: Citywide

ENVIRONMENTAL STATUS: Exemption under the General Rule, CEQA Section 15061(b)(3).

PUBLIC SPEAKERS: None.

#### COMMISSIONER DISCUSSION AND QUESTIONS

The Commissioners discussed various aspects of the project.

#### COMMISSION ACTION:

Moved by Commissioner Cohen and seconded by Commissioner Watson to approve staff's recommendation with the modification to Animal Enclosure regulations adding "front yard" setback standards and removing proposed subjective odor and dust standards. Motion carried (5-0-0). Ayes: Cohen, Garcia, Spann, Watson and Weiler. Noes: None. Absent: McNair and Romo.

#### ADJOURNMENT:

Chairman Spann adjourned the meeting at 8:07 p.m. The Planning Commission meeting scheduled for July 9, 2019 has been cancelled. The next regularly scheduled Planning Commission meeting will be held at 7:00 p.m. on Tuesday, July 23, 2019 in the City Council Chambers, 201 North Broadway Escondido, California.

  
\_\_\_\_\_  
Mike Strong, Secretary to the  
Escondido Planning Commission

  
\_\_\_\_\_  
Kirsten Peraino, Minutes Clerk

ORDINANCE NO. 2019-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING ARTICLES 1, 6, 9, 16, 26, 39, 57, 61, 65, 66, 67, 70, AND 73 OF THE ESCONDIDO ZONING CODE TO ADDRESS CHANGES IN STATE LAWS, CORRECT ERRORS, AND IMPROVE EXISTING REGULATIONS.

APPLICANT: City of Escondido  
PLANNING CASE NO.: AZ 19-0003

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

SECTION 1. That proper notices of a public hearing have been given and public hearings have been held before the Planning Commission and City Council on this issue.

SECTION 2. The Planning Commission conducted a public hearing on June 25, 2019, to discuss and consider proposed amendments to the Zoning Code, considered public testimony, and made a recommendation to the City Council.

SECTION 3. The City Council has duly reviewed and considered all evidence submitted at said hearings, including, without limitation:

- a. Written information;
- b. Oral testimony from City staff, interested parties, and the public;
- c. The staff report, dated August 7, 2019, which along with its attachments is incorporated herein by this reference as though fully set forth herein; and
- d. Additional information submitted during the Public Hearing.

SECTION 4. The City Council finds that the City's Municipal Code, Zoning Code, and Specific Plans need to be reviewed and amended periodically to address changes in State law, correct errors, and improve regulations.

SECTION 5. That upon consideration of the staff report, Planning Commission recommendation, Planning Commission staff report, all public testimony presented at the hearing held on this project, and the “Findings of Fact,” attached as Exhibit “A” to this Ordinance and incorporated herein by this reference as though fully set forth herein, this City Council finds the Zoning Code Amendments are consistent with the General Plan and all applicable specific plans of the City of Escondido. At this time, the City Council of the City Escondido desires to amend the Escondido Zoning Code to correct minor errors in the text, incorporate code interpretations, and improve existing regulations to eliminate uncertainty for staff, customers, and the public.

SECTION 6. This action is exempt from environmental review pursuant to California Environmental Quality Act Guidelines (“CEQA” and “CEQA Guidelines”) Section 15061(b)(3) since there would be no possibility of a significant effect on the environment because the amendments will not directly result in development. Any future project or development as defined by the CEQA that may occur as a result of the amended language would be subject to CEQA review and analysis.

SECTION 7. That the specified sections of the Escondido Zoning Code are amended as set forth in Exhibit “B” to this Ordinance and incorporated herein by this reference as though fully set forth herein

SECTION 8. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 9. That as of the effective date of this Ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 10. That the City Clerk is hereby directed to certify to the passage of this Ordinance and to cause the same or a summary to be prepared in accordance with Government Code Section 36933, to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the County and circulated in the City of Escondido.

## **EXHIBIT "A"**

### **FACTORS TO BE CONSIDERED / FINDINGS OF FACT**

#### Municipal Code and Zoning Code Amendment(s) Determinations:

1. Over the years, staff and customers have found certain sections of the Municipal Code and Zoning Code are vague, unclear, or conflicting, which results in confusion and disagreement in code interpretation. It is important that the City of Escondido review policies and procedures on an on-going basis to ensure a customer-focused government through transparent services and positive organizational culture.

The Planning Division maintains a regular process and schedule for maintaining the City's codes and regulations. Those issues that have been identified are being addressed as part of this clean-up effort, whereby all code amendments have been combined in a single batch, called an annual omnibus.

Additional items to correct or improve the Municipal Code or Zoning Code may be considered in the next annual omnibus code clean-up cycle.

2. The City Council's decision is based on factors pursuant to Section 33-1263 of the Escondido Zoning Code.
3. The public health, safety, and welfare would not be adversely affected by the proposed batch of Municipal Code or Zoning Code Amendments because they correct internal inconsistencies, improve readability, update references to other code sections or regulatory documents, codify prior interpretations, and make the code consistent with changing state or federal regulations.
4. The proposed batch of Municipal Code or Zoning Code Amendments would be consistent with the goals and policies of the General Plan because they address changes in state laws, correct errors, and improve existing regulations to eliminate uncertainty for staff, customers, and the public. This effort is not intended to be a comprehensive update to the local code or change land use densities or intensities.
5. The proposed Zoning Code amendment does not conflict with any specific plan.

## EXHIBIT "B"

### PROPOSED MUNICIPAL CODE AND ZONING CODE AMENDMENTS

#### AZ 19-0003

#### SECTION 1.

Amend the Chapter 32 of the Escondido Municipal Code to read as specified below. The changes are listed in order by section number, with ~~strikeout~~ typeface illustrating deletions and underline typeface illustrating new text.

#### ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS

**Sec. 33-8. Definitions.** New definitions to be inserted or replaced, maintaining the sequencing of the existing alphabetical order.

*Building.*

(2) *Building height (also structure height)* means the vertical distance measured from the average level of the highest and lowest point of that portion of the lot covered by the building or structure to the top of the roof; ~~provided that chimneys, spires, towers, tanks and similar projections shall not be included in the height of the building or structure.~~ When a basement element or underground structures exist or are proposed, height is measured from the finished grade (exterior grade adjacent to the structure) provided the finished grade is at or below the previous natural grade. All portions of the building/structure shall be located at or below the height limit of the underlying zone. Allowable projections listed in section 33-1075 need not be included in the building/structure height calculation.

*Lot means:*

(1) A parcel of real property shown as a delineated parcel of land with a number and other designation on the final map of subdivision recorded in the office of the county recorder of San Diego County; or

(2) A parcel of land, the dimensions or boundaries of which are defined by a record of survey maps recorded in the office of the county recorder of San Diego County in accordance with the law regulating the subdivision of land; or

(3) A parcel of real property not delineated as in subsection (1) or (2) of this definition, and containing not less than the prescribed minimum area required in the zone in which it is located and which abuts at least one (1) public street or easement which the planning commission has designated adequate for access purposes, and is held under one (1) ownership.

(4) The various definitions in this category are as follows:

(A) *Lot area* means the total area measured in a horizontal plane, included within the lot lines of a lot or parcel of land.

(B) *Corner lot* means a lot situated at the intersection of two (2) or more streets, which streets have an angle of intersection of not more than one hundred thirty-five (135) degrees.

(C) *Lot coverage* means the total horizontal area of a lot, parcel or building site covered by any building which extends more than three (3) feet above the surface of the ground level and including any covered car parking spaces. Covered patios shall not be considered as lot coverage provided that said patio is not more than fifty (50) percent enclosed.

(D) *Lot depth* means the horizontal length of a straight line connecting the bisecting points of the front and the rear lot lines.

(E) *Lot width* means the horizontal distance between the side lot lines measured at right angles to the line comprising the depth of the lot at a point midway between the front and rear lot lines.

~~(E)~~(F) *Cul-de-sac lot* means an interior lot taking access from and having frontage primarily on the bulb of a cul-de-sac.

~~(F)~~(G) *Flag lot* means a lot in the approximate configuration of a flag pole, panhandle, or sign post, with the pole or post functioning primarily as an access way to the main body of the lot from the street of access, meeting the requirements of section 33-1084. In determining setbacks for a flag lot, the handle or access portion of the lot shall not be used to determine building setbacks. Setbacks shall be determined as though no handle was on the lot.

~~(G)~~(H) *Front lot line* means a line separating an interior lot from a street, or a line separating the narrower street frontage of a corner lot from the street.

~~(H)~~(I) *Interior lot* means a lot other than a corner lot or reversed corner lot.

~~(I)~~(J) *Key lot* means the first lot to the rear of a reversed corner lot whether or not separated by an alley.

~~(J)~~(K) *Rear lot line* means the record lot line or lines most distant from and generally opposite the front lot line except that in the case of an interior triangular or gore-shaped lot, it shall mean a straight line ten (10) feet in length which is: (i) parallel to the front lot line or its chord; and (ii) intersects the two (2) other lot lines at points most distant from the front lot line.

~~(K)~~(L) *Reversed corner lot* means a corner lot, the side street line of which is substantially a continuation of the front lot line of the lot upon which the rear of said corner lot abuts.

~~(L)~~(M) *Side lot line* means any lot boundary line not a front lot line or a rear lot line.

~~(M)~~(N) *Through lot* means a lot having a frontage on two (2) parallel or approximately parallel streets.

#### Horse stable.

(1) *Private horse stable* means facilities for the keeping of horses, mules, donkeys or ponies for the use of the owners or lessees of the property and owners of the boarded animals.

(2) *Commercial horse stable* shall mean equestrian facilities such as, but not limited to, riding academies, riding rings, or training areas for horses, mules, donkeys or ponies which are rented, shown, used or boarded on a commercial basis for compensation. Accessory uses such as tack shops, on-site sale of food for people and animals, or similar uses may be permitted in conjunction with a commercial use permit. A commercial horse stable may include an office, employee break area, full bathroom and other associated areas or structures related to a commercial use. The temporary gathering of additional people and horses for a horse event,







<u>subject to sections 33-144(b) and 33-145.</u>								
<u>Barbeque pits, outdoor fireplaces, and grills</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Horse stable (commercial), subject to sections 33-144(b) and 33-145.</u>	<u>C</u>	<u>C</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>
<u>Horse stable (private), subject to sections 33-144(b) and 33-145.</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>

**ARTICLE 6. RESIDENTIAL ZONES.**

**Sec. 33-100. Side setback.**

**Table 33-100**

<b>Interior Side Setback Requirements</b>	<b>R-A</b>	<b>R-E</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>R-4</b>	<b>R-5</b>	<b>R-T</b>
Interior side setback width (feet)	10 <sup>1</sup>	10 <sup>1</sup>	5 <sup>1,2</sup>	5 <sup>4</sup>	5 <sup>3,4</sup>	5 <sup>3,4</sup>	5 <sup>3,4</sup>	5 <sup>1,5</sup>

Notes:

- 1 When used for access to a required parking facility, the drive aisle clearance shall be wide enough for a 10-foot-wide, unobstructed, paved driveway. The minimum width shall be increased to 16 feet with an approved turnaround (large enough to accommodate fire trucks) for driveways longer than 150 feet.
- 2 If the lot or parcel does not abut an alley, one such side setback shall be at least 10 feet in width.
- 3 An additional 5-foot setback shall be provided on each side of a lot or parcel of land for each story over 2 of a principal building, with a maximum requirement for any such side setback of 15 feet. Exception: The additional, 5-foot set-back standard does not apply to the third-story immediately above an enclosed, off-drive parking space on a lot or parcel in the R-4 or R-5

Zone with a lot width of 50 feet or less. Said exception is allowed provided that the building still maintains a setback from the side lot line or other structures as required by the California Building Code for fire separation.

- 4 A driveway that serves 2 homes has a minimum width of 20 feet. A driveway that provides a parking facility housing 3 homes or 9 or more vehicles with access to a street or alley shall be at least 24 feet wide, unless the parking facility is served by 2 one-way drives, in which case each driveway shall be at least 12 feet wide. All driveways shall have a height clearance of at least 13 feet, and shall be paved with cement, asphaltic concrete, or other construction material(s) to the satisfaction of the Director of Community Development.
- 5 Title 25 provisions shall apply where appropriate.

## **ARTICLE 6. RESIDENTIAL ZONES.**

### **Sec. 33-102. Accessory buildings side setback and building requirements.**

(i) Accessory dwelling units shall conform to the side yard setback requirements of the underlying residential zone ~~for the primary structure~~, unless otherwise permitted by Article 70.

## **ARTICLE 6. RESIDENTIAL ZONES.**

### **Sec. 33-103. Accessory buildings rear setback and building requirements.**

(g) Accessory dwelling units, shall conform to the  ~~aforementioned~~ rear yard setback requirements of the underlying residential zone ~~for the accessory building~~, unless otherwise permitted by Article 70.

## **ARTICLE 6. RESIDENTIAL ZONES.**

### **Sec. 33-104. Projections into setbacks (single- and multi-family zones, excluding R-T zone).**

(a) The following structures may be erected or projected into any required setback in all residential zones (excluding the R-T zone):

- (1) Fences and walls in accordance with codes or ordinances;
- (2) Landscape elements, including trees, shrubs and other plants, except that no hedge shall be grown or maintained at a height or location other than that permitted by city codes or ordinances;
- (3) Necessary appurtenances for utility services;
- (4) Ground-mounted mechanical equipment, including heating and air conditioning units, provided the auxiliary structure is at least three (3) feet to interior side and rear lot lines, provided such units are screened from the street or adjoining lot by a sight obscuring fence or planting;
- (5) Pools and pool equipment, subject to Article 57.

(6) Barbeque pits, outdoor fireplaces, and grills with the prior approval of the fire chief or designee. Structures shall still maintain a front yard setback consistent with the underlying zone, and a side yard and rear yard setback as required by the California Building Code for fire separation. Incinerators, outdoor fireplaces, barbecues and grills shall not be built, installed, or maintained near combustible materials or in hazardous fire areas without prior approval of the city.

## **ARTICLE 9. ANIMAL OVERLAY (AO) ZONE.**

### **Sec. 33-144. Animal enclosures.**

(b) Animal enclosures are defined as pens, coops, hutches, stables, corrals and similar structures used for the keeping of poultry or animals.

(1) That the location, size, and design of the animal enclosure(s) will be compatible with adjacent uses, residences, buildings or structures, with consideration given to the suitability of the site for the number of animals proposed on the premises, and the harmful effect, if any, upon desirable neighborhood character.

(2) Animals shall be provided with adequate living facilities including an enclosed paddock, corral or stall, etc. for keeping. Such area shall be located within an animal enclosure or stable. Paddocks, corrals or stalls for horses and large animals shall have enough room for the animal to move about and lay down without restriction.

(3) An animal enclosure shall be maintained to standard best management practices in compliance with the grading, stormwater, and watershed protection ordinances.

(4) Manure Management. The area shall be kept in a clean and sanitary manner by the daily removal of manure to a manure management area from all usable areas to prevent the accumulation of flies, the spread of disease, or offensive odor. Manure shall be kept in the manure management area in a covered or enclosed bin or container unless being composted. Manure shall be removed from the property a minimum of every other week or properly composted onsite. The manure management area shall meet animal enclosure setbacks.

## **ARTICLE 9. ANIMAL OVERLAY (AO) ZONE**

### **Sec. 33-145. Animal enclosure setback requirements.**

(a) Animal enclosures shall be set back from property lines as follows:

(1) Front yard: twenty-five (25) feet in the R-A and R-E Zones and fifteen (15) feet in the R-1, R-2, R-3, R-4, and R-5 Zones;

(2) Side yard: fifteen (15) feet; and

~~(2)~~(3) Rear yard: ten (10) feet.

(b) Animal enclosures shall be set back from any residence twenty (20) feet.

(c) Additional setbacks shall be required for a private horse stable and commercial horse stable as follows:

(1) All storage areas of materials related to the horse stable use and parking shall meet the animal enclosure setbacks, this includes trailer parking, loading and delivery areas, hay storage, etc.

(2) Any structure permitted as part of a commercial horse stable that is over 1000 square feet in area shall meet a minimum twenty-five (25) foot setback from all property lines. Such structures include barns, hay barns, covered arenas, covered riding areas, stables and other structures.

**ARTICLE 16. COMMERCIAL ZONES.**

**Sec. 33-332. Principal land uses.**

**Table 33-332. PERMITTED AND CONDITIONALLY PERMITTED LAND USES**

Use Title	CG	CN	CP
Food stores (grocery, produce, candy, baked goods, meat, delicatessen, etc., with or without off-sale beer and wine, off-sale general license excluding concurrent sale)	P	P	---
<del>With facilities to dispense gasoline to 4 or fewer vehicles at a time* (Article 57)</del>	<del>P</del>	<del>---</del>	<del>---</del>
<del>With facilities to dispense gasoline to 5 or more vehicles at a time* (Article 57)</del>	<del>C#</del>	<del>---</del>	<del>---</del>
Gasoline sales or service stations including concurrent sale of alcoholic beverages and motor vehicle fuel* (Articles 57 and Council Resolution #5002)	<u>C#</u>	<u>---</u>	<u>---</u>
<del>With facilities to dispense gasoline to 4 or fewer vehicles at a time</del>	<del>P</del>	<del>---</del>	<del>---</del>
<del>With facilities to dispense gasoline to 5 or more vehicles at a time</del>	<del>C#</del>	<del>---</del>	<del>---</del>

**ARTICLE 16. COMMERCIAL ZONES.**

**Sec. 33-333. Permitted accessory uses and structures.**

**Table 33-333. PERMITTED ACCESSORY USES AND STRUCTURES**

<b>Use Title</b>	<b>CG</b>	<b>CN</b>	<b>CP</b>
Vending machines* (Article 33 for recycling and Article 73 for outdoor retail)	P	P	P

**ARTICLE 26. INDUSTRIAL ZONES.**

**Sec. 33-565. Permitted accessory uses and structures.**

**Table 33-565. PERMITTED ACCESSORY USES AND STRUCTURES.**

<b>Use Title</b>	<b>I-O</b>	<b>M-1</b>	<b>M-2</b>	<b>I-P</b>
Reverse vending machines* (Article 33)	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

**ARTICLE 39. OFF-STREET PARKING**

**Sec. 33-763. Nonconforming facilities.**

Any use of property which, on the effective date of this article or of any subsequent amendment thereto, is nonconforming only as to the regulations relating to off-street parking facilities may continue in the same manner as if the parking facilities were conforming. Such existing facilities shall not be further reduced, except when necessary to meet federal, state or regional requirements, such as to accommodate updated standards related to the Americans with Disabilities Act (ADA), retrofitting existing dumpster areas for refuse collection, and/or accommodating electrical vehicle charging infrastructure. When the updating of parking facilities to meet ADA standards results in fewer parking spaces than required by section 33-765, the reduced parking shall not be considered when determining if a property is nonconforming pursuant to Article 61, Division 3 of this chapter.

## **ARTICLE 39. OFF-STREET PARKING.**

### **Sec. 33-764. Adjustments to residential or nonresidential parking.**

(a) Administrative Adjustment. For uses in nonresidential zones, adjustments up to twenty-five (25) percent of the number of parking spaces required by section 33-765 may be considered by the director upon the submittal of an application for an administrative adjustment with the application fee adopted by city council. The director may approve or conditionally approve the request upon demonstration that the proposed adjustment will be compatible with adjacent properties or improvements. The director will consider the following: proximity to public transit; on-street and/or overflow parking; and the range of uses in the area. The director shall give notice of his or her intended decision as outlined in Article 61 of this chapter. Multiple requests for reductions of required parking spaces may be considered when the total of all requests for reductions related to the subject property does not exceed twenty-five (25) percent of the overall number of parking spaces required for the entire property.

(b) Minor Conditional Use Permit. For uses in nonresidential zones, a request to provide fewer than seventy-five (75) percent of the parking spaces required by section 33-765 may be considered by the zoning administrator upon the submittal of an application for a minor conditional use permit pursuant to Article 61, Division 1, with the application fee adopted by city council. The zoning administrator may approve or conditionally approve the request upon demonstration that the proposed reduction will be compatible with adjacent properties, uses and improvements; the development is in close proximity to public transit; and the number of parking spaces provided is suitable for the mix of uses proposed. The zoning administrator may require additional information with the application, including, but not limited to, a market demand study or report that substantiates the appropriateness of the requested parking reduction.

(c) The minimum required parking spaces for any existing development may be reduced by minor plot plan as necessary by the director to accommodate updated standards related to federal accessibility requirements (Americans with Disabilities Act), retrofitting existing dumpster areas for refuse collection, and/or accommodating electrical vehicle charging infrastructure.

(d) Major Conditional Use Permit. Unbundling any amount of parking or other means to separate the cost to rent a parking space from the cost of renting an apartment or condo.

## **ARTICLE 57. MISCELLANEOUS DEVELOPMENT STANDARDS.**

### **Sec. 33-1075. Permitted structures in excess of height limit.**

Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, fire or parapet walls, roof-level architectural screening devices, roof-top gardening storage areas and/or equipment, skylights, towers, church steeples, flagpoles, chimneys, smokestacks, silos, water tanks, windmills, windbreaks, wireless masts or other similar structures (subject to the provisions of Article 34 (Communication Antennas)) Antennas) may be erected above the height limits established for the various zones provided that no portion of the structure in excess of the allowable building height

shall be used for sleeping or eating quarters, nor shall such portion of the structures in excess of the allowable building height be used for the purpose of providing additional habitable floor space or be deemed as an excessive or unreasonable use of space that creates an unnecessary aesthetic impact on surrounding properties (as determined by the director of community development).

## **ARTICLE 61. ADMINISTRATION AND ENFORCEMENT.**

### **Sec. 33-1300. Notification of surrounding property owners.**

The following provisions shall govern all notices of public hearing or public notices. Such notices shall be given as follows, unless noted otherwise:

(a) For notices of public hearings, the notice shall be published at least ten (10) calendar days before the hearing at least once in a newspaper of general circulation in the community. Such notice shall include a general explanation of the matter to be considered, the time, date and place of the hearing, the hearing body or officer, and any subject property.

(b) For notices of intended decision ~~and other public notices~~, the matter shall be published at least ten (10) days before the action at least once in a newspaper of general circulation in the community. Such notice shall include a general explanation of the matter to be considered and other information required pursuant to subsection (a) of this section. The findings, determination, or order contained in that notice will be declared as final on the date of noticed decision unless appealed as provided by the procedures commencing at section 33-1303.

## **ARTICLE 65. OLD ESCONDIDO NEIGHBORHOOD.**

### **Sec. 33-1374. Conditional uses.**

(d) ~~Staff and~~The planning commission shall evaluate all conditional use permits against the criteria set forth in Article 61 of this zoning code. In addition, those conditional use permits pursuant to section 33-1374(b) shall be subject to the following:

(1) Hours of operation shall be from 7:00 a.m. to 11:00 p.m.

(2) Adaptive reuse shall conform to design guidelines for historic resources. Every project for adaptive reuse will be subject to design review to assess appropriateness of the proposed use and any proposed changes in relation to the area, the building and the site.

(3) Parking for employees shall be provided on site at a ratio of one (1) parking space per three hundred (300) square feet of the office area.

Curbside parking with a two (2) hour limit will be provided for customer parking. The city will provide parking stickers for residents.

(4) Noise and lighting standards shall be the same as for residential areas.

(5) Signs shall conform to section 33-1379 of this article



## **ARTICLE 66. SIGN ORDINANCE.**

### **Sec. 33-1396. General use signs.**

(a) Special event signs. Commercial grand opening and similar signs may be approved by the director for a limited period of time in the COCG (general commercial) and CN (neighborhood commercial zones) and for specific uses in the M-I (light industrial) and M-2 (general industrial) zones, as a means of publicizing grand openings and special events such as new management and promotional sales. In addition, special event signs are also allowed for private schools, day care centers and churches regardless of the zoning. The regulation and limitation of the signs shall be as follows:

## **ARTICLE 67. DENSITY BONUS AND RESIDENTIAL INCENTIVES.**

### **Sec. 33-1412. Implementation.**

(a) Any developer requesting a density bonus and any incentive(s), waiver(s), or parking reductions provided by State Density Bonus Law shall submit a density bonus report as described below. The density bonus report shall not exceed the reasonable documentation standards of state law. The requests contained in the density bonus report shall be processed concurrently with the planning application for the first ~~discretionary~~ permit required for the housing development and shall include the following information:

## **ARTICLE 67. DENSITY BONUS AND RESIDENTIAL INCENTIVES.**

### **Sec. 33-1412. Implementation.**

(b) For projects proposing a density bonus:

(1) The city shall grant, according to Government Code Section 65915, a density bonus and/or concession(s) or incentive(s), waiver(s) or reductions of development standards and parking ratios, or financially equivalent incentive(s) as required by State Density Bonus Law. Each housing development is entitled to only one (1) density bonus. If a housing development qualifies for more than one (1) density bonus based on the number of target units provided, or as otherwise granted under State Density Bonus Law, the developer shall select the category under which the density bonus is granted and may not combine bonus density calculations.

(2) In order to qualify for this bonus, a housing development must consist of five (5) or more dwelling units, including mixed use developments, except those housing developments located within the ~~Centre City residential area~~ South Centre City Specific Plan, ~~as defined in the city's General Plan~~, may consist of three (3) dwelling units to qualify for this bonus. In determining the total number of units to be granted, a developer for a housing development must seek and agree to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this article, that will contain at least any one (1) of the following target households:

## **ARTICLE 67. DENSITY BONUS AND RESIDENTIAL INCENTIVES.**

### **Sec. 33-1412. Implementation.**

- (c) For projects not proposing a density bonus:
  - (1) The city shall grant concessions or incentives as detailed in section 33-1415 of this article.
  - (2) In order to qualify for the listed concessions or incentives, a housing development must consist of five (5) or more dwelling units, except those housing developments located within the ~~Centre City residential area~~ South Centre City Specific Plan may consist of three (3) dwelling units to qualify for the concessions or incentives. All housing developers requesting incentives must meet the criteria listed in 33-1412(b).

## **ARTICLE 67. DENSITY BONUS AND RESIDENTIAL INCENTIVES**

### **Sec. 33-1414. Project application procedure.**

(a) Density Bonus Projects. After notification to the applicant regarding the city's determination on the preliminary application review and/or granting additional concessions or incentives, or waiver of development standard(s), the applicant may submit the development application, which shall be subject to a separate ~~discretionary~~ permit. The proposal shall be submitted in conjunction with a subdivision map, conditional use permit application or planned development application. All appropriate requirements shall be delivered to the planning division in order for the application to be deemed complete. Not later than thirty (30) calendar days after the city has received the planning application, the planning division shall notify the developer in writing whether the application is complete as required by Government Code Section 65943.

At time of application, a notice shall be posted on the project site detailing a general description of the proposal in conformance with section 33-1300 of this chapter.

## **ARTICLE 67. DENSITY BONUS AND RESIDENTIAL INCENTIVES**

### **Sec. 33-1416. Requirements for participation.**

- (a) In order for a developer to participate in the program and be eligible for the density bonus and additional concessions, incentives or financially equivalent incentives, or residential incentives, the following requirements must be met:
  - (1) The developer/property owner shall restrict target units for the prescribed time period, the number of units by bedroom size which are designated for target households, unless transferred through a land donation as described in this article. A unit shall be counted toward meeting this requirement if it is either vacant and held out for rent/sale at affordable housing costs to low- or moderate-income households or occupied by a senior household or other target

household as defined by this article. Priority shall be given to target households that do not receive other housing subsidies.

(A) The units described in this section shall be subject to a recorded affordability restriction of fifty-five (55) years.

(B) The target units must be compatible in floor plan, furnishings and exterior design to non-target units. The exterior appearance, interior finishes, and resident amenities shall be comparable to the market-rate units in the same housing development. Further, the target units must be reasonably dispersed throughout the development.

(C) If the development proposes a phased building plan, a proportionate share of target units shall be constructed in each phase. Otherwise, the city shall not issue building permits for more than fifty (50) percent of the market-rate units until it has issued building permits for all of the target units, and the city shall not approve any final inspections or certificates of occupancy for more than fifty (50) percent of the market rate units until it has issued certificates of occupancy for all of the affordable units.

(D) The number of bedrooms shall at least equal the minimum number of bedrooms of the market-rate units. For non-senior projects involving five (5) to nine (9) units, or three (3) to nine (9) units in the ~~Centre City residential area~~ South Centre City Specific Plan, exclusive of the target units, and which receive incentives in addition to the minimum required by State Density Bonus Law, all target units shall be two (2) bedrooms or larger in size.

## **ARTICLE 70. ACCESSORY DWELLING UNITS.**

### **Sec. 33-1472. Permitted zones.**

Accessory dwelling units shall be permitted in the RA, RE, R1, R2, R3, ~~and R4~~, and R5 zones on properties with only one (1) single-family residence on the lot, subject to the approval of an accessory dwelling unit permit. Accessory dwelling units within the Old Escondido Neighborhood shall observe the same standards and review procedures required of similar building expansions in that neighborhood. Accessory dwelling units shall not be permitted on property developed in a planned development zone or as a part of a planned unit approval, unless approved as a part of the original PD or PUA and the subject lot is not less than six thousand (6,000) square feet in size.

## **ARTICLE 70. ACCESSORY DWELLING UNITS.**

### **Sec. 33-1474. Development standards.**

(d) Setbacks. ~~Attached accessory~~ Accessory dwelling units shall conform to the setback requirements of the underlying residential zone for the primary structure. Detached accessory dwelling units, other than those structures otherwise regulated within this section, may have a building height and setbacks as outlined for accessory residential structures of the underlying zone.

## ARTICLE 73. OUTDOOR DISPLAY AND SALE OF RETAIL MERCHANDISE

### Sec. 33-1533. Permitted uses.

- (a) Outdoor display.
- (1) The following items are acceptable for outdoor display if permitted by the applicable zone in which the associated business is located.
- (T) Retail vending machines

### Sec. 33-1534. Development standards.

All outdoor displays of retail merchandise and temporary outdoor sales shall be subject to the following development standards:

(d) Outdoor retail vending machines. Outdoor retail vending machines are allowed in all commercial zones subject to the following standards:

(1) Retail vending machines shall not sell, store, or dispense anything other than the commercial products, merchandise, food or beverages permitted by the underlying zone or authorized by the Escondido Municipal Code.

(2) Retail vending activities may be established only in conjunction with an otherwise allowed and authorized principal land use activity and may not exceed a maximum of two (2) machines per site or occupy not more than twenty (20) feet of the wall facing the street or access drive.

(3) Retail vending machines shall be located along the face of a building or flush against a structure designed to accommodate them and be located on the site in a manner which will ensure compatibility with surrounding uses. The machine(s) shall not be within ten (10) feet of an entranceway to any business open to the public nor block any store window.

(4) All machines shall be visible in well-lit areas from access drives or public streets and be maintained in a litter free condition.

(5) Retail vending machines shall not obstruct private pedestrian walkways. A minimum four (4) foot wide pedestrian area remains clear and unobstructed and all fire, building and handicapped access requirements shall be kept clear of obstructions, or more if pedestrian traffic volume warrants.

(6) Retail vending machines are not allowed on public sidewalks, alleys, drive-aisles, or within the public right-of-way.

(7) The business owner or operator of said principal land use activity is responsible for the accessibility, maintenance, appearance, and safety in regards to retail vending.

(8) Business owner or operator shall not utilize or permit the utilization of any device which produces loud noise, or use and operate any loudspeaker, public address system, radio, sound amplifier, or similar noise creating device to attract the attention of the public, subject to the noise restrictions of the underlying zone.



## CITY COUNCIL STAFF REPORT

Public Hearing Item No. 17

August 7, 2019

File No. 0440-65, 0690-20, 0875-20

**SUBJECT:** Sale of Windsor Gardens Apartments and Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing

**DEPARTMENT:** City Manager's Office  
Community Development Department, Housing & Neighborhood Services Division  
Engineering Services Department, Real Property Division

**RECOMMENDATION:**

It is requested that the City Council take the following actions regarding Windsor Gardens Apartments:

- 1) Adopt Resolution No. 2019-117 approving the various agreements related to the sale, transfer of ground lease and financing of the Windsor Gardens Apartments, located at 1600 W. Ninth Avenue ("Property"), to Windsor Gardens Housing Associates, L.P. ("CHW").
- 2) Adopt Resolution No. 2019-118 approving an affordable housing loan to CHW in support of the acquisition.
- 3) Conduct a public hearing pursuant to the Tax Equity and Fiscal Responsibility Act ("TEFRA") to approve the issuance of one or more series of revenue bonds in an aggregate principal amount not to exceed \$26,000,000 (the "Bonds") by the California Municipal Finance Authority (the "CMFA") including but not limited to revenue bonds issued as part of a plan to finance the project and adopt Resolution No. 2019-119 approving CMFA's issuance of revenue bonds.
- 4) Adopt Resolution No. 2019-120 authorizing the execution of a Subscription Agreement and the future purchase of tax-exempt bonds.

**FISCAL ANALYSIS:**

Both the General Fund and the Low- and Moderate-Income Housing Asset ("Affordable Housing") Fund will be affected by the sale of the affordable housing development. The City of Escondido ("City") owns the land as a General Fund asset upon which the Windsor Gardens Apartment project was constructed by Escondido Senior Housing Corporation ("ESHC"). Currently, the City leases the land to ESHC at a nominal rent. In 2010, the City issued ESHC an affordable housing loan with Affordable Housing funds requiring long-term affordability restrictions on the development. ESHC wishes to sell their interest in the Property. The City entered into an Exclusive Negotiating Agreement ("ENA") with CHW to negotiate the sale of the Property in 2018.

An appraisal of the Property determined the fair market value to be \$14,900,000. CHW has proposed a purchase price of \$14,900,000. Total development costs, including acquisition and rehab of the Property, are anticipated to be approximately \$26,630,000. The existing Affordable Housing loan would be repaid from funds held by ESHC and a new \$900,000 Affordable Housing loan ("SHA Loan") will be made to CHW. The General Fund will hold a seller carryback note ("Seller Note") for the purchase price.

CHW will apply for Low Income Housing Tax Credit financing (“4% Tax Credits”) for the rehabilitation of the Property. These funds will be loaned to the project when the investment partner enters into the limited partnership. The City General Fund would receive \$3,973,000 in cash payments by the close of tax credit financing in January 2020. CHW will apply to the Federal Home Loan Bank for a \$1,300,000 Affordable Housing Program (“AHP”) grant. If they receive this award, these additional funds will be used to pay down the Seller Note when construction is completed and permanent financing is secured for the Property.

The remaining balance of \$10,927,000 will be repaid to the City General Fund from residual receipts over 55 years as evidenced by a promissory note secured by a deed a trust. The interest rate on the note would be at the Applicable Federal Rate (“AFR”) determined at the time of close of escrow.

Issuance of revenue bonds for the project by CMFA has no fiscal impact to the City. After the City Council public hearing, and adoption of Resolution 2019-119 to approve the issuance of revenue bonds by CMFA, CMFA will conduct its own process to issue the bonds, and investors will look only to CHW for repayment of the bonds. The City, therefore, has no financial or legal obligation, nor liability or responsibility for this project or the repayment of the bonds issued pursuant to this Resolution.

#### PREVIOUS ACTION:

On January 12, 1977, the City Council adopted Resolution No. 77-8 authorizing a fifty-year ground lease of City owned land in the vicinity of Ninth and Hale Avenue to ESHC for the purpose of constructing the Windsor Gardens Apartments as a senior housing project with affordable rents for low-income seniors.

On June 16, 2010, the Community Development Commission of the City of Escondido (“CDC”) adopted Resolution CDC No. 2010-04 authorizing a loan not to exceed \$915,000 from the affordable housing fund to ESHC for the Windsor Gardens apartments to pay off an existing first mortgage.

On January 25, 2012, the City Council adopted Resolution No. 2012-16 electing to serve as the Successor Housing Agency of the CDC (“SHA”).

On October 10, 2018, the City Council adopted Resolution No. 2018-163R authorizing the Mayor and City Clerk to execute a Memorandum of Understanding (“MOU”) with the ESHC and an ENA with CHW regarding the potential sale of the Property.

#### BACKGROUND:

Windsor Gardens is built on property owned by the City of Escondido and leased to ESHC, a non-profit corporation that improved the site with 130 senior affordable rental units with two manager’s units in 1977. The land lease with the City stated that the improvements are to revert back to City ownership at the expiration of the lease on December 31, 2026.

Due to specific federal Department of Housing and Urban Development (HUD) rules regarding rent increases, the project did not have sufficient reserves to begin the necessary rehabilitation of the units. ESHC requested that the CDC assist the project by making an Affordable Housing fund loan to pay off the existing first mortgage, releasing the HUD covenants and making the Property subject to redevelopment law.

The 2010 Affordable Housing Fund loan refinanced Windsor Gardens, but did not include funds for the rehabilitation of the Property. Funds for rehabilitation were anticipated to come from an increased cash flow for the project. Several of the four-plexes were renovated, ADA site issues were addressed, as were stormwater conditions and site lighting. The slow pace of rehabilitation necessitated by the funding model proved difficult, and in 2016, the ESHC began to explore options regarding the long-term ownership of Windsor Gardens.

On October 10, 2018, the City Council approved an MOU between the City and ESHC that contained several restrictions on the potential sale. These restrictions included limits on displacement, annual rent increases for current residents, and commitments regarding future social services. Additionally, ESHC will retain sufficient assets to meet its outstanding obligations including, but not limited to, wind-up and dissolution activities and a \$15,000 charitable contribution(s) in furtherance of its charitable purposes. The City Council also approved an Exclusive Negotiating Agreement (ENA) with CHW to facilitate their due diligence on the Property.

CHW has completed its due diligence on the acquisition and rehabilitation of Windsor Gardens, completing a physical needs assessment and a pro forma for the sale and rehabilitation. The pro forma has been analyzed by Keyser Marston Associates (“KMA”). KMA’s analysis is provided for reference as Attachment 1. CHW’s proposal is identical to their initial offer in 2018 prior to the results of the physical needs assessment. CHW has proposed purchasing the Property with the Seller Note from the City. CHW will apply for 4% tax credits in August of 2019 which will provide most of the funds to rehabilitate the Property. CHW also will apply for AHP in the spring of 2020.

### Sale of Property and City Loan

In order to apply for Federal Tax Credits, CHW must have site control over the Property. The City will sell the Property to CHW in August in exchange for a Seller Note to the City secured by the Property and a new Affordable Housing Fund Loan. The proposed purchase and sale agreement, transfer agreement and approvals of other related documents are provided in Resolution No. 2019-117, subject to approval by City Attorney’s office. The Seller Note will be a 55-year residual receipt note accruing interest at the Applicable Federal Rate (AFR), which is currently 2.33%. Debt not repaid during the 55-year term of the loan will be repaid at maturity. This sale will allow CHW to take over management of the Property as soon as feasible provide additional social services to the residents.

### Affordable Housing Fund Loan

ESHC refinanced the Property in 2010 with an affordable housing loan from the CDC. ESHC is now able to pay off the loan and accrued interest with cash held by the project. Staff recommends entering

into a new Affordable Housing Loan Agreement (AHA) with CHW, using funds received from repayment of the 2010 loan and approximately \$23,000 in new funds from the Affordable Housing fund. The AHA will include a new \$900,000 loan with a 55-year residual receipts promissory note with 3% simple interest. The proposed AHA is provided in Resolution No. 2019-118, subject to approval by City Attorney's office. The AHA loan will pay down a portion of the Seller Note. Through this process, the 2010 Regulatory Agreement will be terminated and new covenants reflecting the modified terms of the MOU will be recorded.

### Other Financing

CHW will apply for non-competitive 4% Tax Credits and tax-exempt revenue bonds in order to fund the rehabilitation of the project. Approval of this debt will occur in October 2019. The investment partner will enter into the partnership at syndication in January 2020. In order to meet the restrictions of the tax-exempt bonds, at least 50% of the funding during construction must be provided through tax-exempt bonds. The City Seller Note is not tax-exempt debt. CHW has therefore proposed that the City purchase a portion of the bond offering (the City will not be the bond issuer) in order to convert the City's Seller Note to tax-exempt debt. The City will enter into a Subscription Agreement for the purchase of the bonds as provided in Resolution No. 2019-120. The Property will be used as collateral for the bond debt.

Additionally, CHW will apply for competitive AHP funds in March 2020. If funds are granted, the City will receive an additional \$1,300,000 payment on the City's Seller Note after construction, currently anticipated in October 2021.

### TEFRA Hearing

Windsor Gardens Housing Associates, L.P. or a partnership created by Community HousingWorks (the "Developer"), consisting at least of the Developer or a related person to the Developer and one or more limited partners, has requested that the California Municipal Finance Authority (the "Authority") issue one or more series of revenue bonds in an aggregate principal amount not to exceed \$26,000,000, including but not limited to revenue bonds issued as part of a plan to finance the project described herein for the acquisition and rehabilitation of the project, a 132-unit multifamily rental housing facility to be owned and operated by the Borrower.

In order for the interest on the Bonds to be tax-exempt to investors, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), requires that an "applicable elected representative" of the governmental unit, in the geographic jurisdiction where the site of facilities to be financed with the proceeds of the Bonds is located, hold a public hearing on the issuance of the Bonds and approve the issuance of the Bonds following such hearing.

The City of Escondido is a member agency of CMFA, who has the authority to serve as the issuer of these tax-exempt revenue bonds, to obtain funds to make loans to finance projects for healthcare, education, cultural facilities and waste-to-energy. The CMFA was created on January 1, 2004, and is a public entity, separate and apart from its members, so the debts, liabilities and obligations of



CMFA do not constitute debts, liabilities or obligations of its members. CMFA provides that any member may withdraw from the Agreement upon written notice to the Board of Directors of the CMFA at any time.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Jay Petrek*, Assistant City Manager  
8/1/2019 9:53 a.m.

*Bill Martin*, Director of Community Development  
8/1/2019 10:37 a.m.

*Owen Tunnell*, Assistant City Engineer  
7/31/2019 6:28 p.m.

ATTACHMENTS:

1. Attachment 1 - KMA Analysis of Windsor Gardens pro forma
2. Resolution No. 2019-117 Authorizing Purchase and Sale Agreement and Related Financing
3. Resolution No. 2019-117 Exhibit A: Transfer Agreement
4. Resolution No. 2019-117 Exhibit B: Agreement for Purchase and Sale of Real Property
5. Resolution No. 2019-118 Authorizing Affordable Housing Loan Agreement
6. Resolution No. 2019-118 Exhibit A: Affordable Housing Loan Agreement
7. Resolution No. 2019-119 Approving CMFA to Issue Revenue Bonds
8. Resolution No. 2019-120 Authorizing Execution of a Subscription Agreement
9. Resolution No. 2019-120 Exhibit A: Subscription Agreement

## SUMMARY TABLE

**TOTAL PAYMENTS TO CITY/CDC  
WINDSOR GARDENS  
CITY OF ESCONDIDO**

<b>I.</b> Repayment of Existing CDC Loan by ESHC	\$877,000
<b>II.</b> Upfront Cash Payment to City General Fund	\$3,009,000
<b>III.</b> Total Cash Payment to CDC/City	\$3,886,000
<b>IV.</b> <i>Payments During 55-Year Loan Term(s)</i>	
<i>Payments Years 1-55 (new SHA Loan)</i>	\$1,464,000
<i>Lump Sum Payoff at end of Loan (new SHA Loan)</i>	<u>\$0</u>
<i>Subtotal</i>	\$1,464,000
<i>Payments Years 1-55 (City Seller Note)</i>	\$16,241,000
<i>Lump Sum Payoff at end of Loan (City Seller Note)</i>	<u>\$23,593,000</u>
<i>Subtotal</i>	\$39,834,000
<i>Total</i>	\$41,298,000
<b>V.</b> Present Value of Share of Future Surplus Cash Flow <sup>(1)</sup>	
Payments toward New SHA Loan	\$278,000
Payments toward City Seller Note <sup>(2)</sup>	<u>\$839,000</u>
Total	\$1,117,000
<b>VI. Total Value to CDC/City (III + V) <sup>(3)</sup></b>	<b>\$5,003,000</b>

(1) Present value of surplus cash flow at Year 1 assuming a 10.0% discount rate.

(2) Includes repayment of outstanding balance at Year 55.

(3) Combination of upfront cash and present value of future payments.

**TABLE 1**

**PROJECT DESCRIPTION  
WINDSOR GARDENS  
CITY OF ESCONDIDO**

---

<b>I. Site Area</b>	6.03 Acres		
<b>II. Housing Type</b>	Senior Apartments		
<b>III. Gross Building Area (GBA)</b>			
Net Rentable Area	68,440 SF	96%	
Common Areas/Circulation	<u>2,650</u> SF	<u>4%</u>	
Total GBA	71,090 SF	100%	
<b>IV. Number of Stories</b>	1 Story		
<b>V. Construction Type</b>	Type V Acquisition / Rehabilitation		
<b>VI. Unit Mix</b>	<u>Units</u>		<u>Average Unit Size</u>
One Bedroom	128 Units	97%	500 SF
One Bedroom - Manager	1 Units	1%	500 SF
Two Bedroom	2 Units	2%	800 SF
Two Bedroom - Manager	<u>1</u> Units	<u>1%</u>	<u>800</u> SF
Total/Average	132 Units	100%	503 SF
<b>VII. Density</b>	22 Units/Acre		
<b>VIII. Affordability Mix <sup>(1)</sup></b>			
Units @ 30% AMI	33 Units	25%	
Units @ 50% AMI	32 Units	24%	
Units @ 60% AMI	65 Units	49%	
Manager	<u>2</u> Units	<u>2%</u>	
Total	132 Units	100%	
Average Affordability (excl. Manager)	50% of AMI		
<b>IX. Parking</b>			
Residential Parking Spaces	82 Spaces		
Parking Ratio	0.62 Spaces/Unit		

(1) California Tax Credit Allocation Committee (TCAC) regulatory agreement will reflect 33 units @ 30% AMI, 47 units @ 50% AMI, and 48 units @ 60% AMI.

TABLE 2

**ESTIMATED DEVELOPMENT COSTS  
WINDSOR GARDENS  
CITY OF ESCONDIDO**

	<u>Totals</u>	<u>Per Unit</u>	<u>Notes</u>
<b>I. Direct Costs</b> <sup>(1)</sup>			
Off-Site Improvements	\$0	\$0	\$0 /SF Site Area
On-Site Improvements/Landscaping	\$0	\$0	\$0 /SF Site Area
Remediation	\$0	\$0	\$0 /SF Site Area
Parking	\$0	\$0	\$0 /Space
Building Rehabilitation <sup>(2)</sup>	\$4,840,269	\$36,669	\$68 /SF GBA
Amenities/FF&E	\$40,000	\$303	Allowance
Contingency	<u>\$675,126</u>	<u>\$5,115</u>	13.8% of Above Directs
<b>Total Direct Costs</b>	<b>\$5,555,395</b>	<b>\$42,086</b>	<b>\$78 /SF GBA</b>
<b>II. Indirect Costs</b>			
Architecture & Engineering	\$428,500	\$3,246	7.7% of Directs
Permits & Fees	\$39,600	\$300	\$1 /SF GBA
Legal & Accounting	\$74,800	\$567	1.3% of Directs
Taxes & Insurance	\$46,700	\$354	0.8% of Directs
Developer Fee	\$3,177,715	\$24,074	57.2% of Directs
Construction Management	\$50,000	\$379	0.9% of Directs
Relocation <sup>(3)</sup>	\$430,000	\$3,258	7.7% of Directs
Marketing/Lease-Up	\$7,500	\$57	0.1% of Directs
Contingency	<u>\$58,214</u>	<u>\$441</u>	1.4% of Above Indirects
<b>Total Indirect Costs</b>	<b>\$4,313,029</b>	<b>\$32,674</b>	<b>77.6% of Directs</b>
<b>III. Financing Costs</b>			
Loan Fees	\$445,405	\$3,374	8.0% of Directs
Interest During Construction	\$497,758	\$3,771	9.0% of Directs
Accrued Interest - Seller Carryback Loan	\$384,035	\$2,909	6.9% of Directs
Accrued Interest - City Loan	\$22,478	\$170	0.4% of Directs
TCAC Fees/Syndication Costs	\$89,870	\$681	1.6% of Directs
Operating Lease-Up/Reserves	\$203,617	\$1,543	3.7% of Directs
Replacement Reserves	<u>\$0</u>	<u>\$0</u>	0.0% of Directs
<b>Total Financing Costs</b>	<b>\$1,643,163</b>	<b>\$12,448</b>	<b>29.6% of Directs</b>
<b>IV. Total Development Costs excluding Acquisition</b>	<b>\$11,511,587</b>	<b>\$87,209</b>	<b>\$162 /SF GBA</b>
<b>V. Acquisition Costs</b>			
Land/Buildings	\$14,900,000	\$112,879	\$210 /SF GBA
Other Acquisition Costs <sup>(4)</sup>	<u>\$283,000</u>	<u>\$2,144</u>	1.9% of Acquisition Costs
<b>Total Acquisition Costs</b>	<b>\$15,183,000</b>	<b>\$115,023</b>	<b>\$214 /SF GBA</b>
<b>VI. Total Development Costs including Acquisition     Or Say (Rounded)</b>	<b>\$26,694,587 \$26,694,000</b>	<b>\$202,232</b>	<b>\$376 /SF GBA</b>

(1) Does not assume the payment of prevailing wages.

(2) Includes general conditions and contractor fee.

(3) Reflects temporary relocation at \$2,500 per unit (130 Units) and \$105,000 allowance for the possible relocation of three households.

Preliminary assessment by Developer indicates no need for permanent relocation.

(4) Includes acquired property reserves, title/recording/escrow, and legal costs.

TABLE 3

NET OPERATING INCOME  
WINDSOR GARDENS  
CITY OF ESCONDIDO

		<u>Unit Size (SF)</u>	<u># of Units</u> <sup>(1)</sup>	<u>Monthly Rent</u> <sup>(2)</sup>	<u>Rent/SF</u>	<u>Total Annual</u>	<u>RDA/TCAC 2019 Rents</u>
<b>I. Residential Income</b>							
One Bedroom @	30% AMI	500 SF	33	\$449	\$0.90	\$177,804	\$476
One Bedroom @	50% AMI	500 SF	32	\$449	\$0.90	\$172,416	\$821
One Bedroom @	60% AMI	500 SF	15	\$686	\$1.37	\$123,480	\$961 <sup>(3)</sup>
One Bedroom @	60% AMI	500 SF	48	\$686	\$1.37	\$395,136	\$994
One Bedroom @	Manager	500 SF	1	\$0	\$0.00	\$0	\$0
Two Bedroom @	60% AMI	800 SF	2	\$676	\$0.85	\$16,224	\$1,112
Two Bedroom @	Manager	<u>800 SF</u>	<u>1</u>	\$0	<u>\$0.00</u>	<u>\$0</u>	<u>\$0</u>
Total/Average		507 SF	132	\$559	\$1.10	\$885,060	<b>\$1,275,972</b>
Add: Other Income				\$6 Unit/Month		\$9,768	
<b>III. Gross Scheduled Income (GSI)</b>						\$894,828	
(Less) Vacancy			5.0% of GSI			<u>(\$44,741)</u>	
<b>IV. Effective Gross Income (EGI)</b>						\$850,087	
<b>V. Operating Expenses</b>							
(Less) Operating Expenses			\$3,791 Unit/Year			(\$500,359)	
(Less) Replacement Reserves			\$300 Unit/Year			(\$39,600)	
(Less) Property Taxes			\$11 Unit/Year			(\$1,428)	
(Less) Services/Amenities			<u>\$273</u> Unit/Year			<u>(\$36,000)</u>	
Total Operating Expenses			\$4,374 Unit/Year			(\$577,387)	
<b>VII. Net Operating Income (NOI)</b>						<b>\$272,700</b>	

(1) TCAC regulatory agreement will reflect 33 units @ 30% AMI, 47 units @ 50% AMI, and 48 units @ 60% AMI.

(2) Reflects in place rents based on current rent roll.

(3) Reflects TCAC rent at 50% AMI.

TABLE 4

**FINANCING SURPLUS/(DEFICIT)  
WINDSOR GARDENS  
CITY OF ESCONDIDO**

---

**I. Sources of Funds**

Supportable Permanent Loan	\$3,679,000
Tax Credit Equity Investment	\$8,339,000
Deferred Developer Fee	\$1,782,000
Income During Construction/Lease-Up	\$334,000
Existing Reserves	\$263,000
Deferred Interest on New SHA Loan	\$22,000
Deferred Interest on Seller Note - City	<u>\$384,000</u>
Total Sources of Funds	\$14,803,000

**II. (Less) Development Costs** (\$26,694,000)

**III. Financing Gap** (\$11,891,000)

**Financing Gap Proposed Sources of Funds:**

New SHA Loan	\$900,000
Seller Note - City	<u>\$10,991,000</u>
Total Sources of Gap Financing	\$11,891,000

**TABLE 5**

**ESTIMATE OF CASH PROCEEDS TO SELLER / CITY  
WINDSOR GARDENS  
CITY OF ESCONDIDO**

---

I.	Acquisition Costs	\$14,900,000
	(Less) New SHA Loan	(\$900,000)
	(Less) Seller Note - City	<u>(\$10,991,000)</u>
	Total	(\$11,891,000)
<b>II. Subtotal Cash to Seller/City</b>		<b>\$3,009,000</b>
III.	Add: Repayment of Existing CDC Loan by ESHC	<u>\$877,000</u>
<b>IV. Total Cash to Seller/City</b>		<b>\$3,886,000</b>

TABLE 6

55-YEAR CASH FLOW PROJECTION  
WINDSOR GARDENS  
CITY OF ESCONDIDO

		0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		
I.	Gross Scheduled Income (GSI)	2.5%	\$885,060	\$907,187	\$951,391	\$997,239	\$1,044,785	\$1,094,084	\$1,145,196	\$1,198,180	\$1,253,096	\$1,310,010	\$1,368,987	\$1,430,093	\$1,493,399	\$1,558,977	\$1,626,900	\$1,697,245	
	Add: Increased Income from Turnover (1)		\$0	\$21,000	\$21,525	\$22,063	\$22,615	\$23,180	\$23,760	\$24,354	\$24,962	\$25,586	\$26,226	\$26,882	\$27,554	\$28,243	\$28,949	\$29,672	
	Total Rental Income		\$885,060	\$928,187	\$972,916	\$1,019,302	\$1,067,399	\$1,117,265	\$1,168,956	\$1,222,533	\$1,278,059	\$1,335,597	\$1,395,213	\$1,456,975	\$1,520,953	\$1,587,220	\$1,655,849	\$1,726,918	
				4.9%	4.8%	4.8%	4.7%	4.7%	4.6%	4.6%	4.5%	4.5%	4.5%	4.4%	4.4%	4.3%	4.3%		
	Other Income	2.5%	\$9,768	\$10,012	\$10,263	\$10,519	\$10,782	\$11,052	\$11,328	\$11,611	\$11,901	\$12,199	\$12,504	\$12,816	\$13,137	\$13,465	\$13,802	\$14,147	
	Total GSI		\$894,828	\$938,199	\$983,179	\$1,029,821	\$1,078,181	\$1,128,316	\$1,180,284	\$1,234,144	\$1,289,960	\$1,347,796	\$1,407,717	\$1,469,791	\$1,534,090	\$1,600,685	\$1,669,651	\$1,741,065	
	(Less) Vacancy During Construction		(\$37,285)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	(Less) Vacancy	5.0%	(\$44,741)	(\$45,860)	(\$49,159)	(\$51,491)	(\$53,909)	(\$56,416)	(\$59,014)	(\$61,707)	(\$64,498)	(\$67,390)	(\$70,386)	(\$73,490)	(\$76,705)	(\$80,034)	(\$83,483)	(\$87,053)	
II.	Effective Gross Income (EGI)		\$812,802	\$892,339	\$934,020	\$978,330	\$1,024,272	\$1,071,900	\$1,121,269	\$1,172,437	\$1,225,462	\$1,280,406	\$1,337,331	\$1,396,302	\$1,457,386	\$1,520,651	\$1,586,168	\$1,654,011	
	(Less) Total Operating Expenses	0.0%	(\$577,387)	(\$596,210)	(\$615,691)	(\$635,854)	(\$656,723)	(\$678,322)	(\$700,678)	(\$723,815)	(\$747,763)	(\$772,548)	(\$798,202)	(\$824,753)	(\$852,233)	(\$880,675)	(\$910,113)	(\$940,581)	
III.	Net Operating Income		\$235,415	\$296,129	\$318,329	\$342,476	\$367,549	\$393,578	\$420,592	\$448,622	\$477,699	\$507,857	\$539,129	\$571,549	\$605,152	\$639,975	\$676,055	\$713,430	
	(Less) Debt Service		\$0	(\$138,298)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	
IV.	Residential Cash Flow		\$235,415	\$157,831	\$81,247	\$105,394	\$130,467	\$156,496	\$183,510	\$211,540	\$240,617	\$270,775	\$302,047	\$334,467	\$368,070	\$402,893	\$438,973	\$476,348	
	(Less) Income During Construction for Rehabilitation		(\$235,415)	(\$98,710)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	Net Residential Cash Flow		\$0	\$59,121	\$81,247	\$105,394	\$130,467	\$156,496	\$183,510	\$211,540	\$240,617	\$270,775	\$302,047	\$334,467	\$368,070	\$402,893	\$438,973	\$476,348	
V.	(Less) Limited Partner Asset Mgmt. Fee (2)	1.0%	\$7,500	(\$5,000)	(\$7,575)	(\$7,651)	(\$7,727)	(\$7,805)	(\$7,883)	(\$7,961)	(\$8,041)	(\$8,121)	(\$8,203)	(\$8,285)	(\$8,368)	(\$8,451)	(\$8,536)	(\$8,621)	
	(Less) Additional Resident Services Fee (3)	3.5%	\$14,000	(\$9,333)	(\$14,490)	(\$14,997)	(\$15,522)	(\$16,065)	(\$16,226)	(\$16,388)	(\$16,552)	(\$16,718)	(\$16,885)	(\$17,054)	(\$17,224)	(\$17,396)	(\$17,570)	(\$17,746)	
	(Less) General Partner Asset Mgmt. Fee	3.0%	\$17,500	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	(\$24,224)	(\$24,951)	(\$25,699)	(\$26,470)		
	Total Asset Management Fees			(\$14,333)	(\$22,065)	(\$22,648)	(\$23,249)	(\$23,870)	(\$24,109)	(\$24,350)	(\$24,593)	(\$24,839)	(\$25,087)	(\$25,338)	(\$49,816)	(\$50,798)	(\$51,805)	(\$52,837)	
VI.	Total Project Cash Flow			\$44,788	\$59,182	\$82,746	\$107,218	\$132,626	\$159,401	\$187,190	\$216,024	\$245,936	\$276,960	\$309,129	\$318,255	\$352,095	\$387,168	\$423,511	
VII.	Deferred Developer Fee Repayment																		
	Beginning Balance			\$1,781,494	\$1,736,706	\$1,677,524	\$1,594,778	\$1,487,559	\$1,354,933	\$1,195,532	\$1,008,342	\$792,317	\$546,381	\$269,421					
	Interest	0.0%		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	(Less) Cash Flow Credit			(\$44,788)	(\$59,182)	(\$82,746)	(\$107,218)	(\$132,626)	(\$159,401)	(\$187,190)	(\$216,024)	(\$245,936)	(\$276,960)	(\$269,421)					
	Ending Balance			\$1,736,706	\$1,677,524	\$1,594,778	\$1,487,559	\$1,354,933	\$1,195,532	\$1,008,342	\$792,317	\$546,381	\$269,421	\$0					
VIII.	Cash Flow Available for Distribution		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$39,707	\$318,255	\$352,095	\$387,168	\$423,511	
IX.	Repayment of New SHA Loan																		
	Beginning Balance			\$900,000	\$927,000	\$954,000	\$981,000	\$1,008,000	\$1,035,000	\$1,062,000	\$1,089,000	\$1,116,000	\$1,143,000	\$1,170,000	\$1,197,000	\$1,214,073	\$1,161,509	\$1,100,486	\$1,030,694
	Interest	3.00%		\$27,000	\$27,000	\$27,000	\$27,000	\$27,000	\$27,000	\$27,000	\$27,000	\$27,000	\$27,000	\$27,000	\$27,000	\$27,000	\$27,000	\$27,000	\$27,000
	(Less) Cash Flow Credit	25.0% (4)		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	(\$9,927)	(\$79,564)	(\$88,024)	(\$96,792)	(\$105,878)	
	Ending Balance			\$927,000	\$954,000	\$981,000	\$1,008,000	\$1,035,000	\$1,062,000	\$1,089,000	\$1,116,000	\$1,143,000	\$1,170,000	\$1,197,000	\$1,214,073	\$1,161,509	\$1,100,486	\$1,030,694	\$951,816
	NPV of Cash Flow to CDC @	10.0%		\$278,000															
X.	Repayment of Seller Note - City																		
	Beginning Balance			\$10,991,000	\$11,292,153	\$11,601,558	\$11,919,441	\$12,246,034	\$12,581,575	\$12,926,310	\$13,280,491	\$13,644,377	\$14,018,233	\$14,402,332	\$14,796,956	\$15,192,466	\$15,529,176	\$15,866,651	\$16,204,606
	Interest	2.74%		\$301,153	\$309,405	\$317,883	\$326,593	\$335,541	\$344,735	\$354,181	\$363,885	\$373,856	\$384,100	\$394,624	\$405,437	\$416,274	\$425,499	\$434,746	\$444,006
	(Less) Cash Flow Credit	25.0% (4)		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	(\$9,927)	(\$79,564)	(\$88,024)	(\$96,792)	(\$105,878)	
	Ending Balance			\$11,292,153	\$11,601,558	\$11,919,441	\$12,246,034	\$12,581,575	\$12,926,310	\$13,280,491	\$13,644,377	\$14,018,233	\$14,402,332	\$14,796,956	\$15,192,466	\$15,529,176	\$15,866,651	\$16,204,606	\$16,542,734
	NPV of Cash Flow to City @	10.0%		\$839,000 (5)															

(1) KMA adjusted Developer's cash flow to reflect 2.5% annual escalation on rental income from turnover.

(2) KMA adjusted Developer's cash flow to reflect no Limited Partnership Fees after Year 15.

(3) CHW proposes to contribute \$50,000 annually to fund resident services program. \$36,000 of contribution to be part of operating expense receipts as a fixed expense; the remaining \$14,000 to come from net (if available) before distribution of proceeds to City and CHW.

(4) Assumes City share of cash flow to repay City Seller Note increases to 50% after CDC loan is repaid

(5) Includes repayment of outstanding balance at Year 55.

(6) Reflects KMA projection beginning in Year 18.



TABLE 6

55-YEAR CASH FLOW PROJECTION  
WINDSOR GARDENS  
CITY OF ESCONDIDO

	16	17	18 <sup>(6)</sup>	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35
I. Gross Scheduled Income (GSI)	\$1,770,090	\$1,845,517	\$1,923,609	\$2,004,452	\$2,090,829	\$2,143,099	\$2,196,677	\$2,251,594	\$2,307,884	\$2,365,581	\$2,424,720	\$2,485,338	\$2,547,472	\$2,611,159	\$2,676,437	\$2,743,348	\$2,811,932	\$2,882,230	\$2,954,286	\$3,028,143
Add: Increased Income from Turnover (1)	\$30,414	\$31,175	\$31,954	\$32,753	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Rental Income	\$1,800,505	\$1,876,692	\$1,955,563	\$2,037,205	\$2,090,829	\$2,143,099	\$2,196,677	\$2,251,594	\$2,307,884	\$2,365,581	\$2,424,720	\$2,485,338	\$2,547,472	\$2,611,159	\$2,676,437	\$2,743,348	\$2,811,932	\$2,882,230	\$2,954,286	\$3,028,143
	4.3%	4.2%	4.2%	4.2%	2.6%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Other Income	\$14,501	\$14,863	\$15,235	\$15,616	\$16,006	\$16,406	\$16,816	\$17,237	\$17,668	\$18,109	\$18,562	\$19,026	\$19,502	\$19,989	\$20,489	\$21,001	\$21,526	\$22,064	\$22,616	\$23,181
Total GSI	\$1,815,005	\$1,891,555	\$1,970,798	\$2,052,821	\$2,106,835	\$2,159,506	\$2,213,493	\$2,268,831	\$2,325,551	\$2,383,690	\$2,443,282	\$2,504,364	\$2,566,974	\$2,631,148	\$2,696,927	\$2,764,350	\$2,833,458	\$2,904,295	\$2,976,902	\$3,051,325
(Less) Vacancy During Construction	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
(Less) Vacancy	(\$90,750)	(\$94,578)	(\$98,540)	(\$102,641)	(\$105,342)	(\$107,975)	(\$110,675)	(\$113,442)	(\$116,278)	(\$119,185)	(\$122,164)	(\$125,218)	(\$128,349)	(\$131,557)	(\$134,846)	(\$138,217)	(\$141,673)	(\$145,215)	(\$148,845)	(\$152,566)
II. Effective Gross Income (EGI)	\$1,724,255	\$1,796,977	\$1,872,258	\$1,950,180	\$2,001,493	\$2,051,530	\$2,102,819	\$2,155,389	\$2,209,274	\$2,264,506	\$2,321,118	\$2,379,146	\$2,438,625	\$2,499,590	\$2,562,080	\$2,626,132	\$2,691,786	\$2,759,080	\$2,828,057	\$2,898,759
(Less) Total Operating Expenses	(\$972,115)	(\$1,004,753)	(\$1,038,495)	(\$1,073,417)	(\$1,109,561)	(\$1,146,969)	(\$1,185,685)	(\$1,225,755)	(\$1,267,228)	(\$1,310,150)	(\$1,354,575)	(\$1,400,553)	(\$1,448,139)	(\$1,497,390)	(\$1,548,364)	(\$1,601,121)	(\$1,655,724)	(\$1,712,236)	(\$1,770,726)	(\$1,831,262)
III. Net Operating Income	\$752,140	\$792,224	\$833,763	\$876,763	\$891,932	\$904,562	\$917,134	\$929,634	\$942,046	\$954,355	\$966,544	\$978,593	\$990,486	\$1,002,200	\$1,013,716	\$1,025,011	\$1,036,062	\$1,046,844	\$1,057,331	\$1,067,497
(Less) Debt Service	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)	(\$237,082)
IV. Residential Cash Flow	\$515,058	\$555,142	\$596,681	\$639,681	\$654,850	\$667,480	\$680,052	\$692,552	\$704,964	\$717,273	\$729,462	\$741,511	\$753,404	\$765,118	\$776,634	\$787,929	\$798,980	\$809,762	\$820,249	\$830,415
(Less) Income During Construction for Rehabilitation	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Residential Cash Flow	\$515,058	\$555,142	\$596,681	\$639,681	\$654,850	\$667,480	\$680,052	\$692,552	\$704,964	\$717,273	\$729,462	\$741,511	\$753,404	\$765,118	\$776,634	\$787,929	\$798,980	\$809,762	\$820,249	\$830,415
V. (Less) Limited Partner Asset Mgmt. Fee (2)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
(Less) Additional Resident Services Fee (3)	(\$17,924)	(\$18,103)	(\$18,284)	(\$18,467)	(\$18,651)	(\$18,838)	(\$19,026)	(\$19,216)	(\$19,409)	(\$19,603)	(\$19,799)	(\$19,997)	(\$20,197)	(\$20,399)	(\$20,603)	(\$20,809)	(\$21,017)	(\$21,227)	(\$21,439)	(\$21,654)
(Less) General Partner Asset Mgmt. Fee	(\$27,264)	(\$28,082)	(\$28,925)	(\$29,792)	(\$30,686)	(\$31,607)	(\$32,555)	(\$33,532)	(\$34,538)	(\$35,574)	(\$36,641)	(\$37,740)	(\$38,872)	(\$40,039)	(\$41,240)	(\$42,477)	(\$43,751)	(\$45,064)	(\$46,416)	(\$47,808)
Total Asset Management Fees	(\$45,188)	(\$46,185)	(\$47,209)	(\$48,259)	(\$49,338)	(\$50,445)	(\$51,581)	(\$52,748)	(\$53,946)	(\$55,177)	(\$56,440)	(\$57,737)	(\$59,069)	(\$60,437)	(\$61,842)	(\$63,286)	(\$64,768)	(\$66,291)	(\$67,855)	(\$69,462)
VI. Total Project Cash Flow	\$469,870	\$508,957	\$549,472	\$591,421	\$605,513	\$617,035	\$628,470	\$639,803	\$651,018	\$662,097	\$673,022	\$683,774	\$694,334	\$704,681	\$714,791	\$724,643	\$734,212	\$743,471	\$752,394	\$760,953
VII. Deferred Developer Fee Repayment																				
Beginning Balance																				
Interest																				
(Less) Cash Flow Credit																				
Ending Balance																				
VIII. Cash Flow Available for Distribution	\$469,870	\$508,957	\$549,472	\$591,421	\$605,513	\$617,035	\$628,470	\$639,803	\$651,018	\$662,097	\$673,022	\$683,774	\$694,334	\$704,681	\$714,791	\$724,643	\$734,212	\$743,471	\$752,394	\$760,953
IX. Repayment of New SHA Loan																				
Beginning Balance	\$951,816	\$861,348	\$759,950	\$645,380	\$516,886	\$381,014	\$238,186	\$88,214												
Interest	\$27,000	\$25,840	\$22,798	\$19,361	\$15,507	\$11,430	\$7,146	\$2,646												
(Less) Cash Flow Credit	(\$117,468)	(\$127,239)	(\$137,368)	(\$147,855)	(\$151,378)	(\$154,259)	(\$157,118)	(\$90,861)												
Ending Balance	\$861,348	\$759,950	\$645,380	\$516,886	\$381,014	\$238,186	\$88,214	\$0												
NPV of Cash Flow to CDC @																				
X. Repayment of Seller Note - City																				
Beginning Balance	\$16,542,734	\$16,878,537	\$17,213,770	\$17,548,059	\$17,881,021	\$18,219,582	\$18,564,540	\$18,916,091	\$19,205,351	\$19,406,069	\$19,606,747	\$19,807,460	\$20,008,298	\$20,209,358	\$20,410,754	\$20,612,613	\$20,815,077	\$21,018,304	\$21,222,470	\$21,427,769
Interest	\$453,271	\$462,472	\$471,657	\$480,817	\$489,940	\$499,217	\$508,668	\$518,301	\$526,227	\$531,726	\$537,225	\$542,724	\$548,227	\$553,736	\$559,255	\$564,786	\$570,333	\$575,902	\$581,496	\$587,121
(Less) Cash Flow Credit	(\$117,468)	(\$127,239)	(\$137,368)	(\$147,855)	(\$151,378)	(\$154,259)	(\$157,118)	(\$229,041)	(\$325,509)	(\$331,048)	(\$336,511)	(\$341,887)	(\$347,167)	(\$352,340)	(\$357,396)	(\$362,322)	(\$367,106)	(\$371,735)	(\$376,197)	(\$380,477)
Ending Balance	\$16,878,537	\$17,213,770	\$17,548,059	\$17,881,021	\$18,219,582	\$18,564,540	\$18,916,091	\$19,205,351	\$19,406,069	\$19,606,747	\$19,807,460	\$20,008,298	\$20,209,358	\$20,410,754	\$20,612,613	\$20,815,077	\$21,018,304	\$21,222,470	\$21,427,769	\$21,634,413
NPV of Cash Flow to City @																				

(1) KMA adjusted Developer's cash flow to reflect 2.5% annual escalation on rental income from turnover.  
 (2) KMA adjusted Developer's cash flow to reflect no Limited Partnership Fees after Year 15.  
 (3) CHW proposes to contribute \$50,000 annually to fund resident services program. \$36,000 of contribution to be part of operating expense receipts as a fixed expense; the remaining \$14,000 to come from net (if available) before distribution of proceeds to City and CHW.  
 (4) Assumes City share of cash flow to repay City Seller Note increases to 50% after CDC loan is repaid  
 (5) Includes repayment of outstanding balance at Year 55.  
 (6) Reflects KMA projection beginning in Year 18.

TABLE 6

55-YEAR CASH FLOW PROJECTION  
WINDSOR GARDENS  
CITY OF ESCONDIDO

	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55
I. Gross Scheduled Income (GSI)	\$3,103,847	\$3,181,443	\$3,260,979	\$3,342,504	\$3,426,066	\$3,511,718	\$3,599,511	\$3,689,499	\$3,781,736	\$3,876,280	\$3,973,187	\$4,072,516	\$4,174,329	\$4,278,687	\$4,385,654	\$4,495,296	\$4,607,678	\$4,722,870	\$4,840,942	\$4,961,966
Add: Increased Income from Turnover (1)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Rental Income	\$3,103,847	\$3,181,443	\$3,260,979	\$3,342,504	\$3,426,066	\$3,511,718	\$3,599,511	\$3,689,499	\$3,781,736	\$3,876,280	\$3,973,187	\$4,072,516	\$4,174,329	\$4,278,687	\$4,385,654	\$4,495,296	\$4,607,678	\$4,722,870	\$4,840,942	\$4,961,966
	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Other Income	\$23,761	\$24,355	\$24,964	\$25,588	\$26,228	\$26,883	\$27,555	\$28,244	\$28,950	\$29,674	\$30,416	\$31,176	\$31,956	\$32,755	\$33,574	\$34,413	\$35,273	\$36,155	\$37,059	\$37,986
Total GSI	\$3,127,608	\$3,205,798	\$3,285,943	\$3,368,092	\$3,452,294	\$3,538,601	\$3,627,066	\$3,717,743	\$3,810,687	\$3,905,954	\$4,003,603	\$4,103,693	\$4,206,285	\$4,311,442	\$4,419,228	\$4,529,709	\$4,642,952	\$4,759,025	\$4,878,001	\$4,999,951
(Less) Vacancy During Construction	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
(Less) Vacancy	(\$156,380)	(\$160,290)	(\$164,297)	(\$168,405)	(\$172,615)	(\$176,930)	(\$181,353)	(\$185,887)	(\$190,534)	(\$195,298)	(\$200,180)	(\$205,185)	(\$210,314)	(\$215,572)	(\$220,961)	(\$226,485)	(\$232,148)	(\$237,951)	(\$243,900)	(\$249,998)
II. Effective Gross Income (EGI)	\$2,971,228	\$3,045,508	\$3,121,646	\$3,199,687	\$3,279,679	\$3,361,671	\$3,445,713	\$3,531,856	\$3,620,152	\$3,710,656	\$3,803,422	\$3,898,508	\$3,995,971	\$4,095,870	\$4,198,267	\$4,303,223	\$4,410,804	\$4,521,074	\$4,634,101	\$4,749,953
(Less) Total Operating Expenses	(\$1,893,915)	(\$1,958,760)	(\$2,025,873)	(\$2,095,335)	(\$2,167,226)	(\$2,241,632)	(\$2,318,641)	(\$2,398,345)	(\$2,480,837)	(\$2,566,214)	(\$2,654,579)	(\$2,746,035)	(\$2,840,690)	(\$2,938,658)	(\$3,040,052)	(\$3,144,994)	(\$3,253,607)	(\$3,366,021)	(\$3,482,367)	(\$3,602,784)
III. Net Operating Income	\$1,077,313	\$1,086,748	\$1,095,773	\$1,104,353	\$1,112,453	\$1,120,039	\$1,127,072	\$1,133,511	\$1,139,316	\$1,144,442	\$1,148,844	\$1,152,473	\$1,155,280	\$1,157,213	\$1,158,215	\$1,158,229	\$1,157,197	\$1,155,053	\$1,151,734	\$1,147,170
(Less) Debt Service	(\$98,784)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
IV. Residential Cash Flow	\$978,529	\$1,086,748	\$1,095,773	\$1,104,353	\$1,112,453	\$1,120,039	\$1,127,072	\$1,133,511	\$1,139,316	\$1,144,442	\$1,148,844	\$1,152,473	\$1,155,280	\$1,157,213	\$1,158,215	\$1,158,229	\$1,157,197	\$1,155,053	\$1,151,734	\$1,147,170
(Less) Income During Construction for Rehabilitation	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Residential Cash Flow	\$978,529	\$1,086,748	\$1,095,773	\$1,104,353	\$1,112,453	\$1,120,039	\$1,127,072	\$1,133,511	\$1,139,316	\$1,144,442	\$1,148,844	\$1,152,473	\$1,155,280	\$1,157,213	\$1,158,215	\$1,158,229	\$1,157,197	\$1,155,053	\$1,151,734	\$1,147,170
V. (Less) Limited Partner Asset Mgmt. Fee (2)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
(Less) Additional Resident Services Fee (3)	(\$21,870)	(\$22,089)	(\$22,310)	(\$22,533)	(\$22,758)	(\$22,986)	(\$23,216)	(\$23,448)	(\$23,682)	(\$23,919)	(\$24,158)	(\$24,400)	(\$24,644)	(\$24,890)	(\$25,139)	(\$25,391)	(\$25,644)	(\$25,901)	(\$26,160)	(\$26,422)
(Less) General Partner Asset Mgmt. Fee	(\$49,242)	(\$50,720)	(\$52,241)	(\$53,809)	(\$55,423)	(\$57,085)	(\$58,798)	(\$60,562)	(\$62,379)	(\$64,250)	(\$66,178)	(\$68,163)	(\$70,208)	(\$72,314)	(\$74,484)	(\$76,718)	(\$79,020)	(\$81,390)	(\$83,832)	(\$86,347)
Total Asset Management Fees	(\$71,113)	(\$72,809)	(\$74,551)	(\$76,341)	(\$78,181)	(\$80,071)	(\$82,014)	(\$84,010)	(\$86,061)	(\$88,169)	(\$90,336)	(\$92,563)	(\$94,852)	(\$97,204)	(\$99,623)	(\$102,109)	(\$104,664)	(\$107,291)	(\$109,992)	(\$112,768)
VI. Total Project Cash Flow	\$907,416	\$1,013,940	\$1,021,222	\$1,028,011	\$1,034,272	\$1,039,968	\$1,045,058	\$1,049,501	\$1,053,255	\$1,056,273	\$1,058,508	\$1,059,910	\$1,060,429	\$1,060,008	\$1,058,592	\$1,056,121	\$1,052,533	\$1,047,762	\$1,041,742	\$1,034,401
VII. Deferred Developer Fee Repayment																				
Beginning Balance																				
Interest																				
(Less) Cash Flow Credit																				
Ending Balance																				
VIII. Cash Flow Available for Distribution	\$907,416	\$1,013,940	\$1,021,222	\$1,028,011	\$1,034,272	\$1,039,968	\$1,045,058	\$1,049,501	\$1,053,255	\$1,056,273	\$1,058,508	\$1,059,910	\$1,060,429	\$1,060,008	\$1,058,592	\$1,056,121	\$1,052,533	\$1,047,762	\$1,041,742	\$1,034,401
IX. Repayment of New SHA Loan																				
Beginning Balance																				
Interest																				
(Less) Cash Flow Credit																				
Ending Balance																				
NPV of Cash Flow to CDC @																				
X. Repayment of Seller Note - City																				
Beginning Balance	\$21,634,413	\$21,773,488	\$21,863,111	\$21,951,550	\$22,039,017	\$22,125,750	\$22,212,011	\$22,298,091	\$22,384,308	\$22,471,011	\$22,558,580	\$22,647,432	\$22,738,016	\$22,830,823	\$22,926,384	\$23,025,271	\$23,128,103	\$23,235,547	\$23,348,319	\$23,467,192
Interest	\$592,783	\$596,594	\$599,049	\$601,472	\$603,869	\$606,246	\$608,609	\$610,968	\$613,330	\$615,706	\$618,105	\$620,540	\$623,022	\$625,565	\$628,183	\$630,892	\$633,710	\$636,654	\$639,744	\$643,001
(Less) Cash Flow Credit	(\$453,708)	(\$506,970)	(\$510,611)	(\$514,006)	(\$517,136)	(\$519,984)	(\$522,529)	(\$524,751)	(\$526,627)	(\$528,136)	(\$529,254)	(\$529,955)	(\$530,214)	(\$530,004)	(\$529,296)	(\$528,060)	(\$526,266)	(\$523,881)	(\$520,871)	(\$517,201)
Ending Balance	\$21,773,488	\$21,863,111	\$21,951,550	\$22,039,017	\$22,125,750	\$22,212,011	\$22,298,091	\$22,384,308	\$22,471,011	\$22,558,580	\$22,647,432	\$22,738,016	\$22,830,823	\$22,926,384	\$23,025,271	\$23,128,103	\$23,235,547	\$23,348,319	\$23,467,192	\$23,592,993
NPV of Cash Flow to City @																				

(1) KMA adjusted Developer's cash flow to reflect 2.5% annual escalation on rental income from turnover.

(2) KMA adjusted Developer's cash flow to reflect no Limited Partnership Fees after Year 15.

(3) CHW proposes to contribute \$50,000 annually to fund resident services program. \$36,000 of contribution to be part of operating expense receipts as a fixed expense; the remaining \$14,000 to come from net (if available) before distribution of proceeds to City and CHW.

(4) Assumes City share of cash flow to repay City Seller Note increases to 50% after CDC loan is repaid

(5) Includes repayment of outstanding balance at Year 55.

(6) Reflects KMA projection beginning in Year 18.

TABLE 7

SOURCES AND USES OF FUNDS  
WINDSOR GARDENS  
CITY OF ESCONDIDO

I. Uses of Funds	Early Sale (Acquisition) August 2019							Syndication Close (Construction) December 2019						Conversion (Permanent) April 2020					
A. Acquisition Costs	\$14,900,000							\$14,900,000										\$14,900,000	
B. Direct Costs	\$0							\$5,555,000										\$5,555,000	
C. Indirect Costs	\$0							\$4,596,000										\$4,596,000	
D. Financing	\$0							<u>\$1,643,000</u>										<u>\$1,643,000</u>	
<b>E. Total Uses of Funds</b>	<b>\$14,900,000</b>							<b>\$26,694,000</b>										<b>\$26,694,000</b>	
<b>II. Sources of Funds</b>																			
		Position	Type	Issuer	Buyer/ Investor	Interest Payable			Position	Type	Issuer	Buyer/ Investor	Interest Payable		Position	Type	Issuer	Buyer/ Investor	Interest Payable
A. Seller Carryback Note	\$14,000,000	(1) 1st	taxable	City	---	accrues	\$10,991,000	2nd	tax-exempt	CMFA	City	---	accrues	\$10,991,000	2nd	taxable	City	---	Residual Receipts
B. New SHA Loan	\$900,000	2nd	taxable	CDC	---	accrues	\$900,000	3rd	taxable	CDC	---	---	accrues	\$900,000	3rd	taxable	CDC	---	Residual Receipts
C. Tax-Exempt Construction Loan	\$0						\$10,605,000	1st	tax-exempt	CMFA	Bank		paid current	\$0					
D. Tax-Exempt Permanent Loan	\$0						\$0							\$3,679,000	1st	tax-exempt	CMFA	Bank	paid current
E. Tax Credit Equity Investment	\$0						\$833,000							\$8,339,000					
F. GP Loan - Acquired Reserves	\$0						\$263,000							\$263,000					
G. Cost Deferred Until Conversion	\$0						\$2,696,000							\$0					
H. Deferred Interest - CDC Loan	\$0						\$22,000							\$22,000					
I. Deferred Interest - City Seller Note	\$0						\$384,000							\$384,000					
J. Income from Operations	\$0						\$0							\$334,000					
K. Deferred Developer Fee	\$0						\$0							<u>\$1,782,000</u>					
<b>L. Total Sources of Funds</b>	<b>\$14,900,000</b>						<b>\$26,694,000</b>							<b>\$26,694,000</b>					
<b>III. Notes</b>	City issues traditional Seller Note in the amount of appraised value less any assumed debt or potential payoff.						Traditional Seller Note paid off by a combination of: 1) tax-exempt Seller Note; and 2) cash proceeds.						City has option to pay off Seller Note with a new traditional (not tax-exempt) note to be repaid with Residual Receipts.						

(1) Includes \$3,009,000 in cash proceeds to be paid to City at syndication close and \$0 from AHP paid to City at conversion (tentative).

WORKSHEET A

TRANSITION OF GROSS SCHEDULED INCOME  
WINDSOR GARDENS  
CITY OF ESCONDIDO

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>	<u>13</u>	<u>14</u>	<u>15</u>	<u>16</u>	<u>17</u>	<u>18</u>	<u>19</u>	<u>20</u>	
<b>I. Residential Income (TABLE 3, Section I)</b>	2.5%	\$1,275,972	\$1,307,871	\$1,340,568	\$1,374,082	\$1,408,434	\$1,443,645	\$1,479,736	\$1,516,730	\$1,554,648	\$1,593,514	\$1,633,352	\$1,674,186	\$1,716,040	\$1,758,941	\$1,802,915	\$1,847,988	\$1,894,188	\$1,941,542	\$1,990,081	\$2,039,833	\$2,090,829
<b>II. Alternative Income to Preserve In Place Rents (TABLE 3, Section II)</b>																						
<u>Year</u>																						
0	2.5%	\$885,060	\$907,187	\$929,866	\$953,113	\$976,941	\$1,001,364	\$1,026,398	\$1,052,058	\$1,078,360	\$1,105,319	\$1,132,952	\$1,161,275	\$1,190,307	\$1,220,065	\$1,250,567	\$1,281,831	\$1,313,877	\$1,346,723	\$1,380,392	\$1,414,901	\$1,450,274
1	2.5%	\$0	\$21,000	\$21,525	\$22,063	\$22,615	\$23,180	\$23,760	\$24,354	\$24,962	\$25,586	\$26,226	\$26,882	\$27,554	\$28,243	\$28,949	\$29,672	\$30,414	\$31,175	\$31,954	\$32,753	\$33,572
2	2.5%			\$21,525	\$22,063	\$22,615	\$23,180	\$23,760	\$24,354	\$24,962	\$25,586	\$26,226	\$26,882	\$27,554	\$28,243	\$28,949	\$29,672	\$30,414	\$31,175	\$31,954	\$32,753	\$33,572
3	2.5%				\$22,063	\$22,615	\$23,180	\$23,760	\$24,354	\$24,962	\$25,586	\$26,226	\$26,882	\$27,554	\$28,243	\$28,949	\$29,672	\$30,414	\$31,175	\$31,954	\$32,753	\$33,572
4	2.5%					\$22,615	\$23,180	\$23,760	\$24,354	\$24,962	\$25,586	\$26,226	\$26,882	\$27,554	\$28,243	\$28,949	\$29,672	\$30,414	\$31,175	\$31,954	\$32,753	\$33,572
5	2.5%						\$23,180	\$23,760	\$24,354	\$24,962	\$25,586	\$26,226	\$26,882	\$27,554	\$28,243	\$28,949	\$29,672	\$30,414	\$31,175	\$31,954	\$32,753	\$33,572
6	2.5%							\$23,760	\$24,354	\$24,962	\$25,586	\$26,226	\$26,882	\$27,554	\$28,243	\$28,949	\$29,672	\$30,414	\$31,175	\$31,954	\$32,753	\$33,572
7	2.5%								\$24,354	\$24,962	\$25,586	\$26,226	\$26,882	\$27,554	\$28,243	\$28,949	\$29,672	\$30,414	\$31,175	\$31,954	\$32,753	\$33,572
8	2.5%									\$24,962	\$25,586	\$26,226	\$26,882	\$27,554	\$28,243	\$28,949	\$29,672	\$30,414	\$31,175	\$31,954	\$32,753	\$33,572
9	2.5%										\$25,586	\$26,226	\$26,882	\$27,554	\$28,243	\$28,949	\$29,672	\$30,414	\$31,175	\$31,954	\$32,753	\$33,572
10	2.5%											\$26,226	\$26,882	\$27,554	\$28,243	\$28,949	\$29,672	\$30,414	\$31,175	\$31,954	\$32,753	\$33,572
11	2.5%												\$26,882	\$27,554	\$28,243	\$28,949	\$29,672	\$30,414	\$31,175	\$31,954	\$32,753	\$33,572
12	2.5%													\$27,554	\$28,243	\$28,949	\$29,672	\$30,414	\$31,175	\$31,954	\$32,753	\$33,572
13	2.5%														\$28,243	\$28,949	\$29,672	\$30,414	\$31,175	\$31,954	\$32,753	\$33,572
14	2.5%															\$28,949	\$29,672	\$30,414	\$31,175	\$31,954	\$32,753	\$33,572
15	2.5%																\$29,672	\$30,414	\$31,175	\$31,954	\$32,753	\$33,572
16	2.5%																	\$30,414	\$31,175	\$31,954	\$32,753	\$33,572
17	2.5%																		\$31,175	\$31,954	\$32,753	\$33,572
18	2.5%																			\$31,954	\$32,753	\$33,572
19	2.5%																				\$32,753	\$33,572
20	2.5%																					\$33,572
Rental Income		\$885,060	\$907,187	\$951,391	\$997,239	\$1,044,785	\$1,094,084	\$1,145,196	\$1,198,180	\$1,253,096	\$1,310,010	\$1,368,987	\$1,430,093	\$1,493,399	\$1,558,977	\$1,626,900	\$1,697,245	\$1,770,090	\$1,845,517	\$1,923,609	\$2,004,452	\$2,088,135
Increase from Turnover		\$0	\$21,000	\$21,525	\$22,063	\$22,615	\$23,180	\$23,760	\$24,354	\$24,962	\$25,586	\$26,226	\$26,882	\$27,554	\$28,243	\$28,949	\$29,672	\$30,414	\$31,175	\$31,954	\$32,753	\$33,572
Total Rental Income		\$885,060	\$928,187	\$972,916	\$1,019,302	\$1,067,399	\$1,117,265	\$1,168,956	\$1,222,533	\$1,278,059	\$1,335,597	\$1,395,213	\$1,456,975	\$1,520,953	\$1,587,220	\$1,655,849	\$1,726,918	\$1,800,505	\$1,876,692	\$1,955,563	\$2,037,205	\$2,121,707
<b>III. Rental Income Used (Lesser of I. or II.)</b>		\$885,060	\$928,187	\$972,916	\$1,019,302	\$1,067,399	\$1,117,265	\$1,168,956	\$1,222,533	\$1,278,059	\$1,335,597	\$1,395,213	\$1,456,975	\$1,520,953	\$1,587,220	\$1,655,849	\$1,726,918	\$1,800,505	\$1,876,692	\$1,955,563	\$2,037,205	\$2,090,829

(1) Assumes current residents continue to pay rents at no more than 30% of actual resident's income until unit is turned over. Units pay an increase of \$251 per unit upon move out. Assumes seven (7) units are turned over per year. Project is projected to achieve maximum regulatory rents by Year 20.

RESOLUTION NO. 2019-117

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, NECESSARY AGREEMENTS, LOAN  
DOCUMENTS AND DEEDS FOR THE SALE  
AND FINANCE OF 1600 W NINTH AVENUE

WHEREAS, the City of Escondido (“City”) owns certain real property, addressed as 1600 W Ninth Avenue, which is a 6.03 acre parcel currently used as affordable senior housing, located on West Ninth Avenue and Windsor Place, known as Windsor Gardens Apartments (the “Property”); and

WHEREAS, the Escondido Senior Housing Corporation (“ESHC”) wishes to terminate their lease and transfer the improvements to the City and ultimately to a new affordable housing developer for continued use as affordable senior housing; and

WHEREAS, the City received an offer from Community HousingWorks and its related entity, Windsor Gardens Housing Associates, L.P (“Buyer”) to purchase the Property for appraised value and rehabilitate the Property for continued use as affordable senior housing; and

WHEREAS, the sale of the Property achieves an important public purpose of the City to preserve affordable housing for low-income residents 62 years old and older, allowing continued stability and integrated social services; and

WHEREAS, the City wishes to sell the Property for appraised value and to enter into escrow with the Buyer under the terms and conditions stated in the Agreement for Purchase and Sale of Real Property; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest as well as fulfilling a specific City purpose for the common benefit to approve the sale of the Property to the Buyer.

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

1. That the above recitations are true.
2. That the Mayor and City Clerk are hereby authorized to execute, on behalf of the City, in a form approved by the City Attorney, any agreements, loan documents, and deeds necessary to facilitate the sale of the Property, including, but not limited to, the Transfer Agreement attached hereto as Exhibit "A" and the Agreement for Purchase and Sale of Real Property attached hereto as Exhibit "B," both of which are incorporated by this reference.
3. That the Real Property Manager is authorized to execute the any escrow instructions necessary to facilitate the sale of the Property.
4. The City Council finds that, to the extent the approval of the Agreements is considered a project for purposes of the California Environmental Quality Act, it is exempt pursuant to 14 CCR § 15312 as a sale of property and 14 CCR § 15061(b)(3) as the approval of the Agreements does not have the potential for causing a significant effect on the environment.

## TRANSFER AGREEMENT

THIS TRANSFER AGREEMENT (this "Agreement") is made and entered into as of \_\_\_\_\_, 2019 (the "Effective Date"), by and between **ESCONDIDO SENIORS HOUSING CORPORATION**, a California nonprofit public benefit corporation ("ESHC"), and the **CITY OF ESCONDIDO and the CITY OF ESCONDIDO AS THE SUCCESSOR HOUSING AGENCY OF THE COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF ESCONDIDO** (together, the "City").

### RECITALS

A. The City is the fee owner of certain real property located at 1600 W. Ninth Avenue in the City of Escondido, County of San Diego, California, more particularly described on Exhibit A attached hereto (the "Land"). The City has ground leased the Land to ESHC pursuant to a ground lease (the "Ground Lease") dated January 14, 1977, and recorded in the Official Records of San Diego County as Instrument No. 77-019936. The Land is improved with residential building(s) containing 132 units (the "Improvements") for low income seniors (the "Project"). The Land and Improvements are collectively referred to herein as the "Real Property."

B. ESHC's organizational documents provide that (i) once the debt on the Project has been repaid, the Project will be transferred to the City, and (ii) upon dissolution of the corporation, any remaining assets will be distributed to the City.

C. The City and ESHC have entered into a memorandum of understanding ("MOU"), pursuant to which the parties have agreed, among other things, to terminate the Ground Lease and transfer the Real Property to the City, and following the transfer to the City, ESHC intends to wind up and dissolve.

D. ESHC is also the owner of certain items of personal property as described on Exhibit "B" attached hereto and hereby made a part hereof (the "Personal Property"), which items are situated in or on, or used in connection with the operation of the Real Property.

E. ESHC has leased certain of the dwelling units comprising a part of the Improvements to third parties pursuant to residential rental agreements (the "Tenant Leases").

F. ESHC is a party to certain contracts affecting the Real Property which City may elect to assume pursuant to this Agreement (the "Assumed Contracts").

G. In consideration of City's acquisition of the Property (defined below), City will provide funds in the amount of \$15,000 (the "Transfer Fee") to ESHC to make a charitable contribution to a nonprofit organization with a charitable mission similar to that of ESHC and ESHC will retain sufficient funds to cover its expenses and third party costs associated with the Transfer and the winding up and dissolution of the organization in an amount not to exceed \$50,000 (the "ESHC Dissolution Fees"). Any funds remaining with ESHC after the completion of dissolution shall be remitted to the City.

H. The Community Development Commission of the City of Escondido (the

“CDC”) made a loan to ESHC in the original principal amount of \$915,000 (the “CDC Loan”), which loan is evidenced and secured by a Loan Agreement dated November 18, 2010, a deed of trust recorded on November 18, 2010, in the Official Records of San Diego County as Instrument No. 2010-0634390, and a Regulatory Agreement recorded on September 29, 2011, in the Official Records of San Diego County as Instrument No. 2011-0508606 (collectively, the “CDC Loan Documents”). The City is the Successor Housing Agency to the CDC.

I. The Project is in need of significant maintenance and repair and the parties have agreed that, following the transfer to the City, the Project will be subsequently transferred to an affiliated limited partnership of Community HousingWorks (the “CHW LP”) pursuant to a purchase and sale agreement between CHW LP and the City executed substantially concurrently herewith (the “Purchase Agreement”), to rehabilitate and preserve the affordable senior housing. The parties have agreed to impose certain conditions on the transfer of the Project to CHW LP, as set forth herein.

J. ESHC and the City desire to enter into this Agreement to provide for the (i) termination of the Ground Lease, (ii) the continuation of certain covenants set forth in the MOU, (iii) the assignment of the Personal Property, Tenant Leases and Assumed Contracts from ESHC to the City (collectively with the Real Property, the “Property”), and (iv) the payment of the Contribution from City to ESHC, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and covenants of the parties hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, and incorporating herein by this reference the foregoing recitals, the parties hereto do hereby agree as follows:

1. Termination of Ground Lease; Transfer of the Property. Upon satisfaction of the terms and conditions set forth herein, ESHC and the City shall cause a termination of the Ground Lease to be recorded in the Official Records of San Diego County, in the form attached hereto as Exhibit C (the “Termination”), and ESHC shall assign and convey to the City, and the City shall assume and accept from ESHC, all of ESHC’s right, title and interest in and to the Property and upon the terms and conditions hereinafter set forth, pursuant to the Bill of Sale attached hereto as Exhibit D and the Assignment of Leases and Contracts attached hereto as Exhibit E, together with the Project’s replacement reserves (the “Reserves”) which shall be deposited by ESHC with the City and thereafter deposited into escrow with Escrow Holder to be transferred to the CHW LP upon the Closing Date.

2. Repayment in Full of Loan; Release and Reconveyance of CDC Loan Documents. ESHC agrees that it will repay the CDC Loan in full at or prior to the Closing Date. The City agrees that simultaneous with repayment of the CDC Loan, it will return the original Promissory Note marked "cancelled" to ESHC and will cause the CDC Loan Documents encumbering the Property to be reconveyed and/or released.

3. Transfer Fee; ESHC Dissolution Fees. In connection with the City’s acquisition of the Property, ESHC will hold back an amount equal to the Transfer Fee and the ESHC Dissolution Fees from their cash assets. The Transfer Fee shall be used by ESHC for the sole purpose of making a charitable contribution to a nonprofit organization with a charitable mission similar to that of ESHC. The ESHC Dissolution Fees shall be used by ESHC for its expenses and third party costs associated with the Transfer and the winding up and dissolution of the organization.



Any funds remaining with ESHC after the completion of dissolution shall be remitted to the City in accordance with Section 4(d) below.

4. Surviving Covenants. The parties agree that the following covenants are an explicit condition to ESHC's consent to the Transfer and shall survive the acquisition of the Property by the City and the subsequent transfer to the CHW LP:

(a) Protections for Current Residents.

- (i) Nondisplacement. The City and ESHC agree that any purchase contract for transfer of the Project will require the buyer to agree not to displace any of the current residents, with the exception of necessary, temporary relocation for a reasonable time period.
- (ii) Rent Increase Limitation. The City and ESHC agree that any purchase contract for transfer of the Project will require the buyer to agree to limit annual rent increases for the current residents of the Project to 2.5% annual increase from their existing rent.

(b) Affordability Restrictions. The City and ESHC agree that any purchase contract for transfer of the Project will require the buyer to agree to the affordability restrictions described below, and the City agrees to effectuate the recordation of a legal document evidencing these restrictions for a minimum of 55 years from transfer: 50 units will be income- and rent-restricted to households earning less than 60% AMI; 47 units will be income- and rent-restricted to households earning less than 50% AMI; 33 units will be income- and rent-restricted to households earning less than 30% AMI; and 2 units will be unrestricted manager units. These affordability restrictions may be implemented by the buyer agreeing to execute a regulatory agreement with the City documenting the restrictions and may be subordinated to the buyer's senior construction and permanent lenders, in the buyer's discretion.

(c) Social Services Plan and Budget.

- (i) Service Plan. The City and ESHC agree that any purchase contract for transfer of the Project will require the buyer to commit to offering supportive services appropriate to seniors for a minimum of 55 years.
- (ii) Services Budget. The City and ESHC agree that any purchase contract for transfer of the Project will require the buyer to commit to a budget for social services of \$50,000 a year, increasing by 3.5% annually, with a minimum of \$36,000 per year, increasing by 3.5% annually, to be paid as an operating expense prior to hard debt service, and the balance to be paid out of cash flow prior to deferred developer fee, partnership management fee payable to the general partner, and residual receipts debt payments on soft loans.

(d) Regulatory Agreement. The foregoing covenants shall be evidenced in a recorded regulatory agreement between the City and the CHW LP (the "Regulatory Agreement"). A failure to record the Regulatory Agreement in the Official Records of San Diego County concurrently with the transfer of the

Property to the CHW LP shall constitute a breach hereunder and under the Purchase and Sale Agreement between the City and CHW LP, and ESHC, prior to its dissolution, shall have the right, following ten (10) business days written notice to the City and CHW LP, to sue for specific performance to cause the Regulatory Agreement to be recorded. In addition, ESHC will be provided a copy of the low income housing tax credit reservation letter anticipated to be received by CHW LP, promptly following receipt by CHW LP, which, when combined with the Regulatory Agreement, will reflect the affordability restrictions set forth in Section 4(b) above.

(e) ESHC Assets.

- (i) Wind Up and Dissolution. The parties understand and agree that after transfer of the Project, ESHC intends to wind up its affairs and to dissolve the corporation. ESHC shall retain sufficient assets, at the mutual agreement of the Parties, to wind up its affairs and complete the dissolution.
- (ii) Charitable Contribution. ESHC shall use the \$15,000 Transfer Fee to make a charitable donation to a nonprofit organization with a similar mission in furtherance of its charitable purposes.
- (iii) Transfer of Remaining Assets to City. The parties agree that any assets of ESHC remaining after the payments described in subsections i. and ii. above and the transfer of the Project Reserves to the CHW LP pursuant to Section 1 above shall be transferred to the City.

5. Closing Date and Closing Obligations.

(a) Closing Date. The consummation of the transaction contemplated by this Agreement shall take place upon the date and subject to the terms and conditions set forth herein and in the Purchase Agreement and in accordance with those certain escrow instructions executed by ESHC, the City and CHW LP (the "Closing Date").

(b) ESHC's Closing Obligations. At least one (1) day prior to the Closing Date, ESHC shall deliver to Escrow Holder executed copies of the following documents the forms of which are attached hereto and funds described below:

- (i) Duplicate original counterparts of the Termination of ground lease, in form and substance of that attached hereto as Exhibit "B" and hereby made a part hereof, duly executed by ESHC and acknowledged by a Notary Public;
- (ii) An original Bill of Sale for all of the Personal Property in form and substance of that attached hereto as Exhibit "D" and hereby made a part hereof, duly executed by ESHC;
- (iii) Duplicate original counterparts of an Assignment of Leases and

Contracts in form and substance of that attached hereto as Exhibit "E" and hereby made a part hereof (the "Assignment of Contracts"), duly executed by ESHC;

- (iv) Executed reconveyances and/or releases for the CDC Loan Documents (the "Reconveyances");
- (v) All funds on deposit in the Project's Reserve account;
- (vi) Such other instruments, documents and items which may be necessary or desirable for, or incidental to, the consummation of the transaction provided herein, in form and substance reasonably satisfactory to the City.

(c) City's Closing Obligations. At least one (1) day prior to the Closing Date, the City shall deliver to Escrow Holder:

- (i) A counterpart original of the Termination of ground lease;
- (ii) A counterpart original of the Assignment of Lease and Contracts; and
- (iii) Executed reconveyances and/or releases for the CDC Loan Documents (the "Reconveyances");
- (iv) Such other documents and items which may be necessary or desirable for, or incidental to, the consummation of the transaction provided herein, in form and substance reasonably satisfactory to ESHC.

(d) Fees and Costs.

- (i) The fees of Escrow Holder shall be paid by CHW LP.
- (ii) All expenses and charges incurred with the discharge of delinquent taxes, if any, liens or encumbrances, shall be charged to ESHC and considered part of the ESHC Dissolution Fees.
- (iii) Recording charges and/or filing fees for the documents to be recorded and/or filed at Closing shall be paid by CHW LP.
- (iv) All City and County documentary transfer taxes shall be paid by CHW LP.

(e) Closing: Delivery of Documents and Possession.

- (i) The term "Closing" is hereby defined to mean the date upon which all of the following have occurred:
  - (A) ESHC and City have each performed their respective

obligations under this Agreement, other than any obligations which are to be performed after the Closing Date pursuant to the terms hereof; and

- (B) Escrow Holder shall have caused the Termination and the Assignment and Assumption Agreement to have been recorded in the Official Records of San Diego County, California.
- (ii) Upon the Closing:
- (A) Escrow Holder shall deliver to the parties a conformed copy of the Termination and Reconveyances;
  - (B) Escrow Holder shall deliver to the City a fully-executed original of the Bill of Sale, and a fully-executed original of the Assignment of Lease and Contracts; and
  - (C) A copy of the recorded Regulatory Agreement between the City and CHW LP;
  - (D) ESHC shall deliver possession of the Property to the City, subject to the rights of the tenants under the Tenant Leases, but not subject to any other rights of occupancy or possession in third parties.

6. Prorations at Closing. Real estate taxes and all other expenses of the Property, including, without limitation, utility charges and expenses, shall be prorated as of the Closing Date, based upon the most current ascertainable tax bill and other relevant billing information. Rental and other charges payable by the tenants to ESHC under the Leases shall be prorated as of the Closing Date. Within ninety (90) days following the Closing Date, the City and ESHC agree to promptly adjust between themselves outside of escrow any rents received after the Closing Date. Any security deposits held by ESHC pursuant to the Tenant Leases and unapplied to delinquencies under the Tenant Leases as of the Closing Date shall be transferred to the City at the Closing. To the extent that information for any such prorations is not available on the Closing Date, the parties shall effect such prorations as soon as possible, but in no event later than thirty (30) days after the Closing Date.

7. Conditions Precedent. Without limiting the obligation of the City and ESHC to comply with their respective covenants and agreements contained in this Agreement, the obligation of ESHC to transfer and the City to acquire ESHC's interest in the Property shall be subject to the full satisfaction of the performance of all covenants and obligations in this Agreement and in the Purchase Agreement to be kept and performed by any party thereto prior to the Closing Date, and the truth and accuracy of all representations and warranties of said party when made and as of the Closing Date shall be conditions precedent to the obligation of the other party to consummate the transaction contemplated by this Agreement.

8. Conveyance of Title: "As-Is"/No Warranties.

(a) ESHC shall convey ESHC's leasehold and fee interest in the Property to the City on the Closing Date, subject to (i) general real estate taxes and installments of special assessments (if any), whether or not yet due and payable, (ii) covenants, conditions, agreements and restrictions of record, (iii) drainage, utility and other easements, and encroachments of any buildings or other improvements constructed on adjacent properties, whether recorded or visible, (iv) building, zoning and all other laws, ordinances, statutes, orders, rules, regulations or requirements of governmental authorities, (v) rights of the public in and to the public ways abutting the Property, and (vi) the rights of the tenants under the tenant Leases.

(b) Except as expressly provided in this Agreement, the City acknowledges that it is acquiring ESHC's interest in the Property on an "As Is" basis.

(c) Notwithstanding anything to the contrary contained in this Agreement, the City shall have no obligation with respect to any litigation that has commenced with respect to the Property on or before the Closing Date nor with respect to any litigation that arises after the Closing Date with respect to incidents or matter that arose prior to the Closing Date. During such time as ESHC remains an active corporation, ESHC shall indemnify and hold the City harmless from any and all injuries, losses, liens, claims, judgments, liabilities, costs, expenses or damages (including reasonable attorney's fees and court costs) sustained by or threatened against the City in connection with any litigation related to the Property with respect to any incident or matter that arose prior to the Closing Date. This indemnification will terminate upon dissolution of ESHC.

9. ESHC's Representations, Warranties and Covenants. ESHC hereby makes the following representations, warranties and covenants in favor of the City, which representations, warranties and covenants shall be effective as of the date of execution of this Agreement and as of the Closing Date and shall survive the Closing.

(a) ESHC is the leasehold owner of the Land and the fee owner of the Improvements (subject to those matters reflected on the preliminary title report).

(b) ESHC is a California nonprofit public benefit corporation duly organized, validly existing, and in good standing under the laws of the State of California, and is not insolvent; that all the documents to be delivered by ESHC to the City at the Closing will be duly authorized, executed and delivered by ESHC, will be legal and binding obligations of ESHC enforceable in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally), and will not violate any provisions of any agreement to which ESHC is a party.

(c) ESHC has the right, power and authority to enter into this Agreement and to sell, convey and transfer the Property to the City as provided herein, and to perform ESHC's obligations hereunder.

(d) To the best of ESHC's knowledge without independent investigation, there are (i) no condemnation, zoning or other land use regulation proceedings, either instituted or planned to be instituted, which would detrimentally affect the value or use of the Property, (ii) no assessments affecting the Property other than as set forth in the preliminary title report, and (iii) no pending or, to ESHC's actual knowledge, threatened legal proceedings or actions

affecting the Property or ESHC's interest therein.

(e) To the best of ESHC's actual knowledge, without independent investigation, the documents required to be delivered to the City by ESHC pursuant to this Agreement are true, correct and complete copies, and are in full force and effect without default by any party.

(f) Other than the Tenant Leases and the Assumed Contracts, there are no other leases, contracts or other agreements, whether written or oral, with any third parties affecting any portion of the Property which will survive the Closing.

(g) ESHC does not use, treat, store or dispose of, and to ESHC's knowledge has not permitted anyone else to use, treat, store or dispose of, whether temporarily or permanently, any hazardous or toxic materials ("Hazardous Materials" as defined below) at the Real Property in violation of any federal, state, or local law, regulation or ordinance with the exception of Hazardous Waste that is routinely used or stored in the ordinary course of operating a multi-family housing development used in accordance with standard practice.

Definition: Hazardous Materials: The term "Hazardous Material(s)" shall mean any (i) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Sections 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seq.; California Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1 et seq.; California Health and Safety Code Sections 25501 et seq. (Hazardous Materials Response Plans and Inventory); the California Porter-Cologne Water Quality Control Act, Water Code Sections 13000 et seq., all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing criminal or civil liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (ii) substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court, and (iii) petroleum or crude oil other than petroleum and petroleum products contained within regularly operated motor vehicles.

10. Default and Remedies. If the Closing does not occur on the Closing Date due to a breach of this Agreement by ESHC, then the City shall have the right to sue for specific

performance of this Agreement.

11. No Assignment. It is understood and agreed that neither party shall have the right at any time to assign this Agreement or any of its rights or interests hereunder at any time to any person or entity without the prior written consent of the other party, and any purported or attempted assignment shall be void and of no force or effect.

12. Time is of the Essence. Time is of the essence in the performance of each and every term, provision, covenant and obligation of the parties under this Agreement.

13. Intentionally Omitted.

14. Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California.

15. Notices. Formal notices, demands, and communications between the Parties shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

City:

City of Escondido  
201 N Broadway  
Escondido, CA 92025  
Attention: Karen Youel, Housing & Neighborhood Services Manager

ESHC:

Escondido Seniors Housing Corporation  
c/o Joan Johnston  
3143 Quiet Hills Drive  
Escondido, CA 92029

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written

16. Severability; Survival. It is agreed that if any provision of this Agreement shall be determined to be void or unenforceable as a matter of law by any court of competent jurisdiction, then such determination shall not affect any other provisions of this Agreement and all such provisions shall remain in full force and effect. All representations, warranties and indemnification obligations set forth in this Agreement shall not merge with any deed and shall survive any termination of this Agreement.

23. Complete Agreement. This Agreement and the attached exhibits evidence and constitute the complete agreement between the parties hereto relative to the subject matter hereof and shall supersede all prior offers, contracts, agreements and arrangements between the parties relating thereto. This Agreement may not be changed, modified or rescinded except in writing,

signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

24. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, executors, administrators, heirs, legatees, successors and permitted assigns.

25. Headings. The section headings used herein are for purposes of convenience only, and shall not be construed to limit or extend the meaning of any of the terms of this Agreement.

26. Counterpart Execution. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

SIGNATURES ON FOLLOWING PAGE



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date first written above.

**ESHC:**

ESCONDIDO SENIORS HOUSING CORPORATION,  
a California nonprofit public benefit corporation,

By: \_\_\_\_\_  
Jeffrey T. Jackson  
President

By: \_\_\_\_\_  
Leanne Page  
Secretary

**CITY:**

CITY OF ESCONDIDO,  
a public body, corporate and politic

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

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

LIST OF EXHIBITS

Exhibit "A"	Legal Description of Property
Exhibit "B"	Description of Personal Property
Exhibit "C"	Termination
Exhibit "D"	Form of Bill of Sale
Exhibit "E"	Form of Assignment of Leases and Contracts

EXHIBIT A  
PROPERTY DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 4, BLOCK 305, AND A PORTION OF LOT 3. BLOCK 304, AND A PORTION OF HALE AVENUE, NOW VACATED, IN RANCHO RINCON DEL DIABLO IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO [MAP THEREOF NO. 724](#), FILED IN THE OFFICE OF THE COUNTY RECORDER, AUGUST 13, 1892, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID LOT 3, SAID POINT BEING A POINT ON THE NORTHWESTERLY RIGHT OF WAY LINE OF HALE AVENUE (66 FEET IN WIDTH); THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID LOT 3, NORTH 63° 26' 43" WEST 16.44 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 63° 26' 43" WEST 160.77 FEET TO THE INTERSECTION WITH THE ARC OF A 1022.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, THROUGH WHICH A RADIAL LINE BEARS NORTH 25° 52' 23" WEST TO SAID POINT; THENCE LEAVING SAID SOUTHWESTERLY LINE, NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 12° 54' 20" A DISTANCE OF 230.20 FEET; THENCE TANGENT TO SAID CURVE, NORTH 77° 01' 57" EAST, 581.33 FEET TO THE INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF VINEYARD AVENUE (84 FEET IN WIDTH); THENCE SOUTHEASTERLY ALONG SAID WESTERLY RIGHT OF WAY LINE, SOUTH 12° 56' 44" EAST 310.61 FEET TO THE BEGINNING OF A TANGENT 942 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 15° 52' 25" A DISTANCE OF 260.98 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 20.00 FEET AND THROUGH WHICH A RADIAL OF SAID 942.00 FOOT RADIUS CURVE BEARS SOUTH 61° 10' 51" WEST TO SAID POINT; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID 20.00 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 87° 01' 15" A DISTANCE OF 30.38 FEET; THENCE TANGENT TO SAID CURVE, SOUTH 58° 12' 06" WEST 9.85 FEET TO THE BEGINNING OF A TANGENT 120.00 FOOT RADIUS CURVE CONCAVE NORTHERLY; THENCE SOUTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 45° 44' 17" A DISTANCE OF 95.79 FEET TO THE INTERSECTION WITH THE SOUTHWESTERLY LINE OF SAID LOT 4, THROUGH WHICH A RADIAL LINE BEARS SOUTH 13° 55' 23" WEST TO SAID POINT AND DISTANT THEREON SOUTH 63° 13' 18" EAST 678.36 FEET FROM SAID MOST WESTERLY CORNER OF SAID LOT 4, SAID POINT ALSO BEING A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF WEST NINTH AVENUE (66 FEET IN WIDTH); THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE NORTH 63° 13' 18" WEST 606.26 FEET TO THE BEGINNING OF A TANGENT 40.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 17° 13' 13" A DISTANCE OF 12.02 FEET; THENCE TANGENT TO SAID CURVE, NORTH 46° 00' 05" WEST 50.00 FEET TO THE

BEGINNING OF A TANGENT 76,00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF  $89^{\circ} 36' 16''$  A DISTANCE OF 118.86 FEET TO THE INTERSECTION WITH THE SOUTHWESTERLY LINE OF SAID LOT 3, DISTANT THEREON NORTH  $63^{\circ} 26' 43''$  WEST 16.44 FEET FROM THE MOST SOUTHERLY CORNER OF SAID LOT 3 AND THROUGH WHICH A RADIAL LINE BEARS NORTH  $45^{\circ} 36' 21''$  WEST TO SAID POINT, SAID POINT BEING ALSO THE TRUE POINT OF BEGINNING.

SAID LAND IS ALSO KNOWN AS LOT 22 OF ESCONDIDO TRACT NO. 477, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO [MAP THEREOF NO. 10083](#), FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 4, 1981.

APN 232-542-13-00

**EXHIBIT B**  
**DESCRIPTION OF PERSONAL PROPERTY**

EXHIBIT C  
TERMINATION

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

CITY OF ESCONDIDO

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**APN: 232-542-13-00**

**TERMINATION OF GROUND LEASE**

THIS TERMINATION OF GROUND LEASE (the "Termination") is entered into as of \_\_\_\_\_, 2019, by and between the CITY OF ESCONDIDO, a municipal corporation of the State of California ("City"), and ESCONDIDO SENIORS HOUSING CORPORATION, a California nonprofit public benefit corporation ("ESHC").

**RECITALS**

A. The City is the fee owner of certain real property located at 1600 W. Ninth Avenue in the City of Escondido, County of San Diego, California, more particularly described on **Exhibit A** attached hereto (the "Land"). The City has ground leased the Land to the ESHC pursuant to a ground lease (the "Ground Lease") dated January 14, 1977, and recorded in the Official Records of San Diego County as Instrument No. 77-019936 ("Ground Lease"). The Land is improved with residential building(s) containing 132 units (the "Improvements") for low income seniors. The Land and Improvements are collectively referred to herein as the "Real Property."

B. The City and the ESHC have entered into a transfer agreement, pursuant to which the parties have agreed, among other things, to terminate the Ground Lease and provide for the transfer of the Real Property to the City.

C. Substantially concurrently herewith the ESHC shall transfer its interest in the Real Property to the City. The City and the ESHC desire to terminate the Ground Lease.

NOW, THEREFORE, in consideration of the promises and the respective covenants and agreements contained in this Termination, the parties hereby agree as follows:

1. Termination of the Ground Lease: The Ground Lease is hereby terminated.
2. Counterparts. This Termination may be signed by different parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts shall be deemed an original of this Termination.

IN WITNESS WHEREOF, the parties have executed this Termination effective as of the date of recording of this Termination in the Official Records of the County Recorder of San Diego County.

**CITY:**

**CITY OF ESCONDIDO,**  
a public body, corporate and politic

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

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ESHC:**

**ESCONDIDO SENIOR HOUSING CORPORATION,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Jeffrey T Jackson  
President

By: \_\_\_\_\_  
Leanne Page  
Secretary

**[SIGNATURES MUST BE NOTARIZED]**



**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

State of California )

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared, \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

State of California )

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared, \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 4, BLOCK 305, AND A PORTION OF LOT 3. BLOCK 304, AND A PORTION OF HALE AVENUE, NOW VACATED, IN RANCHO RINCON DEL DIABLO IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO [MAP THEREOF NO. 724](#), FILED IN THE OFFICE OF THE COUNTY RECORDER, AUGUST 13, 1892, DESCRIBED AS FOLLOWS:

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BEGINNING OF A TANGENT 76,00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 89° 36' 16" A DISTANCE OF 118.86 FEET TO THE INTERSECTION WITH THE SOUTHWESTERLY LINE OF SAID LOT 3, DISTANT THEREON NORTH 63° 26' 43" WEST 16.44 FEET FROM THE MOST SOUTHERLY CORNER OF SAID LOT 3 AND THROUGH WHICH A RADIAL LINE BEARS NORTH 45' 36' 21" WEST TO SAID POINT, SAID POINT BEING ALSO THE TRUE POINT OF BEGINNING.

SAID LAND IS ALSO KNOWN AS LOT 22 OF ESCONDIDO TRACT NO. 477, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO [MAP THEREOF NO. 10083](#), FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 4, 1981.

APN 232-542-13-00

EXHIBIT D  
FORM OF BILL OF SALE

BILL OF SALE

The undersigned, **ESCONDIDO SENIOR HOUSING CORPORATION**, a California nonprofit public benefit corporation ("Transferor"), for valuable consideration, hereby grant, bargain, sell, convey, assign and deliver to **CITY OF ESCONDIDO**, a municipal corporation of State of California ("Transferee"), effective \_\_\_\_\_, 2019, all personal property of any nature or description, whether tangible or intangible, used or obtained in connection with the business of Transferor located at 1600 W. Ninth Avenue in the City of Escondido, County of San Diego, California, including but not limited to:

All furniture, fixtures, equipment, machinery, goods, supplies, appliances;

Together with all permits, applications, certificates, contracts, warranties, guaranties, agreements or licenses required or used in connection with or given for the benefit of the Transferor's business; all of Transferor's interest under any leases of any personal property used in the operation of Transferor's business;

to have and to hold the same to Transferee, its successors and assigns forever. Transferor covenants and warrants that it is the owner of all personal property herein conveyed and has good right and full authority to sell the same and that it will warrant and defend the sale hereby made against all persons lawfully claiming the same by, through or under Transferor.

Transferor:

**ESCONDIDO SENIOR HOUSING CORPORATION,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT E  
FORM OF ASSIGNMENT OF LEASES AND CONTRACTS

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**(LEASES)**

This Assignment and Assumption Agreement (the "Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between **ESCONDIDO SENIOR HOUSING CORPORATION**, a California nonprofit public benefit corporation ("Assignor") and **CITY OF ESCONDIDO**, a municipal corporation of the State of California ("Assignee") with reference to the following facts:

A. Assignor and Assignee have entered into that certain Transfer Agreement dated \_\_\_\_\_, 2019, pursuant to which Assignor will assign to Assignee and Assignee will receive from Assignor that certain real property consisting of land and improvements located at 1600 W. Ninth Avenue in the City of Escondido, County of San Diego, California (the "Property").

B. Assignor desires to assign to Assignee and Assignee desires to accept the assignment from Assignor of those certain tenant leases entered into by Assignor in connection with the rental of the residential units which comprise the Property as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Leases"); and

C. Assignee desires to release Assignor from all obligations in connection with such Leases.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. Assignment by Assignor. Assignor hereby assigns to Assignee, and Assignee hereby accepts from Assignor, all of Assignor's right, title, and interest in and obligations under the Leases.

2. Acceptance of Assignment. Assignee hereby accepts the above assignments and hereby assumes, agrees, and undertakes to perform all of the obligations, covenants, and agreements of Assignor pursuant to the Leases. Any reference to Assignor in the Leases shall be deemed a reference to Assignee.

3. Release of Assignor. Assignee releases Assignor from all obligations imposed under any of the Leases.

4. Representations. Assignor hereby represents and warrants that it has not previously assigned, pledged, hypothecated or otherwise transferred any of its rights under the Leases.

5. Effective Date. The assignments set forth herein above shall be effective as of the date of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**ASSIGNOR:**

**ESCONDIDO SENIOR HOUSING CORPORATION,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Jeffrey T Jackson  
President

By: \_\_\_\_\_  
Leanne Page  
Secretary

**ASSIGNEE:**

**CITY OF ESCONDIDO,**  
a public body, corporate and politic

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

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

## EXHIBIT A

### LEASES

<u>Unit</u>	<u>Resident</u>
01A	MERTE URTON
01B	MARTA OTTEN
01C	DAVID ZEPEDA
02A	LYNN KEARNEY
02B	JULIE SAN MARTIN
02C	LORRETA BORG
03A	DOMINGUEZ SOCORRO
03B	ARRELIA GALVIN
03C	VACANT
04A	JAMES YARGER
04B	JORGE HERNADEZ
04C	BARBARA CALDERON
05A	MARTHA ROCK
05B	LINDA ANGLIN
05C	CAROL CARSON
06A	WILLIAM TISSAIR
06B	GLEN PATTERSON
06C	SHIRLEY MOSSEY ALTMAN
07A	AMALE PAIGE
07B	BEVERLY JACKSON
07C	THERESA SCHUER
08A	DANIEL & MARILY PERRIN
08B	SONGYOD BOONSUE
08C	VICKY FANNING
09A	NATELLA POPOVA
09B	ANGELA LEPE SORIA
09C	MARIA MARRERO
10A	LOIS J KANZIUS
10B	VICTORIA CHESONIS
10C	EDNA FAY WISEMAN
11A	SANDRA BRITTON
11B	LAURA SINGER
11C	PATRICIA FUNDERBUCK
12A	LUCY HAGER
12B	DONNA HAGSTROM
12C	ENRIQUE CASTRO



13A BARBARA SHOWERS  
13B ROSE KENNEDY  
13C CARMEL VILLALOBOS  
14A JACK R.BARNES  
14B MARY ROSE GARCIA  
14C SYLVIA A. STARK  
15A DOROTHY GREGORY  
15B EVELYN EDWARDS  
15C FRANCES M. RUTHERFORD  
16A HASSAN SABERI  
16B MERCEDES REYNA  
16C JEAN BOURGOIN  
17A JANE KOLAR  
17B IRENE PALMER  
17C DAWN SUMMIT  
18A CHARLOTTE DUKICH  
18B JESUS BUZO  
18C SHELLEY WELLS  
19A ROSEMARY AMIGLIORE  
19B BARBARA KINLEY  
19C DARLENE TOTH  
20A ANTHONY MAJOY  
20B YOUNG YOON  
20C CHANG OP YI  
21A MARVIN GRIESSE  
21B FELECITAS CUAJUNCO  
21C ANDRES & MARIA GALLARDO  
22A RAFAELA GARCIA  
22B MARIA RAMOS  
22C LEE YODER  
23A BONNIE ZEPEDA  
23B DIANE ZUBECK  
23C NELLY DOWLATSHAHI  
24A WILLIAM KHAMBOUABANE  
24B GUADALUPE COX  
24C JONI JOHNSON  
25A CARLA GRANTHAM  
25B SUSAN GUFFY  
25C RHONDA WIDEMAN  
26A BERNARD ANDREWS  
26B AIDA COOGAN  
26C NASRIN RAD  
27A DAVID PUSHMAN

27B VACANT  
27C XICHAO ZHANG  
28A CAROL SNEARY  
28B DANE DRISCOLL  
28C CARMELITA HILLIARD  
29A CARMENT SANTOS  
29B ALIKPER ASHUMOV (do not charge rent)  
29C DONNA REIMER  
30A PHILIP LABELLE  
30B ELVIRA LEGASPI  
30C JOSEPHINE ESCALANTE  
31A DAVID HO  
31B LEONARD RUBIN  
31C TERESA MILLS  
32A KHAMMANH CHAMPASRY  
32B GAYLE MOUTARD  
32C NANCY PETERSEN-OLSON  
33A ESTHER PARRY  
33B MARY MAPES  
33C CELIA MORFIN  
34A KATHRYN (TINA) VALLEE  
34B SHARON HERSEY  
34C REBECA ESPINOZA  
35A ERLANDO LIBORO  
35B JUNG CHOI  
35C CLOTILDA KING  
36A JAVIER FIGUEROA  
36B CARMELLO SANTILLO  
36C ROBERT & GENOVEVA BRZYCKI  
37A HUANYA XUE  
37B MARIE (MIMI) L. MOULTON  
37C HAROLD HENSEL  
38A VILAIHONG RONNIE  
38B LORETTA SINGLETARY  
38C DARLENE SEFFRON  
39B ELISA DELGADILLO  
39C EILEEN LAZANIS  
40A SOMDY PHOMMASY  
40B VICTORIA SANDERS  
40C LOUISA LUNDSTEN  
41A BOUNMY VILASAK  
41B BEVERLY J. COUTY  
42A JUDITH PERSING

42B GLORIA REEVES  
43A JUDITH MARIN  
43B GEURENA EDWARD  
44A WINIFRED MORRIS  
44B DAVID SMITH  
45B MARIA AGUAS  
46B RAYMOND MARCON  
47B TERRY PARKER  
48B DIANE BROWN

ASSIGNMENT AND ASSUMPTION AGREEMENT  
(CONTRACTS)

This Assignment and Assumption Agreement (the "Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between **ESCONDIDO SENIOR HOUSING CORPORATION**, a California nonprofit public benefit corporation ("Assignor") and **CITY OF ESCONDIDO**, a municipal corporation of the State of California ("Assignee") with reference to the following facts:

- A. Assignor and Assignee have entered into that certain Transfer Agreement dated \_\_\_\_\_, 2019, pursuant to which Assignor will assign to Assignee and Assignee will receive from Assignor that certain real property consisting of land and improvements located at 1600 W. Ninth Avenue in the City of Escondido, County of San Diego, California (the "Property").
- B. Assignor desires to assign to Assignee and Assignee desires to accept the assignment from Assignor of certain service contracts entered into by Assignor in connection with the maintenance of the Property as more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the "Contracts"); and
- C. Assignee desires to release Assignor from all obligations in connection with such assignments.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. Assignment by Assignor. Assignor hereby assigns to Assignee, and Assignee hereby accepts from Assignor, all of Assignor's right, title, and interest in and obligations under the Contracts.
2. Acceptance of Assignment. Assignee hereby accepts the above assignments and hereby assumes, agrees, and undertakes to perform all of the obligations, covenants, and agreements of Assignor pursuant to the Contracts. Any reference to Assignor in the Contracts shall be deemed a reference to Assignee.
3. Release of Assignor. Assignee releases Assignor from all obligations imposed under any of the Contracts.
4. Representations. Assignor hereby represents and warrants that (a) it has obtained all consents necessary to assign the Contracts to Assignee, and (b) it has not previously assigned, pledged, hypothecated or otherwise transferred any of its rights under the Contracts.
5. Effective Date. The assignments set forth in paragraph 1 above shall be effective as of the date of this Assignment.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first written above.

ASSIGNOR:

**ESCONDIDO SENIOR HOUSING CORPORATION,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Jeffrey T Jackson  
President

By: \_\_\_\_\_  
Leanne Page  
Secretary

ASSIGNEE:

**CITY OF ESCONDIDO,**  
a public body, corporate and politic

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

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**  
**LIST OF CONTRACTS**

<b>VENDOR NAME</b>	<b>Service</b>	<b>ACCOUNT NUMBER</b>
CITY OF ESCONDIDO	Water	<b>3650985000</b>
ESCONDIDO DISPOSAL	Trash	<b>53-EM 10482</b>
SDGE-REC	Electricity	<b>7844 477 504 2</b>
SDGE-REC-GAS	Gas	<b>6719 477 502 1</b>
SDGE-39A-GAS	Gas	<b>7844 490 130 2</b>
SDGE-39A	Electricity	<b>7844 491 600 3</b>
COX BUSINESS	Internet Service Provider	<b>13410071284101</b>
VONAGE BUSINESS	Office Phones	<b>60115</b>
ADT	Buglary Alarm	<b>202725422</b>
BRAVO THREE	Security Patrol	<b>619-328-0671</b>
PESTGON	Pest Control	<b>877-724-8100</b>
GREEN VALLEY LANDSCAPE	Landscaping	<b>800-820-2114</b>
GREEN COAST BUILDING SERVICES	Janitorial	<b>1330</b>
SPARKLETTS	Water Delivery Service	<b>424700712367843</b>

## **AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY**

This Agreement for Purchase and Sale of Real Property (this "**Agreement**") is made and entered into as of \_\_\_\_\_, 2019 (the "**Effective Date**"), by and between Windsor Gardens Housing Associates, L.P., a California limited partnership ("**Buyer**"), and the City of Escondido, a municipal corporation ("**Seller**" and collectively with Buyer, the "**Parties**").

### **RECITALS**

A. WHEREAS, Seller is the fee owner of certain real property located at 1600 W. Ninth Avenue in the City of Escondido, County of San Diego, California, more particularly described on Exhibit A attached hereto (the "**Land**"). Seller has ground leased the Land to Escondido Seniors Housing Corporation ("**ESHC**") pursuant to a ground lease (the "**Ground Lease**") dated January 14, 1977, and recorded in the Official Records of San Diego County as Instrument No. 77-019936. The Land is improved with residential building(s) containing 132 units (the "**Improvements**") for low income seniors (the "**Project**"). The Land and Improvements are collectively referred to herein as the "**Property**."

B. WHEREAS, Buyer is an experienced developer of multi-family affordable housing who desires to develop the Project in furtherance of the charitable purpose of Buyer;

C. WHEREAS, in furtherance of preserving affordable housing in the City of Escondido, California, Seller desires to facilitate the acquisition of the Property from ESHC and the subsequent transfer of the Property to Buyer;

D. WHEREAS, concurrently herewith, Seller and ESHC have entered into a Transfer Agreement (the "**Transfer Agreement**") pursuant to which Seller and ESHC will terminate the Ground Lease and ESHC will transfer its interest in the Ground Lease, Improvements and all personal property to Seller, subject to the terms and conditions and continuing covenants set forth in the Transfer Agreement; and

E. WHEREAS, upon Seller's acquisition of the Property, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Property, for the consideration and on the terms and conditions set forth in this Agreement.

### **AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, Seller and Buyer do hereby covenant and agree as follows:

1. **Agreement to Sell and Purchase.** Seller hereby agrees to sell to Buyer and Buyer hereby agrees to purchase from Seller the Property, upon the terms and conditions hereinafter set forth. The Parties acknowledge and agree that the transaction contemplated by this Agreement shall be closed in a so-called "double-escrow" pursuant to which Seller shall acquire the Property from ESHC pursuant to the Transfer Agreement and concurrently close Escrow for the sale of the Property to Buyer pursuant to the terms of this Agreement. Buyer agrees and acknowledges that

Seller has entered into the Transfer Agreement as an accommodation and that (i) Buyer shall fund in advance any and all amounts required to be funded by Seller pursuant to the Transfer Agreement, including, without limitation, any escrow costs, recording fees or premiums, costs of title insurance, prorations of real property taxes and assessments, rents, interest and other expenses (“**Buyer Advanced Funds**”), and (ii) Buyer shall be solely responsible for performing any and all necessary due diligence related to the Property (including any costs, liabilities, or insurance requirements related to performing such due diligence). In consideration of the expense incurred by Buyer in connection with the acquisition of the Property (i) Seller shall not waive any condition or contingency set forth in the Transfer Agreement, make any election under the Transfer Agreement, or modify, amend or terminate the Transfer Agreement, without the prior consent of the Buyer, (ii) Seller shall take all actions (or refrain from taking actions) under the Transfer Agreement as reasonably requested by Buyer, and (iii) Seller shall not take any action which would constitute a default under the Transfer Agreement. The existing Project replacement reserves (the “**Reserves**”) shall be transferred to Buyer through escrow, together with the Property, upon Closing pursuant to the terms of this Agreement.

2. Purchase Price. The purchase price for the Property shall be \$14,900,000 (the “**Purchase Price**”). The Purchase Price shall be paid by (i) Buyer obtaining a new loan from the City of Escondido as the Successor Housing Agency of the Community Development Commission of the City of Escondido (the “**SHA**”) in the original principal amount of [\$900,000] (the “**SHA Loan**”), and (ii) Seller providing a loan to Buyer for the balance (the “**Takeback Loan**”).

3. Deposit. Buyer shall have delivered to Escrow Holder (as that term is hereinafter defined) the amount of One Hundred and 00/100 Dollars (\$100.00) to be applied towards the Purchase Price at the Closing (as defined below), by the end of the third (3rd) business day following the Effective Date (the aforesaid amount is referred to herein as the “**Deposit**”).

4. “As Is” Sale.

4.1 Buyer does hereby acknowledge, represent, warrant and agree, to and with Seller, that: (i) Buyer is purchasing the Property in an “AS IS, WHERE IS, AND WITH ALL FAULTS” condition with respect to any facts, circumstances, conditions and defects of all kinds; (ii) Seller has no obligation to repair or correct any such facts, circumstances, conditions or defects or compensate Buyer for same; (iii) Buyer is and will be relying strictly and solely upon the advice and counsel of its own agents and officers and such physical inspections, examinations and tests of the Property as Buyer deems necessary or appropriate under the circumstances, and Buyer is and will be fully satisfied that the Purchase Price is fair and adequate consideration for the Property; (iv) Buyer has had and will have, pursuant to this Agreement, an adequate opportunity to make such legal, factual and other inquiries and investigations as Buyer deems necessary, desirable or appropriate with respect to the Property; (v) Seller is not making and has not made any warranty or representation, express or implied, with respect to the Property as an inducement to Buyer to enter into this Agreement and thereafter to purchase the Property, or for any other purpose; and (vi) by reason of all of the foregoing, from and after the Closing, Buyer shall assume the full risk of any loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the physical and other conditions of the Property and/or the operation of the Property, regardless of whether the same is capable of being observed or ascertained.



4.2 SELLER HAS NOT, DOES NOT AND WILL NOT, WITH RESPECT TO THE PROPERTY, MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION OR MERCHANTABILITY, OR WITH RESPECT TO THE VALUE, PROFITABILITY OR OPERATING POTENTIAL OF THE PROPERTY.

4.3 The provisions of this Section 4 shall survive any termination of this Agreement and shall survive Closing and the delivery of the Grant Deed at Closing.

5. Escrow. Following the mutual execution of this Agreement by Buyer and Seller, an escrow shall be opened with Stewart Title Guaranty Company ("**Escrow Holder**"). Said Escrow Holder shall also provide title insurance and hereinafter may also be referred to as the "**Title Company**." The parties shall provide the Escrow Holder with escrow instructions substantially similar to the attached "Exhibit X" ("Escrow Instructions").

6. Title. Title to the Property shall be conveyed by a grant deed (the "**Grant Deed**") from Seller to Buyer in the form attached hereto as Exhibit B, transferring title to the Property to Buyer, and shall be evidenced by an American Land Title Association standard form Owner's Policy of Title Insurance with respect to the Property (the "**Title Policy**") issued by the Title Company with collective liability in the full amount of the Purchase Price (or such greater amount as may be reasonably requested by Buyer).

7. Inspection and Review. Buyer acknowledges that (i) Seller is not the current owner of the Property, and (ii) Seller's only rights to access the Property are as set forth in the Transfer Agreement. Seller shall use commercially reasonable efforts to allow Buyer to have access to the Property on the same terms and conditions as allowed to Seller under the Transfer Agreement and any other agreement between Seller and ESHC pertaining to access to the Property. Buyer hereby agrees to indemnify, defend, protect and hold the City, its agents, officers, and legislators, harmless from and against any and all claims, liabilities, obligations, costs, losses, damages and/or expenses, of any kind or nature (including, without limitation, reasonable attorneys' fees and costs), arising out of or resulting from any submittal(s) affecting the Property by or for Buyer and/or any such entry and/or activities upon the Property by Buyer, its employees, agents, contractors and/or subcontractors and Buyer agrees, at its sole cost and expense, to restore the Property to its condition existing prior to the conduct of any such activities upon the Property by Buyer, its employees, agents, contractors and/or subcontractors. The provisions of this section shall survive the termination of this Agreement and the Close of Escrow and delivery of the Grant Deed.

8. Conditions to Performance of Agreement.

8.1 Conditions to Buyer's Obligations. Buyer's obligation to purchase the Property is conditioned upon:

- (a) Buyer's receipt of a counterpart executed copy of this Agreement, duly executed by Seller;
- (b) Seller has acquired title to the Property pursuant to the terms of the Transfer Agreement; and

(c) Seller's delivery of the Grant Deed to the Property (duly executed and in recordable form).

(d) Escrow Holder has received fully executed and acknowledged (where necessary) documents (including the regulatory agreement described in Section 9.2 below) evidencing the SHA Loan and the Takeback Loan.

8.2 Conditions to Seller's Obligations. Seller's obligation to sell the Property to Buyer is conditioned upon:

(a) Seller's receipt of a counterpart executed copy of this Agreement, duly executed by Buyer;

(b) Seller has acquired title to the Property pursuant to the terms of the Transfer Agreement;

(c) Satisfaction of all conditions in the Escrow Instructions;

(d) Seller's receipt of an easement for the existing City sewer and other utility lines burdening the Property in a form approved by the City; and

(e) Escrow Holder has received fully executed and acknowledged (where necessary) documents (including the Regulatory Agreement described in Section 9 below) evidencing the SHA Loan and the Takeback Loan.

9. Buyer's Covenants Following Closing. The parties agree that the following covenants shall survive the acquisition of the Property by the City and the subsequent transfer to Buyer, and shall be evidenced in a regulatory agreement between the City and Buyer (the "Regulatory Agreement") which shall be recorded concurrently with the Closing (defined below). Buyer and City acknowledge that a failure to record the Regulatory Agreement will constitute a breach under this Agreement and the Transfer Agreement and that ESHC has the right under the Transfer Agreement to sue for specific performance to cause the Regulatory Agreement to be recorded, following the notice and cure period set forth therein.

9.1 Protections for Current Residents.

(a) Nondisplacement. Buyer agrees not to displace any of the current residents, with the exception of necessary, temporary relocation for a reasonable time period.

(b) Rent Increase Limitation. Buyer agrees to limit annual rent increases for the current residents of the Project to 2.5% annual increase from their existing rent.

9.2 Affordability Restrictions. Buyer agrees to the affordability restrictions described below, and further agrees to effectuate the recordation of a legal document evidencing these restrictions for a minimum of 55 years from transfer: 50 units will be income- and rent-restricted to households earning less than 60% AMI; 47 units will be income- and rent-restricted to households earning less than 50% AMI; 33 units will be income- and rent-restricted to households earning less than 30% AMI; and 2 units will be unrestricted manager units. Notwithstanding the foregoing, the City acknowledges that there may be units at the Project which

are currently occupied by tenants whose incomes exceed the foregoing affordability restrictions (the "Existing Over-Income Units"), and the City further agrees that the Existing Over-Income Units will continue to be treated as affordable units, so long as upon the vacancy of any Existing Over-Income Unit, such unit must then be rented to a qualifying household. A regulatory agreement with the City documenting the foregoing restrictions shall satisfy the requirements of this Section 9.2. In addition, City acknowledges and agrees that the foregoing affordability restrictions shall be made subordinate to the senior construction and permanent loans for the Project.

9.3 Social Services Plan and Budget.

(a) Service Plan. Buyer hereby agrees to offer supportive services at the Project appropriate to seniors for a minimum of 55 years.

(b) Services Budget. Buyer hereby commits to a budget for social services of \$50,000 a year, increasing by 3.5% annually, with a minimum of \$36,000 per year, increasing by 3.5% annually, to be paid as an operating expense prior to hard debt service, and the balance to be paid out of cash flow prior to deferred developer fee, partnership management fee payable to the general partner, and residual receipts debt payments on soft loans.

10. Close of Escrow. The close of escrow shall take place on the Closing Date in the offices of the Escrow Holder (the "Closing").

11. Documents and Funds Delivered Though Escrow. At least one (1) day prior to the Closing Date, Seller and Buyer shall execute and deliver to Escrow Holder the following:

11.1 the Grant Deed duly executed by Seller, and in form for recording, conveying marketable, fee simple title to the Property;

11.2 an assignment conveying, assigning and otherwise transferring to Buyer all tenant leases, contracts and rights appurtenant to the Property, if any, in the form set forth in Exhibit C attached hereto (the "Assignment");

11.3 a Bill of Sale conveying, assigning and otherwise transferring to Buyer all rights appurtenant to the personal property, if any, in the form set forth in Exhibit D attached hereto (the "Bill of Sale");

11.4 the SHA Loan documents, including the Regulatory Agreement, in form and substance acceptable to SHA and Buyer;

11.5 the Seller Take Back promissory note and deed of trust, in form and substance acceptable to Seller and Buyer;

11.6 The Reserves; and

11.7 all other documents as Escrow Holder may require to complete the transaction contemplated by this Agreement.

12. Costs and Prorations. Buyer shall be responsible for all closing costs including the cost of the premium for the Title Policy, transfer taxes and escrow fees.

13. Default and Remedies.

(a) By Seller. In the event Seller fails to perform or comply with any of the obligations, covenants or agreements to be performed or any of the conditions to be complied with by Seller under the terms and provisions of this Agreement or if any of the representations or warranties of Seller contained herein are untrue at the close of escrow and not waived by Buyer, Buyer as its sole remedy shall be entitled to either (i) terminate this Agreement by giving written notice of such termination to Seller and Escrow Holder and seek recovery of the Deposit and the Buyer Advanced Funds paid by Buyer, or to (ii) seek specific performance of this Agreement.

(b) Seller's Failure to Close. In the event the conditions set forth in Section 8.2 of this Agreement are satisfied and Seller does not proceed with the Closing, Buyer as its sole remedy shall be entitled to either (i) terminate this Agreement by giving written notice of such termination to Seller and Escrow Holder, whereupon (A) Escrow Holder shall promptly refund to Buyer the Deposit paid hereunder, and (B) Buyer shall pay any and all Escrow Holder termination charges and expenses, or to (ii) seek specific performance of this Agreement.

(c) **BY BUYER; LIQUIDATED DAMAGES. IN THE EVENT (I) SELLER HAS COMPLIED WITH EACH AND EVERY OBLIGATION OF SELLER HEREUNDER, (II) EACH AND EVERY CONDITION PRECEDENT TO BUYER'S OBLIGATIONS HEREUNDER IS SATISFIED, AND (III) BUYER SHALL FAIL TO PERFORM BUYER'S OBLIGATION TO PURCHASE THE PROPERTY AT THE CLOSE OF ESCROW IN ACCORDANCE WITH THE TERMS, PROVISIONS AND CONDITIONS OF THIS AGREEMENT, SELLER SHALL BE ENTITLED TO TERMINATE THIS AGREEMENT BY GIVING WRITTEN NOTICE OF SUCH TERMINATION TO BUYER AND ESCROW HOLDER, WHEREUPON THE DEPOSIT WILL BE PAID TO SELLER AS FULL AND COMPLETE LIQUIDATED DAMAGES FOR THE DEFAULT OF BUYER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE LIQUIDATED DAMAGES ARE INTENDED TO COMPENSATE SELLER FOR ANY AND ALL DAMAGES SUFFERED BY REASON OF ANY DEFAULT BY BUYER, SUCH DAMAGES BEING IMPOSSIBLE OF CALCULATION, AND FURTHER, THAT THE PAYMENT OF THE DEPOSIT TO SELLER IS NOT INTENDED AS A PENALTY, BUT AS LIQUIDATED DAMAGES. NOTHING IN THIS SECTION 12(c) SHALL LIMIT ANY RIGHT OR REMEDY SELLER MAY HAVE AGAINST BUYER AS SET FORTH IN THE MASTER AGREEMENT.**

14. Defense and Indemnification.

14.1. Buyer agrees to defend, indemnify, and hold harmless, City, and provide and pay all costs for a defense of and judgment against the City, including any award for attorney's fees and litigation costs, in any legal action filed in a court of competent jurisdiction by a third party challenging this Agreement or any related agreement or component thereof.

14.2. The City shall have no liability to the Buyer or any other person for, and Buyer shall indemnify, defend, protect and hold harmless the City from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements, which the City may suffer or incur or to which the City may become subject as a result of or allegedly caused by the payment of prevailing wages for construction or rehabilitation of the project.

14.3 The City shall have no liability to the Buyer or any other person for, and Buyer shall indemnify, defend, protect and hold harmless the City from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements, which the City may suffer or incur or to which the City may become subject as a result of or allegedly caused by the assignment and assumption of the tenant leases or other contracts pursuant to the Transfer Agreement.

14.4 If any action or proceeding is brought against the City by reason of any of the matters against which Buyer has agreed to indemnify the City as provided above, Buyer, upon notice from the City, shall defend the City at Buyer's expense by counsel chosen by the City. The City need not have first paid for any of the matters to which the City is entitled to indemnification in order to be so indemnified. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

15. Brokerage Commission. Buyer and Seller represent and warrant to each other that no broker, agent, salesperson, or finder has been engaged with respect to, or is in any way entitled to, a commission or other fee in connection with the transaction contemplated hereunder. In the event of a claim for any commission or fee by any broker, agent, salesperson or finder, Buyer and Seller hereby agree to indemnify and hold each other harmless from any and all such claims and any and all demands, costs, expenses, and causes of action therewith.

16. Time of the Essence. The Parties hereto agree that time is of the essence in the execution and performance of this Agreement and each of its provisions.

17. Governing Law. This Agreement shall be interpreted, construed and governed by the laws of the State of California.

18. Severability. In the event any term, covenant, condition, agreement, section or provision contained in this Agreement shall be deemed invalid or unenforceable by a court of competent and final jurisdiction, this Agreement shall not terminate or be deemed void or voidable, but shall continue in full force and effect and there shall be substituted for such stricken provision a like, but legal and enforceable, provision which most nearly accomplishes the intention of the Parties hereto, and if no such provision is available, the remainder of this Agreement shall be enforced.

19. Notices. All notices required, necessary or desired to be given pursuant to this Agreement, including a change of address for purposes of notice, shall be in writing and shall be deemed effective and given (i) upon personal delivery, (ii) upon delivery if sent by Federal Express or similar private courier company that maintains records of its deliveries, (iii) upon transmission

by facsimile machine to the facsimile number listed herein, (iv) upon transmission by e-mail to the e-mail addressed listed herein, or (v) upon deposit in the United States Mail, certified, return receipt requested, postage prepaid and addressed as follows:

**SELLER:**

City of Escondido  
201 N Broadway  
Escondido, CA 92025  
Attention: Karen Youel, Housing & Neighborhood Services Manager

**BUYER:**

c/o Community HousingWorks  
3111 Camino del Rio N, Suite 800  
San Diego, CA 92108  
Attention: Susan M. Reynolds

20. Assignment. It is understood and agreed that neither party shall have the right at any time to assign this Agreement or any of its rights or interests hereunder at any time to any person or entity without the prior written consent of the other party, and any purported or attempted assignment shall be void and of no force or effect.

21. Binding Effects. The terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective successors, assigns, heirs and legal representatives.

22. Entire Agreement. This Agreement, including all attached Exhibits, constitutes the entire and complete agreement of Buyer and Seller with respect to the transaction contemplated hereby, and conversations, undertakings, representations, promises, inducements, warranties or statements not reduced to writing and expressly set forth herein shall be of no force or effect whatsoever.

23. Modification and Amendment. This Agreement may not be modified, altered or amended except by a written instrument executed by Buyer and Seller.

24. Survival of Agreement. All of the terms and provisions of this Agreement shall survive the close of escrow and not merge with the execution and delivery of the Grant Deed.

25. Headings. The headings throughout this Agreement are for convenience and reference only, and the words contained therein shall not be held to expand, modify, amplify or aid in the interpretation, construction or meaning of this Agreement.

26. Attorneys' Fees. All fees and expenses of attorneys or other advisors retained by Seller or Buyer pursuant to this Agreement and the completion of the transaction contemplated thereby shall be the sole responsibility of the party engaging the services of such attorneys or advisors; except, however, if any lawsuit or proceeding is brought by either party hereto to enforce

the terms of this Agreement, the unsuccessful party in such proceeding hereby agrees to pay the prevailing party all its reasonable attorneys' fees and costs, including court costs, incurred in bringing or defending such action.

27. Extension to Next Business Day. In the event a date for the end of a period, delivery of notice or the close of escrow shall fall on a Saturday, Sunday or legal holiday, then such date shall be postponed to the next business day immediately following such date.

28. Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**BUYER:**

Windsor Gardens Housing Associates, L.P., a California limited partnership

By: CHW Windsor Gardens LLC, a California limited liability company, its managing general partner

By: Community HousingWorks, a California nonprofit public benefit corporation, its sole member/manager

By: \_\_\_\_\_  
Mary Jane Jagodzinski  
Senior Vice President

**SELLER:**

CITY OF ESCONDIDO,  
a public body, corporate and politic

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

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



EXHIBIT A

Legal Description

(see attached)

EXHIBIT B

Form of Grant Deed

RECORDING REQUESTED BY:

WHEN RECORDED MAIL  
TAX STATEMENTS TO:

Community Housing Works  
3111 Camino del Rio N, Suite 800  
San Diego, CA 92108  
Attention: Susan M. Reynolds

APN: \_\_\_\_\_

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(Space above this line is for recorder's use)

**GRANT DEED**

THE UNDERSIGNED GRANTOR(S) DECLARE(S)  
**DOCUMENTARY TRANSFER TAX is \$** \_\_\_\_\_

computed on full value of property conveyed, or  
 computed on full value less value of liens or encumbrances remaining at time of sale  
 County of San Diego

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, City of Escondido, a public body, corporate and politic ("**Grantor**"), hereby GRANTS to Windsor Gardens Housing Associates, L.P., a California limited partnership, its successors and assigns ("**Grantee**"), the following described real property located in the County of Alameda, California, and more particularly described in Exhibit A, attached to and incorporated into this Grant Deed by this reference.

IN WITNESS WHEREOF, Grantor has caused this Grant Deed to be executed as of the  
\_\_\_ day of \_\_\_\_\_, 2019.

**“Grantor”**

CITY OF ESCONDIDO,  
a public body, corporate and politic

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

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT C  
**ASSIGNMENT**

ASSIGNMENT AND ASSUMPTION AGREEMENT  
(CONTRACTS)

This Assignment and Assumption Agreement (the "Agreement") is entered into as of the \_\_\_ day of \_\_\_\_\_, 2019, by and between **WINDSOR GARDENS HOUSING ASSOCIATES, L.P.**, a California limited partnership ("Assignee") and **CITY OF ESCONDIDO**, a municipal corporation of the State of California ("Assignor") with reference to the following facts:

A. Assignor and Assignee have entered into that certain Agreement for Purchase and Sale of Real Property dated \_\_\_\_\_, 2019, pursuant to which Assignor will assign to Assignee and Assignee will receive from Assignor that certain real property consisting of land and improvements located at 1600 W. Ninth Avenue in the City of Escondido, County of San Diego, California (the "Property").

B. Assignor desires to assign to Assignee and Assignee desires to accept the assignment from Assignor of certain service contracts entered into by Assignor in connection with the maintenance of the Property as more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the "Contracts"); and

C. Assignee desires to release Assignor from all obligations in connection with such assignments.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. Assignment by Assignor. Assignor hereby assigns to Assignee, and Assignee hereby accepts from Assignor, all of Assignor's right, title, and interest in and obligations under the Contracts.

2. Acceptance of Assignment. Assignee hereby accepts the above assignments and hereby assumes, agrees, and undertakes to perform all of the obligations, covenants, and agreements of Assignor pursuant to the Contracts. Any reference to Assignor in the Contracts shall be deemed a reference to Assignee.

3. Release of Assignor. Assignee releases Assignor from all obligations imposed under any of the Contracts.

4. Representations. Assignor hereby represents and warrants that (a) it has obtained all consents necessary to assign the Contracts to Assignee, and (b) it has not previously assigned, pledged, hypothecated or otherwise transferred any of its rights under the Contracts.

5. Effective Date. The assignments set forth in paragraph 1 above shall be effective as of the date of this Assignment.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first written above.

**ASSIGNOR:**

**CITY OF ESCONDIDO,**  
a municipal corporation of the State of California

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

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ASSIGNEE:**

**Windsor Gardens Housing Associates, L.P.,**  
a California limited partnership

By: CHW Windsor Gardens LLC,  
a California limited liability company,  
its general partner

By: Community HousingWorks,  
a California nonprofit public benefit corporation,  
its sole member/manager

By: \_\_\_\_\_  
Mary Jane Jagodzinski,  
Senior Vice President

**EXHIBIT A**  
**LIST OF CONTRACTS**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**  
**(LEASES)**

This Assignment and Assumption Agreement (the "Agreement") is entered into as of the \_\_\_ day of \_\_\_\_\_, 2019, by and between **WINDSOR GARDENS HOUSING ASSOCIATES, L.P.**, a California limited partnership ("Assignee") and **CITY OF ESCONDIDO**, a municipal corporation of the State of California ("Assignor") with reference to the following facts:

A. Assignor and Assignee have entered into that certain Agreement for Purchase and Sale of Real Property dated \_\_\_\_\_, 2019, pursuant to which Assignor will assign to Assignee and Assignee will receive from Assignor that certain real property consisting of land and improvements located at 1600 W. Ninth Avenue in the City of Escondido, County of San Diego, California (the "Property").

B. Assignor desires to assign to Assignee and Assignee desires to accept the assignment from Assignor of those certain tenant leases entered into by Assignor in connection with the rental of the residential units which comprise the Property as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Leases"); and

C. Assignee desires to release Assignor from all obligations in connection with such Leases.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. Assignment by Assignor. Assignor hereby assigns to Assignee, and Assignee hereby accepts from Assignor, all of Assignor's right, title, and interest in and obligations under the Leases.

2. Acceptance of Assignment. Assignee hereby accepts the above assignments and hereby assumes, agrees, and undertakes to perform all of the obligations, covenants, and agreements of Assignor pursuant to the Leases. Any reference to Assignor in the Leases shall be deemed a reference to Assignee.

3. Release of Assignor. Assignee releases Assignor from all obligations imposed under any of the Leases.

4. Representations. Assignor hereby represents and warrants that it has not previously assigned, pledged, hypothecated or otherwise transferred any of its rights under the Leases.

5. Effective Date. The assignments set forth herein above shall be effective as of the date of this Agreement.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**ASSIGNOR:**

**CITY OF ESCONDIDO,**  
a municipal corporation of the State of California

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

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ASSIGNEE:**

**Windsor Gardens Housing Associates, L.P.,**  
a California limited partnership

By: CHW Windsor Gardens LLC,  
a California limited liability company,  
its general partner

By: Community HousingWorks,  
a California nonprofit public benefit corporation,  
its sole member/manager

By: \_\_\_\_\_  
Mary Jane Jagodzinski,  
Senior Vice President

**EXHIBIT A**  
**LEASES**

EXHIBIT D

**BILL OF SALE**

BILL OF SALE

The undersigned, **CITY OF ESCONDIDO**, a municipal corporation of State of California ("Transferor"), for valuable consideration, hereby grant, bargain, sell, convey, assign and deliver to **WINDSOR GARDENS HOUSING ASSOCIATES, L.P.**, a California limited partnership ("Transferee"), effective \_\_\_\_\_, 2019, all personal property of any nature or description, whether tangible or intangible, used or obtained in connection with the business of Transferor located at 1600 W. Ninth Avenue in the City of Escondido, County of San Diego, California, including but not limited to:

All furniture, fixtures, equipment, machinery, goods, supplies, appliances;

Together with all permits, applications, certificates, contracts, warranties, guaranties, agreements or licenses required or used in connection with or given for the benefit of the Transferor's business; all of Transferor's interest under any leases of any personal property used in the operation of Transferor's business;

to have and to hold the same to Transferee, its successors and assigns forever. Transferor covenants and warrants that it is the owner of all personal property herein conveyed and has good right and full authority to sell the same and that it will warrant and defend the sale hereby made against all persons lawfully claiming the same by, through or under Transferor.

Transferor:

**CITY OF ESCONDIDO**,  
a municipal corporation of the State of California

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

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

RESOLUTION NO. 2019-118

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING ALLOCATIONS OF LOW AND MODERATE INCOME HOUSING FUNDS FUNDING IN THE TOTAL AMOUNT OF \$900,000 AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE, ON BEHALF OF THE CITY, ALL NECESSARY AGREEMENTS, LOAN DOCUMENTS AND DEEDS

(1600 W Ninth Avenue, Escondido, CA)

WHEREAS, the City of Escondido (“City”) has approved the FY 2019-2020 Successor Housing Agency Budget, which included Low and Moderate Income Housing Funds (“SHA”) for the development of affordable housing; and

WHEREAS, concurrently with this Resolution, the City Council is authorizing the sale of Windsor Gardens Apartments and the sale terms include the repayment of an existing affordable housing loan to the property; and

WHEREAS, Community HousingWorks has requested the City enter into an Affordable Housing Loan Agreement to assist the purchase and rehabilitation of the property in return for new affordability covenants; and

WHEREAS, the City desires at this time, and deems it to be in the best public interest to approve the allocations, to defer payment of the City’s development fees to the end of the construction of the project, and to authorize the execution of all agreements, loan documents and deeds necessary to provide such funds and property for the provision of affordable housing.

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

1. That the above recitations are true.
2. That the City Council approves an allocation of an amount not to exceed \$900,000 in SHA funds Community HousingWorks for the provision of affordable housing at 1600 West Ninth Avenue.
3. That the Mayor and City Clerk are hereby authorized to execute, on behalf of the City, in a form approved by the City Attorney, any agreements, loan documents, and deeds necessary to provide such funds for the development of the above affordable housing project, including, but not limited to, the Affordable Housing Loan Agreement attached hereto as Exhibit "A" and is incorporated by this reference.
4. That the Housing & Neighborhood Services Manager is authorized to execute the any escrow instructions necessary to facilitate the Affordable Housing Loan.

## AFFORDABLE HOUSING LOAN AGREEMENT

### WINDSOR GARDENS 1600 West Ninth Avenue

**THIS AFFORDABLE HOUSING LOAN AGREEMENT** ("Agreement") is dated as of the \_\_\_\_ day of August, 2019, by and between the City of Escondido ("City") and Windsor Gardens Housing Associates, L.P., a California limited partnership ("Borrower") as follows:

#### RECITALS

A. Borrower intends to acquire, rehabilitate and permanently finance that certain real property located at 1600 W Ninth Street, Escondido, California ("Property"), which is more particularly described in Exhibit "A," attached hereto and made a part hereof. Borrower intends to construct and permanently finance affordable housing at the Property using a loan from the City in the original principal amount of Nine Hundred Thousand and No/100 Dollars (\$900,000) ("Loan") as a part of the funds needed to pay for projected costs. The Loan is funded by repayments to the City of Escondido of loans owed to the Successor Housing Agency of the Community Development Commission of the City of Escondido ("SHA") which were transferred pursuant to Health and Safety Code (HSC) Section 34176 (a) (1) and approved by the Department of Finance on February 15, 2013, all of which shall be used for purposes eligible under the Community Redevelopment Law of the State of California as set forth in California Health and Safety Code Section 33000 et seq. as amended ("CRL").

B. The Loan shall be evidenced by a Residual Receipts Promissory Note ("Note"), which shall bear simple interest at the rate of three percent (3.0%) per annum and will be repayable out of Residual Receipts (as defined in the Note) on the terms and conditions set forth in the Note. This Agreement and the Note shall be secured by a Deed of Trust.

C. The Note shall be fully funded at the sale of the Property to the Borrower.

D. As soon as is reasonably practicable after the Closing, Borrower shall begin rehabilitation of one hundred thirty-two (132) dwelling units at the Property (the "Project"). Borrower shall construct and operate one hundred thirty (130) of those dwelling units on the Property as affordable housing units (the "Affordable Units") which shall be rent and occupancy restricted for 55-years, as provided herein. Two (2) of the units shall be unrestricted manager's units.

E. Borrower intends to finance the development of the Project using: (i) the SHA Loan; (ii) a seller takeback loan from the City of Escondido in the amount of up to Fourteen Million Nine Hundred dollars (\$14,900,000) (the "Seller Loan"), (iii) equity in an amount not to exceed Eight million, Three Hundred Thirty-Nine Thousand Dollars (\$8,339,000) raised from low-income housing tax credits (the "Tax Credit Equity") awarded by the California Tax Credit Allocation Committee ("CTCAC"); (iv) the Senior Loan; and (v) deferral of a portion of the

developer fee, which amount is estimated to be approximately One Million Seven Hundred Eighty Two Thousand and No/100 Dollars (\$1,782,000) ("Deferred Developer Fee") which is more particularly described in Exhibit "B". This Agreement is being executed in connection with, and the City's obligation to make the Loan is contingent on, Borrower closing on the Senior Loan, obtaining a commitment for low income housing tax credit equity and deferring the Deferred Developer Fee.

F. The Loan will be funded with repayments to the City of Escondido of loans owed to the SHA which were transferred pursuant to HSC Section 34176 (a) (1) and approved by the Department of Finance on February 15, 2013. The one hundred thirty (130) Affordable Units shall consist of one- and two-bedroom units and shall be operated as affordable housing for seniors. All of the Affordable Units shall be restricted as set forth in the Declaration of Covenants, Conditions and Restrictions ("Declaration") attached hereto as Exhibit "F". All one hundred thirty (130) Affordable Units shall be rent and occupancy restricted as set forth in the Declaration for fifty-five (55) years. The obligations of Borrower under the Declaration shall be independent of, and in addition to, Borrower's obligations under this Agreement, and repayment of the Loans shall not terminate or otherwise affect the affordability restrictions set forth in the Declaration. The Affordable Units will be rent restricted under the provisions of Community Redevelopment Law of the State of California as set forth in California Health and Safety Code Section 33000 et seq., as amended, for fifty-five (55) years.

G. The construction of the Project shall be completed and the Affordable Units shall be 90% occupied within eighteen (18) months after the Financial Closing. Time is of the essence. The Project Schedule of Performance is further described in Exhibit "C" and Borrower shall use commercially reasonable efforts to comply with the Project Schedule of Performance. Completion of the Project shall occur upon the recordation of a Notice of Completion by the Borrower. Borrower shall provide the City with a copy of the recorded Notice of Completion for all units within the Project within five (5) days of Borrower's receipt of the same.

H. The Project shall be rehabilitated in accordance with all applicable law, rules, regulations and conditions of approval from Community Redevelopment Law of the State of California as set forth in California Health and Safety Code Section 33000 et seq., as amended, the City, the various lenders involved with the Project and the requirements of this Agreement.

NOW, THEREFORE, in furtherance of the recitals stated above, the mutual covenants set forth below, the City and Borrower (sometimes collectively referred to herein as "Parties") agree, promise and declare as follows:

#### **DEFINITIONS**

The following terms shall have the meanings set forth below:

"Borrower" means Windsor Gardens Housing Associates, L.P., a California limited partnership.



“City” means the City of Escondido.

“Closing” means the closing of the Loan.

“Defective Work” means all work, material, or equipment that is faulty, incomplete, or does not conform to industry standards, construction documents, or approved drawings.

“Eligible Households” shall mean households earning at thirty percent (30%), fifty percent (50%), and sixty percent (60%), of area median income, who lease or rent any of the units from Borrower for occupancy. All Eligible Households shall include a member who is a minimum of 62 years old. Eligible Households include:

“Extremely-Low Income Household” as determined by State of California Health and Safety Code Section 33000 as found at Section 50106 means persons and families whose incomes do not exceed the qualifying limits for extremely low-income families as established and amended from time to time by the Secretary of Housing and Urban Development and defined in Section 5.603(b) of Title 24 of the Code of Federal Regulations. These limits shall be published by the California Department of Housing and Community Development in the California Code of Federal Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the California Department of Housing and Community Development shall, by regulation, establish income limits for extremely low-income households for all geographic areas of the state at 30% of area median income, adjusted for family size and revised annually.

“Lower Income Households” as determined by State of California Health and Safety Code Section 33000 as found at Section 50106 means persons and families whose incomes do not exceed the qualifying limits for lower income families as established and amended from time to time by the Secretary of Housing and Urban Development and defined in Section 5.603(b) of Title 24 of the Code of Federal Regulations. These limits shall be published by the California Department of Housing and Community Development in the California Code of Federal Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the California Department of Housing and Community Development shall, by regulation, establish income limits for extremely low-income households for all geographic areas of the state at 60% of area median income, adjusted for family size and revised annually.

“Very-Low-Income Household” as determined by State of California Health and Safety Code at Section 33000 as found at Section 50105 means persons and families whose incomes do not exceed the qualifying limits for very low-income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. These qualifying limits shall be published by the California

Department of Housing and Community Development in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the California Department of Housing and Community Development shall, by regulation, establish income limits for very low-income households for all geographic areas of the state at fifty percent (50%) of area median income, adjusted for family size and revised annually

“Environmental Laws” means any federal, state or local law, statute, ordinance or regulation pertaining to environmental regulation, contamination or cleanup of any Hazardous Materials, including, without limitation, (i) the California Hazardous Waste Control Act (California Health and Safety Code §25100 *et seq.*), (ii) the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code §25300 *et seq.*), (iii) the Hazardous Materials Release Response Plans and Inventory (California Health and Safety Code §25500 *et seq.*), (iv) Underground Storage of Hazardous Substances (California Health and Safety Code, §25280 *et seq.*), (v) Article 9 or Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (vi) the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code, §25249 *et seq.*), (vii) the Porter-cologne Water Quality Control Act (California Water Code, §13000 *et seq.*), (viii) the Federal Water Pollution Control Act (33 U.S.C. §1271 *et seq.*), (ix) the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*), (x) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 *et seq.*), (xi) the Safe Drinking Water Act (14 U.S.C. §300f *et seq.*), (xii) the Hazardous Materials Transportation Act (49 U.S.C. §5101 *et seq.*), (xiii) the Toxic Substances Control Act (15 U.S.C. §2601 *et seq.*), (xiv) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §136, *et seq.*), (xv) the Clean Air Act, 42 U.S.C. (§7401 *et seq.*) or (xvi) any state or federal lien or “superlien” law, any environmental cleanup statute or regulation, or any permit, approval, authorization, license, variance or permission required by any governmental authority having jurisdiction.

“Escrow” means the escrow depository and disbursement services to be performed by Escrow Agent.

“Escrow Agent” means Stewart Title Guaranty Company.

“Financial Closing” means the closing of the Senior Loan which shall not be later than December 31, 2019.

“Hazardous Materials” means:

- (i) Those substances included within the definitions of “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic substance,” “solid waste,” “pollutant” or “contaminant” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*); the Clean Water Act (33 U.S.C. §2601 *et seq.*); the Toxic Substances Control Act (15 U.S.C. §9601 *et*

*seq.*); the Hazardous Materials Transportation Act (49 U.S.C. §1801 *et seq.*); or under any other Environmental Laws;

- (ii) Those substances included within the definitions of "Extremely Hazardous Waste," "Hazardous Waste," or "Restricted Hazardous Waste," under §§25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to §§25140 or 44321 of the California Health and Safety Code;
- (iii) Those substances included within the definitions of "Hazardous Material," "Hazardous Substance," "Hazardous Waste," "Toxic Air Contaminant" or "Medical Waste" under §§25281, 25316, 25501, 25501.1, 25023.2 or 39655 of the California Health and Safety Code;
- (iv) Those substances included within the definitions of "Oil" or a "Hazardous Substance" listed or identified pursuant to §311 of the Federal Water Pollution Control Act, 33 U.S.C. §1321, as well as any other hydrocarbonic substance or by-product;
- (v) Those substances included within the definitions of "Hazardous Waste," "Extremely Hazardous Waste" or an "Acutely Hazardous Waste" pursuant to Chapter 11 of Title 22 of the California Code of Regulations;
- (vi) Those substances listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to §25249.9(a) of the California Health and Safety Code;
- (vii) Any material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;
- (viii) Any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;
- (ix) Pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 *et seq.*;
- (x) Asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*;

- (xi) Any radioactive material including, without limitation, any “source material,” “special nuclear material,” “by-product material,” “low-level wastes,” “high-level radioactive waste,” “spent nuclear fuel” or “transuranic waste” and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§2011 *et seq.*, the Nuclear Waste Policy Act, 42 U.S.C. §§10101 *et seq.*, or pursuant to the California Radiation Control Law, California Health and Safety Code §§25800 *et seq.*;
- (xii) Any material regulated under the Occupational Safety and Health Act, 29 U.S.C. §§651 *et seq.*, or the California Occupational Safety and Health Act, California Labor Code §§6300 *et seq.*;
- (xiii) Any material regulated under the Clean Air Act, 42 U.S.C. §§7401 *et seq.* or pursuant to Division 26 of the California Health and Safety Code;
- (xiv) Those substances listed in the United States Department of Transportation Table (49 CFR Part 172.101), or by the Environmental Protection Agency, or any successor agency, as hazardous substances (40 CFR Part 302);
- (xv) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state or local laws or regulations; and
- (xvi) Any material, waste or substance that is:
  - (a) a petroleum or refined petroleum product;
  - (b) asbestos;
  - (c) polychlorinated biphenyl;
  - (d) designated as a hazardous substance pursuant to 33 U.S.C. §1321 or listed pursuant to 33 U.S.C. §1317;
  - (e) a flammable explosive; or
  - (f) a radioactive material.

The term “Hazardous Materials” shall exclude those materials and substances commonly used in the construction, rehabilitation, operation and maintenance of multifamily residential apartment complexes, to the extent such substances are used and/or stored in accordance with applicable law.

“Partnership Agreement” means the current Amended and Restated Agreement of Limited Partnership of Borrower.

“Permitted Transfer” means a transfer which does not require the prior written approval of the City including:

- (i) Replace a general partner of Borrower due to default of a general partner pursuant to the terms of the Partnership Agreement as of the date of execution of this Agreement; or
- (ii) Allow a general partner to execute and exercise a purchase option and right of first refusal pursuant to the terms of the Partnership Agreement, as of the date of execution of this Agreement. Upon such occurrence, Borrower shall notify City in writing that such transfer has occurred; or
- (iii) Transfers of limited partnership interests in Windsor Gardens Housing Associates, LP; or
- (iv) Refinancing of the Senior Loan by a new loan (the “Refinanced Senior Loan”) provided that the principal balance of such Refinanced Senior Loan does not exceed the outstanding principal balance of the Senior Loan at such time together with rehabilitation or repair costs and amounts necessary to fund Project reserves.

“Replacement Reserve” means funds the Borrower agrees to set aside for necessary repair and replacement of any portion of the Project.

“Senior Lender” means that lender who will make a construction loan in the approximate amount of up to Eleven Million Five Hundred Thousand Dollars (\$11,500,000).

“Senior Loan” means the construction loan to Borrower made by the Senior Lender, in the original principal amount of up to approximately Eleven Million Five Hundred Thousand Dollars (\$11,500,000).

“SHA Affordable Units” or “Senior Affordable Units” means the one hundred thirty (130) Affordable Units described in Recital F of this Agreement restricted under the Community Redevelopment Law of the State of California as set forth in California Health and Safety Code Section 33000 et seq as amended regulations.

“SHA Deed of Trust” or “Deed of Trust” means the deed of trust securing the Declaration and the SHA Loan, in the form and format attached hereto as Exhibit “E”.

“SHA Loan” or “Loan” means the predevelopment, acquisition, construction and permanent financing loan from the City to Borrower evidenced by this Agreement and funded with repayments to the City of Escondido of loans owed to the SHA which were transferred pursuant to Health and Safety Code (HSC) Section 34176 (a) (1) and approved by the Department of Finance on February 15, 2013.

“SHA Note” or “Note” means that certain promissory note to be executed by Borrower (concurrently with the Closing) in favor of the City evidencing the SHA Loan, in the form attached hereto as Exhibit “D”.

“Statement of Insurance Requirements” means the statement of insurance requirements, in the form and format attached hereto as Exhibit “G,” which shall be executed and delivered by the Borrower and the City concurrently with the Closing as set forth in Section 1.7, below.

## ARTICLE I

### Loan Provisions - General

Section - 1.1 Acquisition, Rehabilitation and Permanent Financing Loan. The City will fund the Loan to Borrower according to and upon the terms and conditions set forth below. The proceeds of the Loan shall be used by Borrower solely for the purposes of acquiring, rehabilitating and permanently financing the Affordable Units, in accordance with all applicable California Health and Safety Code Section 33000 et seq. as amended regulations.

(a) Loan Amount. The amount of the Loan shall not exceed Nine Hundred Thousand and No/100 Dollars (\$900,000.00).

(b) Promissory Note.

(1) The Loan shall be evidenced by the SHA Note executed by Borrower, in favor of the City, in the original principal amount of Nine Hundred Thousand and No/100 Dollars (\$900,000.00).

(2) The Note shall bear simple interest at the rate of three percent (3%) per annum from the date of disbursement.

(3) Interest shall accrue on such amounts as are advanced from the date of the advance, however, no payments shall be due under the Note until May 15, 2022. Beginning on May 15, 2022 and annually on May 15 of each subsequent year during the term of the Note, Borrower shall provide a residual receipts calculation statement and make payments to the City in the manner provided in the Note, until fifty-five (55) years from the date of Notice of Completion, at which time all principal and unpaid interest shall be due and payable as defined

in the Note. The principal and interest may be prepaid in whole or in part at any time and from time to time, without notice or penalty. Any prepayment shall be allocated first to unpaid interest and then to principal. Prepayment of the Loan shall not in any manner affect any obligation or restriction related to maintaining the units as "Senior Affordable Units" during the fifty-five (55) year term.

(4) Except for the Permitted Transfers, should Borrower agree to or actually sell, convey, transfer, further encumber or dispose of the Property or any interest in it, without first obtaining the written consent of the holder of the Note (i.e., the City), which consent shall be granted or withheld at the sole discretion of the holder of the Note, then all obligations secured by the Note may be declared due and payable at the option of the holder of the Note and upon Notice to Borrower. The consent to one transaction of this type will not constitute a waiver of the right to require consent to future or successive transactions. The resident tenant restrictions referenced in Section 1.5 of this Agreement shall remain in place whether or not the City approves or disapproves a successor-in-interest for the term of fifty-five (55) years from the date of completion of construction of the Project.

(5) Reserved.

(6) If the Closing does not occur on or before September 30, 2019, then the Parties shall close as soon thereafter as possible.

(7) If the Financial Closing does not occur on or before January 31, 2020 then Borrower will set a date for the extended Financial Closing and the City will not unreasonably withhold its consent thereto. If the Financial Closing does not occur after a reasonable extension, the City will have the option to terminate all rights and liabilities of the City and Borrower with respect to this Agreement and trigger repayment of any distributed Loan funds.

## Section 1.2 - Security.

(a) Deed of Trust. Borrower shall execute, acknowledge, deliver and cause to be recorded at Closing, the SHA Deed of Trust, as security for the Loan and the Declaration, in a form and format set forth in Exhibit "E" attached to this Agreement and incorporated herein by this reference. A copy of this Agreement shall not be attached to and recorded as part of such Deed of Trust but any breach of or misrepresentation under this Agreement shall, upon the expiration of any applicable notice and cure period(s), constitute an event of default under such Deed of Trust. The SHA Deed of Trust will be subordinate to the deeds of trust securing Senior Loan, a deed of trust securing a Refinanced Senior Loan and to the MHP loan, and City shall cooperate and sign subordination agreements as necessary to allow the deeds of trust securing the Permanent Loans, a Refinanced Senior Loan (or any of them) to be insured as senior the SHA Deed of Trust

(b) Additional Security. Borrower shall execute and deliver to the City UCC-1 financing statements and such other separate consents or certificates, assignments and other documents or instruments as the City may reasonably require to properly reflect the security interests in the personalty used in connection with the operation of the Property as the City may require provided that the UCC-1 shall not be filed until the Financial Closing and shall be junior and inferior to any UCC-1 securing any of the Permanent Loans. In addition thereto, Borrower shall execute and deliver such security agreements, and the like, as required by the City in connection with the Deeds of Trust. Specifically, Borrower agrees that any notice of default and/or copy of any notice of sale will be mailed to the City in compliance with Section 2924(b) of the California Civil Code.

Section 1.3 - Subsequent Financing. Except for the Senior Loan, an Affordable Housing Program loan, a loan from the general partner or sponsor of Borrower, or a Permitted Transfer, no further loan, deed of trust, or encumbrance, shall be placed by Borrower upon any portion of the Property or Project, whether by refinancing or otherwise, without first obtaining the express written consent of the City. Any failure to obtain prior written consent for subsequent financing which is not a Permitted Transfer shall constitute a material breach of this Agreement. Further, in connection with any City approved refinancing or subsequent encumbrance, the City shall be provided ALTA title insurance or endorsements acceptable to the City, at the cost and expense of Borrower. Said written consent shall be at the City's sole discretion.

Section 1.4 - Funding. The City's obligation to fund those portions of the Loan other than the Predevelopment Amount Loan shall be and is specifically conditioned upon Borrower closing on the Senior Loan, the City approving the preliminary title reports concerning the Property, payment of all taxes due and payable on the Property, issuance of an ALTA Lender's policy insuring the Loan satisfactory to the City and its counsel, satisfaction of all conditions precedent to the City's obligation to fund the Loan, and satisfaction of those conditions set forth in Section 1.16 of this Agreement.

Section 1.5 - Declaration. The obligation of the City to make and fund the Loan hereunder is subject to the execution and recordation against the Property of the Declaration. The Declaration shall contain housing payment and income level restrictions for the one hundred thirty (130) Senior Affordable Units for a period of fifty-five (55) years. The monthly rental rate shall be as set forth in the Declaration. The rents may be subject to modification annually as set forth in the Declaration. The Declaration shall be recorded in a position superior and prior to all encumbrances on the Property, except for the deed of trust and other instruments securing the Senior Loan.

Section 1.6 - No Partnership or Joint Venture. The relationship between the City and Borrower created by this Agreement shall not be one of partnership or joint venture, but rather shall be one of secured lender and borrower.



**Section 1.7 - Insurance.** As and when more specifically required under Exhibit G, Borrower, at its sole cost and expense, shall purchase and maintain public liability, auto liability and property damage insurance with limits of not less than \$2,000,000 for injury to or death of one or more persons and/or property damage arising out of a single accident or occurrence, insuring against any and all liability of the City and its respective employees, Borrower, its contractors, employees, agents, subcontractors and its authorized representatives, arising out of or in connection with Borrower's activities under the Project. All public liability insurance and property damage insurance shall insure the performance of Borrower of the indemnity provisions set forth in this Agreement. Further, in all such insurance required to be purchased and maintained by Borrower: (i) the City shall be named as an additional insured, (ii) Borrower's coverage shall be primary, (iii) additional insured endorsement shall not exclude completed operations, (iv) the policy shall provide ten year extended reporting period, and (v) the policy shall contain cross-liability endorsements. Borrower further agrees to purchase and maintain in full force and effect such policies of worker's compensation insurance as may be required to cover all employees of Borrower during the term of this Agreement, in a form and amount acceptable to the City. Further, Borrower shall maintain policies of insurance as referenced in the Statement of Insurance Requirements throughout the term of the Loans and for the duration of the Declaration. Certificates of insurance acceptable to the City shall be filed with the City prior to funding of the Loans. The insurance requirements contained in this section shall not be construed to limit the Borrower's obligations under this Agreement, including without limitation any indemnities.

**Section 1.8 - Assignability.** Except as provided with respect to any Permitted Transfer:

(a) Borrower may not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the City. Any assignment without the prior written consent of the City shall be voidable, at the election of the City. The City shall have full right and authority to assign all or a part of its rights and delegate all or a part of its duties under this agreement.

(b) Except to the extent that changes are permitted hereunder, Borrower shall not amend or modify in any material respect or, restate, revoke or rescind its Certificate of Limited Partnership or Limited Partnership Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. The City acknowledges that timely completion of a restatement of the Limited Partnership Agreement will be necessary to the Partnership's acquisition of the property, and the admission of the tax credit equity investor as a limited partner which will occur at the Financial Closing. Notwithstanding the foregoing, changes to Borrower's Limited Partnership Agreement which correct scrivener's errors or effectuate transfers expressly permitted by the terms of the loan documents related to the Senior Loan shall be permitted without City consent.

**Section 1.9 - General Contractor and Subcontracting.** Not to exceed construction contract(s), shall be entered into by Borrower with the general contractor for the construction of the Project on or before the date of the Financial Closing, and shall be subject to the prior written

approval of the City which approval shall not be unreasonable withheld or delayed. Borrower shall be fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by Borrower. Borrower shall insert in each subcontract appropriate provisions requiring compliance with the labor standard provisions of this Agreement, including without limitation the payment of and State prevailing wages, if required. Notwithstanding the foregoing, the City has not imposed, and nothing in this agreement shall be construed as imposing, any independent prevailing wage requirements that are different from those imposed by applicable Federal or State law.

Section 1.10 – Borrower Liability. Borrower shall be responsible for all injuries to persons and/or all damages to real or personal property of the City or others, caused by or resulting from the negligence and/or breach of this Agreement, of itself, its employees, subcontractors and/or its agents during the construction of or arising out of the construction of the Project and/or the breach of this Agreement. Borrower shall defend and hold harmless and indemnify the City, and all of its officers and employees from all costs, damages, judgments, expenses and claims to any third party resulting from the negligence and/or breach of this Agreement, by Borrower, its employees, subcontractors and/or its agents, arising out of the construction of the Project and/or the breach of this Agreement, except those arising from the sole negligence or willful misconduct of the City.

Section 1.11 - Ownership of Materials and Documents. Subject to any rights required by Senior Lender or any tax credit equity investor, any and all sketches, drawings, tracings, field survey notes, computations, plans, details and other materials and documents prepared by or on behalf of Borrower pertaining to the Property shall be the property of the City upon default by Borrower (to the extent of Borrower's rights in such documents), and the expiration of all applicable cure period(s), and Borrower shall deliver such materials and documents, without warranty, to the City whenever requested to do so by the City. Subject to the rights of third parties that prepared such documents, the City shall have the right to have duplicate copies of such materials and documents for their file, at the cost and expense of the City, upon written request even if Borrower is not in default under the terms of this Agreement

Section 1.12 - Indemnification.

(a) With respect to any liability, including but not limited to claims asserted, demands, causes of action, costs, expenses, losses, attorney fees, injuries, or payments for injury to any person or property, including injury to Borrower's employees, agents, or officer, caused or claimed to be caused by the acts or omissions of the Borrower, or the Borrower's employees, agents, and officers, arising out of, arising from, or related to the Loans; the design, engineering, or construction of the Project; Borrower's ownership or operation of the Property and the Project; or any other work performed or obligation under this Agreement, the Borrower agrees to defend, indemnify, protect, and hold harmless the City, their respective agents, officers, and employees from and against all liability, losses, damages, costs or claims, including, but not limited to, claims for injury or death to any person occurring on the Property and contracts executed by Borrower and any losses from the Property. Also covered is liability

arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees that may be in combination with the active or passive negligent acts or omissions of the Borrower, its employees, agents or officers, or any third party. Borrower's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees. This indemnity provision shall survive the repayment of the Loans and the term of this Agreement.

(b) Borrower further agrees to defend, indemnify, and hold harmless, the City, their respective agents, officers and employees from and against any and all costs, damages, claims, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly, arising from or related to Hazardous Materials located, used, released, or otherwise present or alleged to be present, used, or released on the Property, or any violation or alleged violation of Environmental Laws. This indemnity provision shall extend beyond the term of this Agreement and the termination of this Agreement. The City has no obligation or liability whatsoever regarding toxic contamination or Hazardous Materials on the Property.

(c) The Borrower agrees to pay any and all costs the City incurs to enforce the indemnity and defense provisions set forth in Section 1.12.

Section 1.13 - Termination. This Agreement and the relationship created herein shall terminate upon full satisfaction of all of Borrower's obligations, and those of Borrower's successors, if approved by the City or otherwise permitted hereunder, under this Agreement. The obligations of Borrower include, but are not limited to, those obligations arising under the Declaration, the provisions of which shall survive repayment of the Loans.

Section 1.14 - Defective Work.

(a) Correction, Removal, or Replacement. The Project shall be maintained in accordance with Escondido Municipal Code during the term of this Agreement, or any duration as may be required by law or regulation. If the Project is reasonably determined to contain Defective Work, the Borrower shall promptly and in accordance with the City's written instructions and within the reasonable time limits stated therein, either cause the Defective Work to be corrected, or if identified during construction of the Project, cause the Defective Work to be removed from the site and replace the Defective Work with non-defective and conforming work.

(b) The City Right to Correct. If circumstances warrant, including but not limited to an emergency or Borrower's failure to adhere to section 1.14(a), following 30 days' written notice and an opportunity to cure, the City may correct, remove, or replace the Defective Work. In such circumstances, Borrower shall not recover costs associated with the Defective Work and shall reimburse the City for all costs incurred, whether direct or indirect, associated with the correction or removal and replacement

(c) No Limitation on other Remedies. Exercise of the remedies for defects pursuant to this Section shall not limit the remedies the City may pursue under this Agreement or law.

Section 1.15 - Default by Borrower.

(a) In the event of a default by Borrower in the performance of any of the terms, covenants and conditions contained in this Agreement, the Note, the Deed of Trust, or the Declaration, the City shall give Borrower notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, Borrower shall have such period to effect a cure prior to exercise of remedies by the City under this Agreement, the Declaration and the Deeds of Trust. If the default is such that it is not reasonably capable of being cured within thirty (30) days and Borrower (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Borrower shall have such additional time (but not to exceed ninety (90) days) as is reasonably necessary to cure the default prior to exercise of any remedies by the City. If such default is not timely cured or in the event of any default after the expiration of any applicable notice and cure periods under any prior or junior note secured by an encumbrance on the Property or any portion of it, or any note or deed of trust given in conjunction herewith, or in the event of the filing of a bankruptcy proceeding by or against Borrower that is not cured within 60 days, all sums disbursed or advanced by the City shall at the option of the City immediately become due and payable and the City shall have no obligation to disburse any further funds from said account, or otherwise, and the City shall be released from any and all obligations to Borrower under the terms of this Agreement. These remedies shall be in addition to any and all other rights and remedies available to the City, either at law or in equity.

(b) In the event of any monetary default by Borrower under the terms of this Agreement, the Note, the Deed of Trust, or the Declaration, the City may give Borrower a ten (10) day written notice of default, during which Borrower shall have the ability to cure the monetary default. If the default is not timely cured, the City may proceed with all rights and remedies under the terms of the Loans or at law.

(c) The default or defective performance by Borrower under the terms of this Agreement shall not relieve Borrower from any obligation to correct any incomplete, inaccurate, or Defective Work at no further cost to the City.

(d) A copy of any notice of default sent to Borrower shall be sent to Borrower's limited partner and the limited partner shall have the right, but not the obligation to cure the default within the time periods provided to the Borrower for such cure; provided, however, if such cure requires that the limited partner remove the general partner of Borrower in accordance with the terms of Borrower's limited partnership agreement, the limited partner shall have an additional 120 days following removal to cure the default. Any cure tendered by the limited partner shall be accepted or rejected on the same basis as if such cure had been tendered by the Borrower.

Section 1.16 - Conditions to the City Obligations. The obligation of the City to make and fund the Loan is subject to the following conditions:

- (a) This Agreement, the Note, Deed of Trust, Declaration, and Statement of Insurance Requirements, fully executed by Borrower, shall have been delivered to the City and/or its designee;
- (b) Borrower's certification at the close of escrow that: (i) the Loan is wholly for the benefit of Borrower, (ii) Borrower is responsible for all obligations created by the Loan including, without limitation, the repayment of all principal and interest now due and payable or which may become due and payable on the terms and conditions of this Agreement, and the Note;
- (c) Borrower shall have strictly complied with, and performed, all terms and conditions of the documents executed by Borrower in connection with this Agreement;
- (d) Borrower has paid or will concurrent with the Closing pay an amount into Escrow, which is sufficient to pay for all costs associated with such Escrow, including without limitation title fees, escrow fees, closing costs and carrying costs and the City's legal fees;
- (e) Recordation of a grant deed vesting fee simple title to the Property in Borrower;
- (f) Reserved and
- (g) Such other conditions as the City shall reasonably request.

Section 1.17 - Borrower's Representations and Warranties. Borrower represents and warrants to the City as provided in this Section 1.17. Borrower shall, upon learning of any fact or condition, which would cause any warranties or representations herein not to be true in any material respect, immediately give written notice of such fact or condition to the City.

(a) Borrower is a validly and lawfully formed California limited partnership, and is in good standing under California law and will remain such for the term of this Agreement.

(b) Execution of this Agreement, the Note, the Deed of Trust, the Declaration and all other documents executed in conjunction herewith have been duly authorized by Borrower's general partners, and such execution shall not result with the passage of time or the giving of notice or both in breach of or in acceleration of performance under any contract or document to which Borrower may be a party.

(c) All required approvals have been obtained in connection with Borrower's execution of this Agreement, and all related agreements and documents to the effect that no

breach of or acceleration of performance under any agreement or document to which Borrower is a party will result in such execution.

(d) Funds advanced by the City pursuant to the Loan are advanced for the benefit of Borrower.

(e) The principal and interest due and payable under the Loan are subject to the terms and conditions of this Agreement, any other security documents or instruments provided for herein.

(f) Borrower agrees to use the Loan funds solely for predevelopment costs, acquisition, construction and permanent financing of the Project as set forth in the Recitals.

(g) Borrower shall comply with the terms of the Declaration at all times during the 55-year term of the Declaration.

(h) The defective performance by Borrower under the terms of this Agreement shall not relieve Borrower from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to the City, when such inaccuracies, defects and incomplete work are due to Borrower's fault, including the fault of Borrower's subcontractors, agents, partners, joint venturers and employees.

(i) There are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Borrower or any parties affiliated with the Borrower, at law or in equity before any court, tribunal, government agency, domestic or foreign, which, if adversely determined, would materially impair the right or ability of Borrower to execute or perform its obligations under this Agreement or any documents required hereby to be executed by Borrower, or which would materially adversely affect the financial condition of the Borrower or any parties affiliated with the Borrower.

(j) Borrower's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or breach or any contract, agreement, or order to which Borrower or any parties affiliated with Borrower is a party or by which it is bound.

(k) No attachment, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, receivership or other proceedings have been filed or are pending or threatened against the Borrower, or any parties affiliated with Borrower, nor are any of such proceedings contemplated by Borrower or any parties affiliate with Borrower.

Section 1.18 Affordability Provision.

(a) Execution of Declaration. Borrower agrees to execute the Declaration and to cause it to be recorded, assuring compliance with the affordability provisions of this Agreement. Borrower agrees to obtain any and all subordination agreements, if any, necessary

to insure that at the Closing, the Declaration is an encumbrance on the Property prior to all other encumbrances and liens, other than (i) taxes and (ii) the deed of trust and other documents securing the Senior Loan. Such subordinations shall be on terms and conditions acceptable to the City and its counsel in their sole but reasonable discretions. The Declaration shall be binding and enforceable against all heirs, successors and assigns of Borrower.

(b) Term of Affordability. Borrower agrees that the Property shall remain affordable and subject to the Declaration for not less than fifty-five (55) years from the effective date as referenced in the Declaration.

(c) Cross-Default With the Declaration. Borrower and its successors in interest to the Project and/or the Property shall strictly comply with all of the terms and conditions of the Declaration. Any default after the expiration of any applicable notice and cure periods under the Declaration shall be a default under this Agreement, the Note and the Deed of Trust.

(d) No Conversion to Condominiums. Borrower agrees that Borrower shall not, and shall not allow any other person to, during the term of the Declaration, cause all or any portion of the Property and/or the Project to be converted to condominiums or to otherwise allow a condominium map or condominium plan to be recorded or filed against all or any portion of the Property and/or the Project. Borrower further agrees that the conversion of all or any portion of the Property or the Project to condominiums and/or the recordation or filing of a condominium map or condominium plan against all or any portion of the Property and/or the Project during the term of the Declaration, shall be a breach of this Agreement, the Loans, the Declaration, the Notes and the Deeds of Trust, entitling the City to immediately exercise any and all of its rights and remedies under this Agreement, the Loans, the Declaration, the Notes and the Deeds of Trust, including without limitation acceleration of the Notes and foreclosure under the Deeds of Trust.

Section 1.19 City Approval of Property Manager. At all times during the term of the Declaration, if the City serves a thirty (30) day written notice of deficiencies in the property management for the Property, or default under the Declaration or any document executed in conjunction herewith, which deficiencies or default have not been rectified by Borrower, within the thirty (30) day period (unless such deficiency or default is not capable of being cured within such thirty (30) day period, then such amount of time as the City determines is needed, not to exceed ninety (90) days, provided Borrower commences cure within thirty (30) day period and continues to diligently pursue cure), then, the City shall have the right, but not the duty, in its sole discretion and upon such thirty (30) days written notice: (i) to require the retention of a replacement professional property management firm to manage the Property; (ii) to approve, in advance and in writing, the retention of any such property management firm, including the terms of the contract governing such retention; and (iii) to require Borrower to terminate any such property management firm, provided that such termination shall comply with the termination provisions of the management contract in question. Borrower shall cooperate with the City to effectuate the City's rights.

Section 1.21 - Remedies.

(a) Contract Governed by Laws of the State of California. This Agreement, its performance, and all suits and special proceedings under this Agreement, shall be constituted in accordance with the laws of the State of California and Federal law, to the extent applicable. In any action, special proceeding, or other proceeding that may be brought arising out of, under or because of this Agreement, the laws of the State of California and the United States, to the extent applicable, shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted.

(b) Standing, Equitable Remedies; Cumulative Remedies. Borrower expressly agrees and declares that the City or any successor or public agency shall be the proper party and shall have standing to initiate and pursue any and all actions or proceedings, at law or in equity, including but not limited to foreclosure under any security instrument securing performance hereunder, to enforce the provisions hereof and/or to recover damages for any default hereunder, notwithstanding the fact that such damages or the detriment arising from such a default may have actually been suffered by some other person or by the public at large. Further, Borrower expressly agrees that receivership, injunctive relief and specific performance are proper pre-trial and/or post-trial remedies hereunder, and that, upon any default, a receiver may be appointed by the court to take control of the Property and to assure compliance with this Agreement. Nothing in this subparagraph, and no recovery to the City, shall restrict or limit the rights or remedies of persons or entities other than the City, against Borrower in connection with the same or related acts by Borrower. The remedies set forth in this Section are cumulative and not mutually exclusive, except the extent that their award is specifically determined to be duplicative by final order of a court of competent jurisdiction.

(c) Remedies at Law for Breach of Operating Restrictions. In the event of any default under this Agreement after the expiration of any applicable notice and cure periods regarding restrictions on the operation and the transfer of the Property, the City shall be entitled to, in addition to any and all other remedies available at law or in equity: (i) declare the Loans to be all due and payable; and (ii) recover compensatory damages.

(d) Expert Witness, Attorneys' Fees, and Costs. The parties agree that the prevailing party in litigation for the breach and/or interpretation and/or enforcement of the terms of this Agreement shall be entitled to their expert witness fees, if any, as part of their costs of suit, and attorneys' fees as may be awarded by the court, pursuant to California Code of Civil Procedure ("CCP") Section 1033.5 and any other applicable provisions of California law, including, without limitation, the provisions of CCP Section 998.

Section 1.22 – No Asset Management Fee or Deferred Developer Fee. No asset management fee or deferred developer fee concerning the Project shall be paid to Borrower or its affiliates until ninety percent (90%) of the Affordable Units have been leased. The amount of management fees shall be subject to the annual approval of the City in its reasonable discretion. The initial property management agreement for the Project is approved including,



without limitation, the stated property management fees and any increases to said fees stated therein.

Section 1.23 - Replacement Reserves. Borrower shall, during the time of the term of the Declaration, maintain Replacement Reserves approved by the City and held in a financial banking institution, which may include Senior Lender or the tax credit investor until such reserves are used for their intended purpose. Failure to maintain such reserves shall constitute a material default under the terms of this Agreement unless reserves have been used for their intended purposes. Each year, beginning with the first year after the timely completion of construction of the Project and each year thereafter, not less than a minimum monthly deposit into Replacement Reserves equal to \$300 per unit per year shall be required, subject to any increase allowed by lenders, such increases not to exceed 3.5% per annum. The reserves shall be maintained in a separate account in anticipation of and as a contingency against unbudgeted and/or unforeseen expenses in the operation and maintenance of the Project. No disbursements from the replacement account shall be made without the express written consent of the City, which consent shall not be unreasonably withheld or delayed. Any request for consent to a disbursement from the replacement account not responded to by City within ten (10) days of receipt shall be deemed approved. Notwithstanding anything to the contrary contained herein, City consent to disbursement from the replacement account shall not be required for any disbursement Borrower reasonably believes is necessary to address an emergency which is eligible to be paid for from the replacement account. Borrower shall account to the City for any monies expended from the replacement account, in such form as approved by the City.

Section 1.24 - Completion of Construction. All construction of the Project, as approved by the City pursuant to Section 2.1(d), hereof, shall be completed by Borrower on or before June 30, 2021 which shall be evidenced by a Certificate of Completion by the Contractor. Time is of the essence. Failure to comply with these requirements shall, at the option of the City, constitute a material default under the terms of this Agreement, provided that no default shall exist if a material contributing factor to delay is a force majeure event. Borrower shall provide the City with a copy of the recorded Notice of Completion for all units within the Project within five (5) days of Borrower's receipt of the same.

Section 1.25 - Failure to Receive Funding. The failure of Borrower to close on the Senior Loan on or before the Financial Closing, shall constitute a material default under the terms of the Agreement.

Section 1.26 - Funding Mechanism. The Loan proceeds shall be disbursed in full at the Closing of the Loan and the Seller Loan and the transfer of Property to Borrower.

(a) Limit on Effect of Approval. Any City review and/or approval of the work and disbursements of monies pursuant to draw requests shall be general review and/or approval only, and shall not relieve Borrower of the responsibility to design, engineer, and rehabilitate

the Project in accordance with all applicable laws, codes, regulations, and good design, construction, and engineering practice. Any deficiencies or defects shall be corrected at Borrower's cost and expense and without any cost to the City.

## ARTICLE II

### Specific Loan Provisions

#### Section 2.1 - Conditions to the City Obligations and Borrower Representations and Warranties.

(a) Interest of Current or Former Members, Officers or Employees. Borrower represents and warrants that no member, officer, or employee of Borrower, no member of the governing body of the locality in which the City was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to this Agreement, shall, during his or her tenure, or for one year thereafter, have any interest direct or indirect, in this Agreement or the proceeds thereof. Any violation of this section may, at the option of the City, result in unilateral and immediate termination of this Agreement by the City. Further, the contractor, who rehabilitates the Project, agrees to comply with all of the Conflict of Interest provisions contained in 24 CFR 92.356.

(b) Title Policy. Borrower, shall, at its sole cost and expense, obtain an ALTA lender's policy naming the City as insured, and insuring that the City's interest is subject to no superior liens, encumbrances, special assessments or taxes, except as provided for in this Agreement and except as may be further approved by the City.

(c) Construction Loan and Contract. The City shall be entitled to review, inspect and approve, without liability, the construction contract and all of the work being performed pursuant to the terms of the construction contract. All construction shall be performed in accordance with the plans and specifications approved by the City in accordance with Section 2.2 of this Agreement, without liability to the City for review and observation of the construction. The City approval shall be understood to be general approval only, and shall not relieve Borrower or contractor of the responsibility to design, engineer, and construction of the Project in accordance with all applicable laws, codes, regulations, and good design, construction, and engineering practice. Any deficiencies in construction of the Project shall be corrected by the contractor, and/or Borrower, upon written notice from the City to Borrower, prior to any additional funding of the Loans, at Borrower's expense and at no cost to the City.

(d) Housing Quality Standards. Borrower represents and warrants that Affordable Units shall be maintained, at all times during the term of the Agreement, in complete compliance with all housing quality standards contained within 24 CFR §92.251. Further, Borrower warrants that all construction shall meet or exceed the applicable local codes and

construction standards, including zoning and building codes of the City. Borrower hereby consents to periodic inspection by the City's designated inspectors and/or designees during regular business hours, to assure compliance with said zoning, building codes, regulations, and housing quality standards. Property shall be maintain in accordance with federal, state and local laws.

(e) Limitation of Use of Funds for Religious Purposes. Borrower represents and warrants that Borrower will fully comply with any and all requirements and limitations contained in 24 CFR 92.257, as amended, from time to time. Borrower further represents, warrants and agrees that Project funds will not be used for any purpose proscribed in 24 CFR 92.257, as amended.

(f) Approval of the City Disclosure Statement. This Agreement is subject to approval by the City of the executed disclosure statements of Borrower.

(g) Records and Reports. Each year during the term of the Declaration, Borrower shall supply the City with: (i) a certified rent roll on February 15 for all tenants occupying the Affordable Units as of the immediately preceding December 31; and (ii) a certified rent roll on August 15 for all tenants occupying the Affordable Units as of the immediately preceding June 30. Borrower shall supply the City, annually (after the developer fee for the Project has been paid in full) On May 15<sup>th</sup> and for the immediately preceding calendar year, with such records and reports as are required and are requested by the City in the City's electronic reporting form. The records and reports include, but are not limited to the following:

- (1) Amount of funds expended pursuant to this Agreement;
- (2) Eligible Tenant information, including yearly income verifications;
- (3) Housing payments charged to resident tenants, to the extent applicable;
- (4) On-site inspection results;
- (5) Affirmative marketing records;
- (6) Insurance policies and notices;
- (7) Equal Employment Opportunity and Fair Housing records;
- (8) Labor costs and records;
- (9) An audited income and expense statement and balance sheets for Borrower;

- (10) An audited income and expense statement and balance sheets for the Project;
- (11) A Management Plan for the calendar year in which the report is prepared showing anticipated rental income, other income, expenses, anticipated repairs and replacements to the Project, timing of such repairs and replacements, insurance maintained with respect to the Project, and such other matters as the City shall require, in its sole discretion;
- (12) Federal and State income tax returns for the calendar year, ending on the preceding December 31st;
- (13) Annual analysis of reserves for repair and replacement;
- (14) Annual certification and representation regarding status of all loans, encumbrances and taxes;
- (15) Annual statement regarding condition of the Property and disclosing any known defects;
- (16) Such other and further information and records as the City shall request in writing from Borrower.

Time is of the essence in supplying each and every report required to be supplied to the City. The parties agree that a fee of \$25.00 per day shall be paid by Borrower to the City for each day that each report is delinquent. The parties agree that multiple fees may be charged at any one time, depending upon the number of report(s) and/or information that is delinquent. The parties agree that a fee of \$25.00 per day, per report and/or information is a reasonable estimation of the damages that will accrue to the City as a result of the failure of Borrower to timely submit the required information and/or reports and that said fees shall be treated as liquidated damages by the parties, in anticipation of the damages that will be incurred by the City as a result of a failure to provide records on time. Notwithstanding the foregoing or anything to the contrary contained herein, the City shall give Borrower prior written notice of any report and/or information that Borrower has failed to provide the City pursuant to this Section 2.1(i) and Borrower shall have thirty (30) days to provide such report and/or information to the City prior to the assessment of any of the foregoing described liquidated damages.

(h) Monitoring of Project Activities. Borrower agrees to allow the City reasonable access upon reasonable notice to review and inspect Borrower's activities under this Agreement as the City shall require to perform its monitoring duties. The City shall monitor Borrower's activities without liability for said inspection and review.

(i) Federal and State Requirements. Borrower represents, warrants and agrees that Borrower will fully comply, during the term of this Agreement, with any applicable federal, state and local regulations, including California Health and Safety Code Section 3300 et seq as amended. Borrower further warrants, represents and agrees that should said Program requirements be changed by the State of California, from time to time, that Borrower will comply with said changed and amended regulations. Borrower, the general contractor, and any and all subcontractors, shall pay prevailing wages for all work done with respect to the Project as required by Federal and California law. Notwithstanding the foregoing, the City has not imposed, and nothing in this agreement shall be construed as imposing, any independent prevailing wage requirements that are different from those imposed by applicable Federal or State law.

(j) Affirmative Marketing. Borrower shall, at all times during the term of this Agreement, comply with all of the provisions of Section 24 CFR 92.351 and the affirmative marketing procedures adopted by the City, including, but not limited to, all requirements and procedures referenced in said Section 24 CFR 92.351(b), amended from time to time. Borrower shall maintain records to verify compliance with the applicable affirmative marketing procedures and compliance. Such records are subject to inspection by the City during regular business hours upon five (5) days written notice.

(k) Equal Opportunity and Fair Housing Programs. During the term of this Agreement, Borrower agrees as follows:

(1) Borrower will not discriminate against any employee, person, or applicant for employment and/or housing because of race, age, sexual orientation, marital status, color, religion, sex, handicap, or national origin or any other protected class designated by state or federal law. Borrower will take affirmative action to ensure that applicants are employed and/or are housed, and that employees or applicants are treated during employment and/or housing, without regard to their race, age, sexual orientation, marital status, color, religion, sex, handicap, or national origin. Such action shall include, but is not limited to the following: employment, upgrading, demotion, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Borrower agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

(2) Borrower will, in all solicitations or advertisements for employees and housing placed by on or behalf of Borrower, state that all qualified applicants will receive consideration for employment without regard to race, age, sexual orientation, marital status, color, religion, sex, handicap, or national origin.

(3) Borrower will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provision shall not apply to contracts or subcontracts for standard commercial supplies of raw materials.

(4) Borrower hereby agrees to comply with the Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal and State laws and regulations. The City will provide technical assistance and copies of the referenced programs upon request.

(5) All activities carried out by Borrower and/or agents of Borrower shall be in accordance with the requirements of the Federal Fair Housing Act. The Fair Housing Amendments Act of 1988 became effective on March 12, 1989. The Fair Housing Amendments Act of 1988 and Title VIII of the Civil Rights Act of 1968, taken together, constitute The Fair Housing Act. The Act provides protection against the following discriminatory housing practices if they are based on race, sex, religion, color, handicap, familial status, or national origin: denying or refusing to rent housing, denying or refusing to sell housing, treating differently applicants for housing, treating residents differently in connection with terms and conditions, advertising a discriminatory housing preference or limitation, providing false information about the availability of housing, harassing, coercing or intimidating people from enjoying or exercising their rights under the Act, blockbusting for profit, persuading owner to sell or rent housing by telling them that people of a particular race, religion, etc. are moving into the neighborhood, imposing different terms for loans for purchasing, constructing, improving, repairing, or maintaining a home, or loans secured by housing; denying use or participation in real estate services, e.g., brokers' organizations, multiple listing services, etc.

The Fair Housing Act gives HUD the authority to hold administrative hearings unless one of the parties elects to have the case heard in U.S. District Court and to issue subpoenas. Both civil and criminal penalties are provided. The Act also provides protection for people with disabilities.

The following State of California Laws also govern housing discrimination: Fair Employment and Housing Act, Unruh Civil Rights Act of 1959, Ralph Civil Rights Act of 1976, and Civil Code Section 54.1.

(l) Labor Requirements. Borrower will comply with all applicable federal, state and local labor standards, laws and regulations.

(m) Lead Based Paint. Borrower represents and warrants that during the term of the Agreement that Borrower will comply with local, state, and federal regulations regarding lead-based paint identification, testing, assessment, abatement, and control and/or clearance.

(n) Certification Concerning Debarment and Suspension. Borrower represents, warrants and hereby certifies that Borrower will not use a contractor that has been debarred and or suspended, nor that is proposed for debarment, declared ineligible or voluntarily excluded from participation in the Project, including verification that all contractors proposed for use do not appear on federal or state lists of debarred or suspended contractors and that all

contractors are licensed and in good standing with the California State Contractor's License Board.

(o) Flood Insurance. Borrower represents, warrants, and that no Real Property which is the subject of this Agreement, is located within a Flood Plain or Flood Hazard Zone or Area, as indicated on a FEMA Map; or that the Real Property is located within a community participating in the National Flood Insurance Program and Borrower agrees to purchase and maintain flood insurance for the duration of the term of this Agreement concerning such Real Property.

(p) Fire Protection and Safety. Borrower represents and warrants that Borrower will comply with all requirements and regulations of the Fire Administration Act of 1992 and the Federal Fire and Prevention Control Act. Borrower will use and install all fire and safety related equipment pursuant to the National Fire Protection Association standards.

(q) Accessibility Standards. Borrower represents and warrants that Borrower will comply with all federal, state and local requirements and regulations concerning access to the units by the disabled and handicapped persons.

(r) Drug Free Workplace. Borrower shall comply with all applicable State and Federal rules, laws and regulations to ensure a drug free workplace at all times during the term of this Agreement. Further, Borrower shall incorporate such federal provisions as are required in each contract or subcontract that Borrower enters into in connection with the Project.

(s) Lobbying Prohibition. Borrower hereby certifies to the City, under penalty of perjury, under the terms of applicable federal law, that at all applicable times before, during and after the term of the Agreement, that:

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

(ii) If any funds other than appropriated funds have been 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, Borrower will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(iii) Borrower will require that the above stated language be included in the award documents for all subawards at all tiers, including subcontracts, subgrants, loans, contracts, and cooperative agreements concerning the subject matter of this Agreement; and

(iv) Further, Borrower and all subrecipients, at all times, shall certify compliance with the provisions of 31 U.S.C. §1352 and any and all terms and conditions of the Byrd Anti-Lobbying Amendment, as amended from time to time.

Section 2.2 - Commencement of Construction and Compliance with Plans and Specifications.

(a) Completion Deadline. Borrower shall continue construction of the Project diligently and without delay, in a good and workmanlike manner. Borrower will complete construction of the Project in accordance with the plans and specifications approved by the City ("Plans and Specifications"), including any additional specifications prescribed by the City for compliance with all requirements of governmental authorities having or asserting jurisdiction. Construction of the Project shall be completed on or before June 30, 2021, as referenced in Section 1.24 of this Agreement.

(b) Submission of Documents Related to Changes. Borrower shall submit any proposed change to the Plans and Specifications to the City where the change order is in excess of five percent of the total cost of construction at least ten (10) days prior to the commencement of construction relating to such proposed change whether or not such change is subject to the City's consent. Requests for any change that requires consent shall be accompanied by any applicable working drawings and a written description of the proposed change, submitted on a change order form acceptable to the City, signed by Borrower and, if required by the City, also signed by the architect and the contractor.

Section 2.3 - Stoppage of Work by the City. The City or its agents shall have the right to enter upon the Property and the Project during the period of construction of the Project. If in the reasonable opinion of the City, the construction is not in material conformance with the plans and specifications, the City shall have the right to order the replacement of any unsatisfactory work theretofore incorporated into construction of the Project, and to withhold all disbursements from the accounts until it is satisfied with the work. If the work is not made satisfactory to the City, in its sole discretion, within fifteen (15) calendar days from the date of stoppage by the City, such shall constitute a default hereunder. If any unsatisfactory work is such that it is not reasonably capable of being cured within fifteen (15) calendar days and Borrower, in the City's sole discretion, (i) initiates corrective action within said period, and (ii) diligently and in good faith works to correct the unsatisfactory work as soon as possible, then Borrower shall have such additional time as the City determines, in its sole discretion, is reasonably necessary to cure the unsatisfactory work prior to exercise of any remedies by the City.

Section 2.4 - Cessation of Work, Completion by the City. Should the work of construction of the Project cease (other than due to force majeure), and such cessation continues for a period



of thirty (30) consecutive days, or should said work for any reason whatsoever (other than force majeure) not progress continuously in a manner satisfactory to the City, in its reasonable discretion, then the City may, at its option and upon 30 days written notice, declare Borrower to be in default hereunder, and the City may thereupon, should it so elect but subject to the rights of the Senior Lender, take possession of said property and let contracts for the completion of construction of the Project and pay the cost thereof, plus a fee of fifteen percent (15%) for supervision of construction, disbursing all or any part of the Loan for such purposes; and should the cost of completing construction of the Project plus such fee exceed the undisbursed balance of the loan, then the amount of such excess may be expended by the City, in which event such amount shall be considered an additional loan to Borrower, and the repayment thereof, together with interest thereon at the rate provided in the Note, shall be secured by the Deed of Trust and shall be repaid within ten (10) days after the completion of construction of the Project, and Borrower agrees to pay the same; Borrower further authorizes the City at its option at any time, subject to the rights of the Senior Lender, upon a default by any contractor under any contract in connection with construction of the Project which is not cured within thirty (30) days following notice to Borrower, either in its own name or in the name of Borrower, to do any act or thing necessary or expedient in the opinion of the City to secure the performance of construction contracts and assure the completion of construction of the Project substantially in accordance with the plans and specifications, disbursing all or any part of the loan funds for such purposes. In addition to the specific rights and remedies hereinabove mentioned, the City shall have the right to avail itself of any other rights or remedies to which it may be entitled under any existing law or laws.

Section 2.5 - Mechanic's Liens and Notices to Withhold. Borrower shall use its best efforts to prevent any lien or stop notice from being placed on the Property or Project. If a claim of lien or stop work notice is given or recorded affecting the Property or Project, the Borrower shall within thirty (30) calendar days of such recording or service (or such shorter time as City may determine is reasonably necessary to insure such lien or stop notice will not have a materially adverse impact on its security): (i) cause payment and discharge same; (ii) effect a release thereof by recording and delivering to the City a surety bond in sufficient form and amount; or (iii) provide the City with indemnification from a title insurance company reasonably acceptable to the City against such lien or other assurance which the City, in its sole discretion, deems to be satisfactory for the payment of such lien or stop notice and for the full and continuous protection of the City from the effect of such lien or notice. In the event of the filing with the City of a notice to withhold or the recording of a mechanic's lien pursuant to Division 3, Part 4, Title 15 of the Civil Code of the State of California, the City may summarily refuse to honor any requests for payment pursuant to this Agreement. In the event Borrower fails to furnish the City with a bond causing such notice or lien to be released (or alternatively issuance of a title policy or endorsement in the full amount of the Loans, which title policy or endorsement excludes such lien as an exception to title) within thirty (30) days after the filing or recording thereof, such failure shall at the option of the City constitute a default under the terms of this Agreement.

Section 2.6 - Involvement of the City in Legal Proceedings. The City shall have the right to commence, to appear in, or to defend any action or proceeding purporting to affect the rights or duties of the parties hereunder or the payment of any funds in connection with the Loan and to pay out of funds not yet disbursed, necessary expenses, employ counsel and pay its fees, all of which the undersigned, jointly and severally, agree to repay to the City upon demand. Provided, however, such costs and expenses shall not be due and owing to the City, if they are incurred as a result of the breach of the Agreement by the City or its negligence or willful misconduct.

Section 2.7 - Books and Records. Borrower shall require that the general contractor maintain complete and accurate books and records showing all of the income and disbursements made in connection with the construction of the Project and such books and records shall be available for inspection and copy by the City upon request and during regular business hours.

Section 2.8 - Waiver and Amendment. No provision of this Agreement, or breach of any provision, can be waived except in writing. Waiver of any provision or breach shall not be deemed to be a waiver of any other provision, or of any subsequent breach of the same or other provision. Except as otherwise provided herein, this Agreement may be amended, modified or rescinded only in writing signed by Borrower and the Executive Director of the City.

Section 2.9 – Crime Free Multi-Housing. Borrower agrees to participate in the Crime Free Multi-Housing Program and any crime prevention program sponsored by the City of Escondido Police Department including training and certification as required by the Police Department.

### ARTICLE III

#### Miscellaneous Provisions

Section 3.1 - Governmental Requirements Superior. All provisions of this Agreement and all the other documents relating to the Loan shall be subject and subordinate to any and all applicable federal, state and local statutes, regulations and ordinances and shall be subject to modification to comply therewith.

Section 3.2 - Notices. All notices under this Agreement shall be in writing and sent by (a) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered seven (7) business days after deposit, postage prepaid in the United States Mail, (b) by a nationally recognized overnight courier such as UPS Overnight or Federal Express, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or (c) by personal delivery, in which case notice shall be deemed delivered upon the actual date of delivery. All notices shall be delivered to the following addresses, provided, however the addresses may be changed by any party by written notice to all other parties.

City: City of Escondido  
201 N. Broadway  
Escondido, CA, 92025  
Attn: Housing Division

Borrower: Windsor Gardens Housing Associates, .LP.  
3111 Camino del Rio North, Suite 800  
San Diego, CA 92108

A copy of any notice sent to Borrower shall be sent to Borrower's investor limited partner at the address provided to the City in writing.

Section 3.3 - Severability. If any provision of this Agreement is deemed to be invalid or unenforceable by a court of competent jurisdiction, that provision shall be severed from the rest of this Agreement and the remaining provisions shall continue in full force and effect.

Section 3.4 - Nonwaiver of the City's Rights. No right, remedy, or power of the City in this Agreement shall be deemed to have been waived by any act or conduct on the part of the City or by any failure to exercise or delay in exercising such right, remedy, or power. Every such right, remedy or power of the City shall continue in full force and effect until specifically waived or released by an instrument in writing executed by the City.

Section 3.5 - Entire Agreement. This Agreement contains the entire understanding between the Parties concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed and/or referred to herein.

Section 3.6 - Exhibits and Recitals Incorporated. All exhibits referred to in this Agreement are hereby incorporated in this Agreement by this reference, regardless of whether or not the exhibits are actually attached to this Agreement. The Recitals to this Agreement are hereby incorporated in this Agreement by this reference.

Section 3.7 - Construction of the Agreement. The provisions contained in this Agreement shall not be construed in favor of or against either party but shall be construed as if both parties contributed equally to its preparation. This Agreement shall be construed in accordance with the laws of the State of California.

Section 3.8 - City's Reliance on Statements and Disclosures of Borrower. Borrower has made certain statements in applications or other documents and correspondence submitted to the City or in statements made before the representatives of the City in order to induce the City to make said loan and enter into this Agreement, and in the event Borrower has made material misrepresentations or failed to disclose any material fact in such applications, documents, correspondence or statements, the City may treat such misrepresentation or omission as a

breach of this Agreement, and the act of doing so shall not affect any remedies the City may have under the deeds of trust securing said loan for such misrepresentation or concealment.

Section 3.9 - City Not Liable for Acts of Omissions of Borrower or Others. City shall in no way be liable for any acts or omissions of Borrower, any agent or contractor employed by Borrower, or any person furnishing labor and/or materials used in or related to the construction of the Project.

Section 3.10 - Time of the Essence. Time is of the essence of this Agreement and of each and every provision hereof. The waiver by the City of any breach or breaches hereof shall not be deemed, nor shall the same constitute, a waiver of any subsequent breach or breaches.

Section 3.11 - Integration. This Agreement represents the entire agreement between the Parties of the subject matter of this Agreement and supersedes any other agreements, promises, or representations oral or written pertaining to such subject matter, including without limitation, any and all agreements, promissory notes, and deeds of trust, along with any amendments and modifications to such agreements, promissory notes and deeds of trust entered into by and between the City and Borrower.

Section 3.12 - Participation. At the request of the City, Borrower shall cause the fact that the City has provided funds to be referenced in any advertisements, press releases, brochures or information sheets where funding for the Project is discussed, and on all project designation placards placed on the Property or other sites, as approved in advance, by the City. The design, content and format of the press releases, brochures, information sheets, and all project designation placards containing a reference to the City are subject to the written approval of the City with respect to all references to the City. The City, at its sole option, reserves the right to request, in writing, that the references to the participation of the City not be included in any, or all, advertisements, press releases, brochures, information sheets, and/or project designation placards.

Section 3.13 - Approvals, Consents and Other Determinations. Unless otherwise provided, in any approval, consent, or other determination by the City or Borrower required under this Agreement or any of the other loan documents evidencing and/or securing the Loans, the City and Borrower shall act in good faith and without delay.

Section 3.14 - Counterparts. This Agreement may be executed in any number of counterparts and, as so executed, the counterparts shall constitute one and the same Agreement. The parties agree that each such counterpart is an original and shall be binding upon all the parties, even though all of the parties are not signatories to the same counterpart.

Section 3.15 - Consents and Approvals. Any approval required under this Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

Section 3.16 - Non-Liability of Officials and Employees of the City. No member, official or employee of the City shall be personally liable to Borrower, or any successor in interest, in the event of any default or breach of this Agreement or for any amount which may become due to Borrower or its successors, or on any obligations under the terms of this Agreement.

Section 3.17 - Capacity and Authority. All individuals signing this Agreement for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the City that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

Section 3.18 - Governing 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.

(signatures on following page)

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first set forth above.

**BORROWER:**

Windsor Gardens Housing Associates, L.P.,  
a California limited partnership

By: CHW Windsor Gardens LLC,  
a California limited liability company,  
its managing general partner

By: Community HousingWorks,  
a California nonprofit public benefit corporation,  
its sole member/manager

By: \_\_\_\_\_  
Name: Mary Jane Jagodzinski  
Title: Senior Vice President

**City:**  
City of Escondido

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

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

APPROVED AS TO FORM:

CITY ATTORNEY OF THE CITY OF ESCONDIDO

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

## Exhibit "A"

### Property Description

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 4, BLOCK 305, AND A PORTION OF LOT 3. BLOCK 304, AND A PORTION OF HALE AVENUE, NOW VACATED, IN RANCHO RINCON DEL DIABLO IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO [MAP THEREOF NO. 724](#), FILED IN THE OFFICE OF THE COUNTY RECORDER, AUGUST 13, 1892, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID LOT 3, SAID POINT BEING A POINT ON THE NORTHWESTERLY RIGHT OF WAY LINE OF HALE AVENUE (66 FEET IN WIDTH); THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID LOT 3, NORTH 63° 26' 43" WEST 16.44 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 63° 26' 43" WEST 160.77 FEET TO THE INTERSECTION WITH THE ARC OF A 1022.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, THROUGH WHICH A RADIAL LINE BEARS NORTH 25° 52' 23" WEST TO SAID POINT; THENCE LEAVING SAID SOUTHWESTERLY LINE, NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 12° 54' 20" A DISTANCE OF 230.20 FEET; THENCE TANGENT TO SAID CURVE, NORTH 77° 01' 57" EAST, 581.33 FEET TO THE INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF VINEYARD AVENUE (84 FEET IN WIDTH); THENCE SOUTHEASTERLY ALONG SAID WESTERLY RIGHT OF WAY LINE, SOUTH 12° 56' 44" EAST 310.61 FEET TO THE BEGINNING OF A TANGENT 942 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 15° 52' 25" A DISTANCE OF 260.98 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 20.00 FEET AND THROUGH WHICH A RADIAL OF SAID 942.00 FOOT RADIUS CURVE BEARS SOUTH 61° 10' 51" WEST TO SAID POINT; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID 20.00 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 87° 01' 15" A DISTANCE OF 30.38 FEET; THENCE TANGENT TO SAID CURVE, SOUTH 58° 12' 06" WEST 9.85 FEET TO THE BEGINNING OF A TANGENT 120.00 FOOT RADIUS CURVE CONCAVE NORTHERLY; THENCE SOUTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 45° 44' 17" A DISTANCE OF 95.79 FEET TO THE INTERSECTION WITH THE SOUTHWESTERLY LINE OF SAID LOT 4, THROUGH WHICH A RADIAL LINE BEARS SOUTH 13° 55' 23" WEST TO SAID POINT AND DISTANT THEREON SOUTH 63° 13' 18" EAST 678.36 FEET FROM SAID MOST WESTERLY CORNER OF SAID LOT 4, SAID POINT ALSO BEING A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF WEST NINTH AVENUE (66 FEET IN WIDTH); THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE NORTH 63° 13' 18" WEST 606.26 FEET TO THE BEGINNING OF A TANGENT 40.00 FOOT RADIUS CURVE, CONCAVE

NORTHEASTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF  $17^{\circ} 13' 13''$  A DISTANCE OF 12.02 FEET; THENCE TANGENT TO SAID CURVE, NORTH  $46^{\circ} 00' 05''$  WEST 50.00 FEET TO THE BEGINNING OF A TANGENT 76,00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF  $89^{\circ} 36' 16''$  A DISTANCE OF 118.86 FEET TO THE INTERSECTION WITH THE SOUTHWESTERLY LINE OF SAID LOT 3, DISTANT THEREON NORTH  $63^{\circ} 26' 43''$  WEST 16.44 FEET FROM THE MOST SOUTHERLY CORNER OF SAID LOT 3 AND THROUGH WHICH A RADIAL LINE BEARS NORTH  $45^{\circ} 36' 21''$  WEST TO SAID POINT, SAID POINT BEING ALSO THE TRUE POINT OF BEGINNING.

SAID LAND IS ALSO KNOWN AS LOT 22 OF ESCONDIDO TRACT NO. 477, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO [MAP THEREOF NO. 10083](#), FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 4, 1981.

APN 232-542-13-00



**Exhibit "B"**

**Proposed Financing Plan and Project Budget**

**Windsor**

<b>Prepared For:</b>	Community HousingWorks
<b>Prepared By:</b>	California Housing Partnership Corporation
<b>Version:</b>	Feasibility v2
<b>Revised:</b>	7/30/2019
<b>Filename:</b>	Windsor - Feasibility v2 7.30.19.xlsm

**TABLE OF CONTENTS**

Sources of Funds.....	1	Cash Flow (Residential).....	11a
Uses of Funds.....	2	Cash Flow (Commercial) .....	11b
Developer Fee Calculation.....	3	Outstanding Debt & Reserves (Book).....	12a
Unit Mix & Rental Income.....	4	Outstanding Debt & Reserves (Tax).....	12b
Tax Credit Calculation.....	5	Net Cash Flow Fee Accruals.....	12c
Base Year Income & Expense.....	6	Schedule of Existing Debt.....	12d
Mortgage Calculation & Bond Ratios.....	7	Schedule of Deductions.....	13
Lease-up/Placed-in-Service Schedule.....	8	Analysis of Taxable Income.....	14
Net Syndication Proceeds.....	9	Capital Account & Exit Tax Liability.....	15
TCAC Calculations.....	10a	Investment Summary.....	16
TCAC Transfer Event Calculation.....	10b	Net Quarterly Benefits.....	17

**SOURCES OF FUNDS - PERMANENT**

	AMOUNT	TOTAL INTEREST COST	OID INTEREST RATE	AMORT (Yr)	COMMENTS
Tax-Exempt Perm Loan - A Tranche	3,678,000	5.500%		35.0	<i>Total Permanent Debt: 3,678,000</i>
Seller Carryback Loan	9,695,559	2.330%	2.330%	55.0	<i>Term - 15 (yrs.) Index - 10Y T - 2.330% Spread - 240 bps U/W Cushion - 77 bps</i>
Accrued Deferred Interest - Seller Carry	325,054				
City of Escondido Loan	900,000	3.000%	1.788%	55.0	
Accrued Deferred Interest - City of Escc	23,067				
FHLB - AHP	1,300,000	0.000%	0.000%	55.0	
Income from Operations	333,977				
Deferred Developer Fee	1,777,755				<i>Capitalized Developer fee 1,400,000</i>
Capital Contributions					<i>Aggregate Equity Pricing: 0.960</i>
General Partner (Developer Fee)	0				<i>Total LP capital includes release of bond collateral funded during construction</i>
General Partner (Other)	199,200				<i>Synd Costs 119,800</i>
Limited Partners	8,339,309				<i>Net Equity for TCAC 8,219,509</i>
<b>TOTAL SOURCES</b>	<b>26,571,921</b>				
<i>Surplus/(Shortfall)</i>	<i>0</i>				

PERMANENT LOAN INTEREST RATE	TRANCHE A	TRANCHE B	INVESTOR EQUITY STACK	OTHER ASSUMPTIONS
Base Rate	4.730%	5.380%	LIHTC Equity (Federal+State)	Current AFR: 2.33%
Cushion	0.770%	0.000%	Historic Tax Credit	AFR Month: 1/1/17
MIP	0.000%	0.000%	Investment Tax Credit (Solar PV)	AFR Cushion: 0.00%
GNMA/Servicing	0.000%	0.000%	<b>Subtotal LP Equity</b>	<b>Total U/W AFR: 2.33%</b>
Issuer	0.000%	0.000%		
Trustee	0.000%	0.000%		
Rating	0.000%	0.000%	CA Certificated Credit Sale	
Remarketing	0.000%	0.000%	<b>Total Investor Equity</b>	
Rebate Analyst	0.000%	0.000%		
<b>Total</b>	<b>5.500%</b>	<b>5.380%</b>		

**SOURCES OF FUNDS - CONSTRUCTION**

	AMOUNT	INTEREST RATE	TERM (Mos.)	COMMENTS
Tax-Exempt Construction Loan	10,599,464	4.730%	17	
Seller Carryback Loan	10,995,559	2.330%	17	
Accrued Deferred Interest - Seller Carry	325,054			
City of Escondido Loan	900,000	3.000%	17	
Accrued Deferred Interest - City of Escc	23,067			
Costs Deferred Until Conversion	917,891			<i>See page 2 - right column</i>
Income from Operations	0			
Deferred Developer Fee	1,777,755			
Capital Contributions				<i>LP Equity - Construction Period</i>
General Partner (Developer Fee)	0			<i>LP Equity used for construction 833,931 10.00%</i>
General Partner (Other)	199,200			<i>LP Equity used for bond collateral 0 0.00%</i>
Limited Partners*	833,931			<b>Total Equity During Constr 833,931 10.00%</b>
<b>TOTAL SOURCES</b>	<b>26,571,921</b>			<i>Syndication Costs 119,800</i>
<i>Surplus/(Shortfall)</i>	<i>0</i>			<i>Net Equity for TCAC 714,131</i>
Sources Less Deferred To Conversion:	25,654,030			<i>Less Costs Deferred to Conversion 25,737,990</i>

CONSTRUCTION LOAN INTEREST RATE	CONSTRUCTION LOAN VALUATION	TAX-EXEMPT BOND DATA
Index Type: LIBOR	Restricted NOI 272,586	50% Test (see Page 7): 86.51%
Current Index: 2.48%	OAR 5.00%	Issuer Inducement: TBD
Spread: 1.25%	Perm Loan Amount 5,451,712	CDLAC Alloc:0.00 TBD
Base Interest Rate (not including cushi 3.73%	Credit Value 0.96 8,339,309	Percent of CDLAC Allocation Use 0.00%
Cushion - Private Placement / Convent 1.00%	Perm-Only Soft Debt 1,300,000	Const-only portion: 6,921,464
<b>Interest Rate (All-In) 4.73%</b>	Total Value 15,091,021	
	LTV: 85.00%	CDLAC Limit 55,550,000
	Max. Const. Loan Amount 12,827,368	
	Commitment Amount TBD	

**SELLER POSITION**

<b>Proceeds of Sale:</b>		<b>Uses of Cash to Seller:</b>	
Sales Price	14,900,000	Incl. Reserves & Personal Pro	
Seller Carryback Note	-9,695,559	Cash to Seller	4,304,441
Assumed Debt	-900,000	Repayment of Debt	0
<b>Cash to Seller</b>	<b>4,304,441</b>	<b>Net Cash to Seller</b>	<b>4,304,441</b>
Cash from Initial Sale	877,000		
<b>Total Cumulative Cash to Seller</b>	<b>5,181,441</b>		

**Uses of Funds** Version: Feasibility v2

	Res Cost: Res Sq Foot:		COST ALLOCATIONS										LIHTC ELIGIBLE BASIS		OTHER BASIS & COST ALLOCATIONS				
	TOTAL	Per Unit	TOTAL RESIDENTIAL	TOTAL NON-RESIDENTIAL	NON-DEPREC	DEPRECIABLE			EXPENSE	AMORTIZE	CONST/REHAB	ACQ	Deferred to Completion or Perm Conv.	Land/Basis for 50% Test	Historic Rehab Tax Credit Basis	ITC Tax Credit Basis (Solar PV)			
						RESID.	NON-RES	RESID.									NON-RES		
<b>ACQUISITION COSTS</b>																			
<i>Total Purchase Price - Real Estate: 14,900,000</i>																			
Land - Windsor	590,000	4,394	590,000	0	590,000							0	590,000						
Building - Windsor	14,320,000	108,485	14,320,000	0		14,320,000					14,320,000	0	14,320,000						
Acquired Property Reserves	199,010	1,508	199,010	0	199,010							0							
Title/Recording/Escrow - Acquisition	5,000	38	5,000	0	5,000		0	0				0		5,000					
Legal - Acquisition	15,000	114	15,000	0	15,000		0	0				0		15,000					
<b>HARD COSTS</b>																			
<b>REHAB</b>																			
Demolition	0	-	0	0						0		0				0			
Hard Costs-Unit Construction	4,132,468	31,307	4,132,468	0	4,132,468					4,132,468		0	4,132,468	4,132,468					
Personal Property in Construction Contract	0	-	0	0						0		0				0			
Site Improvements/Landscape	0	-	0	0						0		0				0			
GC - General Conditions	247,948	1,878	247,948	0		247,948				247,948		0	247,948	247,948					
GC - Overhead & Profit	364,331	2,760	364,331	0		364,331				364,331		0	364,331	364,331					
GC - Insurance	53,068	402	53,068	0		53,068				53,068		0	53,068	53,068					
GC - Bond Premium	42,454	322	42,454	0		42,454				42,454		0	42,454	42,454					
Contingency - Owner's Construction	501,400	3,798	501,400	0		501,400				501,400		0	501,400	501,400					
Contingency - Escalation	173,726	1,316	173,726	0		173,726				173,726		0	173,726	173,726					
<b>SOFT COSTS</b>																			
Architecture - Design	250,000	1,894	250,000	0	250,000					250,000		0	250,000	250,000		0			
Architecture - Supervision	15,000	114	15,000	0	15,000					15,000		0	15,000	15,000		0			
Design/Engineering - MEP	60,000	455	60,000	0	60,000					60,000		0	60,000	60,000		0			
Environmental Consulting	28,500	216	28,500	0	28,500					28,500		0	28,500	28,500		0			
Owner's Rep / Construction Supervision	50,000	379	50,000	0	50,000					50,000		0	50,000	50,000		0			
Local Permits/Fees	39,600	300	39,600	0	39,600					39,600		0	39,600	39,600		0			
Relocation - Temporary (Rehab)	430,000	3,258	430,000	0	430,000					430,000		0	430,000	430,000		0			
Real Estate Taxes During Const	15,000	114	15,000	0		15,000		0		15,000		0	15,000	15,000		0			
Insurance During Const	31,700	240	31,700	0		31,700				31,700		0	31,700	31,700		0			
Appraisal	9,000	68	9,000	0		9,000				9,000		0	9,000	9,000		0			
Market/Rent Comp Study	8,500	64	8,500	0					8,500			0				0			
Soft Cost Contingency	58,214	441	58,214	0		58,214				58,214		0	58,214	58,214		0			
Predev. Loan Interest/Fees	9,375	71	9,375	0				9,375				0				0			
Construction Loan Interest	497,531	3,769	497,531	0		252,766		244,765		252,766		0	252,766	252,766		0			
Accrued Interest - Seller Carryback Loan	325,054	2,463	325,054	0				325,054				0				0			
Accrued Interest - City of Escondido Loan	23,067	175	23,067	0		14,859		8,208		14,859		0	14,859	14,859		0			
Title/Recording/Escrow - Construction	25,000	189	25,000	0		25,000				25,000		0	25,000	25,000		0			
Title/Recording/Escrow - Permanent	7,500	57	7,500	0					7,500			7,500				0			
Legal (Owner): Construction Closing	30,000	227	30,000	0		30,000				30,000		0	30,000	30,000		0			
Permanent Closing	0	-	0	0						0		0				0			
Organization of Ptnshp	15,000	114	15,000	0								0				0			
Syndication - LP	20,000	152	20,000	0								0				0			
Syndication Consulting	75,000	568	75,000	0								2,500				0			
Audit/Cost Certification	9,800	74	9,800	0					9,800							0			
TCAC Application/Res/Monitoring Fee	89,871	681	89,871	0								54,120				0			
Marketing	7,500	57	7,500	0								0				0			
Furnishings Not in Contract	40,000	303	40,000	0		40,000				40,000		0	40,000			0			
Capitalized Operating Reserve (3 mos.)	203,601	1,542	203,601	0								203,601				0			
Developer Fee	3,177,755	24,074	3,177,755	0		3,177,755				1,029,755	2,148,000	560,000	3,177,755	1,029,755		-			
<b>COSTS OF ISSUANCE/FINANCING FEES</b>																			
Underwriter Fee	0	0	0	0						0		0				0			
Bond Counsel	55,000	417	55,000	0						55,000		0				0			
Underwriter Counsel	0	0	0	0						0		0				0			
Borrower Counsel	0	0	0	0						0		0				0			
Collateralized Bond Legal (Eichner/Norris)	0	0	0	0						0		0				0			
Issuer Financial Advisor	0	0	0	0						0		0				0			
Issuer Application Fee	0	0	0	0						0		0				0			
Issuer Fee - Upfront	19,874	151	19,874	0						19,874		0				0			
Issuer Fee - Annual During Const.	21,199	161	21,199	0						21,199		0				0			
Construction Lender Origination Fee	105,995	803	105,995	0						105,995		0				0			
Construction Lender Expenses	22,000	167	22,000	0						22,000		0				0			
Construction Lender Counsel	40,000	303	40,000	0						40,000		0				0			
Other Bond Fee: (specify here)	0	0	0	0						0		0				0			
Other Bond Fee: (specify here)	0	0	0	0						0		0				0			
Other Bond Fee: (specify here)	0	0	0	0						0		0				0			
Other Bond Fee: (specify here)	0	0	0	0						0		0				0			
Permanent Lender Expenses	10,000	76	10,000	0						10,000		10,000				0			
Permanent Lender Counsel	15,000	114	15,000	0						15,000		15,000				0			
Permanent Loan Origination Fee	27,585	209	27,585	0						27,585		27,585				0			
Other Perm Bond Fee: (specify here)	27,585	209	27,585	0						27,585		27,585				0			
Other Perm Bond Fee: (specify here)	10,000	76	10,000	0						10,000		10,000				0			
Trustee Fee During Construction	8,000	61	8,000	0						8,000		0				0			
CDLAC Fee	3,710	28	3,710	0						3,710		0				0			
COI Contingency	20,000	152	20,000	0						20,000		0				0			
Subtotal - Financing/Costs of Issuance	385,947	2,924	385,947	0		0				385,947		0				0			
<b>TOTAL DEVELOPMENT COSTS</b>																			
TDC Per Unit	26,571,921	201,302	26,571,921	0	799,010	24,362,790	0	604,702	506,824	7,894,790	16,468,000	917,891	24,962,790	7,854,790		0			
TDC Net of accrued interest:	26,223,800																		
TDC TCAC	26,452,121		26,452,121																

<b>Developer Fee Calculation</b>	Version: Feasibility v2
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DEVELOPER FEE CALCULATION			
	CONST.	ACQ.	TOTAL
Fee per Base TCAC Formula	1,029,755	2,148,000	3,177,755
<i>Percent of Total</i>	<i>32.41%</i>	<i>67.59%</i>	<i>100.00%</i>
Max. Allowable Fee per TCAC (prorated)	1,029,755	2,148,000	3,177,755
<i>Less: Development Consulting</i>	<i>0</i>		<i>0</i>
<b>Net Allowable</b>	<b>1,029,755</b>	<b>2,148,000</b>	<b>3,177,755</b>
<i>Less: Owner Reduction</i>	<i>0</i>	<i>0</i>	<i>0</i>
<b>Net Allowable</b>	<b>1,029,755</b>	<b>2,148,000</b>	<b>3,177,755</b>
Maximum Base Developer Fee per TCAC			3,177,755
Maximum Developer Fee per HCD			N/A
Maximum Developer Fee per Local			N/A
Maximum Developer Fee per Owner			N/A
Most Restrictive Maximum Developer Fee:			<b>3,177,755</b>
Maximum Cash Fee per TCAC ( <i>Lesser of Calc. or Reservation Amount</i> )			2,800,000
Maximum Cash Fee per HCD			N/A
Maximum Cash Fee per Local			1,400,000
Maximum Cash Fee per Owner			N/A
Most Restrictive Maximum Cash Fee:			<b>1,400,000</b>

DEVELOPER FEE PAYMENT SCHEDULE			
	Amount	% of Cash Fee	% of Total Fee
Construction Close	700,000	50.00%	22.03%
Interim Milestone 1	-	0.00%	0.00%
Interim Milestone 2	-	0.00%	0.00%
Interim Milestone 3	-	0.00%	0.00%
Completion	140,000	10.00%	4.41%
Conversion	401,112	28.65%	12.62%
Final LP Pay-in 1	-	0.00%	0.00%
Final LP Pay-in 2	158,888	11.35%	5.00%
<b>Total: Cash Fee</b>	<b>1,400,000</b>		
Plus: Deferred Developer Fee	1,777,755		55.94%
Plus: GP Capital	0		0.00%
<b>Total Developer Fee</b>	<b>3,177,755</b>		

**Windsor**

**Unit Mix & Rental Income**

Version: Feasibility v2

AVERAGE AFFORDABILITY FOR LIHTC UNITS (% of Median)	48.77%
9% TCAC INCOME TARGETING POINTS:	50.00
RENT LIMITS AS OF YEAR:	2019

UTILITY ALLOWANCES	0BR	1BR	2BR	3BR	4BR	5BR
Windsor	-	42	53	-	-	-
	-	-	-	-	-	-

**RESIDENTIAL INCOME**

LIHTC - Tier 1		Windsor										NOT SUBSIDIZED					
		TCAC 30%															
		Rent / Income Per: RDA															
Unit Type	Number	Unit Floor Area	Unit Rent	Actual TCAC AMI %	RDA AMI %	Per Unit Monthly Gross Rent	Per Unit Regulatory Net Rent	Per Unit Actual Net Rent	Monthly Net Rent	Total Annual Net Rent	Total Annual Net Rent	# of Subsidized Units	Per Unit Net Subsidy Rents	Per Unit Subsidy Increment	Total Monthly Subsidy	Total Annual Subsidy	Total Annual Income
1BR	33	500	24.48%	28.45%	491	476	449	14,817	177,804	177,804	0	0	0	0	0	177,804	
<b>TOTAL</b>	<b>33</b>							<b>14,817</b>	<b>177,804</b>	<b>177,804</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>177,804</b>	

LIHTC - Tier 2		Windsor										NOT SUBSIDIZED					
		TCAC 50%															
		Rent / Income Per: RDA															
Unit Type	Number	Unit Floor Area	Unit Rent	Actual TCAC AMI %	RDA AMI %	Per Unit Monthly Gross Rent	Per Unit Regulatory Net Rent	Per Unit Actual Net Rent	Monthly Net Rent	Total Annual Net Rent	Total Annual Net Rent	# of Subsidized Units	Per Unit Net Subsidy Rents	Per Unit Subsidy Increment	Total Monthly Subsidy	Total Annual Subsidy	Total Annual Income
1BR	32	500	24.48%	28.45%	491	821	449	14,368	172,416	172,416	0	0	0	0	0	172,416	
<b>TOTAL</b>	<b>32</b>							<b>14,368</b>	<b>172,416</b>	<b>172,416</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>172,416</b>	

LIHTC - Tier 3		Windsor										NOT SUBSIDIZED					
		RDA 60%															
		Rent / Income Per: TCAC															
Unit Type	Number	Unit Floor Area	Unit Rent	Actual TCAC AMI %	RDA AMI %	Per Unit Monthly Gross Rent	Per Unit Regulatory Net Rent	Per Unit Actual Net Rent	Monthly Net Rent	Total Annual Net Rent	Total Annual Net Rent	# of Subsidized Units	Per Unit Net Subsidy Rents	Per Unit Subsidy Increment	Total Monthly Subsidy	Total Annual Subsidy	Total Annual Income
1BR	15	500	36.29%	42.18%	728	961	686	10,290	123,480	123,480	0	0	0	0	0	123,480	
<b>TOTAL</b>	<b>15</b>							<b>10,290</b>	<b>123,480</b>	<b>123,480</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>123,480</b>	

LIHTC - Tier 4		Windsor										NOT SUBSIDIZED					
		TCAC 60%															
		Rent / Income Per: RDA															
Unit Type	Number	Unit Floor Area	Unit Rent	Actual TCAC AMI %	RDA AMI %	Per Unit Monthly Gross Rent	Per Unit Regulatory Net Rent	Per Unit Actual Net Rent	Monthly Net Rent	Total Annual Net Rent	Total Annual Net Rent	# of Subsidized Units	Per Unit Net Subsidy Rents	Per Unit Subsidy Increment	Total Monthly Subsidy	Total Annual Subsidy	Total Annual Income
1BR	47	500	36.29%	42.18%	728	994	686	32,242	386,904	386,904	0	0	0	0	0	386,904	
2BR	3	800	30.30%	37.56%	729	1,112	676	2,028	24,336	24,336	0	0	0	0	0	24,336	
<b>TOTAL</b>	<b>50</b>							<b>34,270</b>	<b>411,240</b>	<b>411,240</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>411,240</b>	

Staff Units - Site 1		Windsor									
Unit Type	Number	Unit Floor Area	Unit Rent	Actual TCAC AMI %	RDA AMI %	Per Unit Monthly Gross Rent	Per Unit Regulatory Net Rent	Per Unit Actual Net Rent	Monthly Net Rent	Total Annual Net Rent	Total Annual Net Rent
1BR	1	500	0.00%	0.00%	0	0	0	0	0	0	0
2BR	1	800	0.00%	0.00%	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>2</b>									<b>0</b>	<b>0</b>

TOTAL RESIDENTIAL INCOME																
	Number	Total Monthly Net Rent	Total Annual Net Rent	Monthly NA Income	Annual NA Income	Monthly NA Income	Annual NA Income	Monthly Income	Annual Income	Monthly Income	Annual Income	Monthly Income	Annual Income	Grand Total Income	Total Floor Area	
LIHTC	130	73,745	884,940	0	0	0	0	0	0	0	0	0	0	884,940	65,900	
Staff Units	2	0	0	0	0	0	0	0	0	0	0	0	0	0	1,300	
<b>TOTAL</b>	<b>132</b>	<b>73,745</b>	<b>884,940</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>884,940</b>	<b>67,200</b>	

MISCELLANEOUS INCOME			
	Per Unit Per Month	Monthly Total	Annual Total
Laundry / Vending	6.17	814	9,768
Other	0.00	0	0
Parking	0.00	0	0
<b>TOTAL</b>	<b>6.17</b>	<b>814</b>	<b>9,768</b>

COMMERCIAL INCOME					
	Floor Area	Monthly Rental Income	Annual Rental Income	Monthly NNN Income	Annual NNN Income
Commercial Tenant 1	-	-	-	0	-
Commercial Tenant 2	-	-	-	0	-
Commercial Tenant 3	-	-	-	0	-
Commercial Tenant 4	-	-	-	0	-
Commercial Tenant 5	-	-	-	0	-
Commercial Tenant 6	-	-	-	0	-
Commercial Tenant 7	-	-	-	0	-
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

SUBSIDIZED UNIT MIX SUMMARY						
Unit Type	Units With NA	Units With 0	Units With 0	Units Without Subsidy	Total Units	Total Units
0BR	0	0	0	0	0	0
1BR	0	0	0	128	128	128
2BR	0	0	0	4	4	4
3BR	0	0	0	0	0	0
4BR	0	0	0	0	0	0
5BR	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>132</b>	<b>132</b>	<b>132</b>

SCATTERED SITE UNIT MIX SUMMARY						
LIHTC						
Unit Type	Windsor	0	0	0	0	0
0BR	0	0	0	0	0	0
1BR	127	0	0	0	0	0
2BR	3	0	0	0	0	0
3BR	0	0	0	0	0	0
4BR	0	0	0	0	0	0
5BR	0	0	0	0	0	0
<b>TOTAL</b>	<b>130</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Non-LIHTC						
Unit Type	Windsor	0	0	0	0	0
0BR	0	0	0	0	0	0
1BR	0	0	0	0	0	0
2BR	0	0	0	0	0	0
3BR	0	0	0	0	0	0
4BR	0	0	0	0	0	0
5BR	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
STAFF UNITS						
Unit Type	Windsor	0	0	0	0	0
0BR	0	0	0	0	0	0
1BR	1	0	0	0	0	0
2BR	1	0	0	0	0	0
3BR	0	0	0	0	0	0
4BR	0	0	0	0	0	0
5BR	0	0	0	0	0	0
<b>TOTAL</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL ALL:</b>	<b>132</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>



**Base Year Income & Expense**

Version: Feasibility v2

<b>INCOME</b>		
Scheduled Gross Income - Residential		884,940
Scheduled Gross Income - Commercial		0
Total Gross Subsidy Income - NA		0
Total Gross Subsidy Income - NA		0
Misc. Income		9,768
MHSA Operating Subsidy		0
Vacancy Loss - Residential	5.0%	(44,735)
Vacancy Loss - NA	5.0%	0
Vacancy Loss - NA	5.0%	0
Vacancy Loss - Commercial	20.0%	0
<b>EFFECTIVE GROSS INCOME</b>		<b>849,973</b>
<b>EXPENSES - RESIDENTIAL</b>		
<b>Administrative</b>		
Advertising	1,172	
Legal	0	
Accounting/Audit	11,879	
Security	9,306	
Other: Misc. Admin	16,447	
<b>Total Administrative</b>		<b>38,804</b>
<b>Management Fee</b>		<b>71,280</b>
<b>Utilities</b>		
Gas	2,762	
Electricity	20,069	
Water/Sewer	83,903	
Other	1,102	
<b>Total Utilities</b>		<b>107,836</b>
<b>Payroll/Payroll Taxes</b>		
On-Site Manager/Office Admin	57,000	
Maintenance Payroll	40,000	
Manager Unit Expense/(Credit)	0	
Payroll Taxes/Benefits	30,070	
<b>Total Payroll/Payroll Taxes</b>		<b>127,070</b>
<b>Insurance</b>		<b>24,487</b>
<b>Maintenance</b>		
Painting	1,760	
Repairs	52,790	
Trash Removal	8,832	
Exterminating	5,000	
Grounds	60,000	
Elevator	0	
Other	2,500	
<b>Total Maintenance</b>		<b>130,882</b>
<b>Resident Services</b>		
Tenant Services	36,000	
<b>Total Resident Services</b>		<b>36,000</b>
<b>Replacement Reserve</b>		<b>39,600</b>
<b>Real Estate Taxes</b>		<b>1,428</b>
<b>TOTAL EXPENSES - RESIDENTIAL</b>		<b>577,387</b>
Per Unit Per Annum (incl. Reserves)	4,374	
Per Unit Per Annum (w/o taxes/res/svc)	3,791	
TCAC Minimum (w/o taxes/res/svc)	4,500	
<b>TOTAL EXPENSES - COMMERCIAL</b>		<b>0</b>
<b>NET AVAILABLE INCOME</b>		<b>272,586</b>
Debt Service Coverage Ratio		1.15
<b>AVAILABLE FOR DEBT SERVICE (NET OF OP SUBSIDY)</b>		<b>237,031</b>
<b>NET AVAILABLE INCOME AFTER SENIOR DEBT SERVICE</b>		<b>35,555</b>

**Mortgage Calculation/Bond Ratios** Version: Feasibility v2

TRANCHE A				
Uses baseline year NOI; includes annual fees				
Financing Type: Tax-Exempt Perm Loan - A Tranche				
	Underwriting Constraint	Maximum Loan Amount		
Debt Service Coverage	1.15	3,678,209	Rate:	5.500%
Lender Commitment		NA	Term (mths):	420
<b>MAXIMUM MORTGAGE</b>		<b>3,678,209</b>	NOI for DS:	<u>272,586</u>
			Max PMT @ DSCR:	237,031
			Annual Fees:	0
			Annual DS Payment:	237,031

INTEREST RATE STACK	TRANCHE A	TRANCHE B	221(D)(4)	SELECTED
Base Rate	4.7300%	5.3800%	4.2500%	4.7300%
Cushion	0.7700%	0.0000%	0.7500%	0.7700%
MIP	0.0000%	0.0000%	0.4500%	0.0000%
GNMA/Servicing	0.0000%	0.0000%	0.2000%	0.0000%
Issuer	0.0000%	0.0000%	0.0000%	0.0000%
Trustee	0.0000%	0.0000%	0.0000%	0.0000%
Rating	0.0000%	0.0000%	0.0000%	0.0000%
Remarketing	0.0000%	0.0000%	0.0000%	0.0000%
Rebate Analyst	0.0000%	0.0000%	0.0000%	0.0000%
<b>TOTAL</b>	<b>5.5000%</b>	<b>5.3800%</b>	<b>5.6500%</b>	<b>5.5000%</b>
DCR	1.15	1.15	1.15	1.15

LOAN AMOUNT COMPARISON	SELECTED	
TRANCHE A	3,678,209	3,678,209
TRANCHE B	0	0
221(d)(4)	3,643,845	0

**BOND / REHABILITATION RATIOS**

Tax-Exempt Financing Ratio	CDLAC Allocation Limit	Effective Date Limits: 1/1/18		
		Units	Per-Unit Limit	Total Limit
	Studio and SRO	0	402,500	0
Tax-Exempt Seller Financing	10,995,559	One BR	128	420,000
Series A Bonds	0	Two BR	4	447,500
Series B Bonds	0	Three BR	0	492,500
Short Term Bonds (Construction Loan Portion)	<u>10,599,464</u>	Four BR or More	0	517,500
<b>TOTAL TAX-EXEMPT FINANCING</b>	<b>21,595,023</b>			<b>0</b>
		<b>TOTAL</b>		<b>55,550,000</b>
TOTAL BASIS + LAND ALLOCATION	24,962,790	Potential Bond Size		10,599,464
		Over/(Under)		-44,950,536
<b>Percent Tax-Exempt Financing</b>	<b>86.51%</b>			

**Rehabilitation Cost Ratios**

Total Rehabilitation Basis	N/A
<b>LIHTC TEST</b>	
Elig. Rehabilitation Per Low-Income Unit	N/A IRS Minimum Per Unit: \$6800
Percentage of Building Basis	55% (Minimum 20%)
<b>TAX-EXEMPT BOND TEST</b>	
Building Basis Financed with Bonds	14,246,278
Rehabilitation Basis	N/A
% Tax-Exempt Use Property	90.00%
Rehab Basis - Non-Tax-Exempt Use Portion	N/A
<b>Rehab as % of Bldg Basis Financed w/ Bonds</b>	<b>N/A (Minimum 15%)</b>



# Windsor

<b>TCAC Calculations &amp; Scoring</b>	<b>Version:</b> Feasibility v2
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THRESHOLD BASIS LIMIT						
County:	San Diego					
9% or 4% credits:	4%					
Year:	2019					
Base Limits for Geographic Region	Threshold Basis Limit for This Project					
	9%	4%	Unit Type	# Units	Per Unit Basis Limit	Total
0 BR	207,647	237,558	0 BR	0	237,558	0
1 BR	239,415	273,902	1 BR	128	273,902	35,059,456
2 BR	288,800	330,400	2 BR	4	330,400	1,321,600
3 BR	369,664	422,912	3 BR	0	422,912	0
4 BR	411,829	471,150	4 BR	0	471,150	0
5 BR	411,829	471,150	5 BR	0	471,150	0
				132		36,381,056
Energy/Resource Efficiency Boosts						
Renewables (50% tot./90% area)	0%	<b>Additional Basis Adjustments</b>				
Renewables (75% CA/90% area)	0%	Boost for Prevailing Wage	0.0%			
Title 24 + 15%	0%	Boost for Project Labor Agreement	0.0%			
Post-rehab improvement > 80%	0%	Boost for Parking beneath Units	0.0%			
Greywater landscaping	0%	Boost for Childcare	0.0%			
Community gardens > 60 s.f.	0%	Boost for 100% Special Needs	0.0%			
Natural flooring kitchens	0%	Boost for elevator service	0.0%			
Natural flooring common area	0%	<b>Subtotal Boost (Max 39%)</b>	<b>0.0%</b>	<b>0</b>		
EPA Indoor Air Plus Program met	0%	Boost for Energy / Resource Efficiency	0.0%	<b>0</b>		
<b>Subtotal Efficiency (Max 10%)</b>	<b>0%</b>	Toxic/Seismic Abatement Costs	0.0%	<b>0</b>		
		Local Development Impact Fees		<b>0</b>		
		High Opportunity Area	0%	<b>0</b>		
		BONDS: Boost for units <= 50% AMI (excl. CA credit project)	1.0%	13,097,180		
		BONDS: Boost for units <= 35% AMI (excl. CA credit project)	2.0%	18,190,528		
		<b>Total Threshold Basis Limit</b>		<b>67,668,764</b>		
		Potential Eligible Basis (Less DDF/GP for 4%/state)		24,362,790		
		Eligible Basis Surplus / Deficit		43,305,974		

Windsor

15-Year Cash Flow

Version: Feasibility v2

Assumptions																				
Rent Increase: Residential Tenant Rents	2.50%	Perm Loan - % Debt Svc Yr -1	0.0%																	
Rent Increase - NA	2.50%	Perm Loan - % Debt Svc Yr 0	0.0%																	
Rent Increase: Commercial Rents	3.50%	Perm Loan - % Debt Svc Yr 1	66.7%																	
Expenses Increase:	3.50%	Perm Loan - % Debt Svc Yr 2	100.0%																	
Reserve Increase:	0.00%	Perm Loan - % Debt Svc Yr 3	100.0%																	
	<b>Credit Period Year:</b>	<b>(1)</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>
		<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>	<b>2030</b>	<b>2031</b>	<b>2032</b>	<b>2033</b>	<b>2034</b>	<b>2035</b>	<b>2036</b>	<b>2037</b>
<b>GROSS POTENTIAL INCOME - RESIDENTIAL</b>		0	884,940	907,064	951,265	996,572	1,043,011	1,090,611	1,139,402	1,189,412	1,240,672	1,293,214	1,347,069	1,402,271	1,458,853	1,516,849	1,576,295	1,637,227	1,699,683	1,763,700
Income from Turnover				21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000
Misc. Income		0	9,768	10,012	10,263	10,519	10,782	11,052	11,328	11,611	11,901	12,199	12,504	12,816	13,137	13,465	13,802	14,147	14,501	14,863
Vacancy Loss - Residential	5.0%	0	-44,735	-45,854	-49,126	-51,405	-53,740	-56,133	-58,586	-61,101	-63,679	-66,321	-69,029	-71,804	-74,649	-77,566	-80,555	-83,619	-86,759	-89,978
Vacancy Loss - Rehab Period	5.0%	0	-37,280	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>GROSS EFFECTIVE INCOME</b>		0	812,693	892,222	933,401	976,686	1,021,053	1,066,530	1,113,143	1,160,922	1,209,895	1,260,092	1,311,544	1,364,283	1,418,340	1,473,748	1,530,542	1,588,756	1,648,425	1,709,585
Operating Expenses w/ Standard Inflator	3.5%	0	537,787	556,610	576,091	596,254	617,123	638,722	661,078	684,215	708,163	732,948	758,602	785,153	812,633	841,075	870,513	900,981	932,515	965,153
<b>TOTAL EXPENSES</b>		0	537,787	556,610	576,091	596,254	617,123	638,722	661,078	684,215	708,163	732,948	758,602	785,153	812,633	841,075	870,513	900,981	932,515	965,153
<i>Total Expenses - Residential</i>	3.5%	0	537,787	556,610	576,091	596,254	617,123	638,722	661,078	684,215	708,163	732,948	758,602	785,153	812,633	841,075	870,513	900,981	932,515	965,153
<b>NET OPERATING INCOME</b>		0	274,906	335,612	357,310	380,432	403,930	427,807	452,065	476,706	501,732	527,143	552,943	579,130	605,707	632,673	660,029	687,775	715,909	744,432
REPLACEMENT RESERVE		39,600	0	39,600	39,600	39,600	39,600	39,600	39,600	39,600	39,600	39,600	39,600	39,600	39,600	39,600	39,600	39,600	39,600	39,600
<b>NET REMAINING INCOME</b>		0	235,306	296,012	317,710	340,832	364,330	388,207	412,465	437,106	462,132	487,543	513,343	539,530	566,107	593,073	620,429	648,175	676,309	704,832
INCOME FROM OPERATIONS FOR REHAB	100.0%	0	235,306	98,671	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>PERM LOAN - TRANCHE A</b>																				
Principal Balance (Ending)	3,678,000	0	0	3,657,462	3,620,687	3,581,837	3,540,797	3,497,441	3,451,639	3,403,254	3,352,140	3,298,143	3,241,099	3,180,838	3,117,178	3,049,927	2,978,882	2,903,830	2,824,544	2,740,786
Series A Bond P&I	237,018	0	0	138,260	237,018	237,018	237,018	237,018	237,018	237,018	237,018	237,018	237,018	237,018	237,018	237,018	237,018	237,018	237,018	237,018
Interest Payment		0	0	117,722	200,243	198,168	195,977	193,662	191,216	188,633	185,903	183,020	179,974	176,756	173,357	169,766	165,973	161,965	157,732	153,259
Principal Payment		0	0	20,538	36,775	38,849	41,041	43,356	45,801	48,385	51,114	53,998	57,043	60,261	63,660	67,251	71,045	75,052	79,286	83,758
<b>TOTAL SERIES A DEBT SERVICE</b>		0	0	138,260	237,018	237,018	237,018	237,018	237,018	237,018	237,018	237,018	237,018	237,018	237,018	237,018	237,018	237,018	237,018	237,018
<b>NET CASH FLOW</b>		0	0	59,081	80,693	103,815	127,313	151,190	175,448	200,089	225,114	250,526	276,325	302,513	329,089	356,056	383,412	411,157	439,292	467,815
CASH FLOW (RESERVED)/RELEASED FOR CONVERSION		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OPERATING RESERVE DRAW		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Remaining Net Cash Flow		0	0	59,081	80,693	103,815	127,313	151,190	175,448	200,089	225,114	250,526	276,325	302,513	329,089	356,056	383,412	411,157	439,292	467,815
Debt Service Coverage Ratio (All Debt)		NA	NA	1.15	1.34	1.44	1.54	1.64	1.74	1.84	1.95	2.06	2.17	2.28	2.39	2.50	2.62	2.73	2.85	2.97
Debt Service Coverage Ratio (Excluding Subordinate Debt)		NA	NA	1.15	1.34	1.44	1.54	1.64	1.74	1.84	1.95	2.06	2.17	2.28	2.39	2.50	2.62	2.73	2.85	2.97
<b>TCAC NET CASH FLOW TESTS:</b>																				
Percent Gross Revenue	#DIV/0!	0.00%	3.97%	8.39%	10.31%	12.08%	13.72%	15.25%	16.66%	17.97%	19.19%	20.32%	21.38%	22.36%	23.27%	24.11%	24.90%			
25% Debt Service Test	NA	NA	0.15	34.05%	43.80%	53.71%	63.79%	74.02%	84.42%	94.98%	105.70%	116.58%	127.63%	138.85%	150.22%	161.77%	173.47%			
Alternative:																				
Year 15 Test - Greater of: (a) 2% Gross Income OR (b) lesser of \$25,000 or \$500/unit																				33,027
<b>DISTRIBUTION OF CASH FLOW</b>																				
LP AMF 1		0	0	5,000	7,575	7,651	7,727	7,805	7,883	7,961	8,041	8,121	8,203	8,285	8,368	8,451	8,536	8,621	8,707	8,794
Services		0	0	9,333	14,490	14,997	15,522	16,065	16,226	16,388	16,552	16,718	16,885	17,054	17,224	17,396	17,570	17,746	17,924	18,103
DDF		0	0	44,748	58,628	81,167	104,064	127,320	151,339	175,739	200,521	225,687	251,238	277,174	80,130	0	0	0	0	0
GP PMF 2		0	0	0	0	0	0	0	0	0	0	0	0	0	24,224	24,951	25,699	26,470	27,264	28,082
<i>Residual Receipts Loans</i>	Total %																			
Seller Carryback Loan	91.51%	0	0	0	0	0	0	0	0	0	0	0	0	0	91,114	139,664	151,720	163,942	176,330	188,884
City of Escondido Loan	8.49%	0	0	0	0	0	0	0	0	0	0	0	0	8,458	12,964	14,084	15,218	16,368	17,533	
General Partner	90.00%	0	0	0	0	0	0	0	0	0	0	0	0	89,614	137,366	149,223	161,244	173,428	185,776	

**Windsor**

**15-Year Cash Flow**

Version: Feasibility v2

**Assumptions**

Rent Increase: Residential Tenant Rents	2.50%	Perm Loan - % Debt Svc Yr -1	0.0%
Rent Increase - NA	2.50%	Perm Loan - % Debt Svc Yr 0	0.0%
Rent Increase: Commercial Rents	3.50%	Perm Loan - % Debt Svc Yr 1	66.7%
Expenses Increase:	3.50%	Perm Loan - % Debt Svc Yr 2	100.0%
Reserve Increase:	0.00%	Perm Loan - % Debt Svc Yr 3	100.0%

	<i>Credit Period Year:</i>	<i>(1)</i>	<i>0</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>	<i>10</i>	<i>11</i>	<i>12</i>	<i>13</i>	<i>14</i>	<i>15</i>	<i>16</i>	<i>17</i>
		2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037
Limited Partner	10.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	9,957	15,263	16,580	17,916	19,270	20,642

### Development Costs

The 132 unit senior project located at 1600 West 9<sup>th</sup> Avenue, known as, Windsor Gardens (the Project), will require approximately \$26,571,921 to develop.

### Development Sources

In general, the project will finance the development costs with 4% tax credit equity, a tax-exempt private lender, seller note, and deferred developer fee.

### Tax Credit Equity

A to be determined tax credit investor will be admitted to the partnership as the Limited Partner, thereby giving them the right to claim federal and state tax credits, in exchange for capital contributions to the partnership totaling approximately \$8,339,309.

### Residual Receipt Loans

#### Traditional Seller Carryback Loan

1. The Seller, City of Escondido, will provide a seller carryback financing totaling approximately \$14,000,000 during the period before the project is syndicated. The note is projected to carry a 55-year term and will bear compounding interest at AFR (currently at 2.33%).

#### Tax-Exempt Seller Carryback Loan

2. The Seller, City of Escondido, will provide a seller carryback financing totaling approximately \$10,995,559 in the form of tax-exempt subordinate bonds that will be privately placed with the seller. This funding will be used in part to pay off the Traditional Seller Note at the time of the syndication close. The note is projected to carry a 45-year term and will bear compounding interest at AFR (currently at 2.33%). No payments on the note during the construction period.

#### Successor Housing Agency Loan

3. City of Escondido as Successor Housing Agency to the Community Development Commission of the City of Escondido (SHA) will loan Windsor Gardens Housing Associates, LP (the Developer) approximately \$900,000 (the SHA loan). The SHA loan will carry a term of 55 years, will bear an interest rate of approximately 3%, and will be paid from residual receipts.

### Deferred Developer Fee

To ensure the Project has enough development sources to pay all the necessary development uses, the Developer has agreed to defer that portion of its fee necessary to cause the Project to be fully funded. The deferred fee will be repaid through operating cash flow.

Construction Period Financing

The following development sources, in whole or in part, will be available to pay costs during the construction period: a tax-exempt loan, SHA Loan, seller carryback loan, City of Escondido loan, and tax credit equity.

Construction Loan

Because some funds will not be available to cover construction expenditures, it is necessary for the Project to obtain a short-term loan in the approximate amount of \$10,599,464 (the Construction Loan). The construction loan is estimated to be due in 24 months and will bear an interest rate of approximately 4.73%.

Permanent Loan

Once the property has achieved stabilized occupancy, a permanent loan will be placed on the property in the approximate amount of \$3,678,000 (the Permanent Loan). The permanent loan is projected to have an amortization period of 35 years with a term of 15 years and will bear an interest rate of approximately 5.5%.

## Exhibit "C"

### Schedule of Performance

#### Milestones

Obtain a 4% Tax Credit Reservation	10/16/2019
Close all construction period financing	01/31/2020
Commence construction	02/01/2020
Complete construction	06/30/2021
Occupy all units with qualified tenants	06/30/2021
Close permanent financing	10/30/2021

**Exhibit "D"**

**City SHA Note**

**RESIDUAL RECEIPTS PROMISSORY NOTE**  
(SECURED BY DEED OF TRUST)  
SHA LOAN

**1600 West Ninth Avenue**  
**(APN: 232-542-13-00)**  
Escondido, California

August \_\_\_\_, 2019

1. Principal and Interest. FOR VALUE RECEIVED, the undersigned (“Maker”) promises to pay to the City of Escondido, a public body, corporate and politic, or order (the “City” or the “Holder”), at 201 N. Broadway, Escondido, California, or to such other place as the Holder may, from time to time, designate by written notice to the Maker, the principal sum, which shall be determined at a later date, not to exceed Nine Thousand Dollars (\$900,000), together with accrued interest from the date hereof at the simple interest rate of 3.0 ( % ) per annum. This Residual Receipts Promissory Note (the “SHA Note”) is made and given pursuant to an Affordable Housing Loan Agreement (“Loan Agreement”) and Declaration of Covenants, Conditions and Restrictions (Tenant Restrictions) (“Declaration”) between the parties dated as of August \_\_, 2019, which agreements are both incorporated herein by reference.

2. Term of Loan, Due Date and Right of Prepayment.

a. Payment Due Date. As is set forth more specifically in Section 3 hereof, payment of a portion of the “Residual Receipts” produced from the Project (capitalized terms used and not defined herein shall have the meanings ascribed thereto in the Loan Agreement) shall be paid by the Maker to the City annually on May 15<sup>th</sup> of each year commencing on May 15, 2022. Payments shall be applied first to accrued interest and thereafter to principal of this SHA Note. Maker shall provide the City with an Annual Operating Budget, documenting the calculation of Residual Receipts for the previous calendar year ending December 31. This accounting shall be made on or before April 30<sup>th</sup> of the year following the calendar year in question, together with the required payment of Residual Receipts.

b. Maturity Date. Unless due at an earlier time by virtue of the acceleration of the balance hereof in accordance with the provisions hereof, all principal and accrued and unpaid interest then due shall be due and payable in full without further demand or notice fifty-five (55) years from the date following the recordation of a Notice of Completion by the Borrower.

c. Prepayment. This SHA Note may be prepaid in whole or in part at any time and from time to time without penalty or premium.

d. Interest Calculation. Principal and interest shall be payable in lawful money of the United States of America. Interest shall be computed based on an actual-day year and the actual number of days elapsed.



3. Residual Receipts. Annual payments of principal and accrued interest under this SHA Note shall be made from the fifty percent (50%) City's Share of the Residual Receipts of the Project, which shall be paid to City annually, as set forth in Section 2 hereof, to be applied toward payment of this SHA Note. On or before each payment date, the undersigned shall submit its Annual Operating Budget to City for the preceding calendar year reconciled for the actual income and expenses experienced during such year, together with Maker's payment of the City's Share of Residual Receipts, if any.

The terms used herein shall have the following meanings and context:

a. "Annual Operating Budget" means an Annual Operating Budget submitted by the undersigned to the City detailing Revenues, Operating Expenses and Residual Receipts for the purposes of determining City's Share, as reconciled for the actual income and expenses for such calendar year by the Annual Financial Statement.

b. "City's Share" shall mean the City's share of the Residual Receipts from operation of the Project in an amount equal to fifty percent (50%) of the Residual Receipts from the Project, said amount so allocated to the City shall be deemed the payment on this SHA Note. City Share will be split fifty percent-fifty percent between payments of the SHA Note and City seller takeback note.

c. "Operating Expenses" shall include the following expenses incurred during the preceding calendar year in the operation of the Project.

(i) the cost of utilities supplied to and used for the Project not paid by the tenants thereof, including trash removal, electricity, water, sewer and gas;

(ii) the cost of all insurance required for the Project to satisfy the requirements of the City and of all other lenders whose loans are secured by a deed of trust encumbering the Project or to satisfy requirements imposed in any ancillary documents including, but not limited to, regulatory agreements and covenants, conditions and restrictions, concerning the operation of the Project and encumbering the interest of the undersigned therein;

(iii) ad valorem tax and assessment payments;

(iv) maintenance and repair expenses and services, including material and labor, including charges for public services such as sewer charges, license and permit fees, goods, commodities, materials and equipment, and including all contract repairs and services and maintenance and repair of all furniture, furnishings and fixtures (to the extent that such repairs and/or maintenance expenses are paid out of reserves maintained by any lender on the Project, such reimbursed expenses shall not be deemed "Operating Expenses"); painting, cleaning, pest control, gardening, rubbish removal, graffiti removal, security services, if any,

advertising, marketing and promotion, leasing commissions, accounting, audit and legal expense attributable to the Project, office expenses incurred in operation of the Project, the allocable share of expenses of the Project for maintenance of roads and use of shared facilities, if any, and repair and maintenance of elevators and parking structures, if any;

(v) salaries, wages, rent payments or allocation, and other compensation due and payable to the employees or agents of the undersigned employed on site in connection with the maintenance, administration or operation of the Project, along with all withholding taxes, insurance premiums, social security payments and other payroll taxes or payments required in connection with such employees;

(vi) regularly scheduled non-contingent payments of interest, principal, and impounds, as well as all fees and charges, if any, required on loans which are secured by liens on the Project which are senior to the lien of the SHA Deed of Trust securing this SHA Note;

(viii) the fee payable to Maker or to any entity, providing resident social support services and programs offered to and made available to the tenants of the Project, initially totaling up to \$50,000 per year, which fee shall be adjusted annually;

(ix) an annual General Partner [asset management fee](#) of Seventeen Thousand Five Hundred Dollars (\$17,500) per annum, which fee shall be increased annually by 3%;

(x) an annual Limited Partner asset management fee paid to the general partners in an aggregate amount of Seven Thousand Five Hundred Dollars (\$7,500) per annum, which fee shall be increased annually by 1%;

(xi) contributions to all reserve accounts required by any lender on the Project or by City, including, but not limited to, payments to a reserve account for capital repair and replacement of the Project Improvements in an annual amount of Three Hundred Dollars (\$300) per unit (or such higher amount which may be required by any lender or the Investor Limited Partner for the Project), which payment shall be adjusted annually;

(xii) the cost of any required compliance/monitoring and reporting in connection with any Project financing (including, but not limited to, issuer fees and inspection fees, if any);

(xiii) payment of any Deferred Developer Fee plus accrued interest thereon; and

(xiv) all other fees and expenses which may be authorized in the annual budget for the Project approved by the senior lender(s), if required, and the City.

Operating Expenses shall not include (aa) repairs or replacements paid out of loan proceeds or insurance proceeds received by the undersigned, or (bb) depreciation of buildings or other similar non-cash items of expense. Operating Expenses shall be determined on a cash basis.

d. "Payment Date" shall mean May 15<sup>th</sup> of each calendar year beginning on May 15, 2022 until this SHA Note is paid in full.

e. "Project" shall mean the apartment community to be rehabilitated and operated by the undersigned on the Property, consisting of one hundred thirty-two (132) apartment units, one hundred thirty (130) of which are made available to Eligible Households at affordable rents, all in compliance with the Loan Agreement and the Declaration and all other restrictions imposed on the Project by senior lenders and/or other governmental entities.

f. "Residual Receipts" shall mean Revenues less Operating Expenses.

g. "Revenues" shall mean all income derived from the Project, including, but not limited to, rent from the apartment units, laundry operations and parking fees, if any. Interest earned on reserves shall not be deemed Revenue. The proceeds of any loans to the Borrower or capital contributions made by any partner of Borrower shall not be considered Revenue.

4. Security for Note. This SHA Note is secured by the SHA Deed of Trust executed by Maker encumbering certain real and personal property located at 1600 W Ninth Avenue, in the City of Escondido, County of San Diego, State of California, as described in Attachment 1 which is incorporated by this reference.

5. Acceleration Upon Default. In the event of any monetary default (that is, a failure by the Maker to pay money when due) under the terms of this SHA Note, the SHA Deed of Trust, the Loan Agreement, the Declaration, or under any senior loans, notes or deeds of trust, at the option of the Holder of this SHA Note and after notice to the Maker, providing Maker with 30 days in which to cure any default, and such default not having been cured in 30 days, or such longer period as provided in the applicable loan document or in subsection (i) below, all principal and interest due under this SHA Note shall immediately become due and payable, upon 30 days written notice from the Holder to the Maker. Failure to exercise such option shall not constitute a waiver of the right to exercise it in the event of any subsequent default.

Except for Permitted Transfers, as defined in the Loan Agreement, should the undersigned sell, convey, transfer, or dispose of the real property described in the SHA Deed of Trust or any part thereof or interest therein, or agree to do the same, without first obtaining the written consent of the Holder of this SHA Note, then, at the option of the Holder, all principal and interest due under this SHA Note shall become due and payable upon 30 days written notice from the Holder hereof to the Maker. Consent to one transaction of this type will not constitute a waiver of the right to require consent to future or successive transactions.

In addition to other notice and cure rights referenced in the Loan Agreement and in this SHA Note, the Maker shall have the following cure rights for nonmonetary defaults in accordance with the following provisions:

(i) if a nonmonetary event of default occurs under the terms of the Affordable Housing Loan Agreement, this SHA Note, the SHA Deed of Trust, or the SHA Regulatory Agreement, prior to exercising any remedies hereunder or thereunder, the City shall give the Maker notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, the Maker shall have such period to effect a cure prior to the exercise of remedies by the City under any of such instruments. If the default is such that it is not reasonably capable of being cured within thirty (30) calendar days and Maker (a) initiates corrective action within said period and (b) diligently and in good faith works to effect a cure as soon as possible, then Maker shall have such additional period of time as reasonably necessary to cure the default prior to exercise of any remedies by City. In no event shall City be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure default or the default (that is, for example, if a senior lender has commenced foreclosure proceedings against the Project, City shall not be required to forebear from completing its foreclosure later than fifteen (15) days prior to the date of foreclosure set by such senior lender).

Maker's limited partners shall have the same cure rights hereunder as are set forth in the Loan Agreement.

6. Costs Paid by Maker. Maker agrees to pay the following costs, expenses and attorneys' fees paid or incurred by the Holder of this SHA Note, or as adjudged by a court of competent jurisdiction: (a) reasonable costs of collection, costs and expenses and attorneys' fees paid or incurred in connection with the collection or enforcement of this SHA Note, whether or not suit is filed; and (b) costs of suit in such sum as the court may adjudge reasonable as attorneys' fees in any action to enforce payment of this instrument.

7. Waiver. Maker hereby waives diligence, presentment, protest and demand, notice of protest, dishonor and nonpayment of this instrument, and expressly agrees that, without in any way affecting the liability of Maker hereunder, the Holder hereof may extend any maturity date or the time for payment of any installment due hereunder, accept additional security, or release any security now or hereafter securing this SHA Note.

8. Non-Recourse to Maker. As is provided more specifically in the Loan Agreement the obligation to pay undertaken by Maker under the terms of this SHA Note shall be a nonrecourse obligation of the Maker and its partners. As a result, no deficiency amount may be recovered from the Maker under the provisions of this SHA Note and the sole recourse of the Holder hereof shall be confined to the exercise of its rights under the SHA Deed of Trust.

9. Severability. If any provision of this SHA Note is determined by a court of competent jurisdiction to be void or unenforceable, such determination shall not affect any other provision of this instrument, and all other provisions hereof shall remain valid and in full force and effect.

10. Non-Waiver. No delay in demanding or failure to demand performance hereunder shall constitute a waiver by the Holder hereof of its right to subsequently demand such performance or to exercise any remedies for any default hereunder. Further, in order to be effective, any waiver of any of the City's rights and remedies hereunder shall be expressed in a writing signed by a duly appointed representative of the City. Further, waiver by the City of any right hereunder shall not constitute a waiver of any other right, including, but not limited to, the right to exercise any and all remedies for a different or subsequent event of default hereunder.

11. Assignment. Except as provided specifically the Loan Agreement and in the SHA Deed of Trust for Permitted Transfers, the Maker may not assign any interest in this SHA Note or the SHA Deed of Trust securing the same and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the City. Any such assignment without the prior written consent of the City shall be voidable, at the election of the City.

**BORROWER:**

Windsor Gardens Housing Associates, L.P.,  
a California limited partnership

By: CHW Windsor Gardens LLC,  
a California limited liability company,  
its managing general partner

By: Community HousingWorks,  
a California nonprofit public benefit corporation,  
its sole member/manager

By: \_\_\_\_\_  
Name: Mary Jane Jagodzinski  
Title: Senior Vice President

ATTACHMENT 1  
Property Description

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 4, BLOCK 305, AND A PORTION OF LOT 3, BLOCK 304, AND A PORTION OF HALE AVENUE, NOW VACATED, IN RANCHO RINCON DEL DIABLO IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO [MAP THEREOF NO. 724](#), FILED IN THE OFFICE OF THE COUNTY RECORDER, AUGUST 13, 1892, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID LOT 3, SAID POINT BEING A POINT ON THE NORTHWESTERLY RIGHT OF WAY LINE OF HALE AVENUE (66 FEET IN WIDTH); THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID LOT 3, NORTH  $63^{\circ} 26' 43''$  WEST 16.44 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH  $63^{\circ} 26' 43''$  WEST 160.77 FEET TO THE INTERSECTION WITH THE ARC OF A 1022.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, THROUGH WHICH A RADIAL LINE BEARS NORTH  $25^{\circ} 52' 23''$  WEST TO SAID POINT; THENCE LEAVING SAID SOUTHWESTERLY LINE, NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF  $12^{\circ} 54' 20''$  A DISTANCE OF 230.20 FEET; THENCE TANGENT TO SAID CURVE, NORTH  $77^{\circ} 01' 57''$  EAST, 581.33 FEET TO THE INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF VINEYARD AVENUE (84 FEET IN WIDTH); THENCE SOUTHEASTERLY ALONG SAID WESTERLY RIGHT OF WAY LINE, SOUTH  $12^{\circ} 56' 44''$  EAST 310.61 FEET TO THE BEGINNING OF A TANGENT 942 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF  $15^{\circ} 52' 25''$  A DISTANCE OF 260.98 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 20.00 FEET AND THROUGH WHICH A RADIAL OF SAID 942.00 FOOT RADIUS CURVE BEARS SOUTH  $61^{\circ} 10' 51''$  WEST TO SAID POINT; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID 20.00 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF  $87^{\circ} 01' 15''$  A DISTANCE OF 30.38 FEET; THENCE TANGENT TO SAID CURVE, SOUTH  $58^{\circ} 12' 06''$  WEST 9.85 FEET TO THE BEGINNING OF A TANGENT 120.00 FOOT RADIUS CURVE CONCAVE NORTHERLY; THENCE SOUTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF  $45^{\circ} 44' 17''$  A DISTANCE OF 95.79 FEET TO THE INTERSECTION WITH THE SOUTHWESTERLY LINE OF SAID LOT 4, THROUGH WHICH A RADIAL LINE BEARS SOUTH  $13^{\circ} 55' 23''$  WEST TO SAID POINT AND DISTANT THEREON SOUTH  $63^{\circ} 13' 18''$  EAST 678.36 FEET FROM SAID MOST WESTERLY CORNER OF SAID LOT 4, SAID POINT ALSO BEING A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF WEST NINTH AVENUE (66 FEET IN WIDTH); THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE NORTH  $63^{\circ} 13' 18''$  WEST 606.26 FEET TO THE BEGINNING OF A TANGENT 40.00 FOOT RADIUS CURVE, CONCAVE

NORTHEASTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 17° 13'13" A DISTANCE OF 12.02 FEET; THENCE TANGENT TO SAID CURVE, NORTH 46° 00' 05" WEST 50.00 FEET TO THE BEGINNING OF A TANGENT 76,00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 89° 36'16" A DISTANCE OF 118.86 FEET TO THE INTERSECTION WITH THE SOUTHWESTERLY LINE OF SAID LOT 3, DISTANT THEREON NORTH 63° 26' 43" WEST 16.44 FEET FROM THE MOST SOUTHERLY CORNER OF SAID LOT 3 AND THROUGH WHICH A RADIAL LINE BEARS NORTH 45' 36' 21" WEST TO SAID POINT, SAID POINT BEING ALSO THE TRUE POINT OF BEGINNING.

SAID LAND IS ALSO KNOWN AS LOT 22 OF ESCONDIDO TRACT NO. 477, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO [MAP THEREOF NO. 10083](#), FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 4, 1981.

APN 232-542-13-00

**Exhibit "E"**

**SHA Deed of Trust**



**Free Recording Requested  
Pursuant to Govt. Code §6103  
When Recorded Mail to:**

Housing Division  
CITY of Escondido  
201 N. Broadway  
Escondido, CA 92025

*THIS SPACE FOR RECORDER'S USE ONLY*

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CITY OF ESCONDIDO  
SHA Funds  
1600 West Ninth Avenue (APN: 232-542-13-00)  
Escondido, California

**DEED OF TRUST WITH ASSIGNMENT OF RENTS, AND  
SECURITY AGREEMENT WITH FIXTURE FILING**

NOTICE TO BORROWER: THIS DEED OF TRUST CONTAINS PROVISIONS RESTRICTING ASSUMPTIONS

THIS DEED OF TRUST, made this \_\_\_\_ day of August, 2019 among the Trustor, WINDSOR GARDENS HOUSING ASSOCIATES, L.P., a California limited partnership ("BORROWER"), THE CITY OF ESCONDIDO, ("Trustee"), and the Beneficiary, the CITY OF ESCONDIDO, (together with its successors in interest referred to as "CITY" or "Beneficiary").

BORROWER, in consideration of the indebtedness recited and the trust created in this Agreement, irrevocably grants and conveys to Trustee, in trust, with power of sale, the real property which is located in the City of Escondido, County of San Diego, State of California with a street address of 1600 W Ninth Avenue , Escondido, CA, and more fully described in Attachment 1, which is attached and incorporated by reference;

WHICH TOGETHER with all the improvements now and hereafter erected on such property, and all easements, rights, appurtenances, and all fixtures now or hereafter attached to the property shall collectively be referred to as the "Property";

TO SECURE to CITY: i) the repayment of the indebtedness evidenced by BORROWER's SHA Residual Receipts Promissory Note of even date (the "Note"), in a principal sum, which shall be determined at a later date, not to exceed NINE HUNDRED DOLLARS AND NO/100

(\$900,000), with interest thereon, due and payable upon sale, transfer or non-occupancy; ii) the payment of all other sums, with interest thereon, advanced in accordance with this SHA Deed of Trust; iii) the performance of BORROWER's obligations in an Affordable Housing Loan Agreement ("Loan Agreement") among BORROWER and CITY, iv) the performance of BORROWER's obligations in a Declaration of Covenants, Conditions and Restrictions (Tenant Restrictions) ("Declaration") (all collectively described as the "SHA Loan Documents").

**BORROWER AND CITY COVENANT AND AGREE AS FOLLOWS:**

1. **BORROWER's Estate.** That BORROWER lawfully owns the estate hereby conveyed and has the right to grant and convey the Property, and that BORROWER will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, easements, or restrictions which are specifically listed in a schedule of exceptions to coverage in the policy insuring CITY's title interest in the Property.

2. **Payment of Principal and Interest.** BORROWER will promptly pay, when due, the principal and interest required by the Note, and all late charges as provided by the Note.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by CITY under the Note and payments of Funds will be applied by CITY first to interest payable on the Note, and then to the principal of the Note, which shall be redeposited to CITY's Low-Moderate Income Housing Fund.

4. **Junior Encumbrances.** Any subsequent encumbrancer of the Property is hereby notified that upon exercise of any power of sale or foreclosure by encumbrancer, such encumbrancer will take title to the Property subject to this SHA Deed of Trust, and more specifically, subject to paragraph 12 of this SHA Deed of Trust, prohibiting assumptions of the loan made by CITY to BORROWER, except as specified in said paragraph.

5. **Charges; Liens.** BORROWER will pay all taxes, assessments fines impositions and other charges attributable to the Property which may attain a priority over this SHA Deed of Trust, at or prior to the time they are required to be paid, by BORROWER making payment directly to the payee thereof. BORROWER will promptly furnish to CITY receipts evidencing such payments. BORROWER will promptly discharge any lien which has priority over this SHA Deed of Trust; provided, that BORROWER will not be required to discharge any such lien so long as BORROWER will agree in writing to the payment of the obligation secured by lien in a manner acceptable to CITY, after which BORROWER may in good faith contest such lien or defend enforcement of such lien in legal proceedings which operate to protect the CITY's interest in the Property.

6. **Hazard Insurance.** BORROWER will keep the Property insured in such amounts and for such periods as CITY may require, which amounts shall be the greater of (1) the outstanding principal balance of the SHA Note plus the amount of any other loan for or secured by the property, or (2) the amount in CITY's determination which is necessary to prevent BORROWER from becoming a co-insurer, or (3) the amount of the replacement cost of the Property. The insurance carrier providing such insurance shall be licensed as required in the LOAN AGREEMENT, satisfy

the criteria identified in the applicable provisions of the SHA Loan Documents and be chosen by BORROWER subject to approval by CITY, which shall not be unreasonably withheld.

All insurance policies and renewals thereof will be in a form reasonably and commercially available acceptable to CITY and will include a standard mortgagee clause with standard endorsement number 438BFU in favor of and in a form acceptable to CITY or any alternative thereto reasonably acceptable to the CITY. CITY will have the right to hold copies of the policies and renewals thereof, and BORROWER will promptly furnish to CITY copies of all renewal notices and all receipts of paid premiums. In the event of loss, BORROWER will give prompt notice to the insurance carrier and CITY. CITY may make proof of loss if not made promptly by BORROWER.

Unless CITY and BORROWER otherwise agree in writing with respect and subject to the requirements of lenders holding deeds of trust senior in lien position to this SHA Deed of Trust (each, if any, a "Senior Lender"), insurance proceeds will be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this SHA Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this SHA Deed of Trust would be impaired, the insurance proceeds will be applied to the sums secured by this SHA Deed of Trust, with the excess, if any, paid to BORROWER and Senior Lenders, if any. If the Property is abandoned by BORROWER, or if BORROWER fails to respond to CITY within thirty (30) days from the date notice is mailed by CITY to BORROWER that the insurance carrier offers to settle a claim for insurance benefits, CITY is authorized to collect and apply the insurance proceeds either to restoration and repair of the Property or to the sums secured by this SHA Deed of Trust, at CITY's option.

Unless CITY or BORROWER otherwise agree in writing, any such application of proceeds to principal will not extend or postpone the due date of the installments referred to above or change the amount of such installments. If the Property is acquired by CITY, all right, title and interest of BORROWER in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition will pass to CITY to the extent of the sums secured by this SHA Deed of Trust immediately prior to such sale or acquisition.

**7. Preservation and Maintenance of Property, Condominium, Cooperatives, Planned Unit Developments.** BORROWER will keep the Property in good repair and will not commit waste or permit impairment or deterioration of the Property, reasonable wear and tear excepted. If this SHA Deed of Trust is on a unit in a condominium, a planned unit development, or cooperative, BORROWER will perform all of BORROWER's obligations under the declaration of covenants, conditions and restrictions creating or governing the condominium, planned unit development, or cooperative, the by-laws and regulations of the condominium, planned unit development, or cooperative and constituent documents. BORROWER will not, without CITY's prior written consent, agree to the abandonment or termination of the condominium, planned unit development or cooperative, any change in the percentage interest of owners in the common areas and facilities of the condominium, planned unit development, or cooperative, or the termination of professional management or assumption of self-management of the condominium, planned unit development, or cooperative. If a condominium, planned development, or cooperative rider is executed by

BORROWER and recorded together with this SHA Deed of Trust, the covenants and agreements of such a rider are incorporated herein by this reference.

8. **Protection of CITY Security.** If BORROWER fails to perform the covenants and agreements contained in the SHA Deed of Trust, or if any action or proceeding is commenced which materially affects CITY interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then CITY at CITY's option, upon notice to BORROWER, may make such appearances, disburse such sums and take such action as is necessary to protect CITY's interest, including, but not limited to, disbursement of reasonable attorney's fees, and entry upon the Property to make repairs.

Any amounts disbursed by CITY pursuant to this paragraph, with interest thereon, will become additional indebtedness of BORROWER secured by this SHA Deed of Trust. Unless BORROWER and CITY agree to other terms of payment, such amounts will be payable upon notice from CITY to BORROWER requesting payment thereof, and will bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the SHA Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts will bear interest at the highest rate permissible under applicable law. Nothing contained in this paragraph will require CITY to incur any expense or take any action hereunder.

9. **Inspection.** BORROWER agrees that CITY may make reasonable entries upon and inspections of the Property, provided that CITY will give the BORROWER reasonable notice of inspection.

10. **Condemnation.** Unless CITY and BORROWER otherwise agree in the future in writing and subject to the requirements of Senior Lenders, the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and will be paid to CITY.

In the event of a total taking of the Property, the proceeds will be applied to the sums secured by this SHA Deed of Trust, with the excess, if any, paid to BORROWER. In the event of a partial taking of the Property, unless BORROWER and CITY otherwise agree in writing, there will be applied to the sums secured by this SHA Deed of Trust such proportion of the proceeds as is equal to that proportion which the amount of sums secured by this SHA Deed of Trust immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to BORROWER.

If the property is abandoned by BORROWER, or if, after notice by CITY to BORROWER that the condemner offers to make an award or settle a claim for damages, BORROWER fails to respond to CITY within thirty (30) days after the date such notice is mailed, CITY is authorized to collect and apply the proceeds, at CITY option, either to restoration or repair of the Property or to the sums secured by the SHA Deed of Trust.

Unless CITY and BORROWER otherwise agree in writing, any such application of proceeds to principal will not extend or postpone the due date of any scheduled payment referred to above or change the amount of such payment.

11. **Forbearance by CITY Not a Waiver.** Any forbearance by CITY in exercising any right or remedy under this SHA Deed will not be a waiver of the exercise for any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by CITY will not be a waiver of CITY's rights to accelerate the maturity of the indebtedness secured by the SHA Deed of Trust.

12. **Loan Not Assumable, Transfer of Property Prohibited; Limited Exceptions.** Where CITY-administered funds continue to be used in financing the purchase or continued use of the Property, no transfer of the Property will be permitted, other than Permitted Transfers, as defined in the LOAN AGREEMENT, and no successor-in-interest to the BORROWER(s) will be permitted to assume the BORROWER(s) loan evidenced by the Note, unless the written consent of CITY to the transfer has been first obtained.

13. **Transfer of the Property or a Beneficial Interest in BORROWER.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in BORROWER is sold or transferred and BORROWER is not a natural person), other than as a result of a Permitted Transfer (as defined in the LOAN AGREEMENT), the CITY may, at its option, require immediate payment in full of all sums secured by this SHA Deed of Trust. However, this option shall not be exercised by the CITY if exercise is prohibited by federal law as of the date of this SHA Deed of Trust, or if the CITY has executed a separate written waiver of this option.

If the CITY exercises this option, the CITY shall give BORROWER notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which BORROWER must pay all sums secured by this SHA Deed of Trust. If BORROWER fails to pay these sums prior to the expiration of this period, the CITY may invoke any remedies permitted by this SHA Deed of Trust without further notice or demand on BORROWER.

14. **Events of Default; Acceleration, Intention of Foreclosure.** CITY shall not exercise any right or remedy provided for herein because of any default of BORROWER unless, in the event of a default, CITY shall have first given written notice thereof to BORROWER and BORROWER shall have failed to cure the default within a period of thirty (30) days after the giving of such notice of such default; provided that if the nonmonetary default cannot be cured within thirty (30) days and BORROWER proceeds diligently to cure such default until it shall be fully cured within no more than ninety (90) days after the giving of such notice, CITY shall not exercise any right or remedy provided for herein until such ninety (90) day period shall expire; provided, however, CITY shall not be required to give any such notice or allow any part of the grace period if BORROWER shall have filed a petition in bankruptcy or for reorganization or a bill in equity or otherwise initiated proceedings for the appointment of a receiver of its assets, or if BORROWER shall have made an assignment for the benefit of its creditors, or if a receiver or trustee is appointed for BORROWER and such appointment is not terminated within 60 days.

With respect to any right to cure or cure period provided in the above paragraph, performance of a cure by any entity or partner of BORROWER shall have the same effect as would like performance by BORROWER, and BORROWER's limited partner shall have the notice and cure rights granted to it in the Loan Agreement.

15. **Assignment of Rents; Appointment of Receiver; CITY in Possession.** As additional security hereunder, unless CITY and BORROWER otherwise agree in the future in writing and subject to the rights of Senior Lenders, BORROWER hereby assigns to the CITY the rents of the Property, provided that BORROWER shall, prior to acceleration under paragraph 14 above or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 14 hereof or abandonment of the Property, the CITY, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the CITY or the receiver shall be applied first to payment of the cost of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receivers bonds and reasonable attorneys' fees, and then to the sums secured by this SHA Deed of Trust. The CITY and the receiver shall be liable to account only for those rents actually received.

16. **Remedies Cumulative.** All remedies provided in this SHA Deed of Trust are distinct and cumulative to any other right or remedy under this SHA Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

17. **Successors and Assigns Bound.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and BORROWER subject to the provisions of this SHA Deed of Trust.

18. **Joint and Several Liability.** All covenants and agreements of BORROWER shall be joint and several.

19. **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to BORROWER provided for in this SHA Deed of Trust will be given by certified mail, addressed to BORROWER at the Property address or such other address as BORROWER may designate by written notice to Lender as provided herein, and (b) any notice to CITY will be given by certified mail, return receipt requested, to CITY address stated above, or to such other address as CITY may designate by notice to BORROWER as provided above.

20. **Governing Law.** This SHA Deed of Trust shall be governed by the laws of the State of California, with venue in North San Diego County.

21. **Severability.** In the event that any provision or clause of this SHA Deed of Trust or the SHA Note conflicts with applicable law, such conflict will not affect other provisions of this SHA Deed of Trust or the SHA Note which can be given effect without the conflicting provision,

and to this end with provisions of the SHA Deed of Trust and the SHA Note are declared to be severable.

22. **Captions.** The captions and headings in this SHA Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

23. **Reconveyance.** Upon payment of all sums secured by this SHA Deed of Trust, Lender may request Trustee to reconvey the Property and will surrender this SHA Deed of Trust to Trustee. Trustee will reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.

24. **Substitute Trustee.** CITY, at CITY's option, may from time to time remove Trustee and appoint a successor Trustee appointed hereunder. Without conveyance of the Property, the successor trustee will succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

25. **Beneficiary Statement.** CITY may charge a fee of fifty dollars (\$50) for furnishing any statement required by California Civil Code Section 2943.

26. **Security Agreement and Fixture Filing.** BORROWER grants and assigns to CITY a security interest junior to the interests of any Senior Lender taking security in the Collateral to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which BORROWER now or at any time hereafter has any interest ("Collateral"):

All goods, buildings and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with or appropriated for use on the Property (to the extent, if any, they are not subject to the Assignment of Rents); all inventory, accounts, cash receipts, deposit accounts, impounds, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes, drafts, letters or credit, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Property or any business now or hereafter conducted thereon by BORROWER; all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all deposits or other security now or hereafter made with or given to utility companies by BORROWER with respect to the Property; all advance payments of insurance premiums made by BORROWER with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by CITY, whether or not disbursed; all funds deposited with CITY pursuant to any loan document, including, all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof, including, without limitation, all books, records and files relating to any of the foregoing.

As to all of the above-described personal property which is or which hereafter becomes a “fixture” under applicable law, this SHA Deed of Trust constitutes a fixture filing under the California Uniform Commercial Code (“UCC”), as amended or recodified from time to time.

27. **Extended Use Agreement.** Notwithstanding anything to the contrary contained herein or in any documents secured by this SHA Deed of Trust or contained in any subordination agreement, the CITY acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, “Foreclosure”) with respect to the Property, the following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended (“Code”), shall apply:

For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by the regulatory agreement with the California Tax Credit Allocation Committee, (i) none of the tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

*[signatures on following page]*



**IN WITNESS WHEREOF, BORROWER HAS EXECUTED THIS DEED OF TRUST.**

**CITY OF ESCONDIDO**

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

\_\_\_\_\_  
Paul McNamara, Mayor  
(signatures must be notarized)

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

\_\_\_\_\_  
Zack Beck, City Clerk  
(signatures must be notarized)

Approved As To Form:

Office of the City Attorney

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

**IN WITNESS WHEREOF, BORROWER HAS EXECUTED THIS DEED OF TRUST.**

Windsor Gardens Housing Associates, L.P.,  
a California limited partnership

By: CHW Windsor Gardens LLC,  
a California limited liability company,  
its managing general partner

By: Community HousingWorks,  
a California nonprofit public benefit corporation,  
its sole member/manager

By: \_\_\_\_\_  
Name: Mary Jane Jagodzinski  
Title: Senior Vice President

ATTACHMENT 1  
Property Description

Real property in the City of ESCONDIDO, County of SAN DIEGO, State of California, described as follows:

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 4, BLOCK 305, AND A PORTION OF LOT 3. BLOCK 304, AND A PORTION OF HALE AVENUE, NOW VACATED, IN RANCHO RINCON DEL DIABLO IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO [MAP THEREOF NO. 724](#), FILED IN THE OFFICE OF THE COUNTY RECORDER, AUGUST 13, 1892, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID LOT 3, SAID POINT BEING A POINT ON THE NORTHWESTERLY RIGHT OF WAY LINE OF HALE AVENUE (66 FEET IN WIDTH); THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID LOT 3, NORTH 63° 26' 43" WEST 16.44 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 63° 26' 43" WEST 160.77 FEET TO THE INTERSECTION WITH THE ARC OF A 1022.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, THROUGH WHICH A RADIAL LINE BEARS NORTH 25° 52' 23" WEST TO SAID POINT; THENCE LEAVING SAID SOUTHWESTERLY LINE, NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 12° 54' 20" A DISTANCE OF 230.20 FEET; THENCE TANGENT TO SAID CURVE, NORTH 77° 01' 57" EAST, 581.33 FEET TO THE INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF VINEYARD AVENUE (84 FEET IN WIDTH); THENCE SOUTHEASTERLY ALONG SAID WESTERLY RIGHT OF WAY LINE, SOUTH 12° 56' 44" EAST 310.61 FEET TO THE BEGINNING OF A TANGENT 942 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 15° 52' 25" A DISTANCE OF 260.98 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 20.00 FEET AND THROUGH WHICH A RADIAL OF SAID 942.00 FOOT RADIUS CURVE BEARS SOUTH 61° 10' 51" WEST TO SAID POINT; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID 20.00 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 87° 01' 15" A DISTANCE OF 30.38 FEET; THENCE TANGENT TO SAID CURVE, SOUTH 58° 12' 06" WEST 9.85 FEET TO THE BEGINNING OF A TANGENT 120.00 FOOT RADIUS CURVE CONCAVE NORTHERLY; THENCE SOUTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 45° 44' 17" A DISTANCE OF 95.79 FEET TO THE INTERSECTION WITH THE SOUTHWESTERLY LINE OF SAID LOT 4, THROUGH WHICH A RADIAL LINE BEARS SOUTH 13° 55' 23" WEST TO SAID POINT AND DISTANT THEREON SOUTH 63° 13' 18" EAST 678.36 FEET FROM SAID MOST WESTERLY CORNER OF SAID LOT 4, SAID POINT ALSO BEING A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF WEST NINTH AVENUE (66 FEET IN WIDTH); THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE NORTH 63° 13' 18" WEST 606.26 FEET TO THE

BEGINNING OF A TANGENT 40.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF  $17^{\circ} 13' 13''$  A DISTANCE OF 12.02 FEET; THENCE TANGENT TO SAID CURVE, NORTH  $46^{\circ} 00' 05''$  WEST 50.00 FEET TO THE BEGINNING OF A TANGENT 76.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF  $89^{\circ} 36' 16''$  A DISTANCE OF 118.86 FEET TO THE INTERSECTION WITH THE SOUTHWESTERLY LINE OF SAID LOT 3, DISTANT THEREON NORTH  $63^{\circ} 26' 43''$  WEST 16.44 FEET FROM THE MOST SOUTHERLY CORNER OF SAID LOT 3 AND THROUGH WHICH A RADIAL LINE BEARS NORTH  $45^{\circ} 36' 21''$  WEST TO SAID POINT, SAID POINT BEING ALSO THE TRUE POINT OF BEGINNING.

SAID LAND IS ALSO KNOWN AS LOT 22 OF ESCONDIDO TRACT NO. 477, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO [MAP THEREOF NO. 10083](#), FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 4, 1981.

APN 232-542-13-00

**Exhibit "F"**

**Declaration of Covenants, Conditions and Restrictions**

**NO CHARGE ON THIS DOCUMENT  
PER CALIFORNIA GOVERNMENT  
CODE SECTION 6103**

**Recording Requested By  
And When Recorded Mail To:**  
the City of Escondido  
201 North Broadway  
Escondido, CA 92025

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
(TENANT RESTRICTIONS)**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** ("Declaration") is dated as of the August \_\_, 2019 by Windsor Gardens Housing Associates, L.P., a California limited partnership ("Declarant") in connection with that certain parcel of real property ("Property") located in the City of Escondido, County of San Diego, California, described in Attachment 1 attached hereto and incorporated herein by reference.

**RECITALS**

A. Concurrently with the recordation of this Declaration, the City of Escondido ("City") is funding a loan ("Loan") secured by a deed of trust ("Deed of Trust") on the Property, as described in that certain Affordable Housing Loan Agreement dated as of August \_\_, 2019 ("Agreement"). Terms not defined herein have the meaning provided in the Agreement.

B. The Agreement and Deed of Trust were conditioned by the City in part upon the recordation of a document setting forth certain restrictions upon the use and sale of the Property. Borrower intends to purchase and rehabilitate one hundred thirty-two (132) dwelling units at the Property (collectively, the "Project"). Borrower shall construct and operate one hundred thirty (130) of those dwelling units on the Property as senior affordable housing units ("Senior Affordable Units") which shall be rent and occupancy restricted for 55-years, as provided herein. All units have been funded using repayments to the City of Escondido of loans owed to the Successor Housing Agency of the Community Development Commission of the City of Escondido ("SHA") which were transferred pursuant to Health and Safety Code (HSC) Section 34176 (a) (1) and approved by the Department of Finance on February 15, 2013 shall be considered SHA units. Two (2) of the units shall be an unrestricted manager's unit.

NOW, THEREFORE, Declarant hereby declares that the Property shall be subject to the covenants, conditions and restrictions set forth below:

1. Restrictive Covenants. Declarant agrees and covenants on behalf of itself and its successors and assigns, and each successor in interest to the Property that at all times during the term of this Declaration set forth herein one hundred thirty (130) residential units at the Project shall be set aside and reserved as “Senior Affordable Units.” All Senior Affordable Units are owned or held available strictly in accordance with the terms and conditions set forth below.

(a) Senior Affordable Unit and Unit Restrictions. The following restrictions shall apply to the one hundred thirty (130) Senior Affordable Units, restricted pursuant to California Health and Safety Code Section 33000 et seq as amended. The restrictions set forth in the Table below shall establish the maximum rental rate, from which a utility allowance as approved by the City shall be deducted: Number of Senior Affordable Units; Unit Type; Maximum Rents as Percentage of AMI; Limit in Income of Eligible Tenants Based upon Percentage of the Median Area Income; Years of Restriction:

TABLE OF RENT AND INCOME RESTRICTION CRITERIA\*\*\*

NUMBER OF SENIOR AFFORDABLE UNITS	UNIT TYPE	MAXIMUM RENTS AS %AGE OF AMI **	MAXIMUM % OF AREA MEDIAN INCOME OF ELIGIBLE TENANTS	YEARS OF RENT RESTRICTION
33	1-Bedroom	30% of 30%	30%	55
32	1-Bedroom	30% of 50%	50%	55
63	1-Bedroom	30% of 60%	60%	55
3	2-Bedroom	30% of 60%	60%	55
1	2-Bedroom	Fair Market *	n/a	n/a
1	1-Bedroom	Fair Market *	n/a	n/a

\* Two Manager’s Units

\*\* Precise maximum rents to be calculated by HCD (CRL calculation).

\*\*\*Declarant

In addition, it is a condition to the City making the Loan that Declarant apply for tax credit financing for the Project and in connection therewith, Declarant will enter into an extended use agreement with the California Tax Credit Allocation Committee following Project completion, which will contain the following rent and income restrictions: 50 units at 60% of Area Median Income, 47 units at 50% of Area Median Income, and 33 units at 30% of Area Median Income, plus 2 unrestricted manager’s units.

(b) “Eligible Tenants” are those tenants whose aggregate gross annual income does not exceed the respective percentages set forth in the table above of annual median income, as adjusted for family size. All households shall include a member who is a minimum 62 years old. For purposes of this Declaration, the current annual median income shall be the median income

as determined by State of California Department of Housing and Community Development in accord with Health and Safety Code Section 33000. The rents and the occupancy restrictions shall be deemed adjusted, from time to time, in accordance with any adjustments that are authorized by HCD or any successor agency. In the event HCD ceases to publish an established median income as aforesaid, the City may, in its sole discretion, use any other reasonably comparable method of computing adjustments in median income or Program rents. Notwithstanding anything contained herein to the contrary, to the extent any other restrictions applicable to the Property limit the rent and/or occupancy of the Property, the most restrictive shall apply. Declarant shall give preference to those income-eligible households which are living in, or have established local ties to, the City of Escondido which residency or ties Borrower determines will enhance their ability to succeed as tenants, unless otherwise prohibited or modified by state or federal law.

(c) An adjustment of rents for the SHA Units may be performed annually in accordance with the rents contained in the applicable the City or HCD rent schedules published by the City based upon the HUD determined median income for the San Diego Standard Metropolitan Statistical Area for the affected unit type and updated from time to time. However, in no event shall the rents, as adjusted, exceed the maximum rents calculated from time to time and published by the State of California, Department of Housing and Community Development.

(d) For Tenants who are living at the Property on August 1, 2019 ("Exempted Tenants"), additional rent restrictions will apply. Exempted Tenants may not be displaced due to Declarant's actions, except for temporary relocation during rehabilitation activities. Rent Increases for Exempted Tenants are limited to 2.5% annually.

2. Affirmative Marketing Plan Compliance. Eligible Tenants shall be described in Declarant's approved Affirmative Marketing Plan and Declarant shall comply with the terms of its approved Affirmative Marketing Plan, renting to those person(s) referenced in said approved plan, as may be amended from time to time. Provided, however, nothing herein shall restrict Declarant from screening tenants through the application of criteria which is lawful and customary in apartment management in San Diego County and otherwise consistent with federal, state and local regulations and restrictions related to the financing for the Property.

3. Determination; Annual Requalification. On the July 1<sup>st</sup> immediately following the calendar year in which rehabilitation of the Senior Affordable Units is completed, and annually on July 1<sup>st</sup> of each year thereafter, Declarant shall certify to the City under penalty of perjury, utilizing such forms and providing such backup documentation as the City may require, that Declarant is complying with all provisions of this Declaration. Failure to complete the annual certification process described in this Section 3 within fifteen (15) days of receipt of written notice from the City shall constitute a material default under this Declaration. The City may resort to the remedies set forth herein upon such material default, as well as any and all other remedies available at law or in equity or contained in the Agreement or Deeds of Trust.



4. Relationship with Declarant. The term "Eligible Tenant" shall not include Declarant or any individuals who are partners or shareholders in Declarant or in any entity having an interest in Declarant or in the Property, or officer, employee, agent or consultant of the owner, developer or sponsor.

5. No Student Dependents. No Senior Affordable Unit shall be occupied or leased to any person who is a full-time student, or a household comprised exclusively of persons who are full-time students, unless such persons are married and eligible to file a joint federal income tax return. The term "full-time student" shall be defined as any person who will be or has been a full-time student during five calendar months of the calendar year in question at an educational institution (other than a correspondence school) with regular faculty and students and or a student dependent as defined in the U.S. Internal Revenue Code, unless the taxpayer (upon whom the student in question is dependent) resides in the same dwelling unit.

6. Income of Co-Tenants. The income of all co-tenants and/or non-dependent occupants shall be taken into account in determining whether a household is an Eligible Tenant hereunder.

7. Over Income Tenants. In the event that a tenant who was properly certified as an Eligible Tenant at the commencement of such tenant's occupancy ceases to be eligible, for any reason other than the tenant being over income, subject to any applicable federal or state law or regulation, Declarant shall give sixty (60) days written notice to such tenant to vacate the Senior Affordable Unit. The vacated Senior Affordable Unit shall thereafter be rented to an Eligible Tenant. Notwithstanding anything to the contrary in this Declaration, no occupant of an Senior Affordable Unit or Senior Affordable Unit who previously and properly qualified as an Eligible Tenant shall be evicted by Declarant because such occupant fails to requalify as an Eligible Tenant, because such occupant exceeds the income limits set forth above, as in the case of increased income.

8. Physical Condition of Senior Affordable Units. After completion of the Project, Declarant shall continually maintain the Senior Affordable Units in a condition which satisfies the Housing Quality Standards promulgated by HUD under its 2013 Final Rule or under its Housing Choice Voucher Program, as such standards are interpreted and enforced by the City under its normal policies and procedures. The City shall have the right to inspect the Senior Affordable Units from time to time, on reasonable notice and at reasonable times, in order to verify compliance with the foregoing maintenance covenant. Further, each Senior Affordable Unit shall be requalified annually, as to the foregoing maintenance covenant, as part of the annual tenant requalification process described in Section 3, above. Any deficiencies in the physical condition of a Senior Affordable Unit shall be corrected by Declarant at Declarant's expense within thirty (30) days of the identification of such deficiency by the City and delivery of written notice of the same to Declarant.

9. City Monitoring Functions. It is contemplated that, during the term of this Declaration, the City will perform the following monitoring functions: (a) preparing and making available to

Declarant any general information that the City possesses regarding income limitations and restrictions which are applicable to the Senior Affordable Units; (b) reviewing the documentation submitted by Declarant in connection with the annual certification process for Eligible Tenants described in Section 3, above; and (c) inspecting the Senior Affordable Units to verify that they are being maintained in accordance with Section 8, above. Notwithstanding the foregoing description of the City's functions, Declarant shall have no claim or right of action against the City based on any alleged failure to perform such function, except that Declarant may reasonably rely upon the City's tenant eligibility determination.

10. Lease Provisions. Declarant agrees that it will include paragraph (a) below in all of its leases and and cause its successors in interest to do the same,

(a) Additional Lease Provisions/Annual Income Verification. Lessee agrees, upon written request from the landlord or the City of Escondido ("the City"), to certify under penalty of perjury the accuracy of all information provided in connection with the examination or reexamination of annual income of the tenant's household. Further, tenant agrees that the annual income and other eligibility requirements are substantial and material obligations of the tenancy and that the tenant will comply promptly with all requests for information with respect to the tenancy from the landlord and/or the City. Further, tenant acknowledges that tenant's failure to provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or the refusal to comply with the request for information with respect thereto, shall be deemed a violation of this lease provision, and a material breach of the tenancy and shall constitute cause for immediate termination of the tenancy.

11. Successors Bound. Except for a Permitted Transfer under the Loan Agreement, Declarant covenants, for itself and its successors and assigns, not to sell, transfer, assign or otherwise dispose of ownership of the Property, without the express written consent of the City. Any prospective purchaser, transferee or assignee shall expressly promise in writing to be bound by all of the provisions hereof, including the covenant in this Section 13 to require successors to expressly assume the obligations herein. It is expressly acknowledged that the covenants and restrictions set forth herein shall survive any repayment of the Loan. Further, the obligations of Declarant hereunder shall be deemed independent of Declarant's obligations under the Loan.

12. Maximum Rent To Be Collected by Declarant. In no event, shall all of the rent paid by the Eligible Tenant for any rent restricted unit exceed the amount of rent set forth in the table in Section 1(a), above. Should Declarant receive rent from a tenant in excess of the allowable maximum rent set forth in the table in Section 1(a), above, Declarant agrees to immediately notify the City and reimburse the Eligible Tenant for any such overpayment. Acceptance by Declarant or its successors in interest, of rent in excess of the maximum rent set forth in the table in Section 1(a), above, shall constitute a material breach of this Declaration and the

Agreement unless the Declarant has acted in accordance with this Section upon the receipt of such excess rent.

13. Cross Default; Occupancy Schedule for Senior Affordable Units. A default under the Agreement, including without limitation failure to make the annual loan payments to the City as set forth in the Agreement, shall be a material default under this Declaration. Declarant's partners shall have the same notice and cure rights hereunder as are set forth in the Loan Agreement. The Senior Affordable Units shall be constructed and receive final inspection approval and shall be occupied by Eligible Tenants no later June 30, 2021. Time is of the essence in the rehabilitation and occupancy of the Senior Affordable Units.

14. Term. This Declaration and the covenants and restrictions contained herein shall be effective upon the completion of the rehabilitation of the Project and shall remain in full force and effect for a period of fifty-five (55) years from the date of the Certificate of Occupancy.

15. Covenant Against Discrimination. Declarant covenants on behalf of itself and its successors and assigns, and each successor in interest to the Property, not to discriminate against any purchaser or prospective purchaser of any Senior Affordable Unit on the basis of their race, age, sexual orientation, marital status, color, religion, sex, handicap, or national origin, as referenced in all applicable state, local and federal law.

16. Article 34. As a lender of property acquisition funds for the Assisted Units, the City asserts that it is not in violation of Article XXXIV, Section 1 of the California Constitution. If ever a court of competent jurisdiction declares that the City has violated Article XXXIV by lending money for the SHA Units, and only after all court appeals have been exhausted, the number of assisted SHA Units will be proportionally reduced, or other amendments to this Declaration will be made, at the City's discretion, so that the City is in compliance with Article XXXIV. The City and Declarant consent that all other provisions of this Declaration must remain valid.

17. Senior Affordable Housing Preservation Project. The City elects to designate this Project as a "qualified affordable housing preservation project" as provided in California Government Code Section 7262.5(a), and will make such a designation in any Regulatory Agreement affecting the Property.

18. Enforcement. Declarant expressly agrees and declares that the City or any successor public agency is a proper party and shall have standing to initiate and pursue any and all actions or proceedings, at law or in equity to enforce the provisions hereof and/or to recover damages for any default hereunder, notwithstanding the fact that such damages or the detriment arising from such default may have actually been suffered by some other person or the public at large. Further, the City or any successor public agency shall be the proper party to waive, relinquish, release or modify the rights, covenants, obligations or restrictions contained in or arising under this Declaration.

19. Attorneys' Fees. In the event that any litigation for the enforcement or interpretation of this Declaration, whether an action at law or arbitration or any manner of non-judicial dispute resolution to this Declaration by reason of the breach of any condition or covenant, representation or warranty in this Declaration, or otherwise arising out of this Declaration, the prevailing party in such action shall be entitled to recover from the other reasonable attorneys' fees to be fixed by the court which shall render a judgment, as well as the costs of suit.

20. Severability. In the event that any provision or covenant of this Declaration is held by a court of competent jurisdiction to be invalid or unenforceable, then it shall be severed from the remaining portions of this Declaration which shall remain in full force and effect.

21. Covenants to Run With the Land. The covenants contained herein shall constitute "covenants running with the land", and shall bind the Property and every person having an interest therein during the term of this Declaration. Declarant agrees for itself and its successors that, in the event that, for any reason whatsoever, a court of competent jurisdiction determines that the foregoing covenants do not run with the land, such covenants shall be enforced as equitable servitudes against the Property.

22. Recordation; Waiver and Amendment. This Declaration shall be recorded in the Office of County Recorder of San Diego, California. No provision of this Declaration, or breach of any provision, can be waived except in writing. Waiver of any provision or breach shall not be deemed to be a waiver of any other provision, or of any subsequent breach of the same or other provision. Except as otherwise provided herein, this Declaration may be amended, modified or rescinded only in writing signed by Declarant and the City.

23. Remedies.

(a) Contract Governed by Laws of State of California. This Declaration, its performance, and all suits and special proceedings under this Declaration, shall be constituted in accordance with the laws of the State of California and Federal law, to the extent applicable. In any action, special proceeding, or other proceeding that may be brought arising out of, under or because of this Declaration, the laws of the State of California and the United States, to the extent applicable, shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted.

(b) Standing, Equitable Remedies; Cumulative Remedies. Declarant expressly agrees and declares that the City or any successor or public agency shall be the proper party and shall have standing to initiate and pursue any and all actions or proceedings, at law or in equity, to enforce the provisions hereof and/or to recover damages for any default hereunder, notwithstanding the fact that such damages or the detriment arising from such a default may have actually been suffered by some other person or by the public at large. Further, Declarant expressly agrees that receivership, injunctive relief and specific performance are proper pre-trial and/or post-trial remedies hereunder, and that, upon any default to assure compliance with this Declaration. Nothing in this subparagraph, and no recovery to the City, shall restrict or

limit the rights or remedies of persons or entities other than the City, against Declarant in connection with the same or related acts by Declarant. The remedies set forth in this Section are cumulative and not mutually exclusive, except to the extent that their award is specifically determined to be duplicative by final order of a court of competent jurisdiction.

(c) Remedies at Law for Breach of Tenant Restrictions. In the event of any material default under Sections 1 through 22 hereof regarding restrictions on the operation and the transfer of the Property and the expiration of any applicable cure period provided under the Agreement, the City shall be entitled to, in addition to any and all other remedies available at law or in equity: (i) declare the Loan to be all due and repayable; and (ii) recover compensatory damages. If the default in question involves the collection of rents in excess of the rents permitted hereunder, the amount of such compensatory damages shall be the product of multiplying: (a) the number of months that the default in question has continued until the time of trial by (b) the result of subtracting the rents properly chargeable hereunder for the Senior Affordable Units in question from the amount actually charged for those Senior Affordable Units. Declarant and the City agree that it would be extremely difficult or impracticable to ascertain the precise amount of actual damages accruing to the City as a result of such a default and that the foregoing formula is a fair and reasonable method of approximating such damages. The City shall be entitled to seek and to recover damages in separate actions for successive and separate breaches which may occur. Further, interest shall accrue on the amount of such damages from the date of the breach in question at the rate of ten percent (10%) per annum or the maximum rate than allowed by law, whichever is less. Nothing in this section shall preclude the award of exemplary damages as allowed by law.

(d) Expert Witness, Attorneys' Fees, and Costs. The parties agree that the prevailing party in litigation for the breach and/or interpretation and/or enforcement of the terms of this Declaration and/or the Agreement shall be entitled to their expert witness fees, if any, as part of their costs of suit, and reasonable attorneys' fees as may be awarded by the court, pursuant to California Code of Civil Procedure ("CCP") §1033.5 and any other applicable provisions of California law, including, without limitation, the provisions of CCP §998.

24. Mortgagees Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Declaration shall defeat or render invalid or in any way impair the lien or charge of any permitted deed of trust recorded on the Property provided, however, that any subsequent owner of the Property shall be bound by the covenants, conditions, restrictions, limitations and provisions of this Declaration, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

25. City Approval of Property Manager. At all times that this Declaration is in force and effect, and the City has served a thirty (30) day written notice of deficiencies in the property management for the Property which do not conform to the standards of property management of a professional property manager operating similar properties in San Diego County and which deficiencies have not been rectified by Declarant, within the thirty (30) day period (unless such

deficiency is not reasonably capable of being cured within such thirty (30) day period, then such reasonable amount of time as is needed not to exceed ninety (90) days, provided Declarant commences cure within such thirty (30) day period and continues to diligently pursue cure), then, the City shall have the right, in its reasonable discretion, and upon thirty (30) days written notice: (i) to require the retention of a replacement professional property management firm to manage the Property; (ii) to approve, in advance and in writing, the retention of any such property management firm, including the terms of the contract governing such retention; and (iii) to require Declarant to terminate any such property management firm, provided that such termination shall comply with the termination provisions of the management contract in question. Declarant shall cooperate with the City to effectuate the City's rights.

26. Declarant Required to Pay Monitoring Fees. Declarant shall pay the City a set-up fee (the "Set-Up Fee") in the amount of Four Hundred Dollars (\$400.00) which shall be paid by Declarant to the City at closing of the Loan. Declarant shall pay to the City an annual monitoring fee (the "Loan Monitoring Fee"), as determined by the City in schedules printed by the City from time to time. Said fee shall be subject to revision annually; the schedule of monitoring fees may be requested from the City. Annual Monitoring Fees shall be paid to the City annually within ten (10) days after the City provides a written invoice for the same. Failure to timely pay such fees shall constitute a material default under the terms and conditions of the Agreement and this Declaration. Both the Set-Up Fee and the Loan Monitoring Fee shall be paid to the City as a consideration for the lending of funds by the City to Declarant.

27. No Conversion to Condominiums. Declarant agrees during the term of this Declaration, that Declarant shall not, and shall not allow any other person to, cause all or any portion of the Property to be converted to condominiums or to otherwise allow a condominium map or condominium plan to be recorded or filed against all or any portion of the Property. Declarant further agrees that the conversion of all or any portion of the Property to condominiums and/or the recordation or filing of a condominium map or condominium plan against all or any portion of the Property during the term of this Declaration, shall be a breach of this Declaration, the Agreement, the Note, as defined in the Agreement, and the Deed of Trust, entitling the City to immediately exercise any and all of its rights and remedies under this Declaration, the Agreement, Note and Deed of Trust, including without limitation acceleration of the Note and foreclosure under the Deed of Trust.

28. Noticing Requirements Prior to Termination. Prior to termination of this Declaration, Declarant shall comply with any and all noticing requirements required under any applicable laws or regulations, including without limitation, the requirements of California Government Code Sections 65863.10 and 65863.11.

29. No Further Encumbrance. Except for a Permitted Transfer (as such term is defined in the Loan Agreement), should Declarant agree to or actually sell, convey, transfer, further encumber or dispose of the Property or any interest in it (or obtain any other funds with respect to the Property or Declarant's activities at the Property, regardless of whether the source), without first obtaining the written consent of the City, shall be a material breach of this

Declaration. The consent to one transaction of this type will not constitute a waiver of the right to require consent to future or successive transactions. This Declaration shall remain in effect for its fifty-five (55) year term, whether or not the City approves or disapproves a successor-in-interest or further encumbrance.

30. Indemnity. Declarant shall be responsible for all injuries to persons and/or all damages to real or personal property of the City or others, caused by or resulting from the sale, rental, ownership or operation of the Property, the negligence and/or breach of this Declaration, of itself, its employees, subcontractors and/or its agents during or arising out of rehabilitation of the Senior Affordable Units. Declarant shall defend and hold harmless and indemnify the City, and all of its officers and employees from and against all claims, liens, claims of lien, losses, damages, judgments, costs, and expenses, whether direct or indirect, arising in any way from (i) the sale, rental, ownership or operation of the Property, including without limitation the Senior Affordable Units; (ii) Declarant's negligence; (iii) breach of this Declaration, by Declarant, its employees, subcontractors and/or its agents; and/or (iv) arising out of the rehabilitation of the Senior Affordable Units, except those arising from the sole negligence or willful misconduct of the City.

31. Signature Authority. All individuals signing this Declaration for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the City that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

**IN WITNESS WHEREOF**, the parties have executed this Declaration on the date first set forth above.

**DECLARANT:**

Windsor Gardens Housing Associates, L.P.,  
a California limited partnership

By: CHW Windsor Gardens LLC,  
a California limited liability company,  
its managing general partner

By: Community HousingWorks,  
a California nonprofit public benefit corporation,  
its sole member/manager

By: \_\_\_\_\_  
Name: Mary Jane Jagodzinski  
Title: Senior Vice President

**City:**  
City of Escondido

By: \_\_\_\_\_  
Paul McNamara, Mayor  
(signature must be notarized)

By: \_\_\_\_\_  
Zack Beck, City Clerk  
(signature must be notarized)

APPROVED AS TO FORM:  
CITY ATTORNEY OF THE CITY OF ESCONDIDO

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



**ATTACHMENT 1**  
**Property Description**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 4, BLOCK 305, AND A PORTION OF LOT 3. BLOCK 304, AND A PORTION OF HALE AVENUE, NOW VACATED, IN RANCHO RINCON DEL DIABLO IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO [MAP THEREOF NO. 724](#), FILED IN THE OFFICE OF THE COUNTY RECORDER, AUGUST 13, 1892, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID LOT 3, SAID POINT BEING A POINT ON THE NORTHWESTERLY RIGHT OF WAY LINE OF HALE AVENUE (66 FEET IN WIDTH); THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID LOT 3, NORTH  $63^{\circ} 26' 43''$  WEST 16.44 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH  $63^{\circ} 26' 43''$  WEST 160.77 FEET TO THE INTERSECTION WITH THE ARC OF A 1022.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, THROUGH WHICH A RADIAL LINE BEARS NORTH  $25^{\circ} 52' 23''$  WEST TO SAID POINT; THENCE LEAVING SAID SOUTHWESTERLY LINE, NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF  $12^{\circ} 54' 20''$  A DISTANCE OF 230.20 FEET; THENCE TANGENT TO SAID CURVE, NORTH  $77^{\circ} 01' 57''$  EAST, 581.33 FEET TO THE INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF VINEYARD AVENUE (84 FEET IN WIDTH); THENCE SOUTHEASTERLY ALONG SAID WESTERLY RIGHT OF WAY LINE, SOUTH  $12^{\circ} 56' 44''$  EAST 310.61 FEET TO THE BEGINNING OF A TANGENT 942 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF  $15^{\circ} 52' 25''$  A DISTANCE OF 260.98 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 20.00 FEET AND THROUGH WHICH A RADIAL OF SAID 942.00 FOOT RADIUS CURVE BEARS SOUTH  $61^{\circ} 10' 51''$  WEST TO SAID POINT; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID 20.00 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF  $87^{\circ} 01' 15''$  A DISTANCE OF 30.38 FEET; THENCE TANGENT TO SAID CURVE, SOUTH  $58^{\circ} 12' 06''$  WEST 9.85 FEET TO THE BEGINNING OF A TANGENT 120.00 FOOT RADIUS CURVE CONCAVE NORTHERLY; THENCE SOUTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF  $45^{\circ} 44' 17''$  A DISTANCE OF 95.79 FEET TO THE INTERSECTION WITH THE SOUTHWESTERLY LINE OF SAID LOT 4, THROUGH WHICH A RADIAL LINE BEARS SOUTH  $13^{\circ} 55' 23''$  WEST TO SAID POINT AND DISTANT THEREON SOUTH  $63^{\circ} 13' 18''$  EAST 678.36 FEET FROM SAID MOST WESTERLY CORNER OF SAID LOT 4, SAID POINT ALSO BEING A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF WEST NINTH AVENUE (66 FEET IN WIDTH); THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE NORTH  $63^{\circ} 13' 18''$  WEST 606.26 FEET TO THE BEGINNING OF A TANGENT 40.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE

THROUGH A CENTRAL ANGLE OF  $17^{\circ} 13' 13''$  A DISTANCE OF 12.02 FEET; THENCE TANGENT TO SAID CURVE, NORTH  $46^{\circ} 00' 05''$  WEST 50.00 FEET TO THE BEGINNING OF A TANGENT 76,00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF  $89^{\circ} 36' 16''$  A DISTANCE OF 118.86 FEET TO THE INTERSECTION WITH THE SOUTHWESTERLY LINE OF SAID LOT 3, DISTANT THEREON NORTH  $63^{\circ} 26' 43''$  WEST 16.44 FEET FROM THE MOST SOUTHERLY CORNER OF SAID LOT 3 AND THROUGH WHICH A RADIAL LINE BEARS NORTH  $45^{\circ} 36' 21''$  WEST TO SAID POINT, SAID POINT BEING ALSO THE TRUE POINT OF BEGINNING.

SAID LAND IS ALSO KNOWN AS LOT 22 OF ESCONDIDO TRACT NO. 477, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO [MAP THEREOF NO. 10083](#), FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 4, 1981.

APN 232-542-13-00

**Exhibit "G"**

**Statement of Insurance Requirements**

**STATEMENT OF**  
**INSURANCE REQUIREMENTS**  
**(Including All Successors and Assigns of Borrower)**

Borrower acknowledges the receipt of these insurance requirements and agrees to maintain in full force and effect, the following policies at Borrower's sole cost and expense during the term of the Declaration of Covenants, Conditions and Restrictions being made by Borrower with respect to a loan from the City of Escondido ("City"). All insurance policies shall contain a provision requiring thirty (30) days advance written notice to the City of cancellation. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the Affordable Housing Loan Agreement ("Loan Agreement"). Borrower agrees to maintain the following insurance coverages:

1. **Required Insurance.** To at all times provide, maintain and keep in force at Borrower's sole expense the following policies of insurance:

(a) Insurance against loss or damage to the Improvements by fire and any of the risks covered by insurance of the type now known as "fire and extended coverage" including endorsement designating City as a Loss Payee, in an amount no less than the original amount of the Note plus any senior liens or encumbrances or the full replacement cost of the Improvements, including the cost of debris removal (exclusive of the cost of excavations, foundations and footings below the lowest basement floor), whichever is greater, and with not more than One Thousand Dollars (\$1,000.00) deductible from the loss payable for any casualty. The policies of insurance carried in accordance with this subparagraph (a) shall contain the "Replacement Cost Endorsements";

(i) The City acknowledges that the policies of insurance carried in accordance with subparagraph (a) are unavailable prior to the Financial Closing, as defined in the Loan Agreement, due to: (A) the present condition of the existing improvements on the Property, and (B) the intention of the parties to demolish the existing improvements in order to construct the Project. Accordingly, it is agreed that the policies of insurance carried in accordance with subparagraph (a) shall only be required after the Financial Closing.

(b) Business interruption insurance and/or loss of "rental value" insurance in such amounts as are satisfactory to the City shall be carried when available following completion of construction.

(c) Auto liability and comprehensive general public liability insurance, including coverage for elevators and escalators, if any, on the Property insuring against claims for

“personal injury”, including, without limitation, bodily injury, death or property damage occurring on, in or about the Property and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit of not less than a project specific One Million Dollars (\$1,000,000.00) Per Occurrence, Combined Single Limit with Two Million Dollar (\$2,000,000.00) Aggregate Limit, with respect to personal injury or death to any one or more persons or damage to property (as that amount may be increased from time to time by the City in its reasonable discretion). General Liability policy must endorse and designate City and the City of Escondido as Additional Insureds. Liability Additional Insured Endorsement must be primary, must not exclude Completed Operations, and must be endorsed to include a Ten (10) year extended reporting period when and if such endorsement is available;

(d) From and after any point in time when Borrower has employees, Workers’ compensation insurance (including employer’s liability insurance, if requested by the City) for all employees of Borrower engaged on or with respect to the Property in such amount as is reasonably satisfactory to the City, or if such limits are established by law, in such amounts;

(e) During the course of any construction or repair of Improvements on the Property, builder’s completed value risk insurance against “all risks of physical loss”, including collapse and transit coverage, during construction of such Improvements, with deductibles not to exceed Ten Thousand Dollars (\$10,000.00), in non-reporting form, covering the total value of work performed and equipment, supplies and materials furnished. The City shall be endorsed as a Loss Payees. Said policy of insurance shall contain the “permission to occupy upon completion of work or occupancy” endorsement;

(f) Boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning, and elevator equipment and escalator equipment provided the Improvements contain equipment of such nature, and insurance against loss of occupancy or use arising from breakdown of any of the items referred to in this subparagraph (f), in such amounts as are reasonably satisfactory to the City;

(g) Insurance against flood damage, including surface waters, if the Property is located in an area considered a flood risk by the United State Department of Housing and Urban Development;

(h) Insurance against loss or damage to the Personal Property by fire and other risks covered by insurance of the type now known as “fire and extended coverage” or by other coverage forms during the course of construction; and

(i) Such other insurance (including, but not limited to, earthquake insurance), and in such amounts, as may from time to time be required by the City against the same or other hazards, provided such additional insurance is available at commercially reasonable rates.

- (j) Pollution Liability insurance – project specific limits
- (k) Excess Liability Insurance
- (l) Borrower shall cause Professional Liability / E&O (design professionals, etc) – project specific limits to be provided by architects and other design professional working on the Project.

All policies of insurance required by the terms of the Deed of Trust shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy, notwithstanding any act or negligence of Borrower which might otherwise result in forfeiture of said insurance, and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Borrower.

**2. Delivery of Policies, Payment of Premiums.** 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.. All policies of insurance shall have attached thereto a lender's loss payable endorsement for the benefit of the holder of the first priority deeds of trust on the property and improvements, and then for the benefit of the City in form satisfactory to the City. Borrower shall furnish the City with an original copy of all policies of required insurance. At least thirty (30) days prior to the expiration of each such policy, Borrower shall furnish the City with evidence satisfactory to the City of the payment of premium and the re-issuance of a policy continuing insurance in force as required by the Deed of Trust. All such policies shall contain a provision that such policies will not be canceled or materially amended, which terms shall include any reduction in the scope of limits of coverage, without at least thirty (30) days prior written notice to the City. In the event Borrower fails to provide the policies of insurance required by the Deed of Trust, the City may procure such insurance or single-interest insurance for such risks covering the City's interest, and Borrower will pay all premiums thereon promptly upon demand by the City, and until such payment is made by Borrower the amount of all such premiums, together with interest thereon at the rate of ten percent (10%) per annum or the maximum rate allowed by law, whichever is less.

In the event any lender, who has a secured interest in the Property, requires additional insurance and/or insurance with greater coverages than that required by this Statement of Insurance Requirements, Borrower agrees to provide to and name the City on such policies providing greater and additional coverages.

Borrower, by execution of this Statement of Insurance Requirements, agrees to provide the required insurance during the term of the loan and to require all successors in interest to agree to provide such coverages for the benefit of the City. Borrower acknowledges that performance of the covenants

contained herein are a material inducement to making the loan to Borrower.

**3. Signature Authority.** All individuals signing this Statement of Insurance Requirements for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the City that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first set forth above.

**BORROWER:**

Windsor Gardens Housing Associates, L.P.,  
a California limited partnership

By: CHW Windsor Gardens LLC,  
a California limited liability company,  
its managing general partner

By: Community HousingWorks,  
a California nonprofit public benefit corporation,  
its sole member/manager

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

Name: Mary Jane Jagodzinski

Title: Senior Vice President



RESOLUTION NO. 2019-119

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING THE ISSUANCE OF REVENUE BONDS BY THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$26,000,000 TO FINANCE A 132-UNIT MULTIFAMILY RENTAL HOUSING FACILITY FOR THE BENEFIT OF WINDSOR GARDENS HOUSING ASSOCIATES, L.P., OR ANOTHER ENTITY TO BE CREATED BY COMMUNITY HOUSINGWORKS (OR AN AFFILIATE), AND CERTAIN OTHER MATTERS RELATING THERETO

WHEREAS, Community HousingWorks, a California nonprofit public benefit corporation (“CHW”), on behalf of Windsor Gardens Housing Associates, L.P., or another entity to be created by CHW or by an affiliate thereof (collectively, the “Borrower”), has requested that the California Municipal Finance Authority (the “Authority”) issue one or more series of revenue bonds in an aggregate principal amount not to exceed \$26,000,000, including but not limited to revenue bonds issued as part of a plan to finance the Project described herein (the “Bonds”) for the acquisition and rehabilitation of a 132-unit multifamily rental housing facility for seniors (the “Project”) to be owned and operated by the Borrower and located at 1600 9th Avenue within the City of Escondido (the “City”); and

WHEREAS, pursuant to Section 147(f) of the Internal Revenue Code of 1986 (the “Code”), the issuance of the Bonds by the Authority must be approved by the City because the Project is located within the territorial limits of the City; and

WHEREAS, the City Council of the City of Escondido (the “City Council”) is the elected legislative body of the City and is one of the “applicable elected representatives” required to approve the issuance of the Bonds under Section 147(f) of the Code; and

WHEREAS, the Authority has requested that the City Council approve the issuance of the Bonds by the Authority in order to satisfy the public approval requirement of Section 147(f) of the Code and the requirements of Section 4 of the Joint Exercise of Powers Agreement Relating to the California Municipal Finance Authority, dated as of January 1, 2004 (the “Agreement”), among certain local agencies, including the City; and

WHEREAS, pursuant to Section 147(f) of the Code, the City Council has, following notice duly given, held a public hearing regarding the issuance of the Bonds, and now desires to approve the issuance of the Bonds by the Authority.

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 approves the issuance of the Bonds by the Authority. It is the purpose and intent of the City Council that this resolution constitute approval of the issuance of the Bonds by the Authority, for the purposes of (a) Section 147(f) of the Code by the applicable elected representative of the governmental unit having jurisdiction over the area in which the Project is located, in accordance with said Section 147(f), and (b) Section 4 of the Agreement.
3. The Clerk shall forward a certified copy of this Resolution and an originally executed Agreement to the Authority in care of its counsel:

Ronald E. Lee, Esq.  
Jones Hall, A Professional Law Corporation  
475 Sansome Street, Suite 1700  
San Francisco, CA 94111

4. This Resolution shall take effect immediately upon its adoption.

RESOLUTION NO. 2019-120

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, NECESSARY AGREEMENTS, LOAN DOCUMENTS AND DEEDS FOR THE PURCHASE OF SUBORDINATE TAX EXEMPT BONDS IN RELATION TO THE FINANCING OF 1600 WEST NINTH AVENUE

WHEREAS, the City Council authorized the sale of certain real property, addressed as 1600 W Ninth Avenue, currently used as affordable senior housing, located on West Ninth Avenue and Windsor Place, known as Windsor Gardens Apartments (the "Property") to Community HousingWorks and its related entity, Windsor Gardens Housing Associates, L.P ("Buyer"); and

WHEREAS, a portion of the financing for the sale of the Property includes the issuance of a residual receipts Seller Note for a portion of the purchase price by the City of Escondido ("City"); and

WHEREAS, the CHW intends to apply for 4 percent non-competitive Low Income Housing Tax Credit Program funds ("4% Tax Credits") from California Tax Credit Allocation Committee ("TCAC") for funds to rehabilitate the property which will require CHW to also apply for bond financing through the California Debt Limit Allocation Committee ("CDLAC"); and

WHEREAS, CDLAC requires that 50 percent (50%) of financing during construction be tax-exempt in order to qualify for bond financing, and the rehabilitation

loan taken by CHW is not 50 percent of the project costs, CHW has requested that the City refinance the City Seller Note to meet this requirement; and

WHEREAS, the sale of the Property achieves an important public purpose of the City to preserve affordable housing for low-income residents 62 years old and older, allowing continued stability and integrated social services; and

WHEREAS, the City has authorized the California Municipal Finance Authority ("CMFA") to issue one or more series of revenue bonds in an aggregate principal amount not to exceed \$26,000,000, including but not limited to revenue bonds issued as part of a plan to finance the acquisition and rehabilitation of the Property; and

WHEREAS, the City's purchase of tax-exempt bonds issued by CMFA in an amount not to exceed \$15,000,000 would be secured by a subordinate deed of trust on the Property; and

WHEREAS, the City desires at this time, and deems it to be in the best public interest to approve the purchase of bonds, and to authorize the execution of all agreements, loan documents and deeds necessary to provide such funds for the provision of affordable housing.

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

1. That the above recitations are true.
2. That the Mayor and City Clerk are hereby authorized to execute, on behalf of the City, in a form approved by the City Attorney, any agreements, loan documents,

and deeds necessary to facilitate the purchase of the bonds, including but not limited to, the Subscription Agreement attached hereto as Exhibit "A" and is incorporated by this reference.

**SUBSCRIPTION AGREEMENT**  
**PRIVATE PLACEMENT OF TAX EXEMPT BONDS**

August 1, 2019

Windsor Gardens Housing Associates, LP  
c/o Community HousingWorks  
3111 Camino del Rio South, Suite 800  
San Diego, CA 92108

Re: Windsor Gardens

Ladies and Gentlemen:

The undersigned is the current fee owner of the Project (the "City"). The City intends to sell the Project (as defined below) to Windsor Gardens Housing Associates, LP, a California limited partnership ("Buyer") pursuant to that certain Purchase and Sale Agreement, dated as of [August 1, 2019] (the "Purchase Agreement"). The purchase price for the Project is \$\_\_\_\_\_ (the "Purchase Price"). Pursuant to the Purchase Agreement, up to [\$\_\_\_\_\_] of the Purchase Price shall be paid by the Buyer in the form of a seller carryback promissory note in favor of City (the "Seller Note"). Pursuant to this Subscription Agreement (this "Agreement"), upon closing of construction financing for the Project ("Closing"), Buyer shall repay that Seller Note using, in part, subordinate tax-exempt bonds to be issued by the California Municipal Finance Authority (the "Issuer") to the City and secured by and payable from a new promissory note of the Buyer in favor of the City (the "Subordinate Bonds"). Capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Purchase Agreement and/or the Seller Note.

Subject to the terms and conditions of this Agreement set forth below, the City agrees to purchase up to [\$\_\_\_\_\_] of the Subordinate Bonds. At Closing, Buyer shall receive a credit toward the repayment of the Seller Note on the Settlement Statement in an amount equal to the par value of the Subordinate Bonds to evidence the purchase of the Subordinate Bonds by the City (the "Subordinate Bond Loan"). The Subordinate Bonds will be issued by California Municipal Finance Authority (the "Issuer"), which bonds will be issued as subordinate bonds in connection with an issuance by the Issuer of approximately [\$\_\_\_\_\_] of senior tax exempt bonds (the "Senior Bonds", and together with the Subordinate Bonds, the "Bonds"). The Senior Bonds will be privately placed, and will fund a senior loan to Buyer in the approximate amount of [\$\_\_\_\_\_] (the "Senior Bond Loan", and together with the Subordinate Bond Loan, the "Bond Loan") which Senior Bond Loan will be secured by a senior deed of trust ("Senior Bond Loan Deed of Trust") on the Project (as defined below). The Subordinate Bonds will not be credit enhanced, will be unrated, and will be secured by a subordinate deed of trust (the "Subordinate Bond Loan Deed of Trust") on the Project. The Subordinate Bond Loan Deed of Trust will be subordinated only to a bond regulatory agreement (the "Bond Regulatory Agreement") and the Senior Bond Loan Deed of Trust. The Subordinate Bond Loan and the Senior Bond Loan will be used to fund the acquisition and rehabilitation of a low income multifamily residential housing project located in Escondido, California, commonly known as Windsor Gardens (the "Project").

In connection with this Agreement, the City hereby represents, warrants and agrees as follows:

1. Terms of Offering. The City understands that it will be provided certain documents, which will disclose material information regarding the terms of the Bonds, the Bond Loans, and information regarding the Project. It is anticipated that the terms of the Subordinate Bonds will be as follows:

- a. Subordinate Bond Amount: Not exceed [\$\_\_\_\_\_]
- b. Maturity Date: Not to exceed forty-five years from issuance subject to earlier call by Issuer.
- c. Interest Rate: Long Term Applicable Federal Rate in effect as of the date of the Closing
- d. Payments: Principal and interest on the Subordinate Bonds shall be payable out of residual receipts only.
- e. Security: Subordinate deed of trust on the Project.
- f. The Subordinate Bond Loan shall be non-recourse and shall not require a guaranty but shall be secured by the Subordinate Deed of Trust.
- g. Minimum bond denomination shall be \$100,000.

2. Experience and Suitability. The City's representative is qualified by knowledge and experience in financial and business matters, investments, securities and private placements to evaluate the merits and risks of an investment in the Subordinate Bonds and to make an informed decision relating thereto. The City has the financial capability for making the investment and protecting the City's interests, and the City can afford a complete loss of the investment. The investment is a suitable one for the City.

3. No need for Liquidity. The City is aware that it may not be able to liquidate the investment readily in case of an emergency and that the Subordinate Bonds which will be issued to the City may have to be held until the Maturity unless sooner called for redemption by the Issuer. The City's overall commitment to investments which are not readily marketable is not excessive in view of the City's financial circumstances and the owning of the Subordinate Bonds will not cause such commitment to become excessive. In view of such facts, the City acknowledges that it has adequate means of providing for its current needs, anticipated future needs and possible contingencies and emergencies and have no need for liquidity in the investment in the Subordinate Bonds. The City is able to bear the economic risk of this investment.

4. Risk Factors. The City has carefully considered the potential risks relating to the Subordinate Bonds and the Project and understands that the Subordinate Bonds are speculative in nature which involve a high degree of risk of loss of the entire investment. The City is familiar with the general risks of investment in subordinate bonds similar to the Subordinate Bonds which are secured by projects with an operating history and financial position such as the Project's.

5. Investment Purpose. The City is acquiring the Subordinate Bonds for its own account for the purpose of investment and not with a view to, or for resale in connection with, the distribution thereof, nor with any present intentional of distributing or selling the Subordinate Bonds. The City understands that the Subordinate Bonds have not been registered under the Securities Act or the securities laws of any state, and hereby agrees not to make any sale, transfer or other disposition of any such Subordinate Bonds unless either (i) the Subordinate Bonds first shall have been registered under the Securities Act and all applicable state securities laws, or (ii) an exemption from such registration is



available, and the Issuer have received such documents and agreements from the City and the transferee as the Issuer requests at such time.

6. No Regulatory Approval of Merits. The City acknowledges that neither the commissioner or department of securities or attorney general of any state has passed upon the merits or qualifications of, nor recommended nor approved, the Subordinate Bonds. Any representation to the contrary is a criminal offense.

7. Independent Advice. The City acknowledges it should seek independent advice from professional advisors relating to the suitability for owning the Subordinate Bonds in view of the City's overall financial needs and with respect to the legal and tax implications of such an investment.

8. Duration. The City acknowledges it may not cancel, terminate or revoke this Agreement or any agreement made by the City hereunder and that this Agreement shall be binding upon the City's heirs, executors, administrators, successors and assigns.

9. Miscellaneous.

a. Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and shall be either (i) delivered by hand, (ii) made by telecopy or facsimile transmission, (iii) sent by overnight courier, or (iv) sent by registered mail, return receipt requested, postage prepaid.

If to the undersigned:

City of Escondido  
201 N Broadway  
Escondido, CA 92025  
Attention: Karen Youel, Housing & Neighborhood Services Manager

If to the Borrower:

Windsor Gardens Housing Associates, LP  
c/o Community HousingWorks  
3111 Camino del Rio South, Suite 800  
San Diego, CA 92108

All notices, requests, consents and other communications hereunder shall be deemed to have been given either (i) if by hand, at the time of the delivery thereof to the receiving party at the address of such party set forth above, (ii) if made by telecopy or facsimile transmission, at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise, (iii) if sent by overnight courier, on the next business day following the day such notice is delivered to the courier service, or (iv) if sent by registered mail, on the 5<sup>th</sup> business day following the day such mailing is made.

b. Governing Law; Jurisdiction. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the law of the State of California, without giving effect to the conflict of law principles thereof. The parties agree to submit to the jurisdiction of the federal and state courts located in San Diego County, California.

c. Severability. In the event that any court of competent jurisdiction shall determine that any provision, or any portion thereof, contained in this Agreement shall be unenforceable in any respect, then such provision shall be deemed limited to the extent that such court deems it enforceable, and as so limited shall remain in full force and effect. In the event that such court shall deem any such provision, or portion thereof, wholly unenforceable, the remaining provisions of this Agreement shall nevertheless remain in full force and effect.

d. Counterparts. This Agreement may be executed in one or more counterparts, and by different parties hereto on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned has executed this Subscription Agreement on August 1, 2019.

City of Escondido,  
a municipal corporation

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

The foregoing subscription for the Subordinate Bonds, is hereby accepted and agreed.

Windsor Gardens Housing Associates, L.P.,  
a California limited partnership

By: CHW Windsor Gardens LLC,  
a California limited liability company,  
its general partner

By: Community HousingWorks,  
a California nonprofit public benefit corporation,  
its sole member/manager

By: \_\_\_\_\_  
Mary Jane Jagodzinski,  
Senior Vice President



## FUTURE CITY COUNCIL AGENDA ITEMS

Updated July 31, 2019

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

**August 14, 2019**  
**NO MEETING**

**August 21, 2019**  
**6:00 p.m.**

<b>CONSENT CALENDAR</b>	
	<p><b>Resolution Establishing the Property Tax Rate and Fixed Charge Assessments for Bonded Indebtedness for Fiscal Year 2019-20</b> (S. Bennett)</p> <p><i>Each year, a property tax rate is established to generate an amount of revenue from the property tax base that is sufficient to pay the General Obligation Bond debt service (principal and interest) for the current tax year.</i></p>
	<p><b>Notice of Completion for the Multi Neighborhood Street Light LED Retrofit Project</b> (J. Procopio)</p> <p><i>This Project featured the retrofitting of 644 non-LED street light and safety light fixtures with new LED luminaries in the area surrounding the following twelve (12) CDBG-eligible neighborhoods: Adams/Gamble, Calm Grove, Park Place, North Hickory, West Hillside Group, South Elm/Hickory, Los Arboles, Westside Involved Neighbors, Old Escondido Historic District, Tulip Group, and Orange Place Collaborative. Due to favorable bids, City Council approved a Change Order that allowed for 119 additional street lights to be retrofitted within CDBG eligible areas. LED Street lights provide a whiter light with a truer color rendering that benefits public safety. In addition, LED lights are energy efficient and reduce maintenance costs.</i></p>
	<p><b>Final Map for Escondido Tract SUB 13-0002 – Oak Creek Project</b> (J. Procopio)</p> <p><i>The Tentative Map for a 65 lot residential subdivision together with a Specific Alignment Plan for Felicita Road and Hamilton Lane were approved, the Environmental Impact Report was certified, and an annexation initiated, for this project by City Council on March 4, 2015 by Resolution No. 2015-27. The Preliminary Master and Precise Development plans and Pre-zone were approved by City Council on March 11, 2015 by Ordinance No. 2015-07. A Modification to the Precise Development Plan was approved by the Zoning Administrator on October 25, 2018 as Resolution No. 2018-10.</i></p>

**August 21, 2019**  
**Continued**

**CONSENT CALENDAR Continued**

**Bid Award for the 2019 Street Rehabilitation Maintenance Project**

(J. Procopio)

*This Project will complete both rehabilitation and maintenance work as part of the City's Annual Street Maintenance and Rehabilitation Program. Work for this project involves replacement of curb, sidewalk, and pavement; installation of new pedestrian ramps; application of seal coats; street resurfacing; and re-striping of treated streets to add bike lanes to conform with the City's Bicycle Master Plan.*

**Consulting Services Agreement for Grand Avenue Vision Plan Phase I**

(J. Procopio)

*The community's desire to develop a new vision for Grand Avenue was brought to the attention of the City Council in late 2015. Merchants and property owners expressed an interest in incorporating diagonal parking, widening sidewalks and improving the ambiance for patrons of downtown businesses. A series of community meetings were held in 2017. The City Council approved the Vision Plan on February 14, 2018 and authorized a grant agreement with SANDAG on February 13, 2019. A request for proposals for design and environmental services was issued on May 20, 2019 and four proposals were received. Staff recommends a consulting services agreement with Kimley-Horn and Associates, Inc. as the most qualified firm who offers the best value for services provided.*

**Lease Agreement with Escondido Federal Credit Union (EFCU) at 201 North Broadway (portion) and 2245 East Valley Parkway (portion)**

(J. Procopio)

*The City and EFCU entered into a Lease Agreement on January 4, 2011 to lease space within City Hall at 201 North Broadway, to operate a non-profit financial institution. The rented area previously consisted of 746 square feet of space on the first (1) floor and 2,200 square feet on the second (2) floor. The space on the second floor has been vacated and EFCU now leases a total of 1,795 square feet on the first floor. In addition, EFCU operates an ATM kiosk in the parking lot of the East Valley Community Center, located at 2245 East Valley Parkway. The parties wish to execute a new lease for a term of ten (10) years.*

**PUBLIC HEARINGS**

**CURRENT BUSINESS**

**True North Research Consulting Agreement**

(J. Petrek)

*As part of an ongoing effort to generate revenue, the City is evaluating a potential sales tax ballot measure for voter approval at the 2020 General Election. True North Research consulting services will develop a citizen survey to determine local voter support for such a measure.*

**FUTURE AGENDA ITEMS**

# Weekly Activity Report



August 1, 2019

## Fall Recreation Guide

Fun and exciting activities are happening in Escondido! The Fall 2019 Recreation Guide covering September – December is now available and registration for classes and activities is open. Check your mailbox or visit: <https://recreation.escondido.org/guide.aspx>



## Escondido Youth Baseball Heads to World Series

Congratulations to the Escondido Youth Baseball 12U All Star Team as they continue their wins and are now heading to the World Series! The PONY International World Series is held in Laredo, TX where the team will face others from all over the globe in their age division.

For more information about the team and the season leading to the World Series check out their [Facebook Page](#). Good luck!



## New Art Exhibit Featuring Edgar Degas Coming to the CCAE

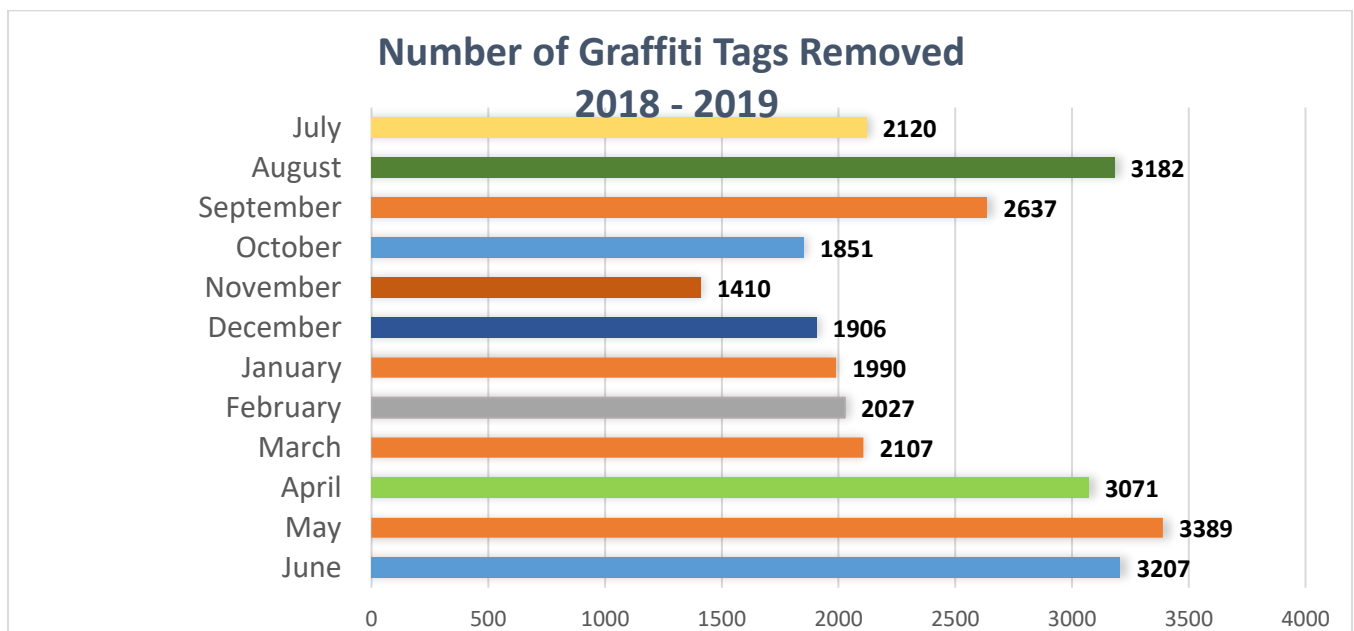
The newest exhibit at the California Center for the Arts will feature a private collection from the French impressionist Edgar Degas. This exhibit has traveled across the U.S. and will be making its home here in Escondido until September 15. For more information about the artist and this exhibit, check out the Coast News article [here](#).

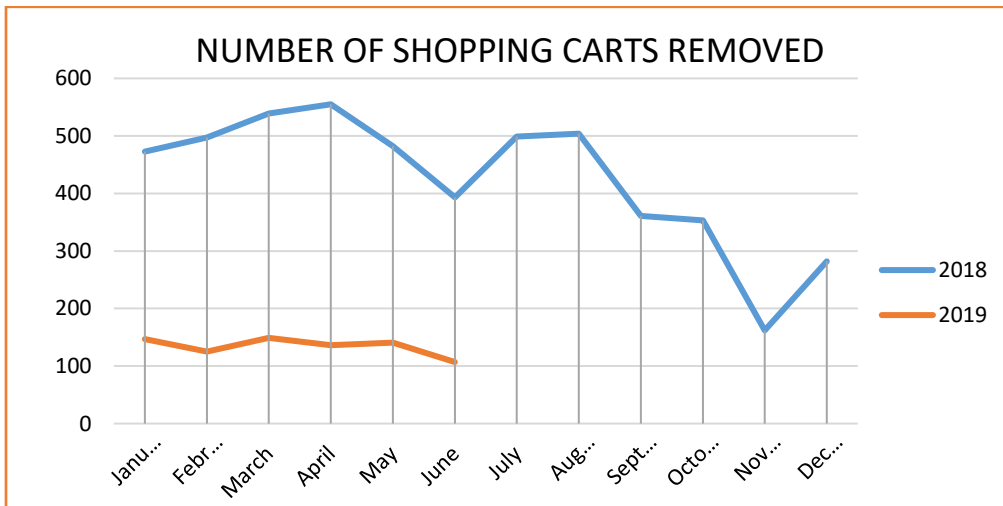
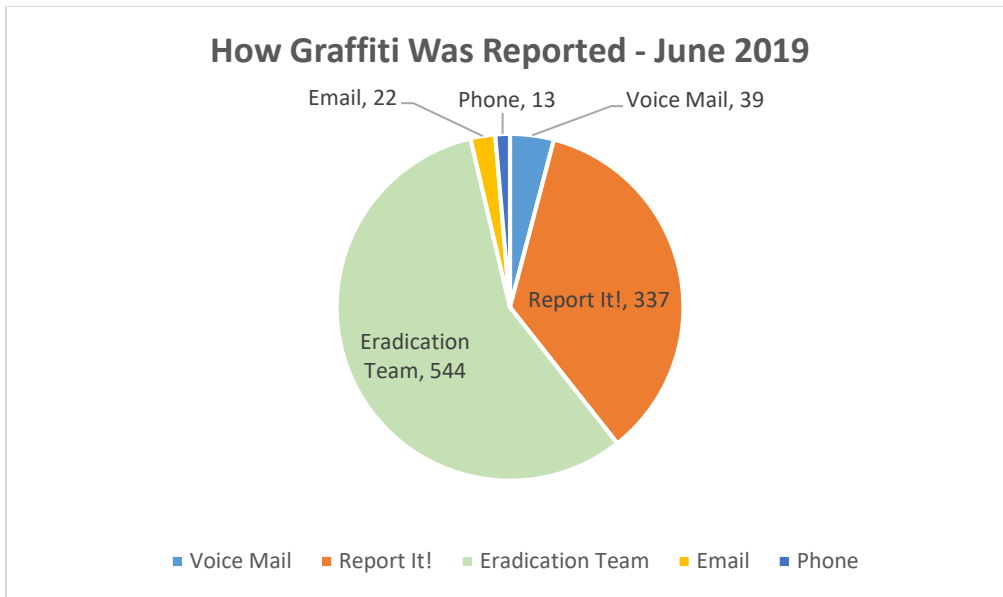
For tickets and general information visit: [www.artcenter.org](http://www.artcenter.org)



## BY THE NUMBERS

### Public Works





**Code Enforcement**

**256 Total Active Cases**

**50 New Cases**

**51 Cases Closed**

**50 Voluntary Compliance**

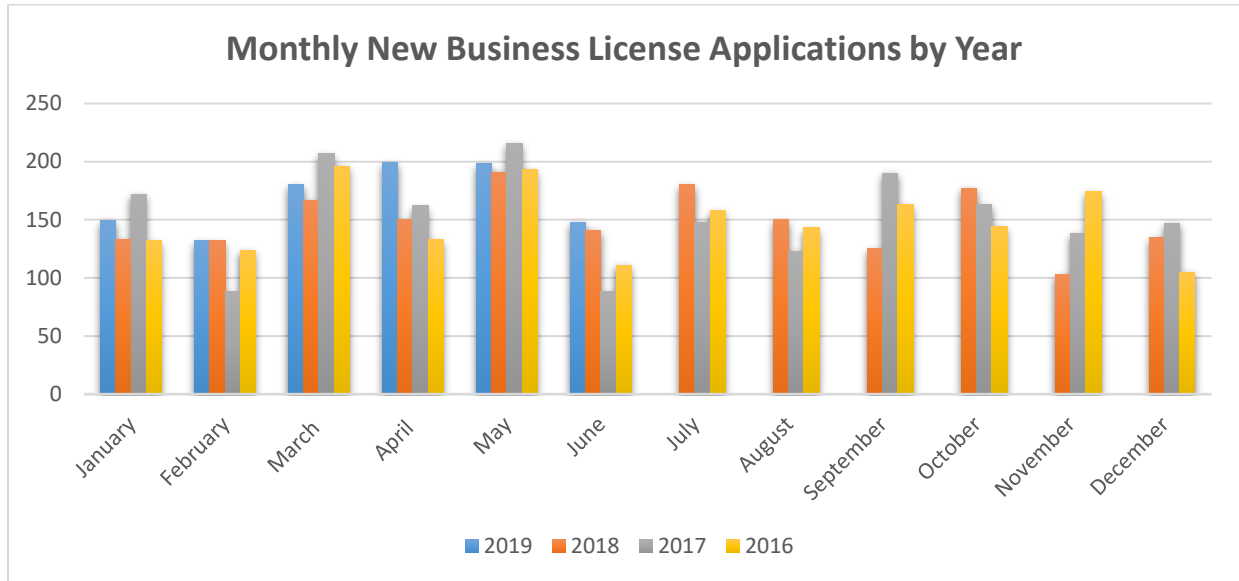
**21 Notices Issued**

**0 Citations Issued**

<b>Total Code Cases (Year To Date)</b>	<b>1,518</b>
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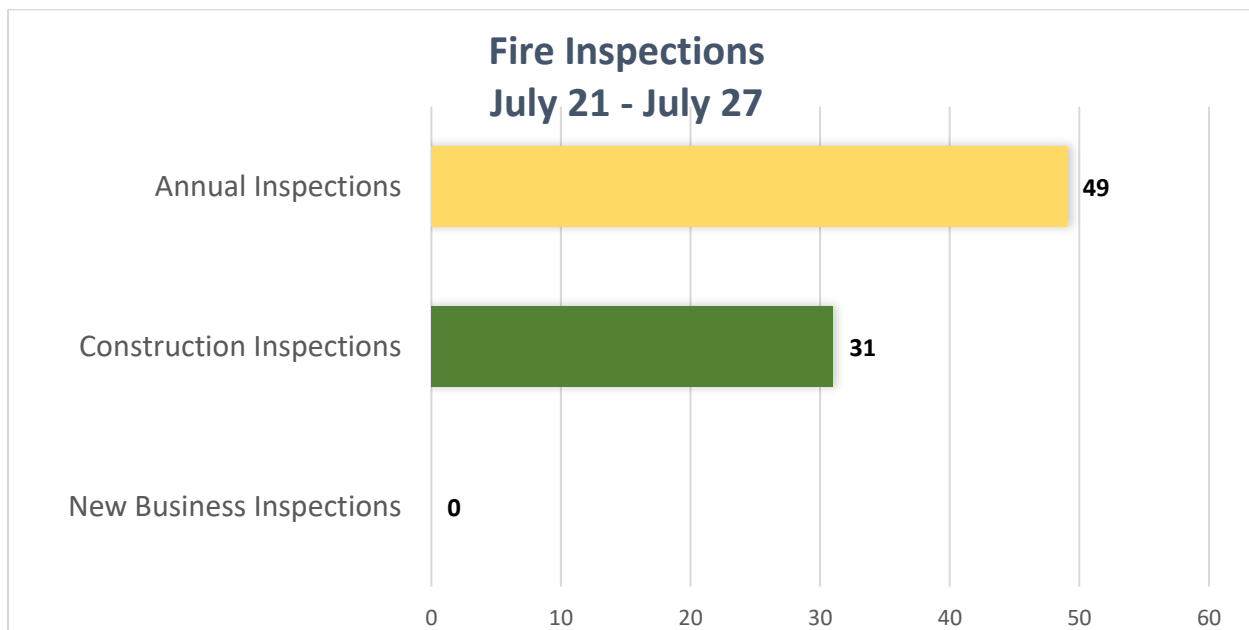
**Business Licenses**



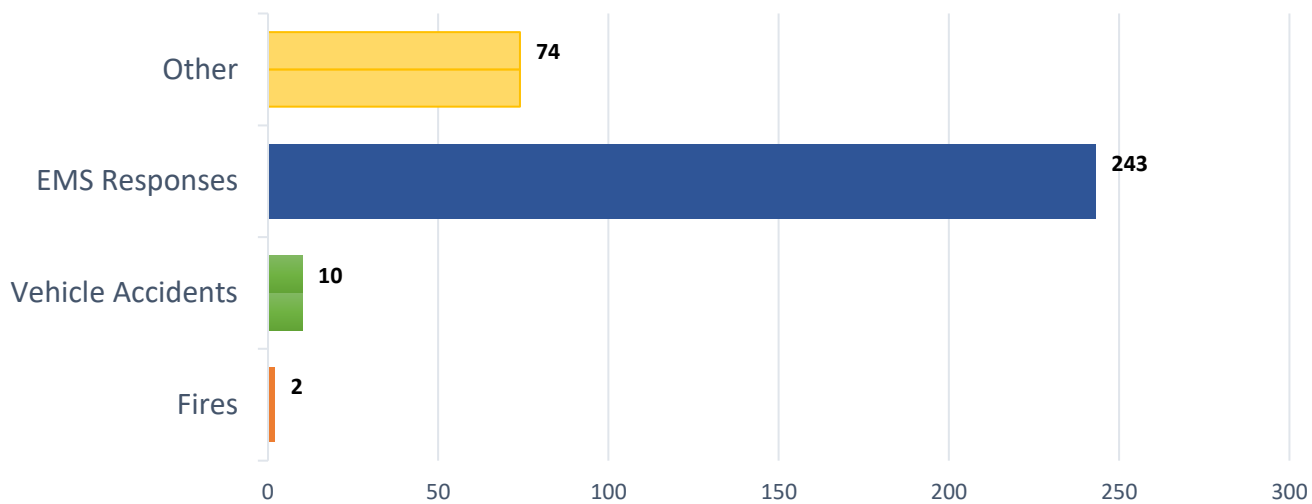
**Graffiti Restitution**

Collected This Week	Collected Year to Date
\$210	\$3835.02

**Fire**



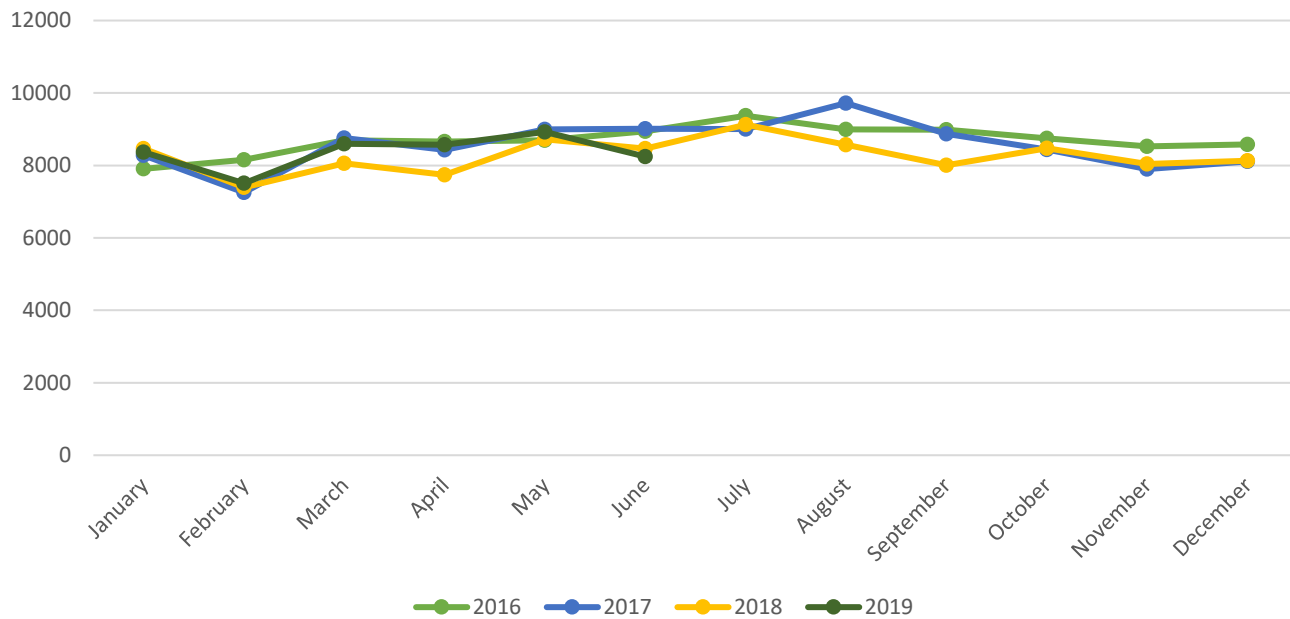
### Fire Emergency Responses July 21 - July 27



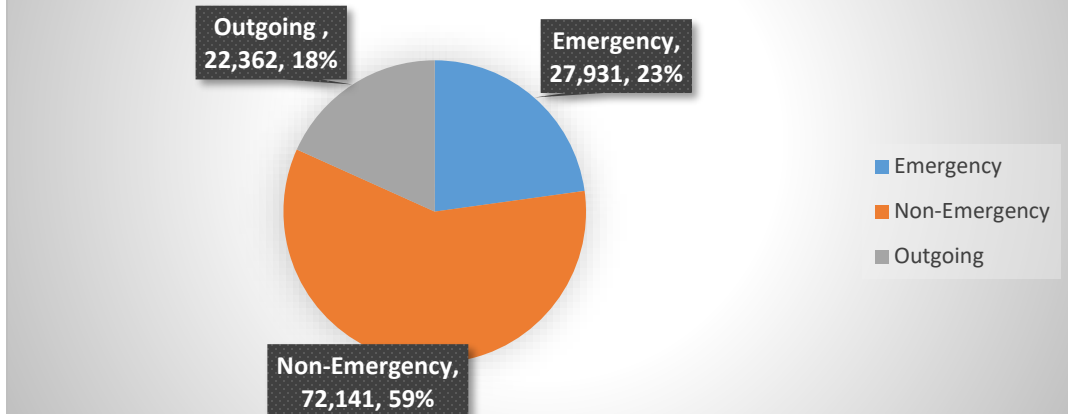
Total Emergency Responses (Year To Date)	9,403
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**Police:**

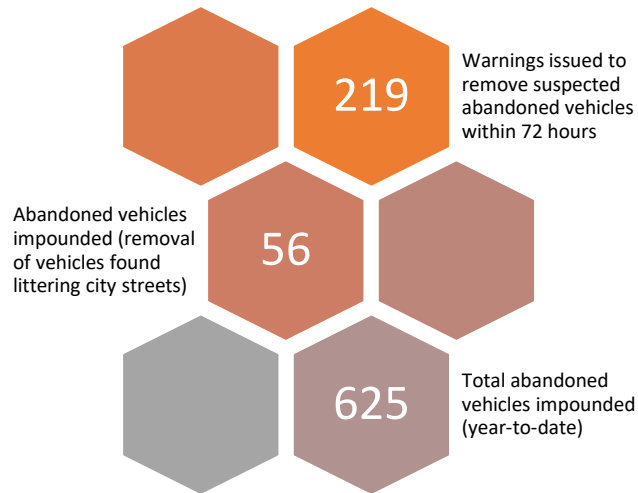
### Monthly Police Calls for Service by Year



## 2019 YTD Police/Fire Communication Center Call Volume

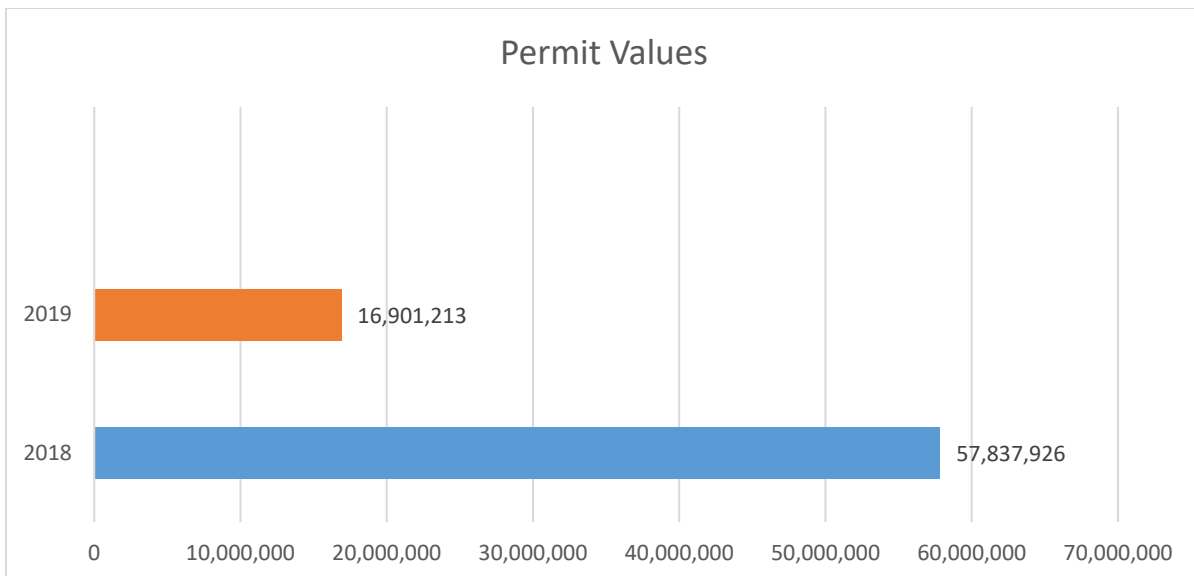


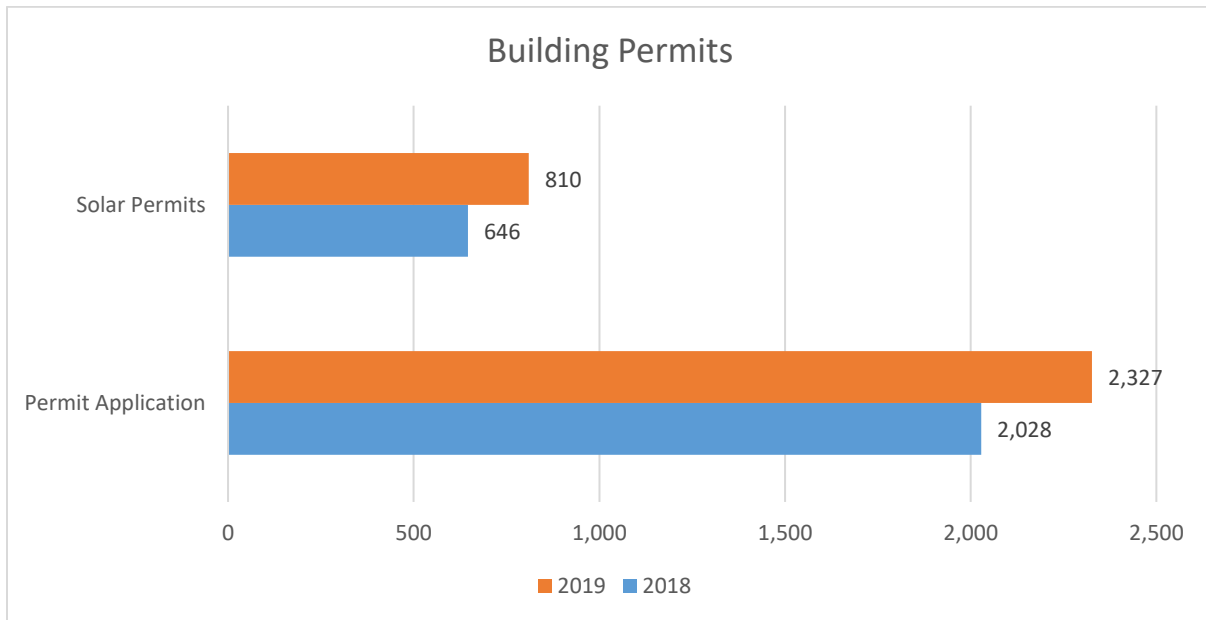
### June Abandoned Vehicle Data



### Building Division:

*\*Data reflects activity through July 27 of each year.*





## POLICE DEPARTMENT

### Incidents:

#### **Man Robs Marie Callender's of Strawberry Pie**

On July 21 at 5:52 p.m., an adult male entered the Marie Callender's Restaurant at 515 W. 13<sup>th</sup> Ave. and ordered a strawberry pie. As the employee brings the pie to the counter, the male states that he does not have any money, but really needs the pie. He then lifts his shirt to show the employee a firearm in his waistband. The employee puts the pie in a bag and turns it over to the suspect who flees the restaurant. The suspect is described as a Hispanic male in his 20's. He was wearing a dark colored shirt, dark jeans, with numerous tattoos on his arms. The suspect left in an unknown tan colored sedan. Anyone with information on this robbery is asked to call Escondido Police at 760-839-4722, or leave an anonymous tip at 760-743-8477.

#### **Juvenile Arrested Following Robbery of Bicycle**

Around midnight on July 26, a 17-year-old male approached a group of four people in the 900 block of E. Mission Ave. The juvenile produced a knife, claimed allegiance to a known criminal street gang, and robbed one of the people of their bicycle. The victim of the robbery flagged down a nearby security officer who reported the crime to police. Officers were close by and quickly apprehended the suspect, who was still in-possession of the bicycle. Officers returned the bicycle to its owner. The juvenile was booked into juvenile hall on a robbery charge.

#### **Dog Locked in Car Leads to Recovery of Stolen Police Equipment**

On July 26 at 4:55 p.m., officers responded to the 200 block of S. Elm St. regarding reports of a dog locked in a car. Officers arrived and conducted computer checks to locate the owner of the car. Those computer searches revealed that the owner had a warrant for his arrest. The owner was located, and the dog was safely freed from the car. However, in the process of freeing the dog from the car and arresting the owner on an active arrest warrant, officers located numerous items of police equipment. Further investigation revealed that the police equipment was stolen during a burglary in El Cajon (the equipment DID NOT belong to a member of the Escondido Police Dept.). A firearm was also recovered, but was determined to not belong to a member of law enforcement, and its rightful owner remains unknown. Maxwell Cook (40-year-old resident

of Poway) was arrested on numerous charges related to weapons possession and possession of stolen property. The dog was unharmed in this incident and released to the care of San Diego Humane Society officials.



### **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
- 10 citations
- 23 extra patrols

### **Tip of the Week:**

It is understandable that members of our community may have information about a criminal activity, but are fearful to share that information with law enforcement. For this reason, we have the following options that allow people to report crime information to us in a completely anonymous fashion.

- If the crime is in-progress, call 911. Tell the dispatcher what is occurring and that you wish to remain anonymous. 911 dispatchers will send the help that is needed, while not identifying who you are.
- Call the Escondido Police Tips Line at 760-743-8477. This number allows callers to leave an anonymous message. The messages are screened daily and forwarded to the appropriate team of investigators.
- Submit an online tip through San Diego Crime Stoppers at [www.sdcrimestoppers.org](http://www.sdcrimestoppers.org) or by calling 888-580-8477. Your information is submitted anonymously and screened by San Diego Crime Stoppers staff who then forward the information to our investigators.

## **FIRE DEPARTMENT**

### **News:**

On July 26 at 2:27 pm the Escondido Police and Fire Communication Center received a report of a fire on the outside of a residential structure in the 700 block of Olinda St and dispatched a structure fire response. The first arriving Captain reported fire and smoke on the side of the home with smoke coming from the attic vents. Crews extinguished the exterior fire, stopped the spread in the home's attic, contained the fire and performed salvage and overhaul. Although the fire caused damage to the home, fortunately there were no injuries. The cause of the fire is under

investigation. A gift card provided by the California Fire Foundation's Supplying Aid to Victims of Emergency (SAVE) program was given to the residents to assist with their short term recovery needs.



## 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. An MOU explaining the phasing and proposed parking improvements for the hospital has been signed by all parties and was completed on July 15, 2019. The grading permit is ready to be issued once temporary parking during construction is identified.
2. Escondido Research and Technology Center (ERTC) – East (Developer: James McCann) 2130 Citracado Parkway – Building plans for a 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. A subsequent plan submittal increased the size of the building to approximately 80,000 SF, which exceeds the specific plan allowance for that planning area. A plot plan application for the modified building design has been submitted by the applicant. Planning has issued comments notifying the property owner of the specific plan issue.
3. 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. EsGil Plan Check Services completed first check of the building plans on May 10, 2019, and returned comments to the applicant. A second plan check for the building plans has been submitted and EsGil commented on July 2, 2019. A demo permit was issued for the commercial building on the corner on July 1, 2019, and demolition is underway. Building permit plans are nearly complete.

## **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 Plan Check Services, Engineering and Fire approved the plans several months ago. Planning met with the architect on July 18, 2019, to finalize design for the screening of rooftop mechanical equipment and then approved the building plans the same day. The grading permit has been approved and grading has commenced on the site.
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. The developer team met with several departments on April 4, 2019, primarily to discuss traffic-related issues. Planning and Building are awaiting submittal of a demo permit for the two abandoned residences on the site.

## **City Projects**

1. Membrane-Filtration Reverse Osmosis (Developer: City of Escondido Utilities Department) SE corner Ash/Washington – On January 16, 2019, the City Council expressed continued support for the MFRO, but directed staff to investigate moving the facility from Ash/Washington to another location. A city-owned property located at 901 W. Washington Avenue has been selected as the new MFRO site. 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 and June 5, 2019 to discuss design and timeline issues. A revised draft site plan was submitted to Planning on July 10, 2019. A draft environmental review document is in preparation. Planning will provide AB 52 notification to interested tribal groups this week.
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. Harvest Hills (aka Safari Highlands Ranch) (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. The applicant and staff met on June 20, 2019, to refine the list of outstanding issues remaining to be resolved prior to advancing to public hearings for the project.

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. Additional discussions between the applicant and the City to resolve project issues occurred on June 20, 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. The homebuilder met with Building, Engineering and Planning on April 24, 2019 to discuss the building plan check and precise grading plan processes. A revised Certified Tentative Map for substantial conformance review was submitted on May 23, 2019 and includes a proposal to relocate approximately 10 residential lots within the development. These changes in Villages 2 and 3 result from comments provided by the Regional Water Quality Control Board and those discussions are on-going. A resubmittal of Village 1 plans including grading, storm drain and the specific alignment plan for Country Club Lane was received on June 18, 2019, and has been approved by Fire. Engineering and Planning comments were sent to the applicant the week of July 15, 2019. The applicant has indicated that a resubmittal is to be expected next week.



The approved tentative subdivision map, Final EIR and appendices, Specific Plan and other related information can be accessed on the City's website at the following link:

<https://www.escondido.org/ecc.aspx>

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 met with the applicant's engineer on January 31, 2019 to discuss drainage issues. A revised Certified TM was approved on March 14, 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 submitted a revised design to address the CWA issues the week of June 3rd. Engineering is awaiting revised grading and improvement plans. Building plans for four model homes were submitted into plan check on July 15, 2019. The Precise Development Plan has tentatively been scheduled for Planning Commission on August 13, 2019.
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 completed final review of the traffic study and storm water plans, asking for modifications to complete the reports. Staff is working with the applicant to move the project to hearing, tentatively scheduled for Planning Commission on August 27, 2019.
6. 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. The applicant submitted revised plans on May 3, 2019. Public review of the Draft Mitigated Negative Declaration resulted in two comment letters. Responses to comments have been completed and a draft version of the Final MND is being reviewed. The project has tentatively been scheduled for a Planning Commission hearing on August 13, 2019.
7. 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 financial feasibility study for the proposed resort was submitted on July 8, 2019.

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](#)

8. 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. The USFWS has requested an additional time to comment. Caltrans expressed a concern for having encroachment into their right of way. Project revisions may be necessary to accommodate grading and fuel modification zone planning on-site.
9. 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 building permits for two model homes were issued the week of July 8. A Model Home Permit was approved by Planning on July 10, 2019, for the sales office and temporary improvements. A second plan check submittal for the final map was received the week of May 13. Second plan check for the off-site improvement plans was received on June 3, 2019. Engineering comments have been returned.
10. 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. 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. Fire has approved the proposed hydrant locations and revised plans are expected soon. Project plans were resubmitted to the City on June 24, 2019, and Development Agreement terms are now being finalized. The project has tentatively been scheduled for a Planning Commission hearing on August 27, 2019.

11. 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, Fire and Engineering met with the applicant on June 10, 2019, to discuss revisions to the plans intended to address the previous comments. Utilities has requested a sewer study to assess potential impacts to the nearby Lift Station 2.
12. 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. A partial 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 closed on June 3, 2019, and approximately 28 comment letters and written forms from the scoping meeting were received. Resubmittal of the redesign package was filed on June 25, 2019. Design and site plan information was submitted on July 1, 2019 and a screen check EIR was submitted on July 29, 2019. It is anticipated that the draft EIR will be released for public review and comment in mid to late fall.

The development proposal and other related information can be accessed on the City's website at the following link:

<https://www.escondido.org/palomarheights.aspx>

13. 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 second submittal of final engineering plans on May 22, 2019. The applicant worked with staff to resolve final boundary adjustment issues to satisfy the title company and a final approval for the boundary adjustment was granted on June 3, 2019. The related Certificates of Compliance have now been recorded. Planning comments on the final map, grading plans and landscape plans were sent to the applicant on June 21, 2019. The project applicant is still working on the improvement plans.

14. 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. 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. Utilities is awaiting resubmittal of a full set of plans. Planning approved the South landscape plan.
15. Accessory Dwelling Units – Planning staff is currently working on seven (7) applications for accessory dwelling units. Twenty (20) accessory dwelling units have been approved so far this year. Twenty-four (24) accessory dwelling units were approved in 2018. Three (3) accessory dwelling units were approved in 2017.

### **Building Division:**

1. The Building Division issued 80 permits (including 26 solar photovoltaic) with a total valuation of \$360,817.
2. Our building inspectors responded to 214 inspection requests. 176 customers visited the Building counter during the week.
3. Shakey's Pizza, located at 355 S. Escondido Blvd. has received its Certificate of Occupancy and is open for business.
4. *No change from the previous.* The Latitude 2 apartment project at 650 Center City Pkwy has received Building final approvals and Temporary Certificates of Occupancy for buildings 1-4. Field Engineering have released Building 6 for TCO. The Building Division has granted a Temporary Certificate of Occupancy, with minor restrictions.
5. *No change from the previous.* The new two story church sanctuary building at 1864 N. Broadway is progressing toward final inspection. Finish work continues to proceed and may take several weeks to complete. A Final Inspection will be performed once work is completed and requested by the contractor.
6. *No Change from the previous.* The new 105 room hotel at 200 La Terraza is currently operating on a Temporary Certificate of Occupancy, pending Engineering final approval. Work is on-going to complete Engineering conditions, however, additional time is needed; an additional extension of the temporary Certificate of Occupancy was granted to Aug. 5<sup>th</sup>, 2019.

7. The new five-story storage building at 852 Metcalf St has completed rough framing and drywall installation is on-going. Rough electrical inspection has been approved. A temporary electrical service meter has been approved and released- this meter is for construction purposes only. The installation of exterior wall panels is on-going. Roof framing is complete and roof sheathing has been approved. City Building inspectors have identified construction deficiencies on site and have informed the contractor that no further inspections will be granted until the contractor's engineer submits corrective measures for review by the Building Department. Staff is closely monitoring the situation. Building department is awaiting response from the engineer.
8. The new Gateway Grand 126-unit apartment project at 700 W. Grand Ave. has received approval of floor sheathing on the 5<sup>th</sup> floor patio areas and loft and 3<sup>rd</sup> floor drywall approval of plumbing walls of Building B. Building C, 2nd floor sheathing is complete; Framing in all other buildings continues to progress. Building B, 2<sup>nd</sup> floor exterior framing has been approved. Clubhouse and Elevator lobby roof sheathing have been approved. Building B, 2<sup>nd</sup> floor exterior shear has been approved.
9. *No change from the previous.* The new apartments at 917 W Lincoln Ave, consisting of 3 buildings and 9 total units, has received partial approval of drywall. Drywall installation is complete. Finish work is on-going and will take several weeks to complete. Staff will continue to monitor progress.
10. *No change from the previous.* The new 2 story 20,000 sf office building for Superior Ready Mix on 1564 W Mission has received underground plumbing and foundation inspection approvals. Remaining Tilt up panels have been lifted into place. Roof framing construction is underway and once complete, staff will perform required inspections.
11. Models by KB Homes, located at the Oak Creek development on Daisy Field Glen are currently under construction. Construction is on an accelerated schedule as both models have received framing inspection approval. No progress had been previously reported, since the "foundation only" permits had been completed. Once Fire Department approved lumber drops on the site, construction has progressed rapidly

## 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 striping subcontractor is continuing to apply thermoplastic and paint legends and strips throughout the project limits. 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. Transit Center Pedestrian Bridge Project – The contractor is clearing trees and shrubs along the channel between Valley Parkway and the flood control channel this week in preparation for grading the area. The work requires the closure of the bike path between Quince Street to the East and Tulip Street to the West. A detour route is in place along Quince Street and Valley Parkway corridor which include signage to assist users of the facility.



3. Tulip Street Improvements Phase IV – The roadway striping and signage was the final item completed this week in advance of the neighborhood meeting being held this Saturday with the Mayor in attendance.
4. Storm Drain Pipe Lining and Rehabilitation Project Phase 1 – 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 weekly meeting is being held on Wednesday to address contractor questions. 47 days remain on the contract.
5. El Norte Parkway Improvements - The project includes widening of El Norte Parkway at the flood control channel by the installation of a new bridge. Construction of new median islands from Valley Parkway to Washington Avenue which include landscaping and drip irrigation system as well as a Bike/Pedestrian signal at the flood control channel along with roadway resurfacing. The preconstruction meeting was being held on July 24. The project will be completed over 120 working days after the Notice to Proceed is issued.

**Private Development**

1. Tract 932 - Canyon Grove Shea Homes Community – The contractor is continuing to reconstruct a water quality basin within the development that failed to perform during last winter’s rain season. The removal of failed or damaged concrete improvements is continuing.
2. Latitude II Condominiums: Washington Avenue @ Centre City Parkway – The project will be working on punch list items over the next reporting period.
3. Tract 934 – Is a 5 lot subdivision located at 1207 Gamble Street. The water line construction is continuing this week.
4. Veterans Village – *No changes from that reported last week.* It was determined after reporting on the project status last week that the Storm Water Certification has not been received. The bonds and securities will be placed on hold until this documentation is received.
5. KB Homes Oak Creek Project – *No changes from that reported last week.* The grading operation is nearing completion. Over the course of the grading operation, 5,920 cubic yards of dirt will be delivered to the site. The large volume of blue granite boulders is being processed on site. The construction of onsite sewer main and minor grading is ongoing this week.
6. ATT Facility Tank Relocation – *No changes from that reported last week.* The testing of the tank and distribution lines to the building are continuing this week. The construction of the concrete improvements along Second Avenue will start this week as well. This will require the closure of the #1 lane on Second Avenue during the pouring of concrete.
7. North American Self Storage – The project is located at 852 Metcalf Street. The construction of the new water main tie valves was completed this week during a night time operation.

**GRANT APPLICATIONS**

None this week.

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