



# Council Meeting Agenda

**APRIL 7, 2021**

**VIDEO CONFERENCE**

**4:00 P.M. Closed Session; 5:00 P.M. Regular Session**  
**201 N. Broadway, Escondido, CA 92025**

MAYOR	<b>Paul McNamara</b>
DEPUTY MAYOR	<b>Michael Morasco</b>
COUNCIL MEMBERS	<b>Consuelo Martinez</b> <b>Tina Inscoe</b> <b>Joe Garcia</b>
CITY MANAGER	<b>Jeffrey Epp</b>
CITY CLERK	<b>Zack Beck</b>
CITY ATTORNEY	<b>Michael McGuinness</b>
DIRECTOR OF COMMUNITY DEVELOPMENT	<b>Mike Strong</b>
DIRECTOR OF ENGINEERING SERVICES	<b>Julie Procopio</b>

**COVID-19 PUBLIC SERVICE ANNOUNCEMENT**

Pursuant to Governor Newsom’s Executive Orders, including N-25-20 and N-29-20: Certain Brown Act requirements for the holding of a public meeting have been temporarily suspended and members of the Escondido City Council and staff will participate in this meeting via teleconference. In the interest of reducing the spread of COVID-19, members of the public are encouraged to submit their agenda and non-agenda comments online at the following link: <https://www.escondido.org/agenda-position.aspx>. Council Chambers will be closed.

Public Comment: To submit comments in writing, please do so at the following link: <https://www.escondido.org/agenda-position.aspx>.

Depending on the volume and/or similarity of public comments, and pursuant to the City Council Rules of Procedure, the Mayor or Presiding Councilmember may limit the number of comments to be read and/or limit the amount of time each comment may be read. It is in the interests of members of the public who desire that their statement be read out loud to be mindful of this potential limitation when drafting their comment. The entirety of all comments received from the public will be made a part of the record of the meeting.

The meeting will be available for viewing via public television on Cox Communications Channel 19 (Escondido only). The meeting will also be live streamed online at the following link: <https://www.escondido.org/meeting-broadcasts.aspx>

In the event a quorum of the City Council loses electrical power or suffers an internet connection outage not corrected within 15 minutes, the meeting will be adjourned. Any items noticed as public hearings will be continued to the next regularly scheduled meeting of the City Council. Any other agenda items the Council has not taken action on will be placed on a future agenda.

**ELECTRONIC MEDIA:**

Electronic media which members of the public wish to be used during any public comment period should be submitted to the City Clerk’s Office at least 24 hours prior to the Council meeting at which it is to be shown.

The electronic media will be subject to a virus scan and must be compatible with the City’s existing system. The media must be labeled with the name of the speaker, the comment period during which the media is to be played and contact information for the person presenting the media.

The time necessary to present any electronic media is considered part of the maximum time limit provided to speakers. City staff will queue the electronic information when the public member is called upon to speak. Materials shown to the Council during the meeting are part of the public record and may be retained by the Clerk.

The City of Escondido is not responsible for the content of any material presented, and the presentation and content of electronic media shall be subject to the same responsibilities regarding decorum and presentation as are applicable to live presentations.



# Council Meeting Agenda

**April 7, 2021**  
**4:00 p.m. Meeting**  
**Mitchell Room**  
**Escondido City Council**

## CALL TO ORDER

**ROLL CALL:** Garcia, Inscoc, Martinez, 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. **Newell v. City of Escondido, et. al.**  
Case No. 37-2020-00023879-CU-PA-NC
  - b. **Noah Werner v. City of Escondido, et. al.**  
Case No. 37-2021-00011594-CU-OR-NC
  - c. **Building Industry Association of S.D. County v. City of Escondido**  
Case No. 37-2021-00008423-CU-MC-CTL
- II. CONFERENCE WITH LABOR NEGOTIATORS (Government Code § 54957.6)**
- a. **Agency representative:** Jeffrey Epp (City Manager) and/or designee  
**Employee organization:** Maintenance and Operations Bargaining Unit (Teamsters)
  - b. **Agency representative:** Jeffrey Epp (City Manager) and/or designee  
**Employee organization:** ECEA Unit (ACE and Supervisory)
  - c. **Agency representative:** Jeffrey Epp (City Manager) and/or designee  
**Employee organization:** Police Officers' Association Non-Sworn Bargaining Unit

## ADJOURNMENT



# Council Meeting Agenda

**April 7, 2021  
5:00 P.M. Meeting**

**Escondido City Council**

## **CALL TO ORDER**

### **MOMENT OF REFLECTION:**

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

### **FLAG SALUTE**

**ROLL CALL:** Garcia, Inscoe, Martinez, Morasco, McNamara

**PROCLAMATIONS:** Adult Education Week, April 19 - 23  
Fair Housing Month

### **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:

- 351100 - 351270 dated March 17, 2021
- 351271 - 351478 dated March 24, 2021

Staff Recommendation: **Approval (Finance Department: Christina Holmes)**

**3. APPROVAL OF MINUTES: None Scheduled**

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

Request the City Council approve acknowledging the Fire Department's report of compliance with annual State mandated inspections.

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

RESOLUTION NO. 2021-29

**5. AUTHORIZATION OF ESRI ENTERPRISE AGREEMENT -**

Request the City Council approve authorizing the Mayor to execute, on behalf of the City of Escondido ("City"), a Small Municipal and County Enterprise Agreement ("SGEA") with Environmental Systems Research Institute, Inc. ("ESRI") for software and maintenance services.

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

RESOLUTION NO. 2021-39

**6. SUNRISE PROJECT TRAFFIC MITIGATION AGREEMENT -**

Request the City Council approve authorizing the Mayor to execute a Traffic Mitigation Funding Agreement with Lennar Homes, the Developer of a 192-unit multi-family residential project with the City of San Marcos, to fund mitigation measures within the City of Escondido.

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

RESOLUTION NO. 2021-31

**7. CONTRACT RENEWAL FOR THE PURCHASE OF CHEMICALS FOR THE WATER AND WASTEWATER TREATMENT PLANTS -**

Request the City Council approve authorizing the Director of Finance to exercise the last year renewal option of the purchase order contracts, to purchase chemicals used at the Water and Wastewater Treatment Plants and approve the unit price increases for FY 2021/22.

Staff Recommendation: **Approval (Finance Department: Christina Holmes)**

RESOLUTION NO. 2021-46

**8. AUTHORIZATION OF PARTICIPATION AGREEMENT, EASEMENT, AND PLOT PLAN APPROVAL -**

Request the City Council approve entering into an agreement with San Diego Gas and Electric ("SDG&E") for the installation and operation of electric vehicle charging stations ("EV Stations") and related underground and above-ground equipment on City-owned property within the Grape Day parking lot adjacent to Woodward Avenue. The request also includes granting SDG&E an easement for the installation and operation of the EV Stations.

Staff Recommendation: **Approval (Community Development Department: Mike Strong)**

RESOLUTION NO. 2021-52

## 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.)

## CURRENT BUSINESS

### 9. APPROVAL OF CITY MANAGER AGREEMENT AND AMENDMENT TO EXISTING CITY MANAGER RETIREE APPOINTMENT AGREEMENT –

Request the City Council approve an Employment Agreement between the City of Escondido and Sean McGlynn to perform the responsibilities of and serve as the City Manager; and approve First Amendment to Retiree Agreement with Jeffrey Epp.

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

a). RESOLUTION NO. 2021-49 b). RESOLUTION NO. 2021-52

### 10. APPROVAL OF A MEMORANDUM OF UNDERSTANDING ("MOU") BETWEEN THE CITY OF ESCONDIDO AND THE US SOCCER FOUNDATION RELATED TO THE INSTALLATION OF TWO MINI-PITCH/FUTSAL COURTS IN WASHINGTON PARK -

Request the City Council approve to a) authorize the Deputy City Manager/Director of Communications and Community Services or her designee to accept a grant from the US Soccer Foundation to fund two Mini-Pitch/Futsal Courts in Washington Park, b) execute all documents necessary for the management and completion of the grant scope; and c) authorize the necessary budget adjustment needed to establish a new project number for tracking and spending of grant funds.

Staff Recommendation: **Approval (Communications and Community Services Department: Danielle Lopez)**

RESOLUTION NO. 2021-54

### 11. DALEY RANCH MITIGATION BANK CREDITS -

Request the City Council discuss Mitigation Bank Credits per Deputy Mayor Morasco's requisition during the February 10, 2021 City Council meeting.

Staff Recommendation: **None (Utilities Department: Christopher McKinney; Community Development Department: Mike Strong)**

### 12. AMERICAN RESCUE PLAN ACT UPDATE -

Request the City Council receive and file and update on the American Rescue Plan Act of 2021 and the estimated funding allocation to the City of Escondido.

Staff Recommendation: **Receive and File (Finance Department: Christina Holmes)**

### 13. APPOINTMENT AND DIRECTION REGARDING A HOUSING SUBCOMMITTEE, AND RELATED DETAILS SUCH AS SCOPE, DURATION, AND STAFF SUPPORT -

Request the City Council appoint and provide direction regarding a housing subcommittee and related details such as scope, duration, and staff support.

Staff Recommendation: **Approval (Councilmember Joe Garcia)**

## FUTURE AGENDA

### 14. FUTURE AGENDA -

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

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

## COUNCIL MEMBERS SUBCOMMITTEE REPORTS AND OTHER 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
April 14	-	-	No Meeting (Cancelled)	-
April 21	Wednesday	4:00 & 5:00 p.m.	Regular Meeting	Council Chambers
April 28	-	-	No Meeting (Spring Break)	-
May 5	-	-	No Meeting (Spring Break)	-

## 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
- 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 Community Development Commission, Escondido Joint Powers Financing Authority, and the Mobilehome Rent Review Board.**

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



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

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





**AFFIDAVITS**

**OF**

**ITEM**

**POSTING**



# CITY COUNCIL STAFF REPORT

Consent Item No. 2

April 7, 2021

File No. 0400-40

SUBJECT: Approval of Warrants

DEPARTMENT: Finance Department

RECOMMENDATION:

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

351100 – 351270 dated March 17, 2021

351271 – 351478 dated March 24, 2021

FISCAL ANALYSIS:

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

March 11 – March 17, 2021, is \$ 1,524,667.53

March 18 – March 24, 2021, is \$ 1,569,296.24

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.



Consent Item No. 3

April 7, 2021

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**APPROVAL**

**OF**

**MINUTES**

## CITY COUNCIL STAFF REPORT

**Consent Item No. 4**

**April 7, 2021**

**File No. 0320-10**

SUBJECT: Annual State Mandated Inspection Compliance Report

DEPARTMENT: Fire Department

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2021-29, acknowledging receipt of the Annual State Mandated Inspection Compliance Report (“Report”). The Report indicates the Escondido Fire Department has conducted 100% of Educational Group E occupancies and 83.8% of Residential Group R occupancies as required by state law.

FISCAL ANALYSIS:

No fiscal impact.

BACKGROUND:

California law requires that certain structures be inspected on a regular basis. Public or private schools, which are used by more than six persons, (Educational Group E occupancies) and specified structures used for housing, such as hotels, motels, lodging houses, residential care facilities, and apartment houses (Residential Group R occupancies), must be inspected for compliance with building standards pursuant to sections 13146.2 and 13146.3 of the California Health and Safety Code.

On September 27, 2018, Governor Jerry Brown signed Senate Bill (SB) 1205, which requires fire departments to report annually to their administering authorities that these mandatory inspections have been conducted. SB 1205 was introduced in early 2018 in response to the Oakland Ghost Ship warehouse fire in 2016, which killed 36 people, and reported that many schools and apartment buildings in the Bay Area had not received their annual required fire inspections for many years.

According to the SB 1205’s author, State Senator Jerry Hill, the annual report required by SB 1205 serves to “remind” cities to inspect their buildings as required by law to prevent the loss of life and property. SB 1205 requires the administering authority to acknowledge receipt of the report in a resolution or a similar formal document. The intent is to bring to the attention of governing bodies, particularly during the budget process, if there is a lack of compliance with specified mandated annual inspections.

The Escondido Fire Department has a business inspection program that meets the Health and Safety Code requirements for the annual inspection of educational Group E and the residential Group R occupancies. Inspections are performed by our Fire Prevention Bureau inspectors and fire engine

company personnel. The current staffing level of the Fire Department is normally sufficient to meet the State mandated inspection requirements of SB 1205.

The goal of the Escondido Fire Department is to complete 100% of the State mandated inspections annually. However, 2020 presented challenges that limited our ability to achieve this goal. Due to the COVID-19 pandemic, State and County guidelines eliminated or severely restricted access to many buildings, particularly residential care facilities. Due to these restrictions, and in the interest of the health and safety of Fire Department employees and the public, in-person inspections of these facilities were halted for several months. Also, during this time period the Fire Department's Fire Prevention Bureau lost two of its five staff members to retirements requiring the recruitment and training of two new Fire Prevention Specialists. In addition, the workload from new development project applications and construction inspections for large projects that were already underway created a huge demand on staff capacity. While 100% of the Group E (Educational) inspections were completed, the circumstances detailed above resulted in the Fire Department inspecting 83.8% of the Group R (Residential) occupancies during the reporting period. However, the disruption from pandemic restrictions led to the development of creative alternative processes, including virtual inspections using video conferencing technology. With pandemic restrictions lifting and vacant positions now filled, the Fire Prevention staff have accelerated their inspection pace and prioritized occupancies that were overdue. Barring any further disruption from the pandemic, the expectation is that all mandatory inspections will be caught up in 2021.

The report of annual State mandated inspections pursuant to sections 13146.2 and 13146.3 of the California Health and Safety Code is contained in Exhibit 1 of Resolution No. 2021-29.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Rick Vogt*, Fire Chief  
04/01/21 12:11 p.m.

ATTACHMENTS:

1. Resolution No. 2021-29
2. Resolution No. 2021-29 – Exhibit "A"

RESOLUTION NO. 2021-29

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, ACKNOWLEDGING RECEIPT OF THE ANNUAL STATE MANDATED INSPECTION COMPLIANCE REPORT DEVELOPED BY THE ESCONDIDO FIRE DEPARTMENT REGARDING THE REQUIRED INSPECTIONS PURSUANT TO SECTIONS 13146.2 AND 13146.3 OF THE CALIFORNIA HEALTH AND SAFETY CODE

WHEREAS, California Health and Safety Code Section 13146.4 became effective on September 27, 2018; and

WHEREAS, California Health and Safety Code Sections 13146.2 and 13146.3 requires all fire departments, which provide fire protection services, conduct annual inspections in every building used as a public or private school, hotel, motel, lodging house, apartment house, and certain residential care facilities for compliance with building standards, as provided; and

WHEREAS, California Health & Safety Code Section 13146.4 requires all fire departments that provide fire protection services to report annually to its administering authority on its compliance with Sections 13146.2 and 13146.3; and

WHEREAS, the City Council intends this Resolution to fulfill the requirements of the California Health and Safety Code regarding acknowledgment of the Escondido Fire Department's compliance with California Health and Safety Code Sections 13146.2 and 13146.3.

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 expressly acknowledges the measure of compliance of the Escondido Fire Department with California Health and Safety Code Sections 13146.2 and 13146.3 in the area encompassed by the City of Escondido, as detailed in Exhibit "A", which is attached to this Resolution and incorporated by this reference.

## Escondido Fire Department Annual State Mandated Inspection Compliance Report

### A. EDUCATIONAL GROUP E OCCUPANCIES:

Educational Group E occupancies are generally those public and private schools, used by more than six persons at any one time for educational purposes through the 12th grade. Within the City of Escondido, there lie 67 Group E occupancies, buildings, structures and/or facilities.

From March 1, 2020, to February 28, 2021, the Escondido Fire Department completed the annual inspection of 67 Group E occupancies, buildings, structures and/or facilities. This is a compliance rate of 100 percent for this reporting period.

### B. RESIDENTIAL GROUP R OCCUPANCIES:

Residential Group R occupancies, for the purposes of this Resolution, are generally those occupancies containing sleeping units, and include hotels, motels, apartments (three units or more), etc., as well as other residential occupancies (including a number of residential care facilities). These residential care facilities have a number of different sub-classifications, and they may contain residents or clients that have a range of needs, including those related to custodial care, mobility impairments, cognitive disabilities, etc. The residents may also be non-ambulatory or bedridden. Within the City of Escondido, there lie 483 Group R (and their associated sub-categories) occupancies of this nature.

From March 1, 2020, to February 28, 2021, the Escondido Fire Department completed the annual inspection of 405 Group R occupancies, buildings, structures and/or facilities. This is a compliance rate of 83.8 percent for this reporting period.



## CITY COUNCIL STAFF REPORT

**Consent Item No. 5**

**April 7, 2021**

**File No. 0600-10, A-3355**

SUBJECT: Authorization of ESRI Enterprise Agreement

DEPARTMENT: Information Systems

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2021-39 authorizing the Mayor to execute, on behalf of the City of Escondido (“City”), a Small Municipal and County Enterprise Agreement (“SGEA”) with Environmental Systems Research Institute, Inc. (“ESRI”) for software and maintenance services.

FISCAL ANALYSIS:

The SGEA is a four-year contract that will become effective upon execution and contingent on the approval of each fiscal year’s budget approval. The total cost of the SGEA is \$282,000. Annual cost for the first year of the SEGA is \$37,000. Annual cost for the second year of the SEGA is \$59,000. Annual cost for the third year of the SEGA is \$79,000. Annual cost for the fourth year of the SEGA is \$109,000. The annual cost for the first year of the SGEA is equivalent to the City’s current annual geographic information system (“GIS”) software subscription costs. Funding for the first year of the SGEA will come from current budget funds. Thereafter, the increased annual costs for the SGEA will be provided via the General Fund with an allocation to Utilities of 30%.

BACKGROUND:

GIS has been in use within the City for almost a quarter of a century. Initially, GIS software was used primarily as a mapping tool and has produced almost every map within the City since then. As GIS technology has evolved, GIS software has become the cornerstone of various City systems and applications.

In early 2015, Cityworks became an invaluable tool to Utilities. Consequently, significant resources have since been devoted to improving the Utilities data and integration of GIS with Cityworks. Volunteers, interns, and paid part-time staff worked on a multiple year project to gather and improve the Utilities network data. This led to the employment of a full-time GIS staff member focused solely on maintaining and improving the Utilities data.

As the success of Cityworks and GIS for Utilities grew, Public Works adopted Cityworks more consistently for their work-orders and inspections. Building on the momentum, GIS built web-based dashboards that gave managers an instant look at the performance of their teams and the state of the City. The need to expand the GIS department’s web knowledge and ability was recognized and a new GIS staff member was employed in 2019 for this purpose. At the same time, our GIS vendor, ESRI, released a community engagement product, commonly referred to as the “Hub.” The Hub provided the ability to convey information to and engage citizens in the discussion using GIS data and related applications. The Hub was used to build the City’s Volunteer site, the Community

April 7, 2021

Authorization of ESRI Enterprise Agreement

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Engagement site, and the new Homelessness site. The City has received numerous awards based on these efforts.

Building on this success, the Community Development Department explored options for replacement to their Permit and Licensing software. Cityworks had a separate, yet integrated, component specifically for this. After seeing the demonstrated success and value of Cityworks' integrated component, it was implemented for Business Licensing and Code Enforcement in 2019, and Community Development in 2020. It is anticipated that additional City departments and functions will adopt this software application in the coming years.

Additionally, various City departments and staff heavily rely on a variety of web applications built by GIS. For example: the EPIC parcel viewer application for rapid querying of parcel information, the Utility Viewer application for rapid querying of utilities and engineering data, and the Fire Viewer for rapid querying of locations for numerous purposes including reviewing fires due to homeless encampments and for reviewing 911 call location and patterns.

Currently, the City's Public Safety Dispatch vendor is transitioning to an ESRI-based map for use with dispatch software. GIS already supports the City's Public Dispatch system. However, this transition will be a leap in technology as it allows significant improvements in the maintenance of the address data that is crucial in responding to emergency calls. Thus, the transition is strongly supported by Information Systems as it makes use of the City's current software and will enable the City to be compliant with new NG911 standards.

The City's current GIS single license software subscription has remained unchanged since before 2015. While this single license approach has served the City well, it has become obsolete in the face of modern technology that increasingly relies on GIS and location intelligence. Upgrading from the City's current single license software subscription to SGEA with ESRI will enable the City to take greater advantage of software and applications based on GIS and location intelligence. Licenses under SGEA will be uncapped for key components and additional capped licenses that will provide additional benefits are included.

ESRI is recognized as the leader, worldwide, in GIS. ESRI has no true competition and no single vendor can provide the same breadth of integrated products. Cityworks is a close partner with ESRI and the two vendors work closely to ensure secure and robust integration of various applications. Staff therefore recommends approval of the SGEA with ESRI, as provided in Resolution No. 2021-39.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Rob Van De Hey*, Deputy City Manager/Director of Information Systems

04/01/21 9:04 a.m.

ATTACHMENTS:

1. Resolution No. 2021-39
2. Resolution No. 2021-39 Exhibit "A" – SGEA with ESRI

RESOLUTION NO. 2021-39

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, A SMALL MUNICIPAL AND COUNTY ENTERPRISE AGREEMENT WITH ENVIRONMENTAL SYSTEMS RESEARCH, INC.

WHEREAS, the City currently uses Environmental Systems Research Institute, Inc. ("ESRI") for geographic information system ("GIS") software licensing and mapping; and

WHEREAS, the City desires to enter into a four-year Small Municipal and County Enterprise Agreement ("SGEA") with ESRI for increased GIS software licensing and mapping capabilities; and

WHEREAS, the City Council desires at this time and deems it to be in the best public interest to approve the four-year SGEA with ESRI.

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

1. That the above recitations are true.
2. That the Mayor and City Council accepts the recommendation of the Information Systems Department regarding approval of the four-year SGEA with ESRI.
3. That the City Council authorizes the Mayor to execute, on behalf of the City, the four-year SGEA with ESRI in substantially the same format as Exhibit "A"

which is attached hereto and incorporated by this reference, subject to final approval as to form by the City Attorney.

January 27, 2021

Rob Van De Hey  
City of Escondido  
201 N Broadway  
Escondido, CA 92025-2709

Dear Rob,

The Esri Small Municipal and County Government Enterprise Agreement (SGEA) is a four-year agreement that will grant your organization access to Esri term license software. The EA will be effective on the date executed and will require a firm, four year commitment.

Based on Esri's work with several organizations similar to yours, we know there is significant potential to apply Geographic Information System (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an Enterprise Agreement (EA).

An EA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the EA.
- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the EA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.
- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.
- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the EA who may directly contact Esri for Tier 2 technical support.
- The organization will provide an annual report of installed Esri software to Esri.
- Esri software and updates that the organization is licensed to use will be automatically available for downloading.
- The fee and benefits offered in this EA proposal are contingent upon your acceptance of Esri's Small Municipal and County Government EA terms and conditions.

- Licenses are valid for the term of the EA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have.

To expedite your acceptance of this EA offer:

1. Sign and return the EA contract with a Purchase Order or issue a Purchase Order that references this EA Quotation and includes the following statement on the face of the Purchase Order:

***"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY GOVERNMENT EA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY."***

Have it signed by an authorized representative of the organization.

2. On the first page of the EA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title (if applicable), address, phone number, and e-mail address.
3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.
4. Send the purchase order and agreement to the address, email or fax noted below:

Esri  
Attn: Customer Service SG-EA  
380 New York Street  
Redlands, CA 92373-8100

e-mail: [service@esri.com](mailto:service@esri.com)  
fax documents to: 909-307-3083

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best Regards,

Natalie Carter



## Quotation # Q-410312

Date: March 23, 2020

Customer # 12745 Contract #

City of Escondido  
 Information System Dept  
 201 N Broadway  
 Escondido, CA 92025-2709

ATTENTION: Rob Van De Hey  
 PHONE: (760) 839-4035  
 EMAIL: rvandehey@escondido.org

Environmental Systems Research Institute, Inc.  
 380 New York St  
 Redlands, CA 92373-8100  
 Phone: (909) 793-2853 Fax: (909) 307-3049  
 DUNS Number: 06-313-4175 CAGE Code: OAMS3

*To expedite your order, please attach a copy of this quotation to your purchase order.*  
 Quote is valid from: 3/11/2020 To: 4/26/2021

Material	Qty	Term	Unit Price	Total
168181	1	Year 1	\$37,000.00	\$37,000.00
Populations of 125,001-150,000 Small Government Term Enterprise License Agreement				
168181	1	Year 2	\$55,000.00	\$55,000.00
Populations of 125,001-150,000 Small Government Term Enterprise License Agreement				
168181	1	Year 3	\$80,000.00	\$80,000.00
Populations of 125,001-150,000 Small Government Term Enterprise License Agreement				
168181	1	Year 4	\$110,000.00	\$110,000.00
Populations of 125,001-150,000 Small Government Term Enterprise License Agreement				

Subtotal:	\$282,000.00
Sales Tax:	\$0.00
Estimated Shipping and Handling (2 Day Delivery):	\$0.00
Contract Price Adjust:	\$0.00
<b>Total:</b>	<b>\$282,000.00</b>

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

<b>For questions contact:</b> Natalie Carter	<b>Email:</b> ncarter@esri.com	<b>Phone:</b> (909) 793-2853 x7419
<p>The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <a href="https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf">https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf</a>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <a href="https://go.esri.com/MAPS">https://go.esri.com/MAPS</a> apply to your purchase of that item. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <a href="https://www.esri.com/en-us/legal/terms/state-supplemental">https://www.esri.com/en-us/legal/terms/state-supplemental</a> apply to some state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin.</p>		

CARTERN

**This offer is limited to the terms and conditions incorporated and attached herein.**

**Esri Use Only:**

Cust. Name \_\_\_\_\_

Cust. # \_\_\_\_\_

PO # \_\_\_\_\_

Esri Agreement # \_\_\_\_\_

**esri**THE  
SCIENCE  
OF  
WHERE™

## SMALL ENTERPRISE AGREEMENT COUNTY AND MUNICIPALITY GOVERNMENT (E214-5)

This Agreement is by and between the organization identified in the Quotation ("**Customer**") and **Environmental Systems Research Institute, Inc. ("Esri")**.

This Agreement sets forth the terms for Customer's use of Products and incorporates by reference (i) the Quotation and (ii) the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the Master Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Customer is located without reference to conflict of laws principles, and the United States of America federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

### Table A List of Products

**Uncapped Quantities****Desktop Software and Extensions (Single Use)**

ArcGIS Desktop Advanced  
 ArcGIS Desktop Standard  
 ArcGIS Desktop Basic  
 ArcGIS Desktop Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Publisher, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Data Reviewer

**Enterprise Software and Extensions**

ArcGIS Enterprise and Workgroup (Advanced and Standard)  
 ArcGIS Enterprise Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager

ArcGIS Monitor

**Enterprise Additional Capability Servers**

ArcGIS Image Server

**Developer Tools**

ArcGIS Engine  
 ArcGIS Engine Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Engine Geodatabase Update, ArcGIS Network Analyst, ArcGIS Schematics  
 ArcGIS Runtime (Standard)  
 ArcGIS Runtime Analysis Extension

**Limited Quantities**

One (1) Professional subscription to ArcGIS Developer  
 Two (2) Esri CityEngine Single Use Licenses  
 1,000 ArcGIS Online Viewers  
 1,000 ArcGIS Online Creators  
 110,000 ArcGIS Online Service Credits  
 1,000 ArcGIS Enterprise Creators  
 10 Insights in ArcGIS Enterprise  
 10 Insights in ArcGIS Online  
 100 Tracker for ArcGIS Enterprise  
 100 Tracker for ArcGIS Online  
 6 ArcGIS Parcel Fabric User Type Extensions (Enterprise)  
 6 ArcGIS Utility Network User Type Extensions (Enterprise)

**OTHER BENEFITS**

Number of Esri User Conference registrations provided annually	<b>4</b>
Number of Tier 1 Help Desk individuals authorized to call Esri	<b>4</b>
Maximum number of sets of backup media, if requested*	<b>2</b>
Self-Paced e-Learning	<b>Uncapped</b>
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement	

\* Additional sets of backup media may be purchased for a fee



Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("**Ordering Document**"). **ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("**Effective Date**").

**Term of Agreement:** Four (4) Years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

\_\_\_\_\_  
(Customer)

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

### CUSTOMER CONTACT INFORMATION

Contact: \_\_\_\_\_

Telephone: \_\_\_\_\_

Address: \_\_\_\_\_

Fax: \_\_\_\_\_

City, State, Postal Code: \_\_\_\_\_

E-mail: \_\_\_\_\_

Country: \_\_\_\_\_

Quotation Number (if applicable): \_\_\_\_\_

## 1.0—ADDITIONAL DEFINITIONS

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

**"Case"** means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

**"Deploy", "Deployed" and "Deployment"** mean to redistribute and install the Products and related Authorization Codes within Customer's organization(s).

**"Fee"** means the fee set forth in the Quotation.

**"Maintenance"** means Tier 2 Support, Product updates, and Product patches provided to Customer during the Term of Agreement.

**"Master Agreement"** means the applicable master agreement for Esri Products incorporated by this reference that is (i) found at <https://www.esri.com/en-us/legal/terms/full-master-agreement> and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed Esri master agreement or license agreement that supersedes such electronically acknowledged master agreement.

**"Product(s)"** means the products identified in Table A—List of Products and any updates to the list Esri provides in writing.

**"Quotation"** means the offer letter and quotation provided separately to Customer.

**"Technical Support"** means the technical assistance for attempting resolution of a reported Case through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

**"Tier 1 Help Desk"** means Customer's point of contact(s) to provide all Tier 1 Support within Customer's organization(s).

**"Tier 1 Support"** means the Technical Support provided by the Tier 1 Help Desk.

**"Tier 2 Support"** means the Esri Technical Support provided to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

## 2.0—ADDITIONAL GRANT OF LICENSE

**2.1 Grant of License.** Subject to the terms and conditions of this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the Products listed in Table A—List of Products for the Term of Agreement (i) for the applicable Fee and (ii) in accordance with the Master Agreement.

**2.2 Consultant Access.** Esri grants Customer the right to permit Customer's consultants or contractors to use the Products exclusively for Customer's benefit. Customer will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Customer. Access to or use of Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations, except for the purpose of hosting the Software or Data on Contractor servers for the benefit of Customer.

## 3.0—TERM, TERMINATION, AND EXPIRATION

**3.1 Term.** This Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Term of Agreement, unless this Agreement is terminated earlier as provided herein. Customer is only authorized to use Products during the Term of Agreement. For an Agreement with a limited term, Esri does not grant Customer an indefinite or a perpetual license to Products.

**3.2 No Use upon Agreement Expiration or Termination.** All Product licenses, all Maintenance, and Esri User Conference registrations terminate upon expiration or termination of this Agreement.

**3.3 Termination for a Material Breach.** Either party may terminate this Agreement for a material breach by the other party. The breaching party will have thirty (30) days from the date of written notice to cure any material breach.

**3.4 Termination for Lack of Funds.** For an Agreement with government or government-owned entities, either party may terminate this Agreement before any subsequent year if

Customer is unable to secure funding through the legislative or governing body's approval process.

**3.5 Follow-on Term.** If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.

## 4.0—PRODUCT UPDATES

**4.1 Future Updates.** Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Customer via written notice for incorporation into the Products schedule at no additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

**4.2 Product Life Cycle.** During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at <https://support.esri.com/en/other-resources/product-life-cycle>. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Customer will not be able to Deploy retired Products.

## 5.0—MAINTENANCE

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at <https://www.esri.com/en-us/legal/terms/maintenance>). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

### a. Tier 1 Support

1. Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.
2. The Tier 1 Help Desk will be fully trained in the Products.
3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
4. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case.
5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer's organization.
6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

### b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.
2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.
4. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.

5. When the Case is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

## 6.0—ENDORSEMENT AND PUBLICITY

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Customer's endorsement of Products. Either party may publicize the existence of this Agreement.

## 7.0—ADMINISTRATIVE REQUIREMENTS

**7.1 OEM Licenses.** Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Customer will not seek any discount from the OEM partner or Esri based on the availability of Products under this Agreement. Customer will not decouple Esri products or services from the OEM partners' application or service.

**7.2 Annual Report of Deployments.** At each anniversary date and ninety (90) calendar days prior to the expiration of this Agreement, Customer will provide Esri with a written report detailing all Deployments. Upon request, Customer will provide records sufficient to verify the accuracy of the annual report.

## 8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

### 8.1 Orders, Delivery, and Deployment

- a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download, operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee up to thirty (30) calendar days before the annual anniversary date for each year.
- b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri reserves the right to suspend Customer's access to and use of Products if

Customer fails to pay any undisputed amount owed on or before its due date. Esri may charge Customer interest at a monthly rate equal to the lesser of one percent (1.0%) per month or the maximum rate permitted by applicable law on any overdue fees plus all expenses of collection for any overdue balance that remains unpaid ten (10) days after Esri has notified Customer of the past-due balance.

- c. Esri's federal ID number is 95-2775-732.
  - d. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.
- 8.2 Order Requirements.** Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.
- a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.
  - b. The following information will be included in each Ordering Document:
    - (1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses
    - (2) Order number
    - (3) Applicable annual payment due

## 9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "**Ownership Change**"). There will be

no decrease in Fee as a result of any Ownership Change.

- 9.1** If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.
- 9.2** If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will transfer the Products to Customer or uninstall, remove, and destroy all copies of the Products.
- 9.3** This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.



# Master Agreement

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Revised January 6, 2021  
IMPORTANT—READ CAREFULLY

Unless superseded by a signed license agreement between you and Esri, Esri is willing to provide Esri Offerings and Services to you only if you accept all terms and conditions contained in this Agreement as the sole and final agreement of the parties regarding your acquisition of these Esri Offerings and Services. Please read the terms and conditions carefully. You may not use the Esri Offerings until you have agreed to the terms and conditions of the Agreement. If you do not agree to the terms and conditions as stated, click "I do not accept the Master Agreement" below; you may then request a refund of applicable fees paid.

This Master Agreement ("Agreement") is between you ("Customer") and Environmental Systems Research Institute, Inc. ("Esri"), a California corporation with a place of business at 380 New York Street, Redlands, California 92373-8100 USA.

Attachment A contains definitions of capitalized terms used throughout this Agreement. Each section of this Agreement may include additional definitions that are used exclusively within that section.

## 1.0 GENERAL GRANT OF RIGHTS AND RESTRICTIONS

**1.1 Grant of Rights.** In consideration of Customer's payment of all applicable fees and in accordance with this Agreement, Esri

- a. Provides Services as set forth in this Agreement;
- b. Grants to Customer a nonexclusive, nontransferable right and license or subscription to access and use Esri Offerings as set forth in the Specifications and applicable Ordering Documents; and
- c. Authorizes Customer to copy and make derivative works of the Documentation for Customer's own internal use in conjunction with Customer's authorized use of Esri Offerings. Customer will include the following copyright attribution notice acknowledging the proprietary rights of Esri and its licensors in any derivative work:

"Portions of this document include intellectual property of Esri and its licensors and are used under license. Copyright © [*Customer will insert the actual copyright date(s) from the source materials.*] Esri and its licensors. All rights reserved."

The grants of rights in this section (i) continue for the duration of the subscription or applicable Term or perpetually if no Term is applicable or identified in the Ordering Documents and (ii) are subject to additional rights and restrictions in this Agreement including Attachment B.

**1.2 Consultant or Contractor Access.** Customer may authorize its consultants or contractors to (i) host Esri Offerings for Customer's benefit and (ii) use Esri Offerings exclusively for Customer's benefit. Customer will be solely responsible for its consultants' and contractors' compliance with this Agreement and will ensure that each consultant or contractor discontinues use of Esri Offerings upon completion of work for Customer. Access to or use of Esri Offerings by consultants or contractors that is not exclusively for Customer's benefit is prohibited.

**1.3 Reservation of Rights.** All Esri Offerings are the copyrighted works of Esri or its licensors; all rights not specifically granted in this Agreement are reserved.

**1.4 Customer Content.** Esri does not acquire any rights in Customer Content under this Agreement other than as needed to provide Esri Offerings and Services to Customer.

## 2.0 SOFTWARE AND ONLINE SERVICES

### 2.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Anonymous Users"** means all who have public access (i.e., without having to provide a Named User Credential) to any part of Customer Content or Customer's Value-Added Applications.
- b. **"App Login Credential(s)"** means a system-generated application login and associated password, provided when registering a Value-Added Application with ArcGIS Online, which when embedded in a Value-Added Application allows the Value-Added Application to access and use Online Services.
- c. **"Commercial App Deployment License"** means a license to distribute Value-Added Applications to third parties for a fee.
- d. **"Concurrent Use License"** means a license to install and use Software on computer(s) on a network, provided that the number of simultaneous users may not exceed the number of licenses acquired. A Concurrent Use License includes the right to run passive failover instances of Concurrent Use License management software in a separate operating system environment for temporary failover support.
- e. **"Deployment License"** means a license to incorporate ArcGIS Runtime components in Value-Added Applications and distribute Value-Added Applications to Customer's end users.
- f. **"Deployment Server License"** means a license to use Software under a Server License for all uses permitted in this Agreement and as described in the Documentation.
- g. **"Development Server License"** means a license to use Software under a Server License only to build and test Value-Added Applications as described in the Documentation.
- h. **"Development Use"** means the right to install and use Products to build and test Value-Added Applications as described in the Documentation.
- i. **"Dual Use License"** means the right to install Software on a desktop computer and use it simultaneously with either a personal digital assistant (PDA) or handheld mobile computer as long as the Software is only used by a single individual at any time.
- j. **"Failover License"** means a license to install Software on redundant systems for failover operations, but the redundantly installed Software may be operational only during the period the primary site is nonoperational. Except for system maintenance and updating of databases, the redundant Software installation(s) will remain dormant while the primary site (or any other redundant site) is operational.
- k. **"Named User(s)"** is Customer's employee, agent, consultant, or contractor to whom Customer has assigned a unique, secure login credential (identity) enabling access to a Product that requires such identity in order to access identity-managed capabilities within a Product for Customer's exclusive benefit. For educational use, Named Users may include registered students.
- l. **"Named User Credential(s)"** means an individual person's login and associated password enabling that person to access and use Products.
- m. **"Named User License"** means the right for a single Named User to use a specific Esri Offering.
- n. **"Online Services Subscription"** means a limited-term subscription conveying the right for one or more Named Users to access and use Online Services.
- o. **"Redistribution License"** means a license to reproduce and distribute Software provided that
  1. Customer reproduces and distributes the Software in its entirety;
  2. A license agreement that protects the Software to the same extent as this Agreement accompanies each copy of the Software, and the recipient agrees to the terms and conditions of the license agreement;
  3. Customer reproduces all copyright and trademark attributions and notices; and
  4. Customer does not charge a fee to others for the use of the Software.
- p. **"Server License"** means a license to install and use Software on a server computer. Server Licenses may be subject to a limited number of server cores or distributed deployment on multiple servers as described in the Ordering Documents or Documentation. If the Software description includes failover use rights, each Server License includes a Failover License.
- q. **"Service Credit(s)"** means a unit of exchange for consumption of services that can be used with an Online Services Subscription.
- r. **"Sharing Tools"** means publishing capabilities included with Customer's authorized use of Online Services or ArcGIS Enterprise that allow Customer to make Customer Content and Value-Added Applications available to third parties or Anonymous Users.

- s. **"Single Use License"** means a license for a single authorized end user to install and use Software on a single computer. The single authorized end user may also install a second copy for the end user's exclusive use on a second computer as long as only 1 copy of Software is in use at any time. No other end user may use Software under the same license at the same time for any other purpose.
- t. **"Staging Server License"** means a license to use Software under a Server License to build and test Value-Added Applications and map caches; conduct user acceptance, performance, and load testing of other third-party software; stage new commercial data updates; and conduct training activities as described in the Documentation. Customer may use Value-Added Applications and map caches with Development and Deployment Server Licenses.

**2.2 License and Subscription Types.** Esri provides Software Products under one or more of the license or subscription types identified in the definitions above. The Documentation and Ordering Documents identify which license or subscription type(s) applies to the ordered Products.

### 2.3 Software Terms of Use.

- a. Customer may
  - 1. Install, access, or store Software and Data on electronic storage device(s);
  - 2. Make archival copies and routine computer backups;
  - 3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed Customer's licensed quantity; thereafter, Customer will not use more Software in the aggregate than Customer's total licensed quantity. This concurrent use right does not apply to Software licensed for Development Use;
  - 4. Move Software in the licensed configuration to a replacement computer;
  - 5. Distribute Software and any associated Authorization Codes required for use of a Deployment License to third parties; and
  - 6. Governmental or not-for-profit organizations that operate a website or offer Internet services may use server Software for revenue-generating purposes on a cost-recovery basis and not for profit.
- b. Customer may customize Software using any macro or scripting language, APIs, or source or object code libraries but only to the extent that such customization is described in the Documentation.
- c. Customer may use all fonts provided with Software for any authorized use of the Software. Customer may also use Esri fonts separately to print any output created by the Software. Any use restrictions for third-party fonts included with the Software are set forth in the font file itself.
- d. Esri publishes Product-specific Software terms of use at <https://www.esri.com/legal/scope-of-use>.

### 2.4 Online Services Terms of Use.

- a. **Online Services Descriptions.** Esri publishes Online Services Subscription-specific terms of use at <https://www.esri.com/legal/scope-of-use>. Use of Online Services is also subject to the Cloud Services terms found in [Attachment B](#).
- b. **Modifications of Online Services.** Esri may change Online Services and associated APIs at any time, subject to 30 days' notice of material changes and 90 days' notice for deprecations. If any modification, discontinuation, or deprecation of Online Services causes a material, adverse impact to Customer's operations, Esri may, at its discretion, attempt to repair, correct, or provide a workaround for Online Services. If a viable solution is not commercially reasonable, Customer may cancel its subscription to Online Services, and Esri will issue a prorated refund.
- c. **Sharing Customer Content.** Sharing Customer Content using Sharing Tools enables third parties to use, store, cache, copy, reproduce, (re)distribute, and (re)transmit Customer Content through Online Services. Esri is not responsible for any loss, deletion, modification, or disclosure of Customer Content resulting from use or misuse of Sharing Tools. Customer's use of Sharing Tools is at Customer's sole risk.
- d. **Limits on Use of Online Services, Service Credits.** Each Online Services Subscription includes Service Credits as described in the applicable Ordering Document. Each Service Credit entitles Customer to consume a set amount of Online Services, the amount varying depending on the Online Services that Customer is



using. As Customer consumes Online Services, Service Credits are automatically debited from Customer's subscription, up to the maximum number of Service Credits available. Customer may purchase additional Service Credits as needed. Esri will notify Customer's subscription account administrator when Customer's Service Credit consumption reaches approximately 75 percent of the Service Credits allocated to Customer through Customer's subscription. Esri reserves the right to suspend Customer's access to Online Services that consume Service Credits when Customer has consumed all its Service Credits. Esri will promptly restore Customer's access to its Online Services once Customer has purchased additional Service Credits.

**2.5 Named User Licenses.** Except as expressly set forth in this Agreement, the following terms apply to Software and Online Services for which Customer acquires Named User Licenses.

**a. Named Users.**

1. Named User login credentials are for designated users only and may not be shared with other individuals.
2. Customer may reassign a Named User License to another user if the former user no longer requires access to the Software or Online Services.
3. Customer may not add third parties as Named Users, other than third parties included within the definition of Named Users.

**b. Value-Added Applications.**

1. Customer is responsible for the development, operation, and technical support of Customer Content and Value-Added Applications.
2. Customer may not embed a Named User Credential into Value-Added Applications. Value-Added Applications that enable access to Customer Content that is not publicly shared through the use of Sharing Tools must require individual users to log in to the application(s) with their unique Named User login credentials.
3. Customer may embed an App Login Credential into Value-Added Applications that provide access by Anonymous Users to services or Content, that has been published for shared access by Anonymous Users through the use of Sharing Tools.
4. Customer may not embed an App Login Credential into Value-Added Applications that enables access to Customer Content that is not publicly shared through the use of Sharing Tools. Value-Added Applications that enable access to Customer Content that is not publicly shared through the use of Sharing Tools must require individual users to log in to the application(s) with their unique Named User login credentials.
5. Customer may not provide a third party, other than third parties included within the definition of Named Users, with access to Software or Online Services, other than through Customer's Value-Added Application(s).
6. Customer may transfer Value-Added Applications to any third party for use in conjunction with the third party's own Software license or Online Services Subscription.

**c. Anonymous Users.** Anonymous Users may only access Software or Online Services through Value-Added Applications that provide access to services or Content, that has been published for shared access through the use of Sharing Tools.

**2.6 Limited-Use Programs.**

- a. Trial, Evaluation, and Beta Programs.** Products acquired under a trial, evaluation, or Beta program are licensed for evaluation and testing purposes only and not for commercial use. Any such use is at Customer's own risk, and the Products do not qualify for Maintenance. If Customer does not convert to a purchased license or subscription prior to the expiration of the trial, evaluation, or Beta license, Customer may lose any Customer Content and customizations made during the license term. If Customer does not wish to purchase a license or subscription, Customer should export such Customer Content before the license expires.
- b. Educational Programs.** Customer agrees to use Products provided under an educational program solely for educational purposes during the educational use Term. Customer shall not use Products for any Administrative Use unless Customer has acquired an Administrative Use license. "Administrative Use" means administrative activities that are not directly related to instruction or education, such as asset mapping,

facilities management, demographic analysis, routing, campus safety, and accessibility analysis. Customer shall not use Products for revenue-generating or for-profit purposes.

- c. **Grant Programs.** Customer may use Products provided under a grant program for noncommercial purposes only. Except for cost recovery of using and operating the Products, Customer shall not use Products for revenue-generating or for-profit purposes.
- d. **Other Esri Limited-Use Programs.** If Customer acquires Products under any limited-use program not listed above, Customer's use of the Products may be subject to the terms set forth in the applicable launching page or enrollment form or as described on Esri's website in addition to the nonconflicting terms of this Agreement.

### 3.0 DATA

**3.1 Definitions.** The following definitions supplement the definitions provided in Attachment A:

- a. **"Business Listing Data"** means any dataset that includes a list of businesses and may include other associated business attributes.
- b. **"Esri Content Package(s)"** means a digital file containing ArcGIS Online basemap Data extracted from the ArcGIS Online basemap services.
- c. **"Street Data"** means Data that includes or depicts information about roads, streets, and related features.

### 3.2 Permitted Uses.

- a. Unless otherwise authorized in writing, Customer may only use Data with the Products for which Esri has provided the Data.
- b. Customer may include representations of Data in hard-copy or static, electronic format (e.g., PDF, GIF, JPEG, HTML); in ArcGIS Web Maps; or in Esri Story Maps apps for the purposes of visualizing Data (including basic interactions such as panning, zooming, and identifying map features with simple pop-ups) for use in presentation packages, marketing studies, or other reports or documents containing map images or data summaries derived from the use of Esri Products to third parties subject to restrictions set forth in this Agreement, provided that Customer affixes an attribution statement to the Data representations acknowledging Esri or its applicable licensor(s) as the source of the portion(s) of the Data used for the Data representation.
- c. Customer may take ArcGIS Online basemaps offline through Esri Content Packages and subsequently deliver (transfer) them to any device for use with licensed ArcGIS Runtime applications and ArcGIS Desktop. Customer may not otherwise scrape, download, or store Data.
- d. Customer may make any internal use of geocoded results that are obtained and stored in compliance with this Agreement. Customer may not redistribute geocoded results except to (i) use and/or display on a map in connection with Customer's public, non-revenue generating website(s), (ii) permit access to third-parties for the purposes of Customer's business, or (iii) deliver to third parties, on a noncommercial/non-revenue generating basis, static results, static output or static base map renderings.

### 3.3 Use Restrictions.

- a. Customer may not act directly or authorize its customers to cobrand Data, use Data in any unauthorized service or product, or offer Data through or on behalf of any third party.
- b. Customer may not use or allow third parties to use Data, for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party.
- c. *Business Listing Data.* Unless authorized in writing, Customer may not use Business Listing Data for any direct marketing purposes, resale publication, or distribution to any third party as part of any mailing list, directory, classified advertising, or other compilation of information.
- d. *Street Data.* Customer may use Street Data for mapping, geocoding, routing, and transportation network analysis purposes. Unless otherwise authorized in writing, Customer may not use Street Data for
  1. Real-time navigational guidance, including alerting a user about upcoming maneuvers, such as warning of an upcoming turn or calculating an alternate route if a turn is missed;
  2. Synchronized multivehicle routing; or

3. Synchronized route optimization.

- e. *Business Analyst Data*. Customer may cache Data provided with ArcGIS Business Analyst Mobile App on a mobile device for use in conjunction with its use of ArcGIS Business Analyst Server. Customer may not otherwise cache or download such Data.
- f. *Partial Dataset Licenses*: If Customer orders a subset of a dataset (e.g., a country, region, state, or local portion of a global database), Customer may use only the licensed subset, not any other portion of the full dataset.
- g. *Michael Bauer Research International Boundaries Data ("MBR Data")*. Customer's right to use data downloaded to Customer's premises (e.g., MBR Data stored in ArcGIS Enterprise, ArcGIS Desktop) terminates 2 years after download.

**3.4 Supplemental Terms and Conditions for Data.** Certain Data licensors require Esri to flow down additional attribution requirements and terms of use to Customer. These terms supplement and amend the terms of this Agreement and are available at [www.esri.com/legal/third-party-data](http://www.esri.com/legal/third-party-data).

#### 4.0 MAINTENANCE

**4.1 US Customers.** Esri will provide Maintenance for Software and Online Services in accordance with the Esri Maintenance and Support Program and this Agreement if Customer is in the United States.

**4.2 Customers outside the United States.** Customer may obtain maintenance services from their local Esri distributor under the distributor's own standard support policy.

#### 5.0 SERVICES

**5.1 US Customers.** Esri may provide Esri Managed Cloud Services, Training, or Professional Services including Advantage Program to US Customers under an applicable Ordering Document. Unless Customer has signed an agreement with Esri establishing terms and conditions for such Services, Esri's performance is subject to the Services terms and conditions incorporated by reference and found at <https://www.esri.com/content/dam/esrisites/en-us/media/legal/services/ma-services.pdf>. A printed copy of these terms and conditions will be provided upon request.

**5.2 Customers outside the United States.** Customers outside of the United States may obtain Services from their local authorized distributor.

## ATTACHMENT A GLOSSARY OF TERMS

The following glossary of terms applies to all Esri Offerings and Services that Esri may provide to its customers. Certain Esri Offerings or Services may not be within the scope of this Agreement. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this Agreement.

**"Affiliate"** means any entity that directly or indirectly (i) Controls; (ii) is Controlled by; or (iii) is under common Control with a party, where "Control" means having more than 50 percent of the voting stock or other voting interest in the Controlled entity.

**"API"** means application programming interface.

**"ArcGIS Website"** means [www.arcgis.com](http://www.arcgis.com) and any related or successor websites.

**"Authorization Code(s)"** means any key, authorization number, enablement code, login credential, activation code, token, user name and password, or other mechanism required for use of Esri Offerings.

**"Beta"** means any alpha, beta, or other prerelease version of a Product.

**"Cloud Services"** means Online Services and Esri Managed Cloud Services.

**"Content"** means data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, graphics components, icons, software, and other resources used in connection with Esri Offerings and Services.

**"Control"** means having more than 50 percent of the voting stock or other voting interest in the Controlled entity.

**"Customer Content"** means any Content that Customer provides, uses, or develops in connection with Customer's use of Esri Offerings or Services, including Value-Added Applications. Customer Content excludes any feedback, suggestions, or requests for improvements that Customer provides to Esri.

**"Data"** means any commercially available digital dataset(s) including, but not limited to, geographic vector data, raster data reports, or associated tabular attributes that Esri bundles with other Esri Offerings or delivers independently.

**"Deliverables"** means anything that Esri delivers to Customer as a result of performance of Professional Services.

**"Documentation"** means all user reference documentation that Esri provides with a Deliverable or an Esri Offering.

**"Esri Managed Cloud Services"** means a Customer-specific cloud infrastructure, Software, Data, and network platform that Esri hosts, manages, and makes available to Customer or Customer's end users via the Internet.

**"Esri Offering(s)"** means any Product or Documentation. If Esri provides Training or Professional Services directly to Customer, then Esri Offerings also include Deliverables and Training Materials. Esri Offerings exclude Services and Third-Party Content.

**"GIS"** means geographic information system.

**"Maintenance"** means a subscription program that Esri provides and that entitles Customer to Product updates and other benefits such as access to technical support and self-paced, web-based learning resources.

**"Malicious Code"** means software viruses; worms; time bombs; Trojan horses; or any other computer code, files, denial of service, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.

**"Online Services"** means any commercially available, Internet-based geospatial system that Esri provides, including applications and associated APIs for storing, managing, publishing, and using maps, data, and other information. Online Services exclude Data and Content.

**"Ordering Document(s)"** means a sales quotation, Maintenance renewal quote, purchase order, proposal, Task Order, or other document identifying Esri Offerings, updates, or Services that Customer orders.

**"Perpetual License"** means a license to use a version of the Esri Offering for which applicable license fees have been paid, indefinitely, unless terminated by Esri or Customer as authorized under this Agreement.

**"Product(s)"** means Software, Data, and Online Services.

**"Professional Services"** means any development or consulting services that Esri provides to Customer.

**"Sample(s)"** means sample code, sample applications, add-ons, or sample extensions of Products.

**"Service(s)"** means Maintenance. If Esri provides Esri Managed Cloud Services, Training, or Professional Services directly to Customer, then Services also include Esri Managed Cloud Services, Training, and Professional Services.

**"Software"** means any proprietary commercial off-the-shelf software, excluding Data, accessed or downloaded from an Esri-authorized website or that Esri delivers on any media in any format including backups, updates, service packs, patches, hot fixes, or permitted merged copies.

**"Specification(s)"** means (i) the Documentation for Software and Online Services, (ii) the scope of work set forth in any Task Order, or (iii) Esri's published course descriptions for Training.

**"Task Order(s)"** means an Ordering Document for Services.

**"Term License"** means a license for use of an Esri Offering for a limited time period ("**Term**").

**"Third-Party Content"** means any Content that Customer may obtain from a third-party website or that persons other than Esri employees, suppliers, or contractors may directly contribute to Esri's website.

**"Training"** means (i) Product training or (ii) related training that Esri provides under this Agreement.

**"Training Materials"** means digital or printed Content required to complete Training, which may include, but is not limited to, workbooks, data, concepts, exercises, assessments, and exams.

**"Value-Added Application(s)"** means an application developed by Customer for use in conjunction with the authorized use of any Software, Data, or Online Services.

## ATTACHMENT B GENERAL TERMS AND CONDITIONS

The following general terms and conditions apply to all Esri Offerings and Services that Esri may offer to its customers. Certain Esri Offerings or Services may not be available under this Agreement. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this Agreement.

### ARTICLE B.1—GENERAL USE RESTRICTIONS

Except as expressly permitted in this Agreement, Customer will not

- a. Sell, rent, lease, sublicense, distribute, lend, time-share, or assign Services or Esri Offerings;
- b. Distribute or provide direct access to Services or Esri Offerings to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs;
- c. Distribute Authorization Codes to third parties;
- d. Reverse engineer, decompile, or disassemble any Product or Deliverable delivered in compiled form;
- e. Make any attempt to circumvent the technological measure(s) that controls access to or use of Esri Offerings;
- f. Store, cache, use, upload, distribute, or sublicense Content or otherwise use Esri Offerings in violation of Esri's or a third-party's rights, including intellectual property rights, privacy rights, nondiscrimination laws, export laws, or any other applicable law or regulation;
- g. Remove or obscure any Esri or its licensors' patent, copyright, trademark, proprietary rights notices, or legends contained in or affixed to any Esri Offerings, output, metadata file, or online or hard-copy attribution page of any Data or Documentation;
- h. Unbundle or independently use individual or component parts of Esri Offerings;
- i. Incorporate any portion of Esri Offerings into a product or service for third-party use that competes with the Esri Offerings;
- j. Publish or in any other way communicate the results of benchmark tests run on Beta Products without the prior written permission of Esri and its licensors; or
- k. Use, incorporate, modify, distribute, provide access to, or combine any Esri Offerings in a manner that would subject any Esri Offering to open-source or open-database license terms (e.g. GPL) that require any part of the Esri Offering to be subject to additional terms, for example
  1. Disclosed in source code form to third parties;
  2. Licensed to third parties for the purpose of making derivative works; or
  3. Redistributable to third parties at no charge; or
- l. Generate revenue by providing access to Software or Online Services through a Value-Added Application.

These restrictions will not apply to the extent that they conflict with applicable law or regulation.

### ARTICLE B.2—TERM AND TERMINATION

**B.2.1** Customer may terminate this Agreement or any Esri Offerings license or subscription at any time upon written notice to Esri. Termination without cause does not entitle Customer to receive any refund of fees paid. Any right to terminate pending Services engagements for convenience is set forth in the applicable section in the body of this Agreement. Either party may terminate this Agreement or any license or subscription for a material breach that is not cured within 30 days of written notice to the breaching party. Upon any termination of this Agreement for breach, Esri will stop providing Services. Any licenses in Esri Offerings that survive termination of this Agreement continue under the terms of this Agreement.

**B.2.2** If Esri terminates this Agreement following Customer's breach, then Esri may also, at its election, terminate Customer's licenses or subscriptions to Esri Offerings. If Customer terminates this Agreement for cause or convenience, then Customer may, at its election, also terminate Customer's licenses or subscriptions to Esri Offerings.

**B.2.3** Upon any termination or expiration of a license or subscription, Customer will

- a. Stop accessing and using the terminated or expired Esri Offerings;
- b. Clear any client-side data cache derived from the terminated or expired Cloud Services; and
- c. Stop using and uninstall, remove, and destroy all copies of the terminated or expired Esri Offerings in Customer's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Esri or its authorized distributor.

Esri may stop performing Services immediately upon written notice to Customer if a bankruptcy or insolvency proceeding is commenced by or against Customer until the trustee cures any existing defaults and provides adequate assurance of future performance under this Agreement. This Agreement terminates upon the insolvency, liquidation, or dissolution of either party.

### **ARTICLE B.3—LIMITED WARRANTIES AND DISCLAIMERS**

**B.3.1 Limited Warranties.** Except as disclaimed below, Esri warrants to Customer that (i) Products and Training will substantially comply with the applicable Specifications and (ii) Services will substantially conform to the professional and technical standards of the industry. The warranty period for Esri Offerings offered under a Perpetual License and for Services runs for 90 days from the date of delivery or from the date of acceptance if this Agreement provides an acceptance period. The warranty period for Esri Offerings offered under a subscription or Term License basis runs for the lesser of (i) the duration of the subscription or term or (ii) 90 days from delivery or acceptance if this Agreement provides an acceptance period.

**B.3.2 Special Disclaimer. Third-Party Content; Data; Samples; hot fixes; patches; updates; Online Services provided at no charge; and trial, evaluation, and Beta Products are delivered "as is" and without warranty of any kind.**

**B.3.3 General Disclaimer.** Except for the express limited warranties set forth in this Agreement, Esri disclaims all other warranties or conditions of any kind, whether express or implied, including, but not limited to, warranties or conditions of merchantability, fitness for a particular purpose, and noninfringement of intellectual property rights. Esri is not responsible for any nonconformities with Specifications or loss, deletion, modification, or disclosure of Customer Content caused by Customer's modification of any Esri Offering other than as specified in the Documentation. Esri does not warrant that Esri Offerings, or Customer's operation of the same, will be uninterrupted, error free, fault tolerant, or fail-safe or that all nonconformities can or will be corrected. Esri Offerings are not designed, manufactured, or intended for use in environments or applications that may lead to death, personal injury, or physical property or environmental damage. Customer should not follow any navigational route suggestions that appear to be hazardous, unsafe, or illegal. Any such uses will be at Customer's own risk and cost.

**B.3.4 Disclaimers.**

- a. **Internet Disclaimer.** Neither party will be liable for damages under any theory of law related to the performance or discontinuance of operation of the Internet or to regulation of the Internet that might restrict or prohibit the operation of Cloud Services.
- b. **Third-Party Websites; Third-Party Content.** Esri is not responsible for any third-party website or Third-Party Content that appears in or is referenced by Esri Offerings or Esri websites, including [www.esri.com](http://www.esri.com) and [www.arcgis.com](http://www.arcgis.com). Providing links to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.

**B.3.5 Exclusive Remedy.** Customer's exclusive remedy and Esri's entire liability for breach of the limited warranties in this section will be to replace any defective media and to (i) repair, correct, or provide a workaround for the applicable Esri Offering or Services or (ii) at Esri's election, terminate Customer's right to use and refund the fees paid for Esri Offerings or Services that do not meet Esri's limited warranties.

#### ARTICLE B.4—LIMITATION OF LIABILITY

**B.4.1 Disclaimer of Liability.** Neither Customer, Esri, nor any Esri distributor or third party licensor will be liable for any indirect, special, incidental, or consequential damages; lost profits; lost sales; loss of goodwill; costs of procurement of substitute goods or services; or damages exceeding the applicable license fees, or current subscription fees, or Services fees paid or owed to Esri for the Esri Offerings or Services giving rise to the cause of action.

**B.4.2** The limitations and exclusions of liability in the preceding paragraph do not apply to Customer's infringement, misuse, or misappropriation of Esri's or Esri's licensors' intellectual property rights, either party's indemnification obligations, gross negligence, willful misconduct, or violations of the Export Compliance clause of this Agreement or any applicable law or regulation.

**B.4.3 Applicability of Disclaimers and Limitations.** Esri or its authorized distributor has set its fees and entered into this Agreement in reliance on the disclaimers and limitations in this Agreement; the fees reflect an allocation of risk that is an essential basis of the bargain between the parties. **These limitations will apply whether or not a party is aware of the possibility of any damage and notwithstanding any failure of essential purpose of any exclusive, limited remedy.**

**B.4.4** The foregoing disclaimers, limitations, and exclusions may be invalid in some jurisdictions and apply only to the extent permitted by applicable law or regulation in Customer's jurisdiction. Customer may have additional rights that may not be waived or disclaimed. Esri does not seek to limit Customer's warranty or remedies to any extent not permitted by law.

#### ARTICLE B.5—INDEMNIFICATIONS

**B.5.1 Definitions.** The following definitions supplement the definitions provided in Attachment A:

- a. **"Claim"** means any claim, action, or demand by a third party.
- b. **"Indemnitees"** means Customer and its directors, officers, and employees.
- c. **"Infringement Claim(s)"** means any Claim alleging that Customer's use of or access to any Esri Offering or Service infringes a patent, copyright, trademark, or trade secret.
- d. **"Loss(es)"** means expenditure, damage award, settlement amount, cost, or expense, including awarded attorneys' fees.

#### **B.5.2 Infringement Indemnity.**

- a. Esri will defend, hold all Indemnitees harmless from, and indemnify any Loss arising out of an Infringement Claim.
- b. If Esri determines that an Infringement Claim is valid, Esri may, at its expense, either (i) obtain rights for Customer to continue using the Esri Offerings or Services or (ii) modify the Esri Offerings or Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, Esri may terminate Customer's right to use the Esri Offerings or Services and will refund any (a) license fees that Customer paid for the infringing Esri Offerings or Services acquired under a Perpetual License, prorated on a 5-year, straight-line depreciation basis beginning from the initial date of delivery or (b) unused portion of fees paid for Term Licenses, Subscriptions, and Maintenance.
- c. Esri has no obligation to defend an Infringement Claim or to indemnify Customer to the extent the Infringement Claim arises out of (i) the combination or integration of Esri Offerings or Services with a product, process, system, or element that Esri has not supplied or specified in the Specification; (ii) alteration of Esri Offerings or Services by anyone other than Esri or its subcontractors; (iii) compliance with Customer's specifications; or (iv) use of Esri Offerings or Services after Esri either provides a modified version to avoid infringement or terminates Customer's right to use the Esri Offerings or Services.

**B.5.3 General Indemnity.** Esri will defend and hold all Indemnitees harmless from, and indemnify any Loss arising out of, any Claim for bodily injury, death, or tangible or real property damage brought against any of the Indemnitees to the extent arising from any negligent act or omission or willful misconduct by Esri or its directors, officers, employees, or agents performing Services while on Customer's site.



**B.5.4 Conditions for Indemnification.** As conditions for indemnification, Indemnitee will (i) promptly notify Esri in writing of the Claim, (ii) provide all available documents describing the Claim, (iii) give Esri sole control of the defense of any action and negotiation related to the defense or settlement of any Infringement Claim, and (iv) reasonably cooperate in the defense of the Infringement Claim at Esri's request and expense.

**B.5.5 This section sets forth the entire obligation of Esri, its authorized distributor, and its third party licensors regarding any Claim for which Esri must indemnify Customer.**

#### **ARTICLE B.6—INSURANCE**

If Esri is providing Services, Esri will carry, at a minimum, the following coverage:

- a. Comprehensive general liability or commercial general liability with a minimum coverage of \$1,000,000.00 (US dollars) combined single limit per occurrence for bodily injury, including death, and property damage liability to include the following:
  1. Premises and operations;
  2. Blanket contractual liability;
  3. Broad form property damage;
  4. Independent contractors;
  5. Personal injury, with employee exclusion deleted; and
  6. Completed operations.
- b. Workers' compensation insurance, with waiver of subrogation, in an amount that complies with statutory limits.

#### **ARTICLE B.7—SECURITY AND COMPLIANCE**

**B.7.1 Security.** Esri publishes its security capabilities at <https://trust.arcgis.com>. Customer may give Esri personnel access to Customer systems or to Customer or third-party personal information, controlled information, or sensitive data if access is essential for Esri's performance of Services and if Esri expressly agrees to such access. Esri will use reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. Customer bears responsibility to (i) confirm that Esri's published security and privacy controls meet all applicable legal requirements for protection of Customer Content and (ii) upload or share Customer Content through Cloud Services only when it is legal to do so. Esri is not responsible to review Customer Content to ensure compliance with applicable laws and regulations. Customer must contact Esri at [securesupport@esri.com](mailto:securesupport@esri.com) for further instruction before providing any Customer Content that requires security measures other than Esri's published security capabilities.

**B.7.2 Malicious Code.** Esri will use commercially reasonable efforts to ensure that Esri Offerings will not transmit any Malicious Code to Customer. Esri is not responsible for Malicious Code that Customer introduces to Esri Offerings or that is introduced through Third-Party Content.

**B.7.3 Export Compliance.** Each party will comply with all applicable export laws and regulations, including the US Department of Commerce's Export Administration Regulations (EAR), the US Department of State's International Traffic in Arms Regulations (ITAR), and other applicable export laws. Customer will not export, reexport, transfer, release, or otherwise dispose of, in whole or in part, or permit access to or transfer or use of Services or Esri Offerings to any United States embargoed countries or denied entities or persons except in accordance with all then-current applicable US government export laws and regulations. Customer will not export, reexport, transfer, or use Services or Esri Offerings for certain missile, nuclear, chemical, or biological activities or end uses without proper authorization from the US government. Customer shall immediately notify Esri in writing if any US government entity or agency denies, suspends, or revokes Customer's export privileges. Customer will not upload, store, or process in Cloud Services any Customer Content that (i) has an Export Control Classification Number (ECCN) other than EAR99 or (ii) is controlled for export from the United States under ITAR. Customer will notify Esri in advance if Esri's performance of any Services or provision of any Esri Offerings is related to any defense article, defense service, or technical data, as defined under the ITAR Sections 120.6, 120.9, and 120.10, respectively; Esri will not perform any such Services or provide any such Esri Offerings until Esri obtains any

necessary export license from the US government. Customer will reasonably assist Esri in applying for and obtaining an export license if needed.

**B.7.4 Privacy.** Esri will process personal data according to the terms of the Data Processing Addendum available at <https://www.esri.com/en-us/privacy/overview>.

## ARTICLE B.8—CLOUD SERVICES

**B.8.1 Prohibited Uses.** Customer shall not provide Customer Content or otherwise access or use Cloud Services in a manner that

- a. Creates or transmits spam, spoofings, or phishing email or offensive or defamatory material; or stalks or makes threats of physical harm;
- b. Stores or transmits any Malicious Code;
- c. Violates any law or regulation;
- d. Infringes or misappropriates the rights of any third party;
- e. Probes, scans, or tests the vulnerability of Cloud Services or breach any security or authentication measures used by Cloud Services without written approval from Esri's product security officer; or
- f. Benchmarks the availability, performance, or functionality of Cloud Services for competitive purposes.

**B.8.2 Service Interruption.** System failures or other events beyond Esri's reasonable control may interrupt Customer's access to Cloud Services. Esri may not be able to provide advance notice of such interruptions.

### B.8.3 Customer Content.

- a. Customer grants Esri and its subcontractors a nonexclusive, nontransferable, worldwide right to host, run, modify, and reproduce Customer Content as needed to provide Cloud Services to Customer. Esri will not access, use, or disclose Customer Content without Customer's written permission except as reasonably necessary to support Customer's use of Cloud Services. Except for the limited rights granted to Esri under this Agreement, Customer retains all its rights, title, and interest in the Customer Content.
- b. If Customer accesses Cloud Services with an application provided by a third party, Esri may disclose Customer Content to such third party as necessary to enable interoperation between the application, Cloud Services, and Customer Content.
- c. Esri may disclose Customer Content if required to do so by law or regulation or by order of a court or other government body, in which case Esri will reasonably attempt to limit the scope of disclosure.
- d. When Customer's use of Cloud Services ends, Esri will either
  1. Make Customer Content available to Customer for download for a period of 30 days unless Customer requests a shorter window of availability or Esri is legally prohibited from doing so; or
  2. Download all Customer Content in Esri's possession to a medium of Customer's choosing and deliver such Customer Content to Customer.

Esri will have no further obligations to store or return Customer Content at the conclusion of the Cloud Services.

**B.8.4 Removal of Customer Content.** Esri may remove or delete Customer Content if there is reason to believe that uploading Customer Content to or using it with Cloud Services materially violates this Agreement. If reasonable under these circumstances, Esri will notify Customer before removing Customer Content. Esri will respond to any Digital Millennium Copyright Act takedown notices in accordance with Esri's copyright policy, available at [www.esri.com/legal/dmca\\_policy](http://www.esri.com/legal/dmca_policy).

**B.8.5 Service Suspension.** Esri may suspend access to Cloud Services (i) if Customer materially breaches this Agreement and fails to timely cure the breach; (ii) if Esri reasonably believes that Customer's use of Cloud Services will subject Esri to immediate liability or adversely affect the integrity, functionality, or usability of the Cloud Services; (iii) for scheduled maintenance; (iv) to enjoin a threat or attack on Cloud Services; or (v) if Cloud Services become prohibited by law or regulated to a degree that continuing to provide them would impose a

commercial hardship. When feasible, Esri will notify Customer of any Cloud Services suspension beforehand and give Customer reasonable opportunity to take remedial action.

Esri is not responsible for any damages, liabilities, or losses that may result from any interruption or suspension of Cloud Services or removal of Customer Content as described above.

**B.8.6 Notice to Esri.** Customer will promptly notify Esri if Customer becomes aware of any unauthorized use of Customer's subscription or any other breach of security regarding Cloud Services.

## **ARTICLE B.9—GENERAL PROVISIONS**

**B.9.1 Payment.** Customer will pay each correct invoice no later than 30 days after receipt and will remit payment to the address stated on the invoice. Customers outside the United States will pay the distributor's invoices in accordance with the distributor's payment terms.

**B.9.2 Feedback.** Esri may freely use any feedback, suggestions, or requests for Product improvement that Customer provides to Esri.

**B.9.3 Patents.** Customer may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Products. This express prohibition on patenting will not apply to Customer's software and technology except to the extent that Products, or any portion thereof, are part of any claim or preferred embodiment in a patent application or a similar application.

**B.9.4 Restrictions on Solicitation.** Neither party will solicit for hire any employee of the other party who is associated with the performance of Services during the performance of the Services and for a period of 1 year thereafter. This does not restrict either party from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.

**B.9.5 Taxes and Fees; Shipping Charges.** Pricing of Esri Offerings and Services that Esri quotes to Customer is exclusive of any and all applicable taxes or fees including, but not limited to, sales tax, use tax, or value-added tax (VAT); customs, duties, or tariffs; shipping and handling charges; and vendor enrollment fees. Esri will add any fees that it is required to pay to the total amount of its invoice to Customer. Esri may include estimated taxes and shipping and handling charges in its quotations but may adjust these fees on invoicing. For Customers outside the United States, the distributor may quote taxes or fees in accordance with its own policies.

**B.9.6 Compliance Review.** Customer will keep accurate and complete records and accounts pertaining to its compliance with its obligations under this Agreement. Esri or its authorized distributor may conduct a compliance review of these records and accounts with no less than 14 business days' written notice or may appoint an independent third party to conduct such a compliance review on its behalf. Customer will promptly correct any noncompliance identified during the compliance review. Neither Esri nor Esri's distributor may conduct a compliance review of Customer within 12 months after the conclusion of any prior compliance review that does not reveal any material Customer noncompliance.

**B.9.7 No Implied Waivers.** The failure of either party to enforce any provision of this Agreement is not a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

**B.9.8 Severability.** If any provision of this Agreement is held to be unenforceable for any reason, (i) such provision will be reformed only to the extent necessary to make the intent of the language enforceable, and (ii) all other provisions of this Agreement will remain in effect.

**B.9.9 Successor and Assigns.** Customer will not assign, sublicense, or transfer Customer's rights or delegate Customer's obligations under this Agreement without Esri's and its authorized distributor's prior written consent, and any attempt to do so without consent will be void. This Agreement will be binding on the respective successors and assigns of the parties to this Agreement. Notwithstanding, a contractor under contract to the government to deliver Products may assign this Agreement and Products acquired for delivery to its government customer upon written notice to Esri, provided the government customer assents to the terms of this Agreement.

Upon mutual agreement, Esri's Affiliates may provide Services under the terms of this Agreement; in such cases, the Ordering Documents will identify the Affiliate as the party that provides the Services. Esri's distributors are not Affiliates of Esri.

**B.9.10 Survival of Terms.** The Glossary of Terms and provisions of the following Articles of these General Terms and Conditions will survive the expiration or termination of this Agreement: "Limited Warranties and Disclaimers," "Limitation of Liability," "Indemnifications," and "General Provisions." -

**B.9.11 US Government Customer.** The Products are commercial items, developed at private expense, provided to Customer under this Agreement. If Customer is a US government entity or US government contractor, Esri licenses or provides subscriptions to Customer in accordance with this Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Esri Data and Online Services are licensed or subscribed under the same DFARS Subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. Products are subject to restrictions, and this Agreement strictly governs Customer's use, modification, performance, reproduction, release, display, or disclosure of Products. Agreement provisions that are inconsistent with federal law regulation will not apply. A US government Customer may transfer Software to any of its facilities to which it transfers the computer(s) on which it has installed such Software. If any court, arbitrator, or board holds that a US government Customer has greater rights to any portion of Products under applicable public procurement law, such rights will extend only to the portions affected. ArcGIS Online has been granted FedRAMP tailored low authorization but does not meet higher security requirements including those found in DFARS 252.239-7010.

**B.9.12 Governing Law.** This Agreement is not subject to the United Nations Convention on Contracts for the International Sale of Goods.

- a. **Government Entities.** If Customer is a government entity, the applicable laws of Customer's jurisdiction govern this Agreement.
- b. **Nongovernment Entities.** US federal law and the law of the State of California exclusively govern this Agreement, excluding their respective choice of law principles.

**B.9.13 Dispute Resolution.** The parties will use the following dispute resolution processes:

- a. **Equitable Relief.** Either party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.
- b. **US Government Agencies.** This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601–613).
- c. **Other Government Entities.** Esri will comply with mandatory dispute resolutions under applicable law.
- d. **Arbitration.** Except as noted above, the parties will submit to binding arbitration to resolve any dispute arising out of or relating to this Agreement that cannot be settled through negotiation. If Customer is in the United States or one of its territories or outlying areas, the Commercial Arbitration Rules of the American Arbitration Association will govern the arbitration proceedings. If Customer is outside the United States, the Rules of Arbitration of the International Chamber of Commerce will govern the proceedings. The parties will select a single arbitrator in accordance with the applicable arbitration rules. The language of the arbitration will be English. Arbitration will be at an agreed-upon location. Either party will, at the request of the other, make available documents or witnesses relevant to the major aspects of the dispute.

**B.9.14 Force Majeure.** A party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond the party's reasonable control. Such causes may include, but are not limited to, acts of God, war, strikes, labor disputes, cyber attacks, laws, regulations, government orders, or any other force majeure event.

**B.9.15 Independent Contractor.** Esri is and at all times will be an independent contractor. Nothing in this Agreement creates an employer/employee, principal/agent, or joint venture relationship between Esri or its authorized distributor and Customer. No party has any authority to enter into contracts on behalf of another party or otherwise act on behalf of another party.

**B.9.16 Notice.** Customer may send notices required under this Agreement to Esri at the following address:

Environmental Systems Research Institute, Inc.  
Attn.: Contracts and Legal Department  
380 New York Street  
Redlands, CA 92373-8100  
USA  
Tel.: 909-793-2853  
Email: [LegalNotices@esri.com](mailto:LegalNotices@esri.com)

## CITY COUNCIL STAFF REPORT

**Consent Item No. 6**

**April 7, 2021**

**File No. 0600-10, A-3356**

SUBJECT: Sunrise Project Traffic Mitigation Agreement

DEPARTMENT: Engineering Services Department

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2021-41 authorizing the Mayor to execute a Traffic Mitigation Funding Agreement with Lennar Homes, the Developer of a 192-unit multi-family residential project within the City of San Marcos, to fund mitigation measures within the City of Escondido.

FISCAL ANALYSIS:

The cost for plan review and inspection of traffic mitigation measures will be funded by the developer through payment of established plan check and inspection fees. The cost of maintenance and operation of the signal that is made necessary to mitigate project traffic impacts will be paid for by the developer through a deposit.

BACKGROUND:

Lennar Homes of California has received approval from the City of San Marcos to construct a 192-unit multi-family housing development located south of Barham Drive and west of Meyers Avenue within the City of San Marcos. The project EIR requires construction of certain mitigation measures, including street widening, sidewalk, signal and drainage improvements. In addition, a new traffic signal at Barham and Meyers was required as a mitigation measure for the project. Since this signal is located with the City of Escondido, the City of San Marcos has conditioned the project to pay for the ongoing operating and maintenance costs of the signal. The attached Traffic Mitigation Agreement provides for construction of required improvements and payment of signal maintenance costs as required for the Sunrise project.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Julie Procopio*, Director of Engineering Services

04/01/21 9:34 a.m.

ATTACHMENTS:

1. Resolution No. 2021-41
2. Resolution No. 2021-41 Exhibit "A"

RESOLUTION NO. 2021-41

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
AUTHORIZING THE MAYOR TO EXECUTE,  
ON BEHALF OF THE CITY, A TRAFFIC  
MITIGATION FUNDING AGREEMENT WITH  
LENNAR HOMES

WHEREAS, the City of San Marcos has entitled a 192-unit multi-family development located south of Barham Drive and west of Meyers Avenue within the City of San Marcos that requires certain mitigation measures within the City of Escondido; and

WHEREAS, the Developer of the project, Lennar Homes of California, has requested a Traffic Mitigation Funding Agreement that outlines the improvements to be constructed within the City of Escondido, and the fair share contributions and operating costs to be funded by the Developer.

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

1. That the above recitations are true.
2. That the Mayor is hereby authorized to execute, on behalf of the City, the Traffic Mitigation Funding Agreement, in substantially the same format as Exhibit "A" which is attached hereto and incorporated by this reference, subject to final approval as to form by the City Attorney.

## TRAFFIC MITIGATION FUNDING AGREEMENT

This Traffic Mitigation Funding Agreement (“**Agreement**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2021 (the “**Effective Date**”), by and between the CITY OF ESCONDIDO, a California municipal corporation (the “**City**”), and LENNAR HOMES OF CALIFORNIA, INC., a California corporation (the “**Developer**”). (City and Developer may be referred to herein individually as a “**Party**” and collectively as the “**Parties.**”)

### RECITALS

1. CAL HEARTHSTONE LOT OPTION POOL 01, L.P., a Delaware limited partnership (“**Owner**”) is the owner of approximately 14.4 acres of real property made up of two parcels (the “**Property**”), one located in the City of San Marcos (“**San Marcos**”) (APN 228-312-09) and one in an unincorporated area of the County of San Diego (the “**County**”) (APN 228-312-10) in the San Marcos sphere of influence, south of Barham Drive, west of Meyers Avenue. On December 7, 2020, the San Diego Local Agency Formation Commission (“**LAFCO**”) approved annexation of the latter parcel into San Marcos.

2. Owner has granted Developer an option (the “**Option**”) to acquire the Property pursuant to that certain Option and Development Agreement, dated December 4, 2020, and addenda related thereto, all by and between Owner and Developer (collectively, the “**Option and Development Agreement**”). Pursuant to the Option and Development Agreement, Developer has agreed to perform certain site development improvements including the improvements required to be performed by Developer under this Agreement (the “**Developer Work**”). In connection therewith, Owner and Developer executed: (a) a Memorandum of Option and Development evidencing the Option which was recorded in the Official Records of San Diego County on February 25, 2021 as Document No. 2021-0149427; and (b) Construction License and Indemnity Agreement granting Developer a license to perform the Developer Work which was recorded in the Official Records of San Diego County on February 25, 2021 as Document No. 2021-0149428.

3. Developer, Owner, and prior owners of the Property have submitted an application for various entitlements that were approved by San Marcos and San Diego LAFCO allowing development of 192 multifamily residential units on the Property (the “**Project**”).

4. As part of the processing of entitlements and San Marcos’s preparation of an environmental impact report (“**EIR**”) for the Project as the lead agency under the California Environmental Quality Act (“**CEQA**”), a traffic impact analysis (“**TIA**”) has been generated that analyzes the Project’s traffic impacts on relevant roadway segments and intersections.

5. The Property is near the jurisdictional boundaries of the City and, as a result, the TIA has identified potential impacts that would occur within the City, which San Marcos, as the CEQA lead agency, does not have the ability to mitigate because these impacts are outside San Marcos’s jurisdiction.

6. The Developer and the City have met and discussed certain infrastructure improvements, set forth herein, that would ensure that the Project’s impacts relating to traffic within the City would not be significant.

7. Accordingly, the Parties agree that, if the Developer and/or Owner proceed with



development of the Project, the Developer will provide the physical infrastructure improvements and/or monetary payment articulated in this Agreement. The City hereby agrees that the infrastructure improvements and/or payment articulated in this Agreement will be sufficient to fully and fairly mitigate any potential Project impacts within the City to a less than significant level under all applicable thresholds of significance.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions herein contained, the Parties hereto agree as follows:

#### SECTION 1. TERM OF AGREEMENT.

This Agreement will commence on the Effective Date and shall continue in full force and effect until the Developer has made all the promised improvements and monetary payments pursuant to the terms and conditions of this Agreement. Notwithstanding the foregoing, in the event the Project is not approved by all relevant public agencies, or Developer decides, in its sole discretion, not to proceed with the Project, this Agreement may be terminated by Developer with thirty (30) days' notice.

#### SECTION 2. MITIGATION.

A. Developer shall, before the issuance of the first certificate of occupancy for a residential unit developed as part of the proposed Project, fulfill all obligations regarding construction of the infrastructure improvements, including all related obligations regarding ongoing maintenance and funding for the improvements, as described in detail in **Exhibit A**, which is attached to this Agreement and incorporated herein by this reference.

B. The City agrees that Developer's obligations articulated in this Section and Exhibit A to this Agreement will ensure that the Project's impacts on roadways and traffic within the City will not be significant. Accordingly, in consideration for the Developer's promise to perform its obligations under the Agreement, the City agrees that it will not object to San Marcos's or LAFCO's approval of the Project, nor will the City request any further traffic mitigation measures or other conditions of approval be imposed on the Project. The City further agrees that, if requested by Developer, the City will submit a letter to San Marcos and/or LAFCO stating its position that the Project will not result in significant traffic impacts in the City.

C. The Developer agrees to process plans for all work prior to commencing construction to the satisfaction of the City of Escondido and to obtain any necessary permits. All such construction shall be consistent with the City of Escondido's standards and subject to inspection and approval by the City. The Developer will pay standard review fees, inspection fees, and securities to the City of Escondido.

#### SECTION 3. CONDITION PRECEDENT.

This Agreement does not obligate the Developer to take any action or expend any funds unless Developer actually proceeds with the Project. The Parties agree that Developer has no obligation to actually proceed with the Project, and no obligations under this Agreement until it applies for its first certificate of occupancy associated with the Project.

#### SECTION 4. NOTICES.

All notices, demands and requests, which may be or are required to be given or made by either Party to the other Party shall be in writing. All notices, demands, requests and payments by Developer to the City shall be sent by United States registered mail, postage prepaid, addressed to the City as follows:

City of Escondido  
201 N Broadway  
Escondido, CA 92025  
Attn: City Attorney

or to such other addressee and at such other place as the City may designate, from time to time, in written notice to Developer.

All notices, demands, and requests by the City to Developer shall be sent by United States registered mail, postage prepaid, addressed to Developer as follows:

Lennar Homes of California, Inc.  
16465 Via Esprillo, #150  
San Diego, CA 92127  
Attn: Alex Plishner, Senior Vice President

and

CAL HEARTHSTONE Lot Option Pool 02, L.P.  
c/o Hearthstone, Inc.  
23975 Park Sorrento, Suite 220  
Calabasas, CA 91302  
Attn: Steven Porath, Esq., General Counsel

or to such other addressee and at such other place as Developer may, from time to time, designate in written notice to the City.

Notices, demands, requests and payments, which shall be served upon the Parties in the manner aforesaid, shall be deemed sufficiently served or given for all purposes thereunder at the time such notice, demand, request or payment is thus mailed.

#### SECTION 5. AMENDMENT.

This Agreement, including but not limited to any modification to the Exhibits thereto, shall only be amended upon written consent of both the Developer and the City.

#### SECTION 6. MISCELLANEOUS.

A. Successors and Assigns. This Agreement and the rights and obligations of the Parties hereunder shall inure to the benefit of, and be binding upon, the Parties' respective successors, assigns and legal representatives.

B. Governing Law. This Agreement shall be governed by and construed under

the laws of the State of California, as such laws apply to agreements among California residents made and to be performed entirely within the State of California, without giving effect to the choice of law or conflict of law provisions (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any other jurisdiction other than the State of California. Any lawsuit brought in connection with this Agreement shall be brought in the appropriate court in the County of San Diego, California

C. No Third-Party Rights. Nothing in this Agreement shall be deemed or otherwise construed as granting any rights, benefits or interests to any individual, entity or body who/that is not a Party to this Agreement.

D. Authority and Requisite Action. The parties covenant that individuals executing this Agreement have the legal power, right and authority to enter into this Agreement and to bind their respective principals/entities to the terms and conditions set forth herein. Furthermore, the parties covenant that all requisite action has been taken by their respective principals/entities in connection with entering into this Agreement and the instruments referenced herein, and the consummation of the transactions contemplated hereby.

E. Entire Agreement. This writing constitutes the entire agreement between the Parties, and no modification of this Agreement shall be valid unless executed in writing by the Parties hereto. Further, none of the Parties to this Agreement shall be bound by any representations, warranties, promises, or statements unless expressly set forth herein.

F. No Waiver. The failure of any Party to enforce against the other a provision of this Agreement shall not constitute a waiver of that Party's right to enforce such a provision at a later time.

G. Captions. The captions of the various Sections in this Agreement are for convenience and organization only, and are not intended to be any part of the body of this Agreement, nor are they intended to be referred to in construing the provisions of this Agreement.

H. Counterparts. This Agreement may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement by electronic means, including an attachment to an email, shall be effective as delivery of an executed original. An electronic signature shall be acceptable and deemed to have the same legal effect as a handwritten signature.

I. Attorney's Fees. In the event an action is commenced by any Party to this Agreement to enforce or construe its rights, the prevailing party in such action, in addition to any other relief and recovery awarded by the court, shall be entitled to recover all reasonable attorneys' fees.

J. Indemnification. To the fullest extent allowable by law, Developer shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages or injuries, in law or equity, to

property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence or willful misconduct of Developer, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the Project or Developer's performance of its obligations under this Agreement, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses (collectively, "Claims"). Developer shall defend, at Developer's own cost, expense and risk, any and all Claims that may be brought or instituted against City, its officials, officers, employees, volunteers or agents. Developer shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, volunteers or agents related to any such Claims. Developer shall reimburse City and its officials, officers, employees, volunteers and agents for any and all legal expenses and costs incurred by each of them in connection with any Claims or in enforcing the indemnity herein provided. Developer's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, volunteers or agents.

K. Cooperation and Future Assurances. The Parties shall reasonably cooperate in good faith to facilitate the performance of this Agreement, and each party shall deliver to the other party copies of such notices, documents, records and information as are reasonably necessary to such performance.

L. Recitals. The Recitals set forth above are included herein by reference as part of this Agreement and the Parties agree that said Recitals are essential facts to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date hereinabove written.

**CITY OF ESCONDIDO,**  
a California municipal corporation

*Approved By:*

\_\_\_\_\_  
City Mayor

LENNAR HOMES OF  
CALIFORNIA, INC., a California  
corporation  
By: Alexander L Plishner  
Name: Alexander L Plishner  
Title: VP, Project Management

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY  
City Attorney

\_\_\_\_\_

## EXHIBIT A

### **Description of Infrastructure Improvements and/or Fair Share Payments**

**1. Intersection #7. Barham Drive / Meyers Avenue** – Prior to the issuance of the first certificate of occupancy for a residential unit, the Developer, at its sole cost and expense, shall provide a traffic signal with a dedicated westbound left turn lane and protected left turn phasing on the westbound approach of Barham Drive towards Meyers Avenue at this intersection. The westbound left-turn pocket shall provide at least 100 feet of storage to accommodate queuing under buildout traffic conditions.

**2. Traffic signal maintenance at Meyers and Barham** – Prior to the issuance of the first certificate of occupancy for a residential unit, the Developer shall deposit the sum of ONE HUNDRED AND NINETY SEVEN THOUSAND ONE HUNDRED AND NINETY-NINE DOLLARS (\$197,199) with the City as the full and complete obligation for funding the long-term operation and maintenance of the new traffic signal at Meyers and Barham. This sum shall not be due until the signal has been energized.

**3. Intersection #9. Mission Road / Nordahl Road** – Prior to the issuance of the first permanent certificate of occupancy, the Developer shall select and complete one (1) of the following:

- Developer Option 1: design, permit and install adaptive signal timing at this intersection to the satisfaction of the City of Escondido; or
- Developer Option 2: Pay a fair share contribution toward the City of San Marcos Adaptive Signal System Capital Improvement Project (CIP) for this intersection. The City of San Marcos does not currently have an adopted CIP for this intersection. Should no adopted CIP exist at the time of application for the first permanent certificate of occupancy, the project applicant shall complete Option 1.

**4. Segment #3. Barham Drive: SR-78 EB On-Ramp to Meyers Avenue** – Prior to the issuance of the first permanent certificate of occupancy, the Developer shall provide half-width improvements (including curb, gutter, and sidewalk, storm water treatment, etc.) along the south side of Barham Drive (between the project's driveway and Meyers Avenue) and sufficient widening, striping, and the necessary facilities to satisfy the requirements for bioretention and hydromodification for the described widening along the north side of Barham Drive between the proposed project driveway and Meyers Avenue to achieve a three-lane cross section (two-lane + two-way left turn lane).

This would allow for a two-way left-turn (TWLTL) lane to be striped, which would enhance segment operations by allowing vehicles turning to the commercial properties to the north to queue in the TWLTL, out of the through lanes. Currently, this section of Barham Drive, located within the jurisdiction of the City of Escondido, is narrower than the sections adjacent to it. Improvements have been made to south side of the sections adjacent to the listed termini to include curb, gutter and sidewalk. The section currently provides a temporary asphalt curb, gutter and sidewalk on the south side of Barham Drive (between the project's driveway and Meyers Avenue), which will be improved as part of this mitigation.

Concurrent with this mitigation measure, the project applicant shall improve the existing approximately 450-foot section of Barham Drive from east of Casitas Del Sol to project driveway "A" to provide a three-lane cross section, consistent with the existing three-lane (two-lane + TWLTL) segment west of Casitas Del Sol.

**5. Segment #4. Barham Drive: Meyers Avenue to Mission Road** – Prior to the issuance of the first permanent certificate of occupancy, the Developer shall improve this segment within existing right-of-way on the north side of Barham Drive from Meyers Avenue to approximately 200 feet west of Mission Road with

adequate street widening to provide an additional two-way left-turn lane while maintaining the on-street parking along the south side of Barham Dr.

The addition of a two-way left-turn lane would enhance segment operations by allowing vehicles turning to commercial properties on the south side of the roadway to queue in the TWLTL, out of the through lanes.

**6. Intersection #8. Barham Drive / Mission Road** - Prior to the issuance of the first permanent certificate of occupancy, the Developer shall select and complete one (1) of the following:

- Developer Option 1: upgrade the traffic signal equipment at this intersection to allow for more efficient signal phases, signal timing, advanced queue detections, and coordination with the Sprinter railway crossing. These upgrades shall include traffic signal infrastructure, associated traffic signing, associated traffic striping, and other minor ancillary improvements within the existing intersection and intersection approaches within the City of San Marcos jurisdiction. Signal phasing upgrades may include modification of the traffic signal to provide right turn overlap (RTOL) phasing; Or

- Developer Option 2: Pay a fair share contribution toward the City of San Marcos Adaptive Signal System Capital Improvement Project (CIP) for this intersection. The City of San Marcos does not currently have an adopted CIP for this intersection. Should no adopted CIP exist at the time of application for the first permanent certificate of occupancy, the project applicant shall complete Option 1.

- As a part of Option 1 and 2 above, the Developer shall provide queuing analysis for the west-bound left turn pocket and extend as necessary to meet the demand to the reasonable satisfaction of the City of Escondido.

**7. Install new storm drain improvements** – The Developer shall at its sole expense extend an 18” storm drain pipe from the project’s driveway entrance on Barham Drive to a clean out transition point further extending an 18” storm drain system, southeast bound on Barham Drive to connect to an existing 72” storm drain system at the intersection of Barham Drive and Meyers Avenue. The Developer shall also extend at its sole expense a 36” or 2’x4’ reinforced box culvert storm drain system from the Meyers Avenue driveway and connect to the existing 72” storm drain system near the intersection of Meyers Avenue and Barham Drive. The storm drain shall have the capacity to accommodate the future storm drain flow from the Sunrise development and APNs 228-312-05-00 and 228-312-06-00 located in the city of Escondido. The Developer shall be responsible for maintenance, in perpetuity, of the new green streets tree wells on the north side of Barham Drive, unless and until another party assumes maintenance responsibility of such tree wells. The tree wells shall be irrigated and kept clean and free of debris, allowing for water filtration.

**8. Install driveway from Sunrise Project to Meyers Avenue** – Developer will Perform all work related to the installation of their proposed driveway from Meyers Avenue to the Sunrise project boundary in San Marcos. The work includes, but is not limited to; clearing, grading, compaction, storm-water treatment, retaining wall(s), curb, gutter, sidewalk, paving, driveway approach, kiosk, lighting, landscaping, irrigation, gates, turn-around and utility connections (including storm drain, sewer, water, gas, electric, telephone, and cable TV, etcetera).

(End of Exhibit A)

## CITY COUNCIL STAFF REPORT

**Consent Item No. 7**

**April 7, 2021**

**File No. 0470-25**

**SUBJECT:** Contract Renewal for the Purchase of Chemicals for the Water and Wastewater Treatment Plants

**DEPARTMENT:** Finance Department

**RECOMMENDATION:**

It is requested that the City Council adopt Resolution No. 2021-46 authorizing the Director of Finance to execute, on behalf of the City of Escondido ("City"), the final renewal option of purchase order contracts for the purchase of chemicals used at the City's water and wastewater treatment plants and approve the unit price increases for Fiscal Year ("FY") 2021/22.

**FISCAL ANALYSIS:**

The price of chemicals used by the City for water treatment have significantly increased since FY 2019/20. The increased chemical costs are attributed to heightened prices of raw materials used to manufacture the chemicals and record-high freight costs.

In FY 2017/18, the City entered into purchase order contracts with the suppliers listed in Exhibit A to this Staff Report, which is attached hereto and incorporated by this reference, for the purchase of chemicals used at the City's water and wastewater treatment plants ("Contracts"). The Contracts included an initial two-year term with three successive one-year options to renew. During the initial two-year term, the chemical suppliers listed in Exhibit A ("Suppliers") honored fixed unit prices resulting in approximately \$1.8 million in chemical costs to the City each fiscal year.

In FY 2019/20, during the first one-year option of the Contracts, the Suppliers stated they were no longer able to honor the fixed unit pricing due to increased material and freight costs. Consequently, the Suppliers requested and the City accepted increased unit pricing during the first one-year option period, resulting in approximately \$2.5 million in chemical costs to the City in FY 2019/20.

In FY 2020/21, the City exercised the second one-year option of the Contracts; the total cost for the purchase of chemicals for current fiscal year is estimated to be approximately \$2.5 million.

For FY 2021/22, the Suppliers have requested increased unit pricing for the final one-year renewal term. Proposed unit prices, percentage increases, and estimated annual costs for FY 2021/22 are detailed in Exhibit A. The requested increases are consistent with current market prices. Sufficient funds will be appropriated in the Utilities Department operating budget for FY 2021/22 to cover the proposed increased costs for the purchase of chemicals.

The total cost for the purchase of chemicals under the Contracts in FY 2021/22 may vary depending on the City's water treatment needs but shall not exceed \$3.8 million. The unit prices detailed in

## Contract Renewal for the Purchase of Water Treatment Chemicals

April 7, 2021

Page 2

Exhibit A will remain firm during FY 2021/22. The purchase of chemicals is essential to the proper treatment of water and wastewater to protect the environment and the public health.

### PREVIOUS ACTION:

On June 28, 2017, the City Council adopted Resolution No 2017-88R authorizing a bid award for the purchase of chemicals to the bidders listed in Exhibit A. The bid specifications required a two-year Contract and provided three successive one-year options to renew.

On May 22, 2019, the City Council adopted Resolution No. 2019-76 authorizing approval of the first one-year option to renew the Contracts for FY 2019/20 with unit price increases. The general provisions of the bid allowed for price increases based on general price increases to the trade or industry, but capped any yearly increase to three percent. Due to current market conditions, several of the general price increases in the industry exceed that threshold.

### BACKGROUND:

The City supplies water to approximately 26,000 residential, commercial, and agricultural customers. The City treats raw water from multiple sources at the City's water treatment plant near Dixon Dam. The raw water is treated, in part through the addition of chemicals, to remove organic compounds and suspended materials to meet and exceed drinking water standards. The City also operates a wastewater treatment and disposal facility, also known as the Hale Avenue Resource Recovery Facility. Wastewater is treated with chemicals to remove suspended solids, volatile organic compounds, and other pollutants so the water is safe for recycling and ocean discharge. The use of these chemicals is essential for the treatment of water and wastewater, both to meet regulatory requirement and to ensure the safety and cleanliness of the Escondido community.

Based on the current market conditions in the chemical industry, and as allowed by the general provisions of the bid, the Purchasing Division and the Utilities Department deemed it is in the City's best interest to renew the Contracts for the final one-year term effective July 1, 2021 through June 30, 2022, at the proposed unit prices listed in Exhibit A.

### APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Christina Holmes*, Director of Finance

04/01/21 9:01 a.m.

### ATTACHMENTS:

1. Resolution No. 2021-46
2. Resolution No. 2021-46 – Exhibit "A" – List of Vendors and Unit Prices for the Purchase of Chemicals.



RESOLUTION NO. 2021-46

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE DIRECTOR OF FINANCE, TO EXECUTE, ON BEHALF OF THE CITY, THE FINAL RENEWAL OPTION OF PURCHASE ORDER CONTRACTS FOR THE PURCHASE OF CHEMICALS

WHEREAS, on June 28, 2017, the City Council adopted Resolution No. 2017-88R, authorizing the Director of Finance to execute purchase order contracts for the purchase of water treatment chemicals (“Contracts”); and

WHEREAS the Contracts included an initial two-year term and three successive one-year options to extend; and

WHEREAS, on May 22, 2019, the City Council adopted Resolution No.2019-76 authorizing the exercise of the first one-year option to extend the Contracts, including increased unit prices; and

WHEREAS, on July 1, 2020, the Director of Finance exercised the second one-year option to extend the Contracts, including increased unit prices; and

WHEREAS, the City desires to exercise the third and final one-year option to extend the Contracts for the purchase of chemicals used at the City’s water and wastewater treatment plants for fiscal year (“FY”) 2021/22; and

WHEREAS, the proposed unit prices for FY 2021/22 are attached hereto as Exhibit “A” and incorporated by this reference; and

WHEREAS, the proposed unit prices detailed in Exhibit "A" are consistent with current market prices; and

WHEREAS, the City Council desires at this time and deems it to be in the best public interest to approve the third and final one-year extension of Contracts for FY 2021/22 at the unit prices detailed in Exhibit "A".

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

1. That the above recitations are true.
2. That the Mayor and City Council accepts the recommendation of the Director of Finance regarding the renewal of Contracts.
3. That the City Council authorizes the Director of Finance to execute, on behalf of the City, the third and final one-year extension of the Contracts for the purchase of chemicals for FY 2021/22 at the proposed unit prices detailed in Exhibit "A" which is attached hereto and incorporated by this reference, subject to final approval as to form by the City Attorney.

Exhibit A - List of Vendors and Unit Prices

Item #	Chemical	Chemical Used by *	Lowest Responsible Bidder	Estimated Annual Usage	FY 2021/22 Proposed Unit Price	Estimated Extended 5th Year Renewal Cost	Annual Cost Increase	% Increase
1	Sodium Chloride (Salt)	WTP	Step Saver Inc.	1181 Tons	\$ 159.06	\$ 187,849.86	\$ 11,892.67	6.76%
2	Cationic Polyelectrolyte (20% Solids)	WTP	SNF Polydyne	162 Tons	\$ 1,160.00	\$ 187,920.00	\$ -	0.00%
3	Ferric Sulfate (12-14% Iron content dry basis)	WTP/WWTP	Kemira Water Solutions	2,700 Dry Tons	\$ 397.00	\$ 1,071,900.00	\$ 45,927.00	4.48%
4	Aqua Ammonia (19% basis wet basis)	WTP	Airgas Specialty Products	220 Tons	\$ 158.40	\$ 34,848.00	\$ -	0.00%
5	Purate	WTP	Water Solutions	141 Tons	\$ 2,100.00	\$ 296,100.00	\$ 2,820.00	0.96%
6	Hydroflousilicic Acid (23% FSA)	WTP	DuBois Chemical	110 Tons	\$ 414.00	\$ 45,540.00	\$ 5,500.00	13.74%
7	Sodium Hydroxide (50% solution)	WTP	JCI Jones Chemicals Inc.	685 Tons	\$ 629.11	\$ 430,940.35	\$ -	0.00%
8	Polyelectrolyte Bulk Polymer	WWTP	SNF Polydyne	380,000 Lbs	\$ 0.137	\$ 52,060.00	\$ -	0.00%
9	Sodium Hypochlorite (12.5% by weight)	WTP/WWTP	Olin Corporation	614,000 Gals	\$ 0.82	\$ 503,480.00	\$ 18,420.00	3.80%
10	Bioxide	WWTP	Evoqua Water Technologies	90,000 Gals	\$ 2.67	\$ 240,300.00	\$ 4,500.00	1.91%
11	Dewatering Polymer (Active lbs.)	WWTP	SNF Polydyne	88,000 Lbs	\$ 2.952	\$ 259,776.00	\$ -	0.00%
12	T-22 Filter Aid (Coagulant)	WWTP	SNF Polydyne	700,000 Lbs	\$ 0.42	\$ 294,000.00	\$ -	0.00%
12a	T-22 Filter Aid (Flocculant)	WWTP	SNF Polydyne	32,200 Lbs	\$ 0.903	\$ 29,076.60	\$ -	0.00%
13	93% FCC Sulfuric Acid	WTP	Northstar Chemical	144 Tons	\$ 341.35	\$ 49,154.40	\$ 1,209.60	2.52%
14	Permanganate	WTP	Carus Chemical Company	40,000 lbs.	\$ 2.41	\$ 96,400.00	\$ 6,400.00	7.11%
			Total Estimated Annual Cost FY 2021/22			\$ 3,779,345.21		

Exhibit A - List of Vendors and Unit Prices

Item #	Chemical	Chemical Used by *	Lowest Responsible Bidder	Estimated Annual Usage	FY 2021/22 Proposed Unit Price	Estimated Extended 5th Year Renewal Cost	Annual Cost Increase	% Increase
	*WTP-Water Treatment Plant / WWTP-Wastewater Treatment Plant							

## CITY COUNCIL STAFF REPORT

**Consent Item No. 8**

**April 7, 2021**

**File No. 0600-10, A-3357**

SUBJECT: Authorization of Participation Agreement, Easement, and Plot Plan Approval

DEPARTMENT: Community Development

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2021-52 authorizing the Mayor to execute, on behalf of the City, a Power Your Drive for Parks Public EV Charging Program Participation Agreement (“Agreement”) and related easement (“Easement”) with San Diego Gas & Electric (“SDG&E”) for the installation of ten electric vehicle (“EV”) charging stations at the Woodward Parking Lot of Grape Day Park, and approve SDG&E’s Plot Plan for the design of the EV charging stations (“Plot Plan”).

The Agreement is attached to the draft Resolution No. 2021-52 as Exhibit A and incorporated herein by this reference.

The Easement is attached to the draft Resolution No. 2021-52 as Exhibit B and incorporated herein by this reference.

The Plot Plan site plan and exhibits are attached to the draft Resolution No. 2021-52 as Exhibit C and incorporated herein by this reference.

FISCAL ANALYSIS:

Fiscal impacts of the Agreement are limited to staff time and resources necessary to carry out related administrative tasks, including but not limited to report preparation, and record and release of the proposed easement. Staff time and resources for such administrative tasks will be included within the Community Development Department budget.

During the eight-year term of the Agreement, SDG&E will own, maintain, and operate the EV charging stations equipment installed at the Woodward Parking Lot of Grape Day Park. Thus, there will be no cost to the City for the design, installation, and operation of EV charging stations equipment and infrastructure.

The City will have the option to purchase the EV charging station equipment from SDG&E at fair market value, subject to regulatory approval, at the end of the Agreement term.

BACKGROUND AND ANALYSIS:

In an effort to reduce greenhouse gas emissions, SDG&E recently adopted its Power Your Drive for City and County Parks EV Charging Infrastructure Program (“Program”) to maximize the use of

April 7, 2021

Authorization of Participation Agreement and Easement

Page 2

renewable energy to charge electric vehicles at highly trafficked community facilities in the region. The Program is the latest in a series of initiatives undertaken by SDG&E to expand EV charging to make it easier for more people to switch to zero-emission transportation, which is key to reducing greenhouse gas emissions and air pollution. The Program is intended to move San Diego County toward supplying 10% of Governor Jerry Brown's goal for 1.5 million zero-emission vehicles in California by 2025.

In late 2020, SDG&E contacted the City staff and confirmed the City's eligibility to participate in the Program. Grape Day Park, and the associated Woodward Parking Lot, was subsequently identified as a preferred location for installation of the EV charging stations due to its proximity to existing SDG&E underground infrastructure, surrounding uses, and downtown amenities.

Thereafter, SDG&E submitted the Plot Plan (Planning Case No. PL21-0039) for the installation of the proposed EV charging station equipment. City staff reviewed the Plot Plan, and have identified conditions for its approval ("Conditions of Approval"). The Conditions of Approval are attached to the draft Resolution No. 2021-52 as Exhibit 4 and incorporated herein by this reference.

SDG&E also submitted proposed plans for installation of the ten EV charging stations at the Woodward Parking Lot ("Proposed Plans"). The Proposed Plans are attached to this Staff Report as Attachment A and incorporated herein by this reference. Pursuant to the Proposed Plans, two types of EV chargers will be installed: eight level 2 (208-240 volt) chargers, which can provide up to 10-20 miles of range per hour of charging; and two DC fast chargers (480 volt), which can provide about 20-30 miles for every 15 minutes of charging. A photo illustration of the proposed EV chargers is attached to this Staff Report as Attachment B and incorporated herein by this reference. Each EV charger will be approximately five feet tall and serviced by SDG&E's existing underground infrastructure.

During the eight-year Agreement term, SDG&E will own, maintain, and operate the ten EV charging stations installed at the Woodward Parking Lot of Grape Day Park. Thus, there will be no cost to the City for the design, installation, and operation of electric vehicle charging stations infrastructure. The City will have the option to purchase the EV charging station equipment from SDG&E at fair market value, subject to regulatory approval, at the end of the Agreement term. At the end of the eight-year Agreement term, the Easement may be abandoned and encumbrance on the property's title may be released

City residents and customers that utilize the EV charging stations installed at the at the Woodward Parking Lot will pay SDG&E at time of use rates. A third-party vendor selected solely by SDG&E will provide related charging and billing services.

Despite staff's attempts to negotiate the Agreement, SDG&E has declined to include insurance and indemnification provisions.

Staff previously requested that SDG&E include an insurance provision in the Agreement. Pursuant to the insurance provision proposed by staff, SDG&E would have been required to procure and maintain insurance against claims for injuries to persons or damages to property that may arise from or in

April 7, 2021

Authorization of Participation Agreement and Easement

Page 3

connection with the Agreement. In lieu of adding the proposed insurance provision, SDG&E provided evidence of its self-insurance. SDG&E further indicated that, throughout the term of the Agreement, it will be responsible for maintaining, operating, and repairing the ten EV charging stations in a manner similar to any of its other facilities existing on private property or within the public right of way (e.g. pole, transformer, switch cabinet, manhole, handhole). SDG&E's obligations to maintain, operate, and repair the ten EV charging stations shall be in accordance with SDG&E's obligations as a utility provider regulated by the Public Utilities Commission.

Similarly, staff proposed to include an indemnification provision within the Agreement. The proposed indemnification provision would have required SDG&E to indemnify, defend, and hold harmless the City (including its officials, officers, agents, employees, and volunteers) from and against any and all claims, suits, liabilities, or injuries arising from the Agreement, except where caused by the sole negligence or willful misconduct of the CITY. SDG&E declined to incorporate the proposed indemnification provision into the Agreement.

#### ENVIRONMENTAL REVIEW:

The California Environmental Quality Act ("CEQA") Guidelines list classes of projects that have been determined to not have a significant effect on the environment and as a result are exempt from review under CEQA. The Project site is located within a developed urban area of the City and developed as a municipal parking lot. The proposed project qualifies for a categorical exemption from CEQA pursuant to CEQA Guidelines section 15303, as a new construction of a small structure. The CEQA Notice of Exemption is attached to the draft Resolution No. 2021-52 as Exhibit F and incorporated herein by this reference. The Notice of Exemption demonstrates that the Project qualifies for the exemption and does not have a significant effect on the environment.

#### APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Mike Strong*, Director of Community Development

04/01/21 12:56 p.m.

#### ATTACHMENTS:

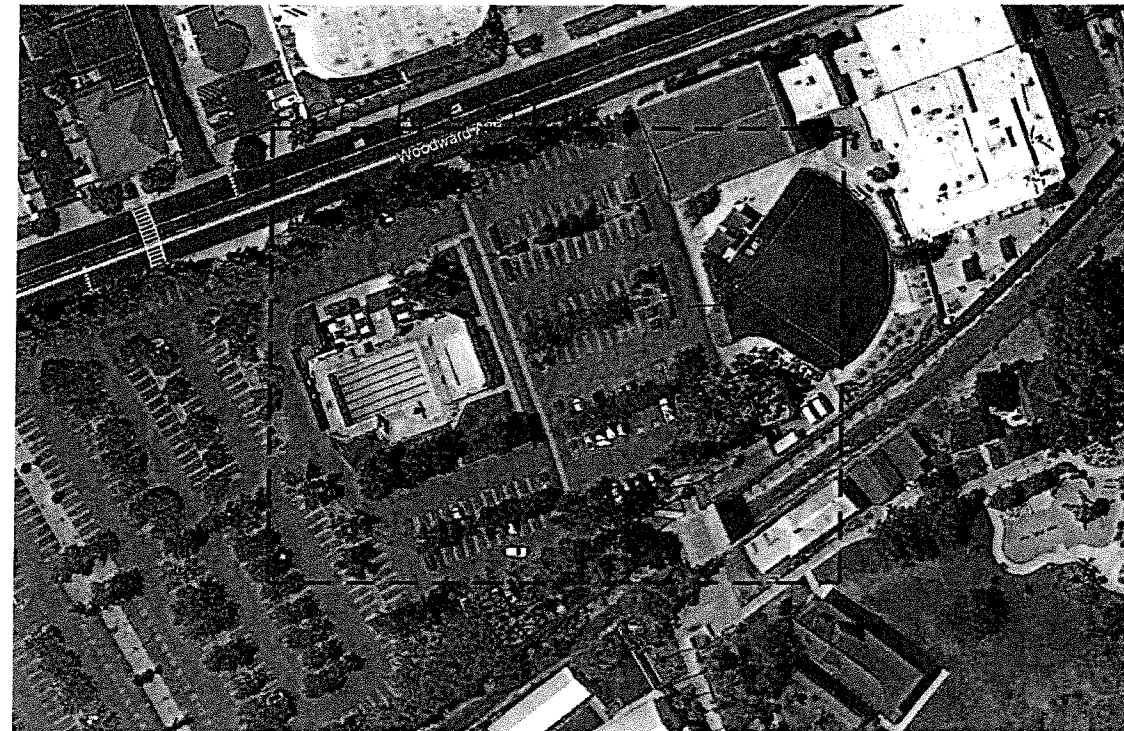
1. Attachment 1 - Proposed Plans
2. Attachment 2 - Photo Illustration
3. Resolution No. 2021-52, including the following Exhibits:
4. Resolution No. 2021-52 Exhibit A Agreement
5. Resolution No. 2021-52 Exhibit B Easement
6. Resolution No. 2021-52 Exhibit C Plot Plan
7. Resolution No. 2021-52 Exhibit D Conditions of Approval
8. Resolution No. 2021-52 Exhibit E Findings of Fact
9. Resolution No. 2021-52 Exhibit F Notice of Exemption

# 83200053 - GRAPE DAY PARK

321 N. BROADWAY, ESCONDIDO, CA 92025



VICINITY MAP  
NO SCALE TB# 1129-H2

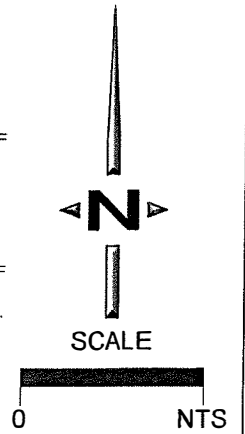


STRUCTURE COORDINATES

[LOC 1] D143394: N 33.125118', W -117.084441'  
[LOC 3] D143394: N 33.125136', W -117.084449'

NOTES

- THE PURPOSE OF THIS WORK ORDER IS TO INSTALL TWO NEW METERS AND TWO TRANSFORMERS FOR ELECTRIC CHARGERS. THE SITE WILL HAVE A TOTAL OF 9 NOZEELS. TWO DC FAST CHARGERS, THREE L2 DUAL CHARGERS AND ONE L2 SINGLE CHARGER
- CAUTION: ELECTRIC STAND-BY LINEMAN REQUIRED FOR ALL WORK AROUND ENERGIZED FACILITIES.
- ALL QUESTIONS RELATED TO SERVICE TRENCH SHOULD BE DIRECTED TO THE APPROPRIATE FIELD CONSTRUCTION ADVISER.
- ALL EQUIPMENT ON PRIVATE PROPERTY WILL REQUIRE AN EASEMENT.

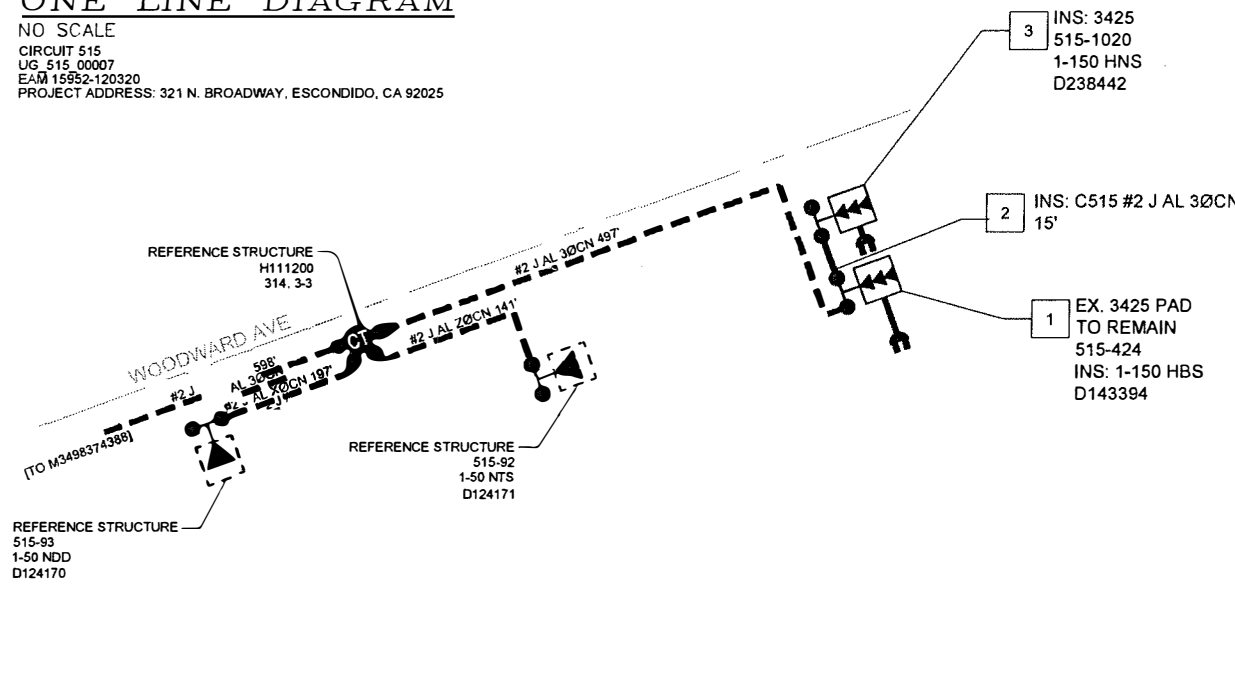


SHEET INDEX

SHEET 1: COVER PAGE AND ONE LINE  
SHEET 2: SKETCH

ONE LINE DIAGRAM

NO SCALE  
CIRCUIT 515  
UG 515 00007  
EAM 15952-120320  
PROJECT ADDRESS: 321 N. BROADWAY, ESCONDIDO, CA 92025



APPLICANT APPROVAL

APPROVAL OF THE SYSTEM DESIGN AS IT APPEARS ON THIS PRELIMINARY DRAWING(S).  
 A. Certifies that the location of facilities to be owned and operated by SDG&E are acceptable and are not in conflict with Applicant's planned improvement.  
 B. Authorizes SDG&E to proceed with the preparation of final design(s), drawing(s), and/or cost(s).  
 Any further costs incurred by SDG&E in the processing of this project will be at the Applicant's expense if:  
 1. There are changes to the system caused by the Applicant or the Applicant's authorized representative.  
 2. There is a deviation from the gas/electric load information specified on the Approved Load Study which will necessitate design and/or construction changes.  
 3. The project is cancelled after contract negotiations have been completed by Applicant and Utility.

APPLICANT APPROVAL - Please Print or Type	TITLE
APPLICANT SIGNATURE	DATE

ATTACHMENT 1

ASPIUNDH  
PLANNING

PROJECT NOTIFICATION #:  
3000003333203  
JOB NOTIFICATION #:  
300000349876  
DESIGNED BY:  
DOMINIC LEACH

SDGE  
San Diego Gas & Electric  
CONTACT PHONE:  
(858) 650-4155

CONTACT NAME:  
SCOTT THOMPSON  
REV/SUPP 1 DATE:  
0 2/09/2020  
PAGE 1 OF 2

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JAN 26 2021  
City of Escondido Planning Division



Call 2 Working Days Before You Dig!  
1-800-227-2600

PL21-0039



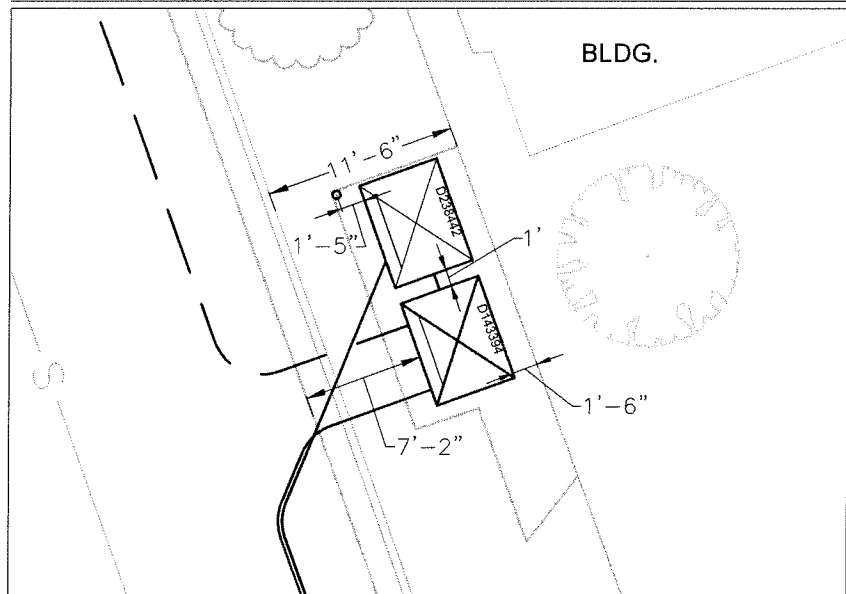
# 83200053 - GRAPE DAY PARK

321 N. BROADWAY, ESCONDIDO, CA 92025



VICINITY MAP  
NO SCALE TB# 1129-H2

## SITE DETAIL

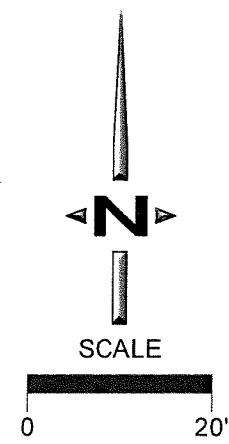
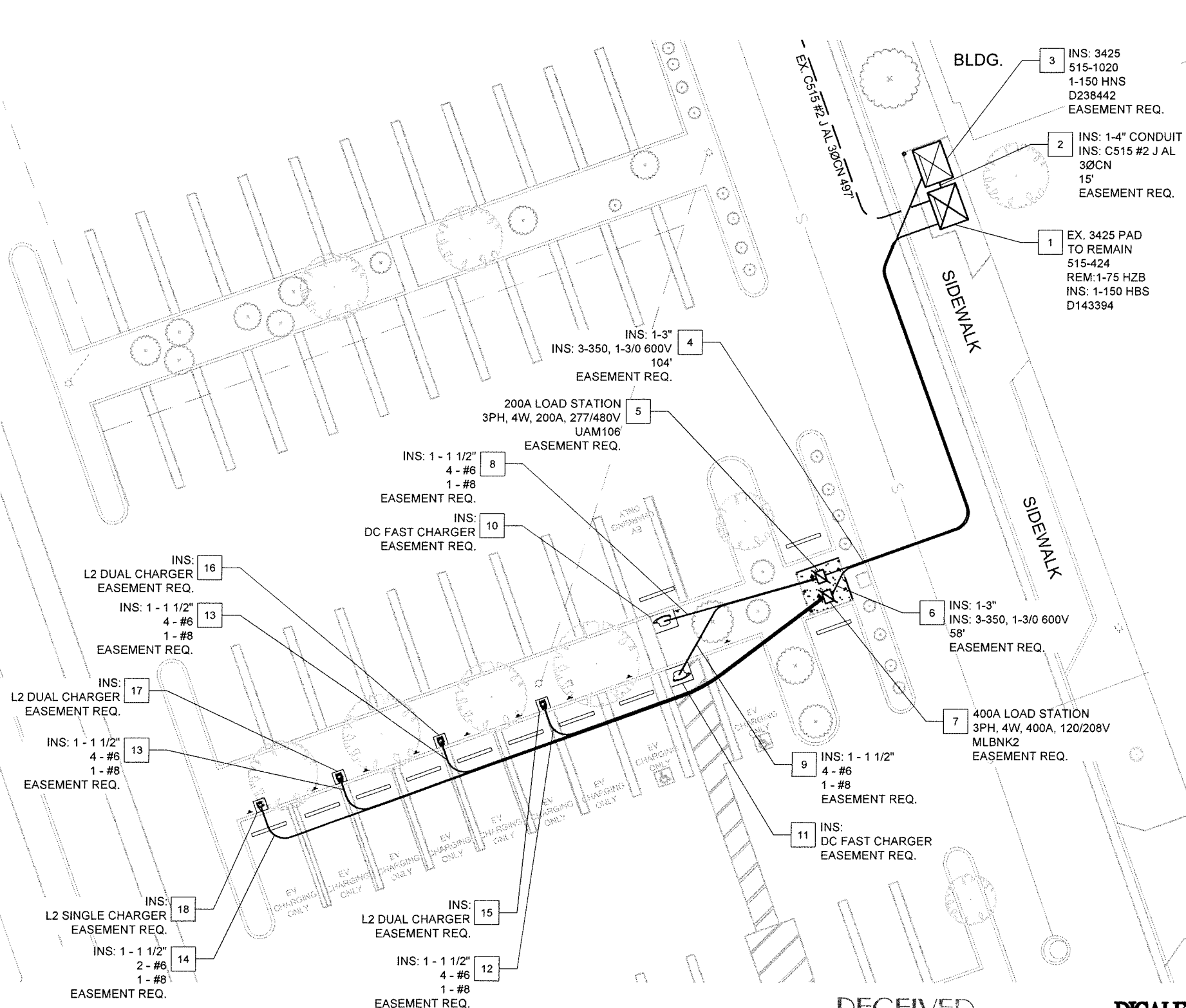


SCALE: 1:10'

## NOTES

- ☑ CAUTION: ELECTRIC STAND BY LINEMAN REQUIRED FOR ALL WORK AROUND ENERGIZED FACILITIES.
- ☑ ALL QUESTIONS RELATED TO SERVICE TRENCH SHOULD BE DIRECTED TO THE APPROPRIATE FIELD CONSTRUCTION ADVISER.

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ASPLUNDH  
PLANNING

PROJECT NOTIFICATION # 300000333203  
JOB NOTIFICATION # 300000349876  
DESIGNED BY DOMINIC LEACH

SDGE San Diego Gas & Electric  
CONTACT PHONE (858) 650-4155

CONTACT NAME SCOTT THOMPSON  
REV/SUPP DATE 0  
PAGE 2 OF 2

$$\frac{\text{NEW KVA}}{\text{CONNECTED KVA}} = \frac{\text{XX KVA}}{\text{XX KVA}} = \text{XX\%}$$

RECEIVED  
JAN 26

City of Escondido Planning Divis.



Call 2 Working Days Before You Dig!  
1-800-227-2600

PL 21-0039

# ATTACHMENT 2

## Charging Station Specifications and Photos



### Express 250

Specifications and Ordering Information



Express 250

### CT4000 Level 2 Commercial Charging Station

Specifications and Ordering Information



CT4001



RESOLUTION NO. 2021-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, A PARTICIPATION AGREEMENT AND EASEMENT WITH SDG&E, AND APPROVING A PLOT PLAN FOR INSTALLATION OF ELECTRIC VEHICLE CHARGING STATIONS AT THE WOODWARD PARKING LOT OF GRAPE DAY PARK

WHEREAS, San Diego Gas & Electric ("SDG&E") recently adopted its Power Your Drive for City and County Parks EV Charging Infrastructure Program ("Program") to maximize the use of renewable energy to charge electric vehicles ("EV") at eligible community facilities in the region;

WHEREAS, in late 2020, SDG&E contacted the City of Escondido ("City") and confirmed the City's eligibility to participate in the Program;

WHEREAS, Grape Day Park, and the associated Woodward Parking Lot, has been identified as a preferred location for installation of EV charging stations as part of the Program due to its proximity to existing SDG&E underground infrastructure, surrounding uses, and downtown amenities;

WHEREAS, the Community Development Commission is the owner of Grape Day Park, and the associated Woodward Parking Lot, located at 251 Woodward Avenue, Escondido, CA 92025 (Assessor's Parcel Number 229-352-12-00);

WHEREAS, pursuant to Resolution No. 2012-16 of the City Council of the City, the City is the successor agency to the Escondido Community Development Commission;

WHEREAS, as a Program participant, SDG&E requires the City to enter into its eight-year Power Your Drive for Parks Public EV Charging Program Participation Agreement (“Agreement”) for installation, maintenance, and operation of EV charging stations at the Woodward Parking Lot of Grape Day Park;

WHEREAS, the Agreement is attached to this Resolution as Exhibit A and incorporated herein by this reference;

WHEREAS, contrary to City staff requests, SDG&E has declined to include insurance and indemnification provisions in the Agreement;

WHEREAS, there will be no cost to the City for the design, installation, and operation of EV charging station equipment and infrastructure pursuant to the Agreement; and

WHEREAS, the City will have the option to purchase the EV charging station equipment at fair market value at the conclusion of the eight-year Agreement term, subject to regulatory approval, and

WHEREAS, it is necessary to grant SDG&E an easement for the purpose of constructing, installing, and maintaining the 10 EV charging stations and infrastructure during the eight-year Agreement term (“Easement”);

WHEREAS, the Easement is attached to this Resolution as Exhibit B and incorporated by this reference;

WHEREAS, SDG&E has filed a land use development application with the City (Planning Case No. PL 21-0039) consisting of a proposed Plot Plan for the installation and operation of 10 EV charging stations and infrastructure at the Woodward Parking Lot of Grape Day Park (“Plot Plan”); and

WHEREAS, the Plot Plan plans and exhibits are attached to this Resolution as Exhibit C and incorporated herein by this reference;

WHEREAS, the Conditions of Approval of SDG&E’s Plot Plan are attached to this Resolution as Exhibit D and incorporated herein by this reference;

WHEREAS, the City Council has reviewed SDG&E’s requests for this project and has determined SDG&E’s proposed installation of EV charging stations at the Woodward Parking Lot of Grape Day Park is categorically exempt from further review under the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15303;

WHEREAS, the Findings of Fact related to SDG&E’s Plot Plan is attached to this Resolution as Exhibit E and incorporated herein by this reference;

WHEREAS, the Notice of Exemption related to SDG&E’s Plot Plan is attached to this Resolution as Exhibit F and incorporated herein by this reference; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve the Agreement, Easement, and Plot Plan for installation and operation of then EV charging stations and infrastructure at the Parking Lot of Grape Day 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. That SDG&E's proposed installation of EV charging stations at the Woodward Parking Lot of Grape Day Park is categorically exempt pursuant to CEQA Guidelines section 15303 and thus exempt from further CEQA review.
3. That the Findings of Fact (Exhibit E) related to SDG&E's Plot Plan are hereby made by this City Council, and represent the City Council's careful consideration of the record. The findings of this City Council contained in Exhibit E shall be the final and determinative Findings of Fact related to SDG&E's Plot Plan.
4. That upon consideration of the Findings, the attached Exhibits, the Staff Report dated April 7, 2021 (a copy of which is on file in the Office of the City Clerk), public testimony presented at the meeting, and all other oral and written evidence regarding the Agreement, Easement, and Plot Plan, the City Council hereby approves the Plot Plan subject to the Conditions of Approval set forth in Exhibit D.
5. The Mayor is authorized to execute, on behalf of the City, the Agreement (Exhibit A) and Easement (Exhibit B).
5. The City Manager or designee is authorized to manage all related Agreement and Easement documentation.

# SDG&E Power Your Drive for Parks Public EV Charging Program Participation Agreement



This CUSTOMER PARTICIPATION AGREEMENT (“Agreement”) is by and between SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation (“SDG&E”) and City of Escondido (“Program Participant”). SDG&E and Program Participant are referred to individually as a “Party” and collectively as the “Parties.”

## RECITALS

- A. In support of California’s goal to reach 1.5 million zero-emission vehicles by 2025 and infrastructure to support more than 5 million zero-emission vehicles by 2030, Program Participant will permit, and SDG&E will own, install, operate and maintain electric vehicle charging stations at qualifying and selected Park & Beaches as part of SDG&E’s Power Your Drive for Parks Public EV Charging Program (“Program”) and as approved by the California Public Utilities Commission (CPUC).
- B. In general, the Program provides: no cost design, installation and operation of SDG&E infrastructure and EV Charging Equipment at no cost to Program Participant for a period of eight (8) years. SDG&E agrees to facilitate billing to EV Drivers using EVSPs as more fully described in Section 1.1 below.
- C. Pursuant to AB1083, Program Participant and SDG&E are entering into this Agreement for participation in the Program; and for installation and operation of public EV charging infrastructure at Grape Day Park, 321 N. Broadway, Escondido, CA 92025 (“Facility”).

## AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

### 1.0 GENERAL PROGRAM PARTICIPATION REQUIREMENTS:

To participate in the Program, Program Participant agrees to comply with the following requirements:

- 1.1 Have dedicated parking for the electric vehicles;
- 1.2 Execute and deliver an SDG&E approved easement which shall be recorded in the office of the County Recorder for the County of San Diego.
- 1.3 Cooperate with SDG&E to ensure the Facility meets applicable accessibility requirements of the Americans with Disabilities Act (ADA);
- 1.4 Notify SDG&E in cases of vandalism, damaged or non-functioning equipment. Program Participant is not obligated to perform any inspection or maintenance of installed EVSE;
- 1.5 Submit Owner Authorized Agent (OAA) Form. OAA approves SDG&E to act as Program Participant’s agent as it relates to obtaining any required permits for the installation of the EV infrastructure (**Exhibit A**) and;
- 1.6 Support data collection efforts as part of this Program.

### 2.0 DEFINITIONS

**ADA:** Americans with Disabilities Act.

**Disadvantaged Community:** Communities identified by census tract as being in the top quartile within SDG&E service territory as scored by the CalEPA EnviroScreen tool and as approved per SDG&E Advice Letter 2876-E, Submittal of Definition of Disadvantaged Communities for Electric Vehicle-Grid Integration (VGI) Pilot Program Pursuant to Commission Decision 16-01-045.

**Easement:** A real property instrument hereto grant right of way for SDG&E to construct, maintain, operate and repair any SDG&E owned infrastructure.

# SDG&E Power Your Drive for Parks Public EV Charging Program Participation Agreement



**Effective Date:** The date that this Agreement is dually signed and executed.

**EV:** Electric Vehicle.

**EV Driver:** An EV operator who parks at and uses the EVSE at the Facility.

**EVSE:** Electric Vehicle Supply Equipment. All equipment needed to charge an EV including the EV charging station, switches, fuses, meters and other associated equipment.

**EVSP:** Electric Vehicle Service Provider. The third party selected by SDG&E to providing charging and billing services to EV Drivers.

**Facility:** The premises, where the EV infrastructure will be located.

**Grantor:** The fee simple owner of the real property where the Facility is to be located pursuant to the Easement.

**Implementers:** SDG&E, its contractors, vendors, representatives, or other persons or entities responsible for implementing the Program on behalf of SDG&E.

**Intellectual Property Rights:** All trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trade marks), services marks, trade names, internet domain names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in inventions (whether patentable or not) including, but not limited to, any and all renewals or extensions thereof, and all other proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world, including, but not limited to, any and all renewals or extensions thereof.

**In Service Date:** The date that Project is energized and project commissioning complete.

**Job or Project:** The installation of the approved EVSE at the Facility identified above.

**Power Your Fleet for Parks Public EV Charging Program (or Program):** All facets of the Power Your Fleet for Parks Public EV Charging Program.

**Program Participant:** The SDG&E Customer that enters into this Agreement.

**Rate:** The billing rate for use of charging at a Facility.

**Removal Cost:** EVSE removal costs which are the sum of (a) SDG&E's full cost and expense to remove the EVSE, (b) an amount equal to the portion of the undepreciated cost of the EVSE remaining at the time of removal, (c) the portion of the undepreciated amount of the installation costs remaining at the time of removal.

**SDG&E:** San Diego Gas & Electric Company.

## 3.0 RIGHT TO ACCESS

**3.1 Design and Installation:** Program Participant shall provide SDG&E and its Implementers access to the project location for purposes of design and installation of the EVSE. SDG&E and its Implementers shall make reasonable accommodations to minimize all impacts to Program Participant operations



# SDG&E Power Your Drive for Parks Public EV Charging Program Participation Agreement



**3.2 Operation of Facility:** Program Participant shall provide SDG&E and its Implementers reasonable access to the Facility at all times.

## 4.0 EASEMENT REQUIREMENTS

Program Participant executes and shall deliver the Easement within 60 days of presentation by SDG&E. If Easement is not approved by SDG&E, Program Participant forfeits Program eligibility.

## 5.0 INSTALLATION OF EQUIPMENT

SDG&E and its Implementers will design and construct the infrastructure in compliance with the terms of this Agreement, as well as all applicable local, state and federal laws and regulatory requirements. For reference, a preliminary layout of proposed infrastructure is illustrated in **Exhibit B: Preliminary Site Plan**. Design layout is coordinated at the site walk, where both SDG&E and Program Participant provide input. Final design will be emailed to Program Participant for approval.

Program Participant shall have six (6) EV Charging Stations, four (4) Level 2 and two (2) DC Fast Chargers.

## 6.0 AMERICANS WITH DISABILITES ACT (ADA) REQUIREMENTS

Program Participant acknowledges that electric vehicle charging infrastructure is required to comply with ADA, if applicable, and California Building Standards, which may impact parking layouts and design.

## 7.0 ELECTRIC VEHICLE SERVICE PROVIDER (EVSP)

**7.1 EVSP:** SDG&E shall select an EVSP to provide charging and payment services to EV Drivers.

**7.2 Additional EVSP Services:** Separate and apart from this Agreement, the EVSP may offer and provide any additional or complementary services, as long as these services do not directly interfere with the objectives of the Program. Specifically, such services may not include activities, agreements, arrangements, policies or procedures that inhibit the ability of the EV Drivers to respond to the pricing signal of the EV Rate. The costs of any additional EVSP services will be borne by Program Participant.

## 8.0 RELOCATIONS

**8.1 Removal:** Except as otherwise provided herein or in the Easement, at any time during the Term of this Agreement, should Program Participant require removal of the EVSE or parts thereof, other than those specifically contemplated herein, Program Participant shall bear full Removal Cost of all infrastructure installed pursuant to this Agreement, including utility owned infrastructure.

Program Participant requesting removals shall be responsible for costs as identified in the Removal Cost Schedule:

Removal Cost Schedule	
Year	Program Participant Percentage Responsibility
1	88%
2	75%
3	63%

# SDG&E Power Your Drive for Parks Public EV Charging Program Participation Agreement



4	50%
5	38%
6	25%
7	13%
8	0%

**8.2 Relocations:** Except as otherwise provided herein or in the Easement, at any time during the course of this Agreement or the duration of the Easement, whichever is longer, should Program Participant require relocation of the infrastructure installed pursuant to this Agreement including Utility owned infrastructure or parts thereof, such relocation shall be by mutual agreement of the Parties. Should SDG&E approve relocation of such infrastructure, such relocation shall be at sole expense of Program Participant regardless of whether Utility owned or Program Participant owned, and in accordance with any Program requirements, laws, regulations, or other applicable jurisdictional requirements in effect at the time of relocation. Additionally, at SDG&E's discretion, upon a relocation, Program Participant shall either amend the Easement to include the legal description of the new location or enter into a new Easement with SDG&E.

**9.0 RATE**

EV Drivers will be charged the EV-TOU Rate, and the EVSP will manage the EV Driver's payment.

**10.0 DATA COLLECTION & USE**

Program Participant shall support the data collection requirements of the Program. Data collection requirements will conform with the requirements of the CPUC. Program Participant consents to the use and disclosure, by SDG&E, its agents and representatives of data gathered as part of the Program for use in regulatory reporting, industry forums, case studies or other similar activities.

**11.0 CONTACT INFORMATION**

Facility contact persons for Program Participant shall be as follows:

**11.1 Designated Program Participant Contact Person for Operations**

Primary - Name: \_  
Job Title: \_  
Agency: \_  
Address: \_  
Email: \_  
Phone: \_

Back-up - Name: \_  
Job Title: \_  
Agency: \_  
Address: \_  
Email: \_  
Phone: \_

**11.2 Designated SDG&E Contact Person for Operations**

Primary - Name: Joe Bielawski  
Job Title: Project Manager, Operations

# SDG&E Power Your Drive for Parks Public EV Charging Program Participation Agreement



Agency: SDG&E  
Address: 8306 Century Park Court, CP 42F, San Diego, CA 92123  
Email: Jbielaw1@sdge.com  
Phone: (858) 276-9980

Back-up - Name: Anthony Aguirre  
Job Title: Project Manager, Power Your Drive for Parks  
Agency: SDG&E  
Address: 8306 Century Park Court, CP 42F, San Diego, CA 92123  
Email: Aaguirre@sdge.com  
Phone: (619) 416-2311

## 12.0 COMPENSATION

Except as otherwise provided in this Agreement, under no conditions shall Program Participant receive compensation of any kind, either by cash, in-kind services, or otherwise, for any duties or requirements provided for in this Agreement or for participation in any way as part of the Program, including but not limited to:

- Easement;
- Use of data for lawful purposes;
- Loss of activity during construction or maintenance activities, or
- Any other inconvenience or loss, without limitation, related to participation.

## 13.0 CONFIDENTIALITY

During the term of this Agreement, Program Participant may be provided with information of a confidential nature ("Confidential Information") by SDG&E or its Implementers.

**13.1 Duty of Confidentiality.** Throughout and after the duration of this Agreement, Program Participant shall hold all Confidential Information in strict confidence. Without SDG&E's prior written approval, Program Participant shall not use, disclose, reproduce, distribute, or otherwise misappropriate any Confidential Information, nor shall Program Participant take any action that may cause, or fail to take any action necessary to prevent causing, any Confidential Information to lose its character as Confidential Information.

**13.2 Return of Materials.** Upon the termination or conclusion of this Agreement for any reason, or upon earlier request by SDG&E, its Implementers or other designated representatives, Program Participant shall promptly erase and destroy or otherwise return all Confidential Information and other documents or data that contain Confidential Information.

**13.3 Customer Information.** Program Participant acknowledges and agrees that all information Program Participant collects or obtains from SDG&E, its Implementers or other designated representatives with regard to EV Drivers, including but not limited to names, addresses, telephone numbers, account numbers, utility bill data, energy usage, demographics, financial data, or any other personal information ("Customer Information"), shall be deemed Confidential Information.

**13.4. Data Security.** Program Participant will establish and diligently maintain safeguards and security practices to protect against the destruction, loss, or disclosure of any Confidential Information in its custody or possession. If Program Participant discovers a breach of security, it

## SDG&E Power Your Drive for Parks Public EV Charging Program Participation Agreement



shall immediately notify SDG&E (use Contact Information included in Section 11.2) and use its best efforts to mitigate the breach and prevent any disclosure or loss of Confidential Information.

Notwithstanding the foregoing, SDG&E understands that Program Participant is a public entity and subject to federal, state and local regulation governing public records, including the California Public Records Act. SDG&E understands and agrees that Program Participant shall comply with all such regulations, including the disclosure of Confidential Information, if legally required.

### 14.0 INTELLECTUAL PROPERTY

Nothing in this Agreement or the Parties' performance of it is intended to or shall be deemed to convey any Intellectual Property Rights to Program Participant. All Intellectual Property Rights relating to the Program are expressly reserved to SDG&E, its Implementers or other designated representatives and their respective licensors.

### 15.0 WAIVER

No provision of this Agreement may be waived unless agreed to by SDG&E and Program Participant in writing. SDG&E's or Program Participant's failure to insist upon strict performance of any provision of the Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such a breach, shall not constitute a waiver of any right under this Agreement.

### 16.0 DISPUTE RESOLUTION

**16.1 Meet and Confer:** In the event of a dispute relating to this Agreement, Program Participant and SDG&E, its Implementers or other designated representatives shall make a good faith effort to resolve the dispute by negotiation between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute.

**16.2 Arbitration:** In the event the Parties fail to resolve by negotiation any dispute arising out of or relating to this Agreement, such dispute shall be resolved by binding arbitration administered by JAMS (formerly known as Judicial Arbitration and Mediation Services) under its then current rules. The arbitration shall be conducted in San Diego County, California. The Parties hereby irrevocably waive any right to have such disputes tried before a jury. If either Party refuses or fails to participate in arbitration after receiving notice, then the arbitrator shall make an award based on the evidence presented to him or her. The arbitrator shall award the prevailing Party its fees and costs. Any arbitration award shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. In no event may arbitration be demanded on any claim after the applicable statute of limitation for commencing litigation has expired.

### 17.0 GOVERNING LAW

This Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. The exclusive venue for any litigation arising from or relating to this Agreement shall be in San Diego County, California.

### 18.0 PROGRAM PARTICIPANT REPRESENTATIONS

Program Participant represents it is an independent entity from SDG&E, its affiliates, contractors, vendors, representatives, designees and nothing herein shall be construed as creating any agency, partnership, or other form of joint enterprise between Program Participant and SDG&E, its affiliates, contractors, vendors, representatives or designees nor create any obligations or responsibilities on their behalf except as otherwise provide herein, nor make any representations of

# SDG&E Power Your Drive for Parks Public EV Charging Program Participation Agreement



any kind to this effect. Program Participant represents that it is the fee title owner and has the ability to grant the Easement.

## 19.0 THIRD PARTY BENEFICIARIES

This Agreement and any related documents are solely between the Parties and no third parties are intended beneficiaries.

## 20.0 SEVERABILITY

If any provision under this Agreement or its application to any person or circumstance is held invalid by any court of lawful jurisdiction, such invalidity shall not affect other provisions of the Agreement which can be given effect without the invalid provision.

## 21.0 MARKETING & BRANDING (SDG&E BRAND or EVSP BRAND)

**22.1 Disclaimer:** All marketing, advertising or promotional materials which reference SDG&E, its Implementers or other designated representatives or the Program itself, shall include a disclaimer which shall state that Program Participant is not an agent or affiliate of any and all of SDG&E, its Implementers or other designated representatives.

**22.2 Logos/ Trademarks:** Program Participant shall not use the logos, trademarks or service marks of SDG&E, its Implementers or other designated representatives in any of Program Participant's marketing, advertising, or promotional materials without express written approval from SDG&E, its Implementers or other designated representatives as appropriate.

**22.3 Signage:** Neither SDG&E nor its Implementers or other designated representatives or the Program itself shall be allowed to erect signage or other marketing materials on Program Participant property without prior express approval.

**22.4 Marketing Materials:** SDG&E must pre-approve all Program marketing materials.

**22.5 Endorsements:** Program Participant shall not state or imply endorsement on the part of SDG&E, its contractors or other designated representatives or the Program.

**22.6 Right to Review Materials:** SDG&E, its contractors or other designated representatives reserves the right to review and approve any and all advertising, marketing, or promotional copy or materials developed or used by the Program Participant which references the Program Participant's participation in this Agreement or the Program, financing and other SDG&E programs or those of the contractors or other designated representatives. At its sole discretion, SDG&E, its contractors or other designated representatives may require the Program Participant to submit such copy and materials for pre-approval. Approval shall be granted, unless SDG&E, its contractors or other designated representatives, in its sole discretion, determines that the copy or materials are misleading, in error, or fail to meet the requirements of this Agreement. The Program Participant agrees to remove from circulation or otherwise discontinue the use of any such materials.

## 22.0 CHANGES

SDG&E, its Implementers or other designated representatives may initiate changes to the Program as circumstances dictate. SDG&E, its Implementers or other designated representatives will make every effort to provide at least 30 calendar days written notice of changes that affect Program activities. In the event SDG&E, its Implementers or other designated representatives materially change the Program to the detriment of Program Participant, Program Participant may terminate

## SDG&E Power Your Drive for Parks Public EV Charging Program Participation Agreement



this Agreement or rescind the Easement upon 30 days written notice to SDG&E, subject to the terms of this Agreement.

Design Changes, Program Participant acknowledges and agrees that any infrastructure installed by SDG&E may vary from the Conceptual Design, if, in SDG&E's sole discretion, actual Site conditions or municipal requirements dictate such changes. Program Participant may be responsible for incremental costs associated with changes to design requested by Program Participant for convenience after acceptance of design.

### 23.0 TERMINATION AND TRANSFER

**23.1 Term:** This Agreement shall be in effect from the Effective Date ("Effective Date") through a period of eight (8) years from the In-Service Date ("In-Service Date"), unless the parties agree in writing to cancel or extend the Term ("Term").

**23.2 SDG&E Right to Terminate:** SDG&E may terminate, or for any duration suspend, this Agreement and Program Participant's participation in the Program, or operation of the infrastructure, with or without cause, at any time, and for any reason, such reasons may include but are not limited to:

- Failure to provide or maintain terms of the Easement
- Breach of Agreement in whole or in part
- Permitting issues
- Exceptional installation costs
- Environmental concerns
- Program no longer authorized by the CPUC
- Any other reason(s) not in Program or ratepayers' best interest

**23.3 Termination:** Program Participant may terminate this Agreement upon thirty (30) days notice should SDG&E materially breach any material term of this Agreement or fail to perform any material its obligations hereunder, after notice and a reasonable opportunity to cure. Should a sale of property or other circumstance result in Program Participant losing ability to perform its obligations per this Agreement, Program Participant shall immediately notify SDG&E in writing and without delay within ten (10) days of Program Participant knowledge of such a possibility and notwithstanding anything to the contrary contained herein, this Agreement shall terminate. Notwithstanding anything contained in this Agreement, if Program Participant terminates the Agreement for any reason other than an SDG&E material breach prior to the eight (8) year period, Program Participant will be responsible for the Removal Cost as calculated pursuant to the Removal Cost Schedule in Section 8.1.

If after signing this Agreement, Program Participant withdraws from the Program prior to the site being activated, then SDG&E reserves the right to recover all fees and costs incurred by it and its Implementers after the Effective Date including, but not limited to, design cost, site walk costs, etc.

**23.4 Transfer of Agreement:** Under no circumstance may this Agreement or parts thereof be assigned, transferred or otherwise conveyed without prior reasonable written approval of the other Party.

### 24.0 OPTION TO PURCHASE EVSE

At the end of the eight (8) year term of this Agreement, Program Participants may have the option to purchase EVSE located at: Grape Day Park, 321 N. Broadway, Escondido, CA 92025, SDG&E may sell EVSE to Program Participant at fair market value, subject to regulatory approval.

# SDG&E Power Your Drive for Parks Public EV Charging Program Participation Agreement



Program Participant must notify SDG&E in writing of its interest to purchase EVSE within thirty (30) days of completing the eight (8) year period term of this Agreement.

## 25.0 NOTICES

Any notice provided under this Agreement shall be sent via certified U.S. Mail, signature required. Notice is deemed effective on the third day after it is deposited in the U.S. Mail. Notice pursuant to this Agreement shall be sent to:

### 25.1 Program Participant:

Primary - Name: \_  
Job Title: \_  
Agency: \_  
Address: \_  
Email: \_  
Phone: \_

Back-up - Name: \_  
Job Title: \_  
Agency: \_  
Address: \_  
Email: \_  
Phone: \_

### 25.2 SDG&E:

Primary - Name: Anthony Aguirre  
Job Title: Project Manager, Power Your Drive for Parks  
Agency: SDG&E  
Address: 8306 Century Park Court, CP 42F, San Diego, CA 92123  
Email: Aaguirre@sdge.com  
Phone: (619) 416-2311

Back-up - Name: Chris Farretta  
Job Title: Clean Transportation Programs Manager  
Agency: SDG&E  
Address: 8306 Century Park Court, CP 42F, San Diego, CA 92123  
Email: Cfarretta@sdge.com  
Phone: (858) 547-3091

## 26.0 AUTHORITY

The undersigned represents and warrants that it has the requisite power, legal authority and capacity to enter into this Agreement and to perform each and every obligation required of Program Participant under this Agreement.

## 27.0 MISCELLANEOUS

This Agreement, including the Exhibits attached hereto and all items incorporated herein by reference and any written modification shall represent the entire and integrated agreement between the Parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the Parties' agreement, and shall supersede any and all prior negotiations,

# SDG&E Power Your Drive for Parks Public EV Charging Program Participation Agreement



representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification. If any provision of this Agreement is in any way deemed unenforceable, then the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those to which it is held unenforceable, shall not be affected, and each term and provision shall be enforceable to the fullest extent permitted by law.

At any time either Party is aware of, any ambiguity in, or conflict between or within this document, said Party shall immediately bring such ambiguity to the attention of the other Party or its designated representative for clarification and resolution.

## 28.0 ACKNOWLEDGEMENT

Program Participant represents and warrants that it has the requisite power, legal authority and capacity to enter into this Agreement and to perform each and every obligation required of Program Participant under this Agreement. In addition, the undersigned warrants and represents that the person signing this Agreement on the Party's behalf has and shall have all requisite power and legal authority to bind the Party on whose behalf he/she is signing to the Party's obligations under this Agreement.

Program Participant acknowledges that it has provided all required information and documentation truthfully and accurately.

This Agreement shall become effective as of the Effective Date.

### PROGRAM PARTICIPANT

### SAN DIEGO GAS & ELECTRIC

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

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

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

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

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Name of Agency



# SDG&E Power Your Drive for Parks Public EV Charging Program Participation Agreement



Date: \_\_\_\_\_ Site ID#: \_\_\_\_\_ Site Name: \_\_\_\_\_

## EXHIBIT A: Owner Authorized Agent Form

I, \_\_\_\_\_, hereby authorize San Diego Gas & Electric to act as my agent in all documents / forms as it relates to obtaining Agency permits for the installation of AB 1082/AB 1083 Electric Vehicle charging infrastructure at the property listed below.

### **SITE HOST TO COMPLETE**

Property Address:

Grape Day Park, 321 N. Broadway, Escondido, CA 92025  
\_\_\_\_\_

Agent Name, Address & Telephone Number:

Anthony Aguirre, Project Manager SDG&E  
8306 Century Park Court, CP 42F, San Diego, CA 92123  
aaguirre@sdge.com, (619) 416-2311

Property Owner Name, Address, & Telephone Number:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

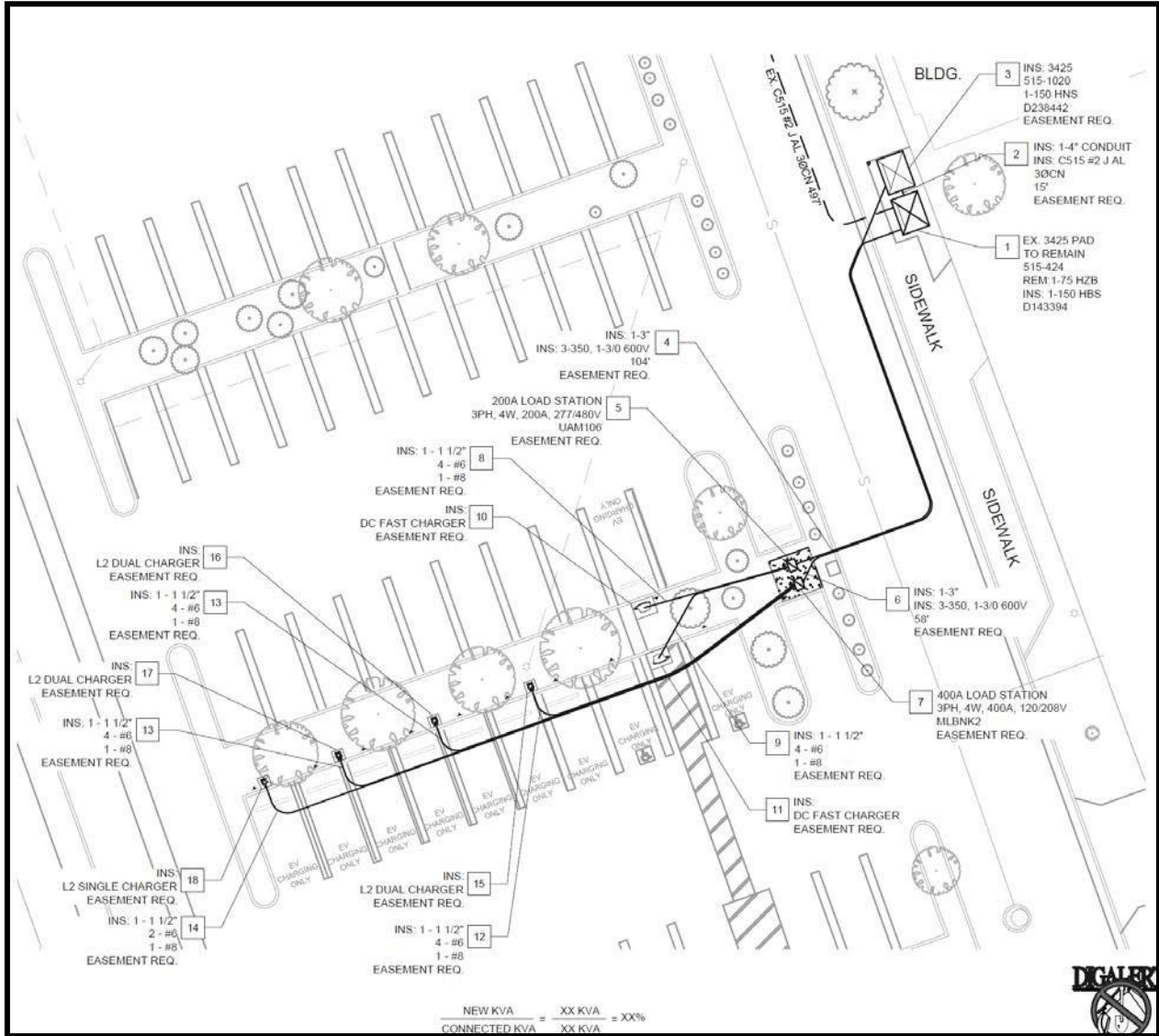
Signature: \_\_\_\_\_

Date: \_

# SDG&E Power Your Drive for Parks Public EV Charging Program Participation Agreement



## EXHIBIT B: Preliminary Site Plan



Recording Requested by  
San Diego Gas & Electric Company

When recorded, mail to:

San Diego Gas & Electric Company  
8690 Balboa Avenue  
San Diego, CA 92123-1569  
Attn: Real Estate Records – CPA01

SPACE ABOVE FOR RECORDER'S USE

Project No.: 3-333203  
Notif. No.: 3-349876  
A.P.N.: 229-352-12  
SR No.: 458401

Transfer Tax None  
SAN DIEGO GAS & ELECTRIC COMPANY

# RW 372105

## EASEMENT

COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF ESCONDIDO (Grantor), grants to SAN DIEGO GAS & ELECTRIC COMPANY, a corporation (Grantee), an easement and right of way in, upon, over, under and across the lands hereinafter described, to erect, construct, change the size of, improve, reconstruct, relocate, repair, maintain and use facilities consisting of:

1. Underground facilities, together with aboveground structures consisting of, but not limited to, pad-mounted electrical equipment, and electric vehicle charging stations (“EV Stations”), and appurtenances for the transmission and distribution of electricity to the Facilities.
2. Communication facilities and appurtenances, which can include Supervisory Control and Data Acquisition (“SCADA”).

The above facilities will be installed at such locations and elevations upon, along, over and under the hereinafter described easement as Grantee may now or hereafter deem convenient or necessary. Grantee also has the right of ingress and egress, to, from and along this easement in, upon, over and across the hereinafter described lands. Grantee further has the right, but not the duty to clear and keep this easement clear from explosives, buildings, structures and materials.

The property in which this easement and right of way is hereby granted is situated in the County of San Diego, State of California described as follows:

That portion of Lot 25 in Block 10 of Escondido, according to Map thereof No. 336, filed in the Office of the County Recorder of said County of San Diego, more particularly described in Parcel 8 in a Deed recorded July 15, 1992 at Document No. 1992-0443955, of Official Records of said County of said County of San Diego.

The easement in the aforesaid property shall be those strips of land, including all of the area lying between the exterior sidelines, which sidelines shall be three (3) feet, measured at right angles, on each exterior side of each and every utility facility installed within said property on or before **December 31, 2022**.

In order to provide adequate working space for Grantee, Grantor shall not erect, place or construct, nor permit to be erected, placed or constructed any building or other structure, deposit any materials, plant any trees and/or shrubs or change ground elevation within eight (8) feet of the front of the door or hinged opening of any above ground Facility (other than the EV Station) and within three (3) feet of the EV Station installed within this easement.

Grantor shall provide at all times, a delineated space surrounding each EV Station, so that EV Station may be accessed and used by an electric vehicle for charging. SDG&E shall stencil, in paint, the ground of such stall with the letters "EV Charging Only". SDG&E shall mark a minimum of two and up to half of these spaces with a sign that states: "No parking except for electric vehicle charging". All signage proposed for this project shall conform to City Wide Sign Regulations and be administered by the Sign Code Administration Division of the Planning Department, where applicable.

Upon Grantor and Grantee's mutual agreement, at both parties' sole discretion, Grantee will (i) remove Grantee's facilities from the Easement within a reasonable period of time, and (ii) upon Grantor's request, furnish Grantor a good and sufficient quitclaim of the Easement; provided, that Grantee shall have such time as is necessary to obtain any and all agency or jurisdictional requirements and approvals necessary for such removal and quitclaim, including but not limited to any approval from the California Public Utilities Commission as may be required.

Grantor grants to Grantee the right to erect and maintain on Grantor's property immediately adjacent to this easement retaining walls and/or protective barricades as may be necessary for Grantee's purposes.

Grantor shall not erect, place or construct, nor permit to be erected, placed or constructed, any building or other structure, plant any tree, drill or dig any well, within this easement.

Grantor shall not increase or decrease the ground surface elevations within this easement after installation of Grantee's facilities, without prior written consent of Grantee, which consent shall not unreasonably be withheld.

Grantee shall have the right but not the duty, to trim or remove trees and brush along or adjacent to this easement and remove roots from within this easement whenever Grantee deems it necessary. Said right shall not relieve Grantor of the duty as owner to trim or remove trees and brush to prevent danger or hazard to property or persons.

CONDUITS CARRY HIGH VOLTAGE ELECTRICAL CONDUCTORS, therefore Grantor shall not make or allow any excavation or fill to be made within this easement WITHOUT FIRST NOTIFYING SAN DIEGO GAS & ELECTRIC COMPANY BY CALLING (619) 696-2000, and OBTAINING PERMISSION.

The legal description for this easement was prepared by San Diego Gas & Electric Company pursuant to Section 8730 of the Business and Professions Code, State of California.

This easement shall be binding upon and inure to the benefit of successors, heirs, executors, administrators, permittees, licensees, agents or assigns of Grantor and Grantee.

IN WITNESS WHEREOF, Grantor executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CITY OF ESCONDIDO  
AS SUCCESSOR AGENCY TO THE ESCONDIDO  
COMMUNITY DEVELOPMENT COMMISSION

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

Name: \_\_\_\_\_  
PRINT NAME

Title: \_\_\_\_\_

Drawn: BCorbilla  
Checked: *CME*  
Date: 12/08/2020  
Site No: 83200053  
Site Name: City of Escondido-Grape Day Park

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 \_\_\_\_\_,  
(name, title of officer)

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 of Notary Public)

(Notary Seal)

PL 21-0039  
 Plans and Exhibits

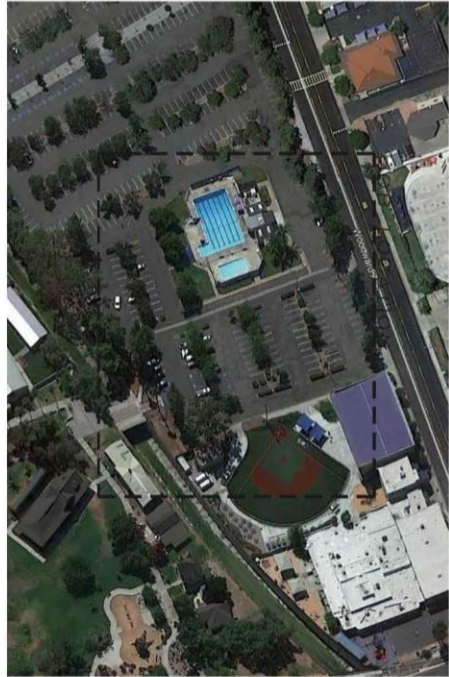
# 83200053 - GRAPE DAY PARK

321 N. BROADWAY, ESCONDIDO, CA 92025



VICINITY MAP  
 NO SCALE  
 TBM 1128-H2

SHEET INDEX  
 SHEET 1: COVER PAGE AND ONE LINE  
 SHEET 2: SECTION

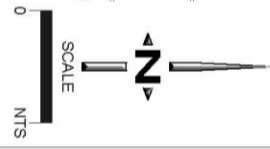


STRUCTURE COORDINATES

[LOC 1] D143394 N 33.725136° W -117.028444°  
 [LOC 3] D143394 N 33.725136° W -117.028444°

NOTES

- ✓ THE PURPOSE OF THIS WORK ORDER IS TO INSTALL TWO NEW METERS AND TWO TWO DC FAST CHARGERS, THREE 12 DUAL CHARGERS AND ONE 12 SINGLE CHARGER EMERGENCY FRONTLINES.
- ✓ ALL QUESTIONS RELATED TO SERVICE TRENCH SHOULD BE DIRECTED TO THE APPROPRIATE FIELD CONSTRUCTION MANAGER.
- ✓ ALL EQUIPMENT ON PRIVATE PROPERTY WILL REQUIRE AN EASEMENT.



APPLICANT APPROVAL

APPROVAL OF THE SYSTEM DESIGN AS IT APPEARS ON THIS PRELIMINARY DRAWING(S) IS LIMITED TO THE INFORMATION PROVIDED HEREON AND DOES NOT CONSTITUTE A GUARANTEE OF THE ACCURACY OF THE INFORMATION PROVIDED HEREON. THE APPLICANT'S AUTHORIZED REPRESENTATIVE SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED HEREON.

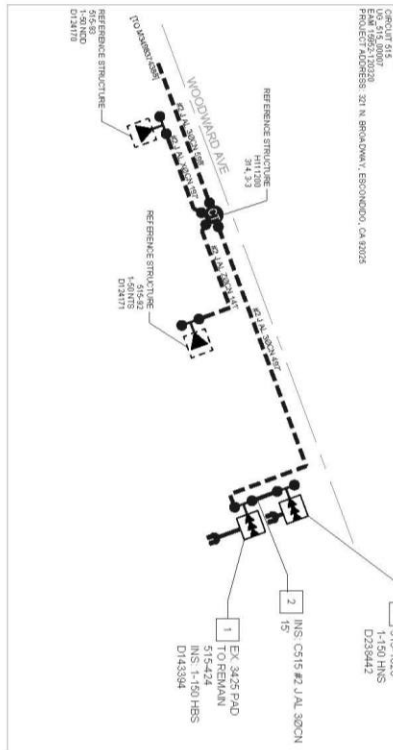
A. Applicant shall be responsible for providing all necessary information and/or data not in conflict with Applicant's proposed information, and/or any further costs incurred by SDC&E in the processing of this project will be at the Applicant's expense if:

1. There are changes to the system caused by the Applicant or the Applicant's authorized representative.
2. There is a deviation from the geo/electric load information specified on the Approved Local Study which will necessitate design study or construction changes.
3. The project is cancelled after contract negotiations have been completed by Applicant and SDC&E.

APPLICANT APPROVAL - Please Print or Type

APPLICANT SIGNATURE	TITLE
DATE	

ONE LINE DIAGRAM



DESIGNED BY DOMINIC LEACH	CONTACT PHONE (959) 650-4156	CONTRACT NAME SCOTT THOMPSON
PROJECT NUMBER 300000333203	CONTACT NAME DOMINIC LEACH	PAGE 1 OF 2
DATE 12/09/2020		

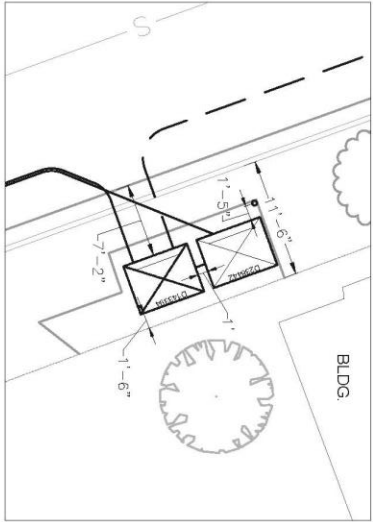
Copyright 2003 San Diego Gas & Electric Company. All rights reserved.  
 Removal of this copyright notice without permission is not permitted under law.

# 83200053 - GRAPE DAY PARK

321 N. BROADWAY, ESCONDIDO, CA 92025

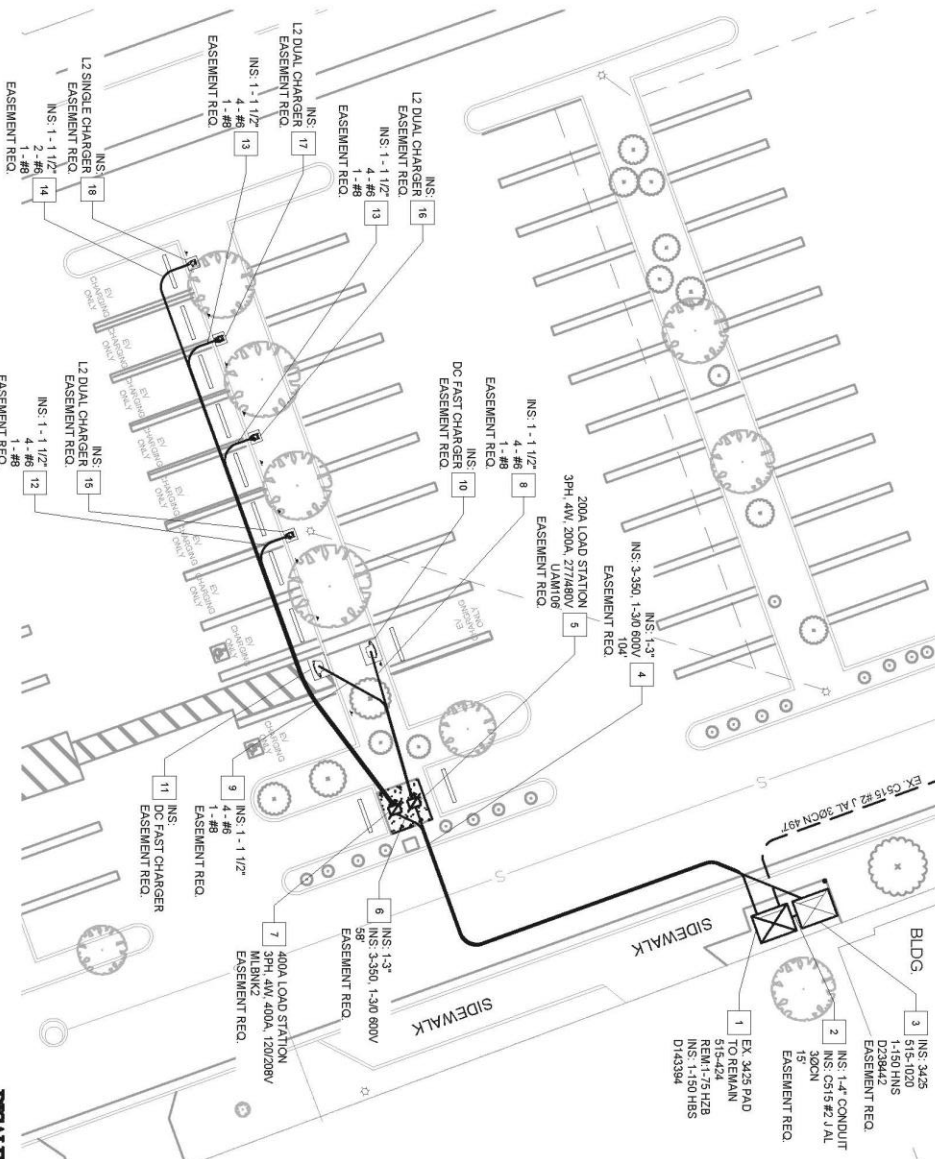


VICINITY MAP  
 NS SCALE 1/8" = 1125'-10"



SITE DETAIL

SCALE: 1:10'

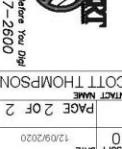


### NOTES

- 1. CHUTE: ELECTRIC STAND BY LINEMAN REQUIRED FOR ALL WORK AROUND ENERGIZED EQUIPMENT.
- 2. REPAIRS: REPAIRS RELATED TO SERVICE TRENCH SHOULD BE DIRECTED TO THE APPROPRIATE FIELD CONSTRUCTION ADVISER.

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NEW KVA = XX KVA = XX%  
 CONNECTED KVA = XX KVA = XX%



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 1-800-227-2600

<b>ASPLUNDH</b> PLANNING 300000333203 300000349876 DOMINIC LEACH CONTACT PHONE (858) 650-4155 SCOTT THOMPSON CONTACT NAME PAGE 2 OF 2 12/09/2020 REV/APP DATE	PROJECT NOTIFICATION # JOB NOTIFICATION # DESIGNED BY CONTACT PHONE CONTACT NAME PAGE 2 OF 2 12/09/2020 REV/APP DATE
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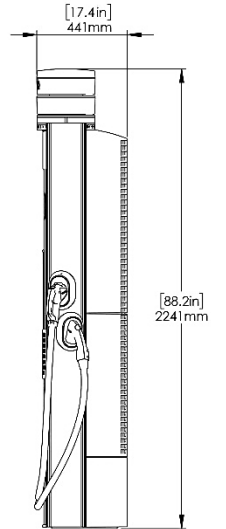
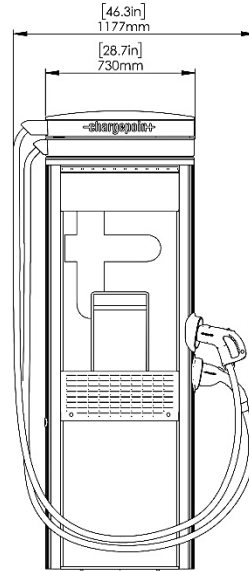
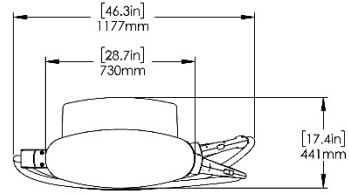
### Architectural Drawings (Dimensions)

## Express 250

Specifications and Ordering Information



Express 250



CT4000 Datasheet

### Architectural Drawings (Dimensions)

## CT4000 Level 2 Commercial Charging Station

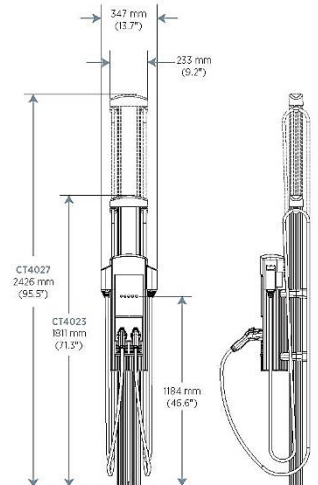
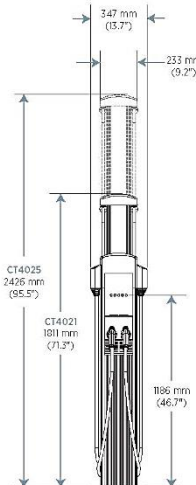
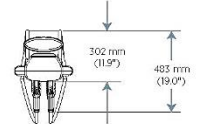
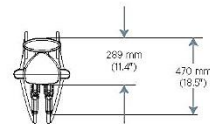
Specifications and Ordering Information



CT4021

CT4021 1830 mm (6')  
 CT4025 2440 mm (8')  
 Bollard

CT4023 1830 mm (6')  
 CT4027 2440 mm (8')  
 Wall Mount





## EXHIBIT D

### PLANNING CASE NOS. PL21-0039

#### CONDITIONS OF APPROVAL

This Project is conditionally approved as set forth on the application received by the City of Escondido on January 26, 2021, and the Project drawings consisting of Site Plans and colored photos all designated as approved on April 7, 2021, and shall not be altered without express authorization by the Community Development Department.

For the purpose of these conditions, the term "Applicant" shall also include the Project proponent, owner, permittee, and the Applicant's successors in interest, as may be applicable.

This Project is subject to all the terms and conditions set forth in the SDG&E Power Your Drive for Parks Public EV Charging Program Participation Agreement between San Diego Gas & Electric Company and the City of Escondido in accordance with Exhibit "A" of City Council Resolution No. 2021-52.

#### A. General:

1. **Acceptance of Permit.** If the Applicant fails to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the Applicant shall be deemed to constitute all of the following on behalf of the Applicant:
  - a. Acceptance of the Permit by the Applicant; and
  - b. Agreement by the Applicant to be bound by, to comply with, and to do all things required of or by the Applicant pursuant to all of the terms, provisions, and conditions of this Project Permit or other approval and the provisions of the Escondido Municipal Code or Zoning Code applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire after one year from the date of this approval, or the expiration date of any extension granted in accordance with the Escondido Municipal Code and Zoning Code.

The Permit shall be deemed expired if a building permit has not been obtained or work has been discontinued in the reliance of that building permit. If no building permits are required, the City may require a noticed hearing to be scheduled before the authorized agency to determine if there has been demonstrated a good faith intent to proceed, pursuant to and in accordance with the provision of this Permit.

3. **Certification.** The Director of Community Development, or his/her designee, is authorized and directed to make, or require the Applicant to make, all corrections and modifications to the Project drawings and any other relevant document comprising the Project in its entirety, as necessary to

make them internally consistent and in conformity with the final action on the Project. This includes amending the Project drawings as necessary to incorporate revisions made by the decision-making body and/or reflecting any modifications identified in these conditions of approval. Three copies of final Approved Plan set, shall be submitted to the Planning Division for certification. Said plans must be certified by the Planning Division prior to submittal of any post-entitlement permit, including grading, public improvement, landscape, or building plans for the Project.

**4. Conformance to Approved Plans.**

- a. The operation and use of the subject property shall be consistent with the Project Description and Details of Request, designated with the Approved Plan set.
- b. Nothing in this Permit shall authorize the Applicant to intensify the authorized activity beyond that which is specifically described in this Permit.
- c. Once a permit has been issued, the Applicant may request Permit modifications. "Minor" modifications may be granted if found by the Director of Community Development to be in substantial conformity with the Approved Plan set, including all exhibits and Permit conditions attached hereto. Modifications beyond the scope described in the Approved Plan set may require submittal of an amendment to the Permit and approval by the authorized agency.

**5. Limitations on Use.** Prior to any use of the Project site pursuant to this Permit, all Conditions of Approval contained herein shall be completed or secured to the satisfaction of the Community Development Department.

**6. Certificate of Occupancy.**

- a. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required, and any such change in occupancy must comply with all other applicable local and state laws.
- b. Prior to final occupancy, a Planning Final Inspection shall be completed to ensure that the property is in full compliance with the Permit terms and conditions. The findings of the inspection shall be documented on a form and content satisfactory to the Director of Community Development.

**7. Right to Entry.** The holder of this Permit shall make the premises available for inspection by City staff during construction or operating hours and allow the investigations of property necessary to ensure that minimum codes, regulations, local ordinances and safety requirements are properly followed. The Applicant shall provide such business records, licenses, and other materials necessary upon request to provide evidence of compliance with the conditions of approval, as well as federal, state, or laws.

- 8. Compliance with Federal, State, and Local Laws.** Nothing in this Permit shall relieve the Applicant from complying with conditions, performance standards, and regulations generally imposed upon activities similar in nature to the activity authorized by this permit. (Permits from other agencies may be required as specified in the Permit's Details of Request.) This Permit does not relieve the Applicant of the obligation to comply with all applicable statutes, regulations, and procedures in effect at the time that any engineering permits or building permits are issued unless specifically waived herein.

No part of this Permit's approval shall be construed to permit a violation of any part of the Escondido Municipal or Zoning Code. During Project construction and after Project completion, the Applicant shall ensure the subject land use activities covered by this Permit is conducted in full compliance with all local and state laws.

**9. Clerk Recording.**

- a. Exemption.** If the environmental determination prepared for the Project is a categorical exemption, the City of Escondido hereby notifies the Applicant that the County Clerk's Office requires a documentary handling fee of \$50 in order to file a Notice of Exemption. In order to file the Notice of Exemption with the County Clerk, in conformance with California Environmental Quality Act (CEQA) Guidelines section 15062, the Applicant should remit to the City of Escondido Planning Division, within two working days of the final approval of the Project (the final approval being the date of this letter) a certified check payable to the "County Clerk" in the amount of \$50. The filing of a Notice of Exemption and the posting with the County Clerk starts a 35-day statute of limitations period on legal challenges to the agency's decision that the Project is exempt from CEQA. Failure to submit the required fee within the specified time noted above will result in the Notice of Exemption not being filed with the County Clerk, and a 180-day statute of limitations period will apply.

- 10. Application Accuracy.** The information contained in the application and all attached materials are assumed to be correct, true, and complete. The City of Escondido is relying on the accuracy of this information and Project-related representations in order to process this application. Any permits issued by the City may be rescinded if it is determined that the information and materials submitted are not true and correct. The Applicant may be liable for any costs associated with rescission of such permits.

- 11. Revocation, Suspension, Modification.** At any time after Project implementation, the City may require a noticed public hearing to be scheduled before the Planning Commission to determine if there has been demonstrated a good faith intent to proceed in reliance on this approval. This item may be referred to the appropriate decision-making body upon recommendation of the Director of Community Development for review and possible revocation or modification of the Permit regarding non-compliance with the Conditions of Approval.

This Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing, and after the following findings are fully investigated:

- a. A violation of any term or condition not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance, state law, or federal law not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates or constitutes a nuisance.

**B. Construction, Maintenance, and Operation Obligations:**

1. **Code Requirements.** All construction shall comply with the applicable requirements of the Escondido Municipal Code, Escondido Zoning Code, California Building Code; and the requirements of the Planning Division, Engineering Services Department, Director of Community Development, Building Official, City Engineer, and the Fire Chief in carrying out the administration of said codes. Approval of this Permit request shall not waive compliance with any City regulations in effect at the time of Building Permit issuance unless specifically waived herein.

As a condition of receiving the land use approvals specified herein, Applicant shall maintain the property subject to the approvals in compliance with all applicable city codes governing the condition or appearance of property. In addition to compliance with such basic standards, the property subject to these approvals shall also be maintained free of trash, plant debris, weeds, and concrete (other than existing foundations and permanent structures). Any signs placed on the property advertising such property for sale or rent shall be in accordance with applicable laws, and be kept clean, in like-new condition, and free from fading and graffiti at all times. This condition shall be applicable from the date the land use is approved. The failure to comply with this condition shall subject the approvals specified herein to revocation for failure to comply.

2. **Agency License and Permitting.** In order to make certain on- or off-site improvements associated with the Approved Plan set, the Permit request may require review and clearance from other agencies. Nothing in these Conditions of Approval shall be construed as to waive compliance with other government agency regulations or to obtain permits from other agencies to make certain on- or off-site improvements prior to Final Map recordation, grading permit issuance, building permit issuance, or certificate of occupancy as required. This review may result in conditions determined by the reviewing agency.

At all times during the effective period of this Permit, the Applicant and any affiliated responsible party shall obtain and maintain in valid force and effect, each and every license and permit

required by a governmental agency for the construction, maintenance, and operation of the authorized activity.

3. **Utilities.** All new utilities and utility runs shall be underground, or fee payment in-lieu subject to the satisfaction of the City Engineer.
4. **Noise.** All Project generated noise shall conform to the City's Noise Ordinance (Ordinance 90-08).
5. **Lighting.** All exterior lighting shall conform to the requirements of Article 35 (Outdoor Lighting Ordinance) of the Escondido Zoning Code.
6. **General Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping. The Applicant shall paint and re-paint all building exteriors, accessory equipment, and utility boxes servicing the Project, as necessary to maintain clean, safe, and efficient appearances.
7. **Anti-Graffiti.** The Applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including all areas of the job site for when the Project is under construction.
8. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, and garbage.
9. **Staging Construction Areas.** All staging areas shall be conducted on the subject property, subject to approval of the Engineering Department. Off-site staging areas, if any, shall be approved through the issuance of an off-site staging area permit/agreement.
10. **Disturbance Coordinator.** The Applicant shall designate and provide a point-of-contact whose responsibilities shall include overseeing the implementation of Project, compliance with Permit terms and conditions, and responding to neighborhood concerns.
11. **Construction Waste Reduction, Disposal, and Recycling.** Applicant shall recycle or salvage for reuse a minimum of 65% of the non-hazardous construction and demolition waste for residential projects or portions thereof in accordance with either Section 4.408.2, 4.408.3, or 4.408.4 of the California Green Building Standards Code; and/or for non-residential projects or portions thereof in accordance with either Section 5.408.1.1, 5.408.1.2, or 5.408.1.3 of the California Green Building Standards Code. In order to ensure compliance with the waste diversion goals for all residential and non-residential construction projects, the Applicant must submit appropriate documentation as described in Section 4.408.5 of the California Green Building Standards Code for residential projects or portions thereof, or Section 5.408.1.4 for non-residential projects or portions thereof, demonstrating compliance with the California Green Building Standards Code sections cited above.

**12. Construction Equipment Emissions.** Applicant shall incorporate measures that reduce construction and operational emissions. Prior to the City's issuance of the demolition and grading permits for the Project, the Applicant shall demonstrate to the satisfaction of the Planning Division that its construction contractor will use a construction fleet wherein all 50-horsepower or greater diesel-powered equipment is powered with California Air Resources Board ("CARB") certified Tier 4 Interim engines or equipment outfitted with CARB-verified diesel particulate filters. An exemption from this requirement may be granted if (i) the Applicant provides documentation demonstrating that equipment with Tier 4 Interim engines are not reasonably available, and (ii) functionally equivalent diesel PM emission totals can be achieved for the Project from other combinations of construction equipment. Before an exemption may be granted, the Applicant's construction contractor shall demonstrate to the satisfaction of the Director of Community Development that (i) at least two construction fleet owners/operators in San Diego County were contacted and those owners/operators confirmed Tier 4 Interim equipment could not be located within San Diego County during the desired construction schedule, and (ii) the proposed replacement equipment has been evaluated using the California Emissions Estimator Model ("CalEEMod") or other industry standard emission estimation method, and documentation provided to the Planning Division confirms that necessary project-generated functional equivalencies in the diesel PM emissions level are achieved.

**C. Parking and Loading/Unloading. N/A**

**D. Landscaping: N/A**

**E. Specific Planning Division Conditions:**

- a. Any new above-ground transformer/electrical boxes shall be painted a dark flat green and this note shall be included on the building plans.
- b. Any landscaping or irrigation removed or damaged shall be replaced/repaired.
- c. The applicant shall submit an encroachment permit with the Engineering Services Division/Field Engineering.

**F. Building Division Conditions:**

Building plans must be submitted for this project. These comments are preliminary only. A comprehensive plan check will be completed prior to permit issuance and additional technical code requirements may be identified and changes to the originally submitted plans may be required.

1. The Applicant shall submit a complete set of construction plans to the Development Services Department for building permit plan check processing. Submitted plans must show compliance with the latest adopted editions of the California Building Code (The International

Building Code with California Amendments, the California Mechanical, Electrical and Plumbing Codes).

## **FINDINGS OF FACT**

### **PL 21-0039**

#### **Environmental Determination(s):**

1. Pursuant to the California Environmental Quality Act, (CEQA, Public Resources Code section 21000 et. seq.), and its implementing regulations (the State CEQA Guidelines), Article 14 of the California Code of Regulations section 15000 et. seq., the City of Escondido is the Lead Agency for the project ("Project"), as the public agency with the principal responsibility for approving the Project.
2. All of the requirements of the California Environmental Quality Act have been met because it was found that the project will not have a significant effect on the environment as demonstrated in the Categorical Exemption in CEQA Guidelines section 15303, "New Construction" as follows:
  - a. The project involves the installation and operation of a limited number of new, small equipment within an existing municipal parking lot. The site can be adequately served by all required utilities and public services.
  - b. The project is not located in the vicinity of any designated or eligible state scenic highway; there are no on-site hazardous waste sites associated with the project site listed under Government Code section 65962.5.; and there are no historic resource located within the project development area or would be affected by the proposed project. All resource topics associated with the project have been analyzed and were found to pose no significant impact. Therefore, the project would not make a cumulatively considerable contribution to a significant cumulative impact.

#### **Plot Plan:**

1. The project site is located within the Park View District (PV) of the Downtown Specific Plan (SPA 9). Accessory structures such as Electric Vehicle Charging Stations and related infrastructure are permitted uses within the Park View District.
2. The Plot Plan is granted subject to such conditions as deemed necessary to meet the standards of the use and zone in which it is located and to comply with applicable design standards. The plot plan also is granted subject to such additional conditions as deemed necessary and desirable to preserve the public health, safety and general welfare.





CITY OF ESCONDIDO  
PLANNING DIVISION  
201 NORTH BROADWAY  
ESCONDIDO, CA 92025-2798  
(760) 839-4671

### Notice of Exemption

To: San Diego Assessor/Recorder/County Clerk  
Attn: Fish and Wildlife Notices  
1600 Pacific Highway, Room 260  
San Diego, CA 92101 (MS A-33)

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

**Project Title/Case No.:** PL21-0039 (SDG&E Electric Vehicle Charging Stations)

**Project Location - Specific:** On the southern side of Woodward Avenue, west of N. Broadway, addressed at 251 Woodward Avenue (APN 229-352-12-00).

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

**Description of Project:** The project involves the installation of SDG&E Electric Vehicle ("EV") charging infrastructure and charging stations within the City of Escondido Grape Day Park/Woodward Parking Lot. Two types of chargers will be installed as part of the pilot programs: Level 2 (208-240 volt) chargers, and DC fast chargers (480 volt). Eight of the ten proposed EV chargers are Level 2 chargers. The other two are DC fast chargers. The EV charging stations are narrow vertical structures that are approximately five feet tall and serviced by underground infrastructure.

**Name of Public Agency Approving Project:** City of Escondido

**Name of Person or Agency Carrying Out Project:**

Name: Anthony Aguirre, San Diego Gas & Electric (Project Manager) Telephone: (619) 416-2311  
Address: 8306 Century Park Court, CP 42F, San Diego, CA 92123

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

**Exempt Status:** The proposed project qualifies for a categorical exemption pursuant to CEQA Guidelines section 15303 for New Construction meeting all applicable conditions.

**Reasons why project is exempt:**

1. The project involves the installation and operation of a limited number of new, small equipment within an existing municipal parking lot. The site can be adequately served by all required utilities and public services.
2. The project is not located in the vicinity of any designated or eligible state scenic highway; there are no on-site hazardous waste sites associated with the project site listed under Government Code section 65962.5; and there are no historic resources located within the project development area or that would be affected by the proposed project. All resource topics associated with the project have been analyzed and were found to pose no significant impact. Therefore, the project would not make a cumulatively considerable contribution to a significant cumulative impact.
3. For the foregoing reasons, the project is categorically exempt pursuant to CEQA Guidelines section 15303, for new construction and the project would not have the potential to cause an adverse impact on the environment from any unusual circumstances. Therefore, the activity is not subject to further CEQA review.

**Lead Agency Contact Person:** Jay Paul, Planning Division Area Code/Telephone/Extension (760) 839-4537

Signature: *J Paul* March 31, 2021  
Jay Paul, Senior Planner Date

Signed by Lead Agency Date received for filing at OPR: N/A

## CITY COUNCIL STAFF REPORT

**Current Business Item No. 9**

**April 7, 2021**

**File No. 0610-10**

SUBJECT: Approval of City Manager Agreement and Amendment to Existing City Manager Retiree Appointment Agreement

DEPARTMENT: City Attorney's Office  
Human Resources Department

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2021-49 approving an Employment Agreement ("Agreement") between the City of Escondido ("City") and Sean McGlynn to serve as the City Manager.

It is further requested that the City Council adopt Resolution No. 2021-52, authorizing the Director of Human Resources to execute, on behalf of the City, a First Amendment to the current City Manager's Retiree Appointment Agreement ("Retiree Agreement") for the sole purpose of extending it to the effective date of Mr. McGlynn's Agreement. All other terms and conditions in the Retiree Agreement will remain the same.

FISCAL ANALYSIS:

The City's financial obligations under the Agreement are detailed in Section 3. Pursuant to Government Code section 54953(c)(3), a summary of the salary and fringe benefits must be reported orally prior to the City Council taking action on the Agreement. The fiscal impact of the extension of the Retiree Agreement for the next few months will be dependent on the number of hours reported by Mr. Epp during that period, multiplied by his hourly rate of \$137.50. Mr. Epp receives no other compensation or benefits under the Retiree Agreement.

PREVIOUS ACTION:

In the spring of 2020, Jeffrey Epp, the current City Manager, gave notice to the City Council that he was retiring after approximately 35 years of faithful service to the City of Escondido as both its City Attorney and City Manager. On June 24, 2020, the City Council adopted Resolution 2020-91R temporarily appointing Mr. Epp as the City Manager effective July 13, 2020 to serve in that role while the City underwent a recruitment effort for his successor. The Retiree Agreement entered into with Mr. Epp included a provision that the term of that temporary appointment would expire with the selection of a permanent replacement.

BACKGROUND:

The City of Escondido operates under a Council-Manager form of government. Under that model, the legislative body appoints a professional manager to oversee the day-to-day operations of the City and implement the policies of the City Council.

Pursuant to the Escondido Municipal Code, the City Manager is an appointed full-time individual who serves at the pleasure of the City Council subject to the provisions of an Employment Agreement. Under the Code, the City Manager has specified powers and responsibilities in addition to the power to serve as the administrative head of the City. In general, the City Manager has overall responsibility for the efficient administration of all affairs of the City; to see that all laws and ordinances are duly enforced; to investigate complaints relating to matters of the administration of the government; to ensure the proper performance of any obligations of the City; to prepare and submit a proposed annual budget and salary plan; to attend meetings of the council; and to recommend the adoption of such measures and laws as necessary and appropriate. The City Manager also serves as the Director of Emergency Services under Chapter 7 of the Code.

RECRUITMENT EFFORT and SELECTION:

In August 2020, the City Council approved staff's recommendation to hire the recruiting firm of Teri Black & Co. ("TBC") to conduct the search for a new city manager.

To initiate the recruitment effort, the mayor and each councilmember (including out-going councilmember Olga Diaz) met with the recruiter between November 5 and November 17, 2020, to discuss the ideal characteristics of the next city manager, priorities for the city manager's first months on the job, and community concerns and challenges. During these one-on-one meetings and in the weeks that followed, each city council member also solicited public input from constituents.

The recruitment was ambitious and thorough, with a nationwide strategy and outreach, officially launched on January 4, 2021, and closed on February 7, 2021. Advertisements were placed in a number of publications and websites, including:

- International City/County Management Association website and e-newsletter
- Local Government Hispanic Network website
- National Forum for Black Public Administrators
- *Western City* website
- Californiacitynews.com
- PublicCEO.com
- Municipal Management Association of Southern California website
- Municipal Management Association of Northern California website

In addition to paid advertising, the position was featured on the TBC website and promoted through its social media venues (including LinkedIn).

In total, 54 resumes were received from across the United States and the candidate pool was particularly impressive, given today's competition for top city manager talent.

TBC conducted preliminary interviews with 11 of the 54 candidates and presented the results to the City Council in closed session on March 3, 2021. The City Council then elected to interview six candidates on March 11 before inviting three finalists back on March 14 and making a preliminary offer of employment to one candidate.

The City unanimously found that Sean McGlynn had the requisite management experience, professional skill and leadership qualities necessary to be the City's next city manager. Mr. McGlynn is currently the City Manager for the City of Santa Rosa, California, and has 18 years of local government experience including 6 years as the Santa Rosa City Manager. Mr. McGlynn has also served as the Deputy City Manager and Director of Museums & Cultural Affairs for the City of El Paso, Texas, and various positions with the Department of Cultural Affairs for the City of New York and New York City Opera in their Finance & Strategic Initiatives and Education programs, respectively.

#### EMPLOYMENT AGREEMENT:

The proposed Agreement between the City and Mr. McGlynn outlines the commitments and understandings of the parties, the compensation and benefits, and the methods by which the Agreement can be terminated. Section 2 of the Agreement provides the details of the City Manager's professional and ethical obligations to serve as the City's Chief Executive Officer and carry out the Code's requirements. Further, the City provides certain commitments to the City Manager to assist him in achieving the City Council's goals and implement its policies.

Sections 3 and 4 of the Agreement identify the salary and benefits, as well as PERS and insurance obligations, which will be furnished to Mr. McGlynn. Mr. Epp, the city attorney, and mayor and deputy mayor, negotiated the salary and benefits, including a reduction in Management Leave and life insurance, from the traditional amounts provided to the city manager.

Section 5 of the Agreement provides the methods by which it may be terminated. Under the Agreement, the City holds the right to terminate the employment relationship for cause and for convenience. A termination for cause provision gives the City Council the authority to determine whether the city manager has committed some specific misconduct or where there has been a material failure to meet the performance obligations outlined for the manager. The City may also terminate the Agreement for convenience by giving 30 day's written notice and paying a year's salary for the first five years, or six month's salary if the contract is terminated for convenience by the City Council thereafter. Such provisions are commonplace in these types of contracts. Mr. McGlynn must give ninety day's written

notice if he wishes to terminate his employment. If Mr. McGlynn gives such notice, he would not be entitled to any severance benefits.

EPP CONTRACT AMENDMENT:

Under Mr. McGlynn's current employment agreement with the City of Santa Rosa, he is required to give 90 day's notice of his departure. On March 30, 2021, Mr. McGlynn gave his contractual notice and has indicated that he will be prepared to start here on June 29, 2021. The Agreement will become effective on that start date.

In the meantime, Mr. Epp will continue to serve as the City Manager. Mr. Epp's Retiree Agreement is set to expire as of the date his replacement is "selected." However, given the gap between the selection date and Mr. McGlynn's start date, it is necessary to adopt an amendment to Mr. Epp's contract on the same terms and conditions as before but now including a specific end date.

CONCLUSION:

Staff recommends the adoption of Resolution Nos. 2021-49 and 2021-52 providing for the execution of the Agreement and First Amendment to the Retiree Agreement, respectively.

The City looks forward to welcoming Mr. McGlynn to start the next chapter of his career and to assist the City Council in achieving its goals, objectives and policies as it sets the course for the City's future.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Michael McGuinness*, City Attorney  
04/01/21 12:03 p.m.

ATTACHMENTS:

1. Resolution No. 2021-49
2. Resolution No. 2021-49 Exhibit "A"
3. Resolution No. 2021-52
4. Resolution No. 2021-52 Exhibit "A"

RESOLUTION NO. 2021-49

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING THE APPOINTMENT OF SEAN MCGLYNN AS THE CITY MANAGER, AND AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, AN EMPLOYMENT AGREEMENT WITH SEAN MCGLYNN TO SERVE AS CITY MANAGER

WHEREAS, the City of Escondido ("City") has a Council-Manager form of government whereby the city manager serves in the role of Chief Executive Officer and administrator of the City; and

WHEREAS, City Manager Jeffrey R. Epp, first announced his retirement in the Spring of 2021, with the retirement to be effective July 13, 2021; and

WHEREAS, the City and Mr. Epp entered into a Retiree Appointment Agreement whereby Mr. Epp agreed to temporarily serve as the City Manager after his retirement and until a replacement city manager could be identified and selected; and

WHEREAS, the City retained a recruiting firm and undertook a comprehensive nationwide search for an individual who has the skill and expertise to serve as the City's next city manager; and

WHEREAS, after review of numerous applications, and after a series of oral interviews and consideration thereon, the City desires to appoint Sean McGlynn as its next city manager; and

WHEREAS, pursuant to the Escondido Municipal Code and consistent with state law, the City and Mr. McGlynn, desire to enter into an Employment Agreement whereby the responsibilities, commitments, compensation and other terms governing the employment relationship are to be recorded and approved by both Parties; and

WHEREAS, the City Council finds that it is in the best public interest to appoint Sean McGlynn to serve as the City's City Manager pursuant to an Employment Agreement which shall provide the necessary terms and conditions of the employment relationship and shall be effective on June 29, 2021.

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

1. That the above recitations are true.
2. That the City Council of the City of Escondido, California does hereby appoint Sean McGlynn to serve as the city manager without bond effective June 29, 2021.
3. That the Mayor is authorized to authorized to execute, on behalf of the City, an Employment Agreement with Sean McGlynn to serve as City Manager which is attached hereto and incorporated by this reference as Exhibit "A."



## **CITY MANAGER EMPLOYMENT AGREEMENT**

This Employment Agreement (“Agreement”) is dated April 7, 2021, and is effective as of June 29 2021, by and between the City of Escondido, California, a municipal corporation (the “City”), and Sean McGlynn, an individual (the “City Manager”) (collectively referred to herein at times as the “Parties”).

### **RECITALS**

WHEREAS, the City requires the services of a City Manager; and

WHEREAS, the City Manager has the necessary education, experience, skills and expertise to serve as the City's City Manager; and

WHEREAS, the City Council of the City (the "City Council") desires to employ the City Manager to serve as the City Manager of City; and

WHEREAS, the Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of the Escondido Municipal Code and Government Code Section 53260, *et seq.*; and

WHEREAS, in consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree as provided in this Agreement.

### **AGREEMENT**

#### **1. Employment**

The City hereby employs the City Manager as its City Manager, and the City Manager hereby accepts such employment.

#### **2. Commitments and Understandings**

##### **A. The City Manager's Commitments**

##### **(1) Duties & Authority**

(a) The City Manager shall be the Chief Executive Officer of the City and be responsible to the City Council for the proper administration of all affairs of the City.



(b) The City Manager shall perform all of the duties of the City Manager as set forth in Article 3, of Chapter 2, of the Escondido Municipal Code (the "Municipal Code"), the California Government Code, and City policies and procedures approved by the City Council, as may be provided from time to time.

(c) The City Council has designated and may also designate the City Manager as the chief executive of other City-related legal entities.

(d) To accomplish the terms of this Agreement, the City Manager shall have the power and be required to:

(i) Attend all meetings of the City Council, and take part in the discussion of all matters before the City Council either personally or by delegation.

(ii) Review all agenda documents before preparing the agenda for any regular or special meetings of the City Council.

(iii) Direct the work of all City officers and departments that are the concern and responsibility of the City Council, except as provided in Municipal Code section 2-64. The City Manager may undertake any study or investigation that is necessary or desirable to, or as directed by, the City Council. The City Manager shall endeavor to implement changes that the City Manager believes will result in greater efficiency, economy, or improved public service in the administration of City affairs.

(iv) Recommend to the City Council adoption of such measures as the City Manager may deem necessary or expedient for the health, safety, or welfare of the community or for the improvement of administrative services.

(v) Consolidate or combine offices, positions, departments, or units under the City Manager's jurisdiction. The City Manager may be the head of one or more City departments.

(vi) Conduct research in administrative practices in order to bring about greater efficiency and economy in City government and develop and recommend to the City Council long-range plans to improve City operations and prepare for future City growth and development.

(vii) Provide management training and develop leadership qualities among department heads and staff as necessary to maintain a City management team that can plan for and meet future challenges.

(viii) Exercise control of City government in emergencies as authorized by the Municipal Code and California law.

(2) Hours of Work

(a) The City Manager is an exempt employee without set hours of work but is expected to be available at all reasonable times and to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position.

(b) The City Manager shall spend sufficient hours on site to perform the City Manager's duties; however, the City Manager has discretion over the City Manager's work schedule and work location.

(3) Disability or inability to perform

In the event the City Manager becomes mentally or physically incapable of performing the City Manager's functions and duties with reasonable accommodation, the City Council may appoint an Interim City Manager and may apply for disability retirement of the City Manager, pursuant to Government Code section 21153, and any other applicable provisions of law.

B. City Commitments

(1) The City shall provide the City Manager with the compensation, incentives and benefits, specified elsewhere in this Agreement.

(2) The City shall provide the City Manager with office space, staff, equipment, supplies and all other facilities and services adequate for the performance of the City Manager's duties.

(3) The City shall pay for or provide the City Manager reimbursement for all actual business expenses. The City shall provide the City Manager a credit card to charge appropriate and lawful business expenses.

(4) The City agrees to pay the professional dues and subscriptions on behalf of the City Manager for participation in national, regional, state, or local associations and organizations, as necessary and desirable for the good of the City.

(5) The City agrees to pay the travel and subsistence expenses of the City Manager for purposes such as official functions, meetings, occasions, short courses, institutes and seminars that are necessary for the good of the City and consistent with the Administrative Directives applicable to Executive Management positions at the City.

C. City Council Member Commitments

(1) The City Council sets policy for the governance and administration of the City, and it implements its policies through the City Manager.

(2) As provided in the Escondido Municipal Code, and except for the purpose of inquiry or as otherwise established by a policy agreed upon by the City Manager and City Council, the City Council and its members shall deal with all subordinate City employees, officers, contractors, and consultants solely through the City Manager or the City Manager's designee, and neither the City Council nor any member thereof, shall give orders to any subordinate of the City Manager, either publicly or privately.

(3) The City Council agrees none of its individual members will order the appointment or removal of any person to any office or employment under the supervision and control of the City Manager.

(4) Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the City Manager. The City Manager shall take direction, orders and instructions from the City Council when it is sitting as a body in a lawfully held meeting.

(5) The City Council agrees that any criticism of a staff member shall be done, whenever reasonably possible, privately through the City Manager.

D. Mutual Commitments

(1) Performance Evaluation

The City Council recognizes that for the City Manager to respond to the City's needs and to grow in the performance of the City Manager's job, the City Manager needs to know how the City Council members evaluate the City Manager's performance. To assure that the City Manager gets this feedback, the City Council shall conduct an evaluation of the City Manager's performance in a properly noticed closed session not less than one (1) year after the effective date of this Agreement. Thereafter, the City Council will annually review the City Manager's performance within forty-five (45) days of the anniversary date of the City Manager's employment, or as otherwise agreed, and/or when it deems necessary to discuss any concerns or direction in performance. At the time of the initial evaluation, and on each anniversary evaluation thereafter, the City Council shall consider in good faith performance-based salary adjustments, based upon comparable compensation information for cities in San Diego County. However, the City Council shall have no obligation to make any such adjustments, regardless of City Manager's level of performance. The City Council may, in its sole discretion, elect to utilize an outside facilitator to assist in the performance evaluation process.

(2) Ethical Commitments

The City expects the City Manager to adhere to the highest professional standards. The City Manager's actions will always comply with those standards. The City Manager agrees to follow the Code of Ethics of the International City/County Management Association (ICMA) and the ethics rules, regulations, and laws of the State of California. Consistent with the standards outlined in the Code, the City Manager shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fundraising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time. The City shall support the City Manager in keeping these commitments by refraining from any order, direction or request that would require the City Manager to violate the ICMA Code of Ethics. Neither the City Council nor any individual member thereof shall request the City Manager to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any

fundraising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality, and merit.

### 3. COMPENSATION

The City agrees to provide to the City Manager compensation and benefits, and assume certain costs on behalf of the City Manager, during the term of the Agreement as follows:

#### A. Compensation & Required Employer Costs

##### (1) Base Salary

(a) The annual Base Salary for the position of City Manager shall be two hundred and eighty thousand dollars (\$280,000).

(b) The City Manager shall be paid at the same intervals and in the same manner as regular City employees. In the event that there are more than twenty-six (26) pay periods in a calendar year, the periodic payments shall be adjusted accordingly so that the Base Salary or other compensation or benefits shall not exceed any amount approved by the City Council.

(c) The City shall not at any time during the term of this Agreement reduce the Base Salary, compensation or other financial benefits of the City Manager unless, as part of a general City management salary reduction, and then in no greater percentage than the average reduction of all City department heads. The City shall give the City Manager ninety (90) day's written notice of any intent to reduce the Base Salary pursuant to this provision.

##### (2) Required Employer Costs

(a) Federal Medicare Contributions (as required).

(b) State Unemployment Insurance.

(c) Public Employees Retirement System (PERS)

The City contracts with the California Public Employees' Retirement System for retirement benefits. The City will pay the City's share, and the City Manager shall pay the employee's share for participation in PERS as a Tier 3 PEPRA member, currently set at seven percent (7%).

(d) The cost of any fidelity or other bonds required by law for the City Manager, which the City reserves the right to waive.

(e) The cost to defend and indemnify the City Manager as provided in Section 6(E) below.

(f) Workers' Compensation Insurance.

B. Basic Benefits

(1) Holidays

The City Manager is entitled to ten (10) paid holidays per year.

(2) Vacation, Sick Leave and Management Leave Allowance

Upon the Effective Date of this Agreement, the City Manager shall receive:

(a) A vacation leave bank of one hundred and twenty (120) hours. Thereafter, the City Manager shall accrue vacation leave hours commencing at the same rate as City employees who have been working for the City for five (5) or more years and progressing according the schedule for city employees generally thereafter. The City Manager may accrue up to up to the maximum leave balance as permitted under existing City policy for a five (5) year or more City employee. The City Manager may convert vacation leave hours to cash at the same rate and at the same times as City Executive Management employees. The City Manager shall be paid for any unused accrued vacation hours upon either voluntary or involuntary termination of employment.

(b) A sick leave bank of eighty (80) hours. Thereafter, the City Manager shall accrue sick leave hours at the same rate and at the same times as City employees who have been working for the City for five (5) or more years.

(c) Ten (10) days (equivalent to 90 hours) of Management Leave. The City Manager shall thereafter receive ten (10) days of Management Leave annually. The Management Leave hours do not carry from one Fiscal Year to the next and will expire at the close of each Fiscal Year if unused. The City Manager may cash out the Management Leave hours in whole or in part at the times established for all City employees.

(d) Moving and relocation expenses in the amount of twenty thousand dollars (\$20,000). This amount shall constitute the total amount of compensation arising out of or related to the City Manager's move from his current home to the City of Escondido including, but not limited to, the need for temporary housing and related relocation expenses.

(3) Automobile

Upon the Effective Date of this Agreement, the City Manager shall be provided a monthly automobile allowance in the amount of seven hundred fifty dollars \$750.00 (\$9,000.00 annually) in lieu of making a vehicle available for the City Manager's City-related business and/or functions during, before and after normal work hours. The City Manager is not precluded from using City vehicles for City business during, before, and after the normal workday on occasion, when appropriate.

(4) Non-Compensable Benefits that Accrue to Other Employees

The City Manager shall be entitled to all other non-compensable benefits, rights, and privileges accorded to City Executive Management employees except as otherwise provided in this Agreement.

4. SECURITY

A. Pensions

(1) Public Employees Retirement System ("PERS")

For the purposes of PERS reporting, the City shall incorporate into the reported Base Salary as compensation earnable the Section 3.A(1)(a) Base Salary, but only to the extent, if any, that PERS will consider it to be compensation earnable. City Manager is a Tier 3 PEPPRA member of CalPERS ("PERS"), and as such, the City Manager is obligated to contribute to PERS at the same level as all other City Tier 3 PEPPRA PERS members, which is currently seven percent (7%) of Base Salary.

(2) Deferred Compensation

(a) Plan Contribution

The City will make, in equal proportionate amounts each pay period, a pro-rated total annual contribution of seven percent (7%) of Base Salary into a qualified deferred compensation plan as selected by the City Manager. Amounts contributed under this section shall be to the benefit of the City Manager in accordance with the Deferred Compensation Plan participation agreement and shall be considered employer contributions.

(b) Internal Revenue Code Compliance

All provisions of this Section 4.A are subject to the provisions and limitations of the Internal Revenue Code and its related regulations as amended from time to time. No requirement of any provision of this Section 4.A shall be effective if it would violate any provision of the Internal Revenue Code or its related regulations.

B. Insurance

(1) Disability Insurance

Short and Long Term Insurance is provided and the City Manager shall contribute 0.715% of Base Salary for short-term disability coverage and 0.50% of Base Salary for long-term disability.

(2) Medical/Dental/Vision Insurance

The City Manager shall receive the same cafeteria plan equal to four percent (4%) of Base Salary plus one hundred and twenty-five dollars (\$125.00) for allowable medical,

dental and vision insurance options and related benefits as are available to other City Executive Management employees.

(3) Life Insurance

The City Manager shall receive Basic Life and AD&D insurance procured by the City and calculated at the rate of twice the Base Salary with a cap of five hundred thousand dollars (\$500,000).

5. SEPARATION

The City Manager is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506. This Agreement may be terminated, or the City Manager may be separated from employment under this Agreement, as follows:

A. By City

The City may terminate this Agreement at any time, either with or without cause, by majority vote of the membership of the City Council at a properly posted and duly authorized public meeting. Termination shall be under one or more of the following provisions:

(1) For Cause:

(A) Misconduct. In the event that the City determines there is good cause to terminate this Agreement due to (1) malfeasance, (2) gross negligence, (3) fraud, or (4) conviction of a crime, other than a traffic offense or infraction on the part of the City Manager, the City shall give the City Manager notice of termination, which at the option of the City Council shall either be effective immediately, or the notice shall specify the intent to terminate and the date the termination will become final. In either case, the notice shall be accompanied by a statement of the basis for the termination. In the case of a termination that is effective immediately, the City Manager shall have the right to present any rebuttal information to the City Council, in writing, no later than 10 calendar days after the termination. In the event that the City Council gives notice of an intent to terminate at a future date, the City Manager shall have the right to present any rebuttal information to the City Council, in writing, prior to the effective date of the termination. In either case, the City Manager shall have the right to be represented and to have a hearing before the City Council, in open or closed session as authorized by the Ralph M. Brown Act, within 14 days following termination. The City Council shall review any rebuttal information provided by the City Manager and any other relevant material and shall then determine whether to uphold the termination or to rescind it. The City Council's decision shall be final. Any actions of the City taken under this paragraph shall occur only after the majority vote of the membership of the City Council.

(B) Material Uncorrected Failure to Perform. In the event that the City determines there is good cause to terminate this Agreement that does not rise to the level of seriousness addressed above in Section 5.A(1)(A), such as (1) a repeated material failure to meet reasonable performance objectives which have been identified

and adopted by the City Council at a properly notice public meeting, that are within the City Manager's control, or (2) uncorrected material failure to present a positive image to the City Council, staff, public or media on behalf of the City, the City may terminate the Agreement for cause provided the City (1) first gives notice to the City Manager in writing of the alleged failure in performance and a reasonable opportunity to cure the problem, and (2) gives the City Manager a reasonable opportunity to present evidence to the City Council in rebuttal to any alleged failure in performance or of any extenuating circumstances showing that the failure was beyond the control of the City Manager. The City will not terminate for cause under this Section 5.A(1)(B) unless it is determined in writing that the evidence in support of the grounds for termination is substantial taking into account all of the information available to the City Council, including any evidence presented by the City Manager. Any actions of the City taken under this paragraph shall occur only after the majority vote of the membership of the City Council.

(C) No Severance Benefits. In the event that this Agreement is terminated by the City pursuant to Section 5.A(1) for cause, the City Manager shall not be entitled to any severance benefits under this Agreement or under any other provision of law or City policy or procedure, except for previously accrued vacation and management leave to which the City Manager is otherwise entitled.

(2) For Convenience

The City may terminate this Agreement at any time without cause and for its convenience as the City shall, in its sole discretion, determine appropriate provided (1) the City Manager shall be given at least thirty (30) days' written notice and an opportunity to be heard, in open or closed session or in writing, as the City Council shall determine consistent with the Ralph M. Brown Act, with respect to the proposed termination before it becomes effective, and (2) the City Council shall vote by not less than a majority of the membership of the City Council to exercise its termination rights under this provision. The City Manager shall be offered the severance benefits specified below in Section 5 which he may accept or reject as provided in Section 5.

B. By the City Manager

The City Manager may terminate this Agreement at any time, with or without cause, by (1) giving Employer ninety (90) days advance written notice of his intent to terminate, or (2) a termination sooner by mutual agreement with the City. In the event that the City Manager exercises his right to terminate, he shall not be entitled to the severance benefits set forth below under Section 5.C or to any other similar termination benefits under law or the City's rules or regulations, provided however, that the City Manager shall be entitled to payment for any vacation or management leave earned and unused at the time his notice of termination is effective.



C. Severance

In the event that the City Manager's employment is terminated by the City for convenience pursuant to Section 5.A(2) above, the City Manager shall be offered and shall be entitled to the severance benefits stated in this Section 5.C, as follows:

(1) Computation

The City shall offer to the City Manager, for a termination occurring during the first five (5) year period after the Effective Date of this Agreement, to pay an amount equal to one (1) year of his Base Salary. For any termination occurring after the first five (5) year period after the Effective Date of this Agreement, an amount equal to six (6) months of his Base Salary. Such severance benefits shall be paid in addition to payment of any accrued vacation or management leave otherwise payable to the City Manager.

(2) Separately Negotiated; Waiver

The Parties expressly acknowledge and agree that these severance pay provisions have been independently negotiated. Acceptance by the City Manager of the severance pay benefits provided by this Section 5 shall operate as a full and complete waiver and release of any and all rights, claims, and/or causes of action which the City Manager may have, or have had, at any time, in the past or in the future, arising out of the City Manager's employment by the City, including but not limited to claims for wrongful termination of this Agreement. If the City Manager wishes to retain any such rights, the City Manager must decline to accept the severance benefits provided by this paragraph. The City Manager shall notify the City of this election to accept or reject these severance benefits within seven (7) days of notice of termination of this Agreement, or within such other time period as the Parties may agree to in writing.

Acceptance of the severance benefits under this paragraph will operate as a general release on the part of the City Manager as to all claims, known or unknown, and the City Manager specifically waives the provisions of Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

(3) The severance provisions of this Agreement shall not apply in the event the City Manager is terminated for cause as provided for in Sections 5.A(1)(A) or (B).

## 6. MISCELLANEOUS PROVISIONS

### A. Term

The term of this Agreement shall be from the Effective Date until terminated pursuant to the terms of this Agreement.

### B. Provisions that Survive Termination

Many sections of this Agreement are intended by their terms to survive the City Manager's termination of employment with the City including, but not limited to, Sections 5 and 6.E. These sections, and the others so intended, shall survive termination of employment and termination of this Agreement.

### C. Amendments

This Agreement may be amended at any time by mutual agreement of the City and the City Manager. Any amendments are to be negotiated, put in writing, and adopted by the City Council.

### D. Conflict of Interest

(1) The City Manager shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.

(2) The City Manager shall also be subject to the conflict of interest provisions of the California Government Code and Municipal Code.

(3) The City Manager is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

### E. Indemnification

The City shall defend and indemnify the City Manager to the fullest extent required by Government Code section 825, *et seq.* and as may be required or provided for under the Municipal Code and related City Administrative Directives.

### F. Severability

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

G. Laws Affecting Title

In addition to those laws affecting a City Manager, the City Manager shall have the same powers, rights and responsibilities as a Chief Executive Officer, City Administrative Officer, Administrator, and City Administrator as those terms are used in local, state or federal laws.

H. Jurisdiction and Venue

This Contract shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in San Diego County, California, notwithstanding any conflicting provisions of the California Code of Civil Procedure.

I. Provisions of Government Code Section 53243, et. seq.

(1) In the event that the City provides paid leave to City Manager pending an investigation of a crime involving abuse of his office or position covered by Government Code section 53243.4, and should that investigation lead to either a criminal conviction or a civil or administrative penalty by the FPPC or any similarly authorized agency, City Manager shall fully reimburse the City for any salary provided for that purpose.

(2) In the event that the City provides funds for the legal criminal defense of City Manager pending an investigation of a crime involving abuse of his office or position covered by Government Code section 53243.4, and should that investigation lead to either a criminal conviction or a civil or administrative penalty by the FPPC or any similarly authorized agency, City Manager shall fully reimburse the City for any funds provided for that purpose.

(3) In the event that the City provides City Manager with severance, or any other type of cash settlement related to the termination of City Manager, and City Manager subsequently is convicted of a crime, or subjected to civil or administrative penalties, resulting from abuse of his office or position covered by Government Code section 53243.4, City Manager shall fully reimburse the City for any such severance or cash settlement.

(4) This provision shall not be interpreted or construed as creating a contractual obligation on the City to provide paid leave, a legal criminal defense or cash settlement related to an investigation or termination of the City Manager.

J. Entire Agreement

This Agreement represents the contractual relationship of the Parties, and no representations have been made or relied upon except as set forth herein. This Agreement may be amended or modified only by a written, fully executed agreement of the Parties.

IN WITNESS WHEREOF, the City of Escondido has caused this Agreement to be signed and executed on its behalf by its Mayor as authorized by Resolution No. 2021-49, and City Manager has signed and executed this Agreement set forth below.

CITY OF ESCONDIDO

CITY MANAGER

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

\_\_\_\_\_  
Sean McGlynn

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael R. McGuinness, City Attorney

RESOLUTION NO. 2021-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE DIRECTOR OF HUMAN RESOURCES TO EXECUTE, ON BEHALF OF THE CITY, A FIRST AMENDMENT TO RETIREE APPOINTMENT AGREEMENT WITH JEFFREY R. EPP TO CONTINUE TO SERVE AS THE CITY MANAGER

WHEREAS, Jeffrey R. Epp has served as the City Manager of the City of Escondido since May 10, 2017; and

WHEREAS, Mr. Epp retired from the City of Escondido in the position of City Manager, effective July 11, 2020; and

WHEREAS, in compliance with Government Code section 7522.56, the City Council of the City of Escondido provided CalPERS a resolution certifying that it was hiring a retiree before 180 days has passed since his retirement date; and

WHEREAS, the City Council of the City of Escondido, the City of Escondido and Mr. Epp, certified and hereby certify that Mr. Epp did not and will not receive a Golden Handshake or any other retirement-related incentive related to his retirement; and

WHEREAS, the City Council of the City of Escondido appointed Mr. Epp as an interim appointment retired annuitant to the vacant position of City Manager for the City of Escondido under Government Code section 21221(h), effective July 13, 2020, and he has performed in that role uninterrupted since that time and has not exceeded the allowable maximum hours of work during this fiscal year; and

WHEREAS, the City Council has selected a new city manager to fill the position but that individual is unable to begin employment with the City until June 29, 2021, and therefore, the appointment will not be effective until that date; and

WHEREAS, the City is currently under a proclaimed state of local emergency and has been since March 18, 2020, pursuant to Proclamation 2020-01, due to the COVID-19 pandemic and such local emergency requires the skills and management provided by Mr. Epp, who also serves as the Director of Emergency Services under the Escondido Municipal Code, to ensure that there is no stoppage of public business; and

WHEREAS, the City has a continuing need for the specialized skills provided by Mr. Epp as an interim appointment until such time as the new city manager can assume those critical duties and responsibilities; and

WHEREAS, the Retiree Appointment Agreement (“Agreement”) between Mr. Epp and the City of Escondido, which identifies all matters, terms, issues, compensation and conditions related to Mr. Epp’s interim appointment, was duly adopted pursuant to Resolution No. 2020-91R (as Exhibit “A”) and has been fully performed pursuant to its terms by both Parties since that adoption; and

WHEREAS, there exists a critical need to extend the expiration date of the Agreement pursuant to a First Amendment to Retiree Appointment Agreement attached hereto as Exhibit “A” to allow for Mr. Epp to continue his service as the interim appointed retired annuitant in the role of city manager up until the new city manager may commence employment;

WHEREAS, during this extended period Mr. Epp will continue to only receive the hourly equivalent of his maximum and minimum base salary of \$23,833.33, which will amount to \$137.50; and

WHEREAS, Jeffrey R. Epp has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate.

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

1. That the above recitations are true.
2. That the City Council of the City of Escondido hereby certifies the entire nature of the employment of Jeffrey R. Epp is detailed in Exhibit "A" to Resolution No. 2020-91R (Retiree Appointment Agreement), and Exhibit "A" hereto (First Amendment to Retiree Appointment Agreement).
3. That this continued appointment is necessary to fill the critically needed position of City Manager for the City of Escondido up and through no later than June 29, 2021, because a city manager is necessary to oversee the operations of the City of Escondido and all departments and employees in the City.
4. That the Director of Human Resources is authorized to execute, on behalf of the City, a First Amendment to Retiree Appointment Agreement, which is attached hereto and incorporated by this reference as Exhibit "A," with Jeffrey R. Epp to continue to serve as the city manager.



**FIRST AMENDMENT TO  
RETIREE APPOINTMENT AGREEMENT**

This First Amendment to Retiree Appointment Agreement (“Agreement”) is dated and effective April 7, 2021, by and between the City of Escondido, California, a municipal corporation (the “City”), and Jeffrey R. Epp, an individual (collectively referred to herein at times as the “Parties”).

RECITALS

WHEREAS, on or about July 13, 2020, Mr. Epp transitioned from full time employment as the City Manager to a temporary appointment as the City Manager subject to and compliant with CalPERS rules, including such additional rules adopted to address responding to the COVID 19 pandemic and related State of Emergency; and

WHEREAS, the City and Mr. Epp entered into a Retiree Appointment Agreement which identified the terms of Mr. Epp’s continued work for the City as the City Manager which Agreement by its terms expires upon the selection of Mr. Epp’s permanent replacement as City Manager; and

WHEREAS, the City desires to select its next City Manager and enter into an Employment Agreement at this time however, the individual selected to be appointed City Manager will not be able to begin his employment with the City until June 29, 2021; and

WHEREAS, the City has a continuing need, and it is in the best public interest, to have Mr. Epp serve in the role of City Manager until such time as the new City Manager may begin full time work for the City; and

WHEREAS, in consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions contained herein and in the Agreement, the Parties agree to enter into this First Amendment of the Agreement as herein provided.

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FIRST AMENDMENT TO RETIREE APPOINTMENT AGREEMENT  
Page 2

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. The term of the Agreement is extended until, and shall expire on, June 25, 2021, unless terminated earlier by Mr. Epp in his discretion or as otherwise agreed to by the Parties. During such time, Mr. Epp shall assist the City Council and management team in transition-related matters in addition to addressing the management of the City including the ongoing impacts of the COVID-19 pandemic.

2. Except as otherwise provided for herein, all other terms and conditions in the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties below agree to the terms contained in this First Amendment and are authorized to execute it.

CITY OF ESCONDIDO

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

\_\_\_\_\_  
Jessica Perpetua  
Director of Human Resources

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

\_\_\_\_\_  
Jeffrey R. Epp

## CITY COUNCIL STAFF REPORT

**Current Business Item No. 10**

**April 7, 2021**

**File No. 0480-70**

SUBJECT: Approval of a Memorandum of Understanding (“MOU”) between the City of Escondido and the US Soccer Foundation related to the installation of two Mini-Pitch/Futsal courts in Washington Park.

DEPARTMENT: Communications and Community Services

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2021-54, authorizing the Deputy City Manager/Director of Communications and Community Services or her designee to execute an MOU with the US Soccer Foundation (“USSF”) to identify a funding source for two Mini-Pitch/Futsal Courts in Washington Park; negotiate and enter into a grant agreement; execute all documents necessary for the management and completion of the grant scope, including the necessary budget adjustment needed to establish a new project number for tracking and spending of grant funds; and process any required entitlement applications through the Planning Division.

FISCAL ANALYSIS:

All costs associated with construction of this project would be funded through the grant with no impact to the General Fund. Maintenance of the Mini-Pitch system is consistent with the maintenance of the tennis court(s) being replaced and will not result in additional costs. Costs associated with processing an entitlement application (likely a Plot Plan) would be limited to staff time and are expected to be minimal.

PREVIOUS ACTION:

None

BACKGROUND:

The USSF is a 501(c)(3) organization. Their mission is to enhance, assist and grow the sport of soccer in the United States, with a special emphasis on underserved communities. By supporting the development of places to play, grow, and learn, their goal is to ensure that children in underserved communities have easy and affordable access to opportunities that help them embrace an active and healthy lifestyle, and support their physical and personal development.

Through partnerships with corporations, the USSF provides ongoing grant opportunities to fund Mini-Pitch Systems in communities nationwide. Essentially, a Mini-Pitch or Futsal court is a hard surface soccer arena. The Mini-Pitches range in size depending on the location available, but are typically

placed on underutilized tennis and basketball courts. Similar to the NFC Fitness Court recently installed in Mountain View Park, the Mini-Pitches are all-inclusive systems that include the court surface with funding agency's logo placed at center court, fencing, benches, goals, and lighting. The systems can be installed rather quickly, with the installation process taking approximately three to four weeks.

Washington Park is being considered for this opportunity because of the existing infrastructure that would lend itself to this project at no cost to the City. If the City were to secure this grant, and depending on the level of funding received, we would keep two of the existing four tennis courts for tennis and convert the other two tennis courts to Mini-Pitches. If a funder is only willing to provide one Mini-pitch, we will continue to work with the USSF to phase the project and build one court now and one in the future, as other funders are identified. It is the staff's goal to get two right from the start.

#### PUBLIC OUTREACH:

A survey was conducted to gauge the community's interest and support for this project. The survey was sent out in multiple City Newsletters, the Recreation Guide, social media, the City's website, and Nextdoor to target the surrounding neighborhood. There were 363 responses, with 343 people or 95% in support of the project. Of the 363 respondents, 231 lived within three miles of Washington Park.

#### NEXT STEPS:

Our next steps would be to sign the MOU with the USSF, and submit the necessary entitlement application to the Planning Division. This will allow the USSF to propose the opportunity to their funders. After approval of the entitlement application, and after a funder is identified, a formal grant agreement would be executed and construction could begin. The timing of this is uncertain, as the entitlement has not yet been obtained and there is not a current funder identified; however, the USSF is confident that with all the proper approvals already in place, a funder is likely to be identified quickly.

The popularity of soccer continues to grow in Escondido and the United States. Soccer is a sport that **appeals to a cross section of people, the rich and poor, men and women, and the young and old.** We have heard the requests and seen the need for more spaces that can accommodate pickup games and family recreational play. These courts will help to meet that demand by providing efficient, professional-grade, customized spaces for our residents to play.

#### CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The current action requested of City Council is to approve the process for exploring the possibility of a potential project, rather than approval of the project itself, and thus the instant action is not a project as defined by the California Environmental Quality Act (CEQA). The City will fully comply with CEQA, including evaluating any potential significant environmental effects, within the context of the

entitlement process as described above, and the City reserves the right to approve, deny, or condition any potential project, or mitigate the environmental effects of such project, as otherwise may be required or authorized under CEQA or other applicable laws.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Danielle Lopez*, Assistant Director of Community Services  
04/01/21 9:18 a.m.

ATTACHMENTS:

1. Attachment "1" - Mini-Pitch System Brochure
2. Resolution No. 2021-54
3. Resolution No. 2021-54 Exhibit "A"

# Mini-Pitch System™

## Modular Sports Solution



We Make It Happen®



***The Mini-Pitch System™  
modular sports solution has  
an innovative, all-in-one design  
to help communities create  
fun and active play spaces by  
revitalizing public areas.***

Created to assist the U.S. Soccer Foundation in providing safer places to play the game, the Mini-Pitch System is ideal for transforming abandoned courts and other underutilized areas into places where children and families can come together in the spirit of teamwork, empowerment, and physical activity. The system supports the Foundation's *It's Everyone's Game* movement to ensure that all children have access to the game and its many benefits.

**Complete**

The mini-pitch comes as a modular system complete with lighting, fencing, goals, benches, ADA-compliant access, and lockable storage.

**Convenient**

Assembly can be done by a three-person crew in approximately 16 hours.

**Customizable**

You'll have options on the size of your pitch and custom signage to ensure it meets your exact needs. Surfacing is handled by another vendor on a project-by-project basis.





***"Since the installation at Santa Fe South, we're seeing kids from different high schools hanging out and playing together almost every night. It's unifying kids using these courts."***

**– Mickey Dollens, Executive Director of the Energy Assist Foundation**

## Complete System

The Mini-Pitch System™ modular sports solution includes lighting, structural, and electrical components designed and engineered to work together for streamlined installation and reliable operation.

- Factory-built, wired, aimed, and tested.
- Fast, trouble-free installation.
- Rugged reliability, designed to be long-lasting in all weather conditions and atop all surfaces.
- 10-year warranty covers all parts and labor.

## TLC for LED® Lighting

Enjoy the benefits of the LED sports lighting technology of choice at venues around the world.

- Custom optics create a more uniform distribution of light for better visibility.
- Patented glare control preserves darkness around your pitch, keeping neighbors happy.
- Instant on/off and energy efficient operation.

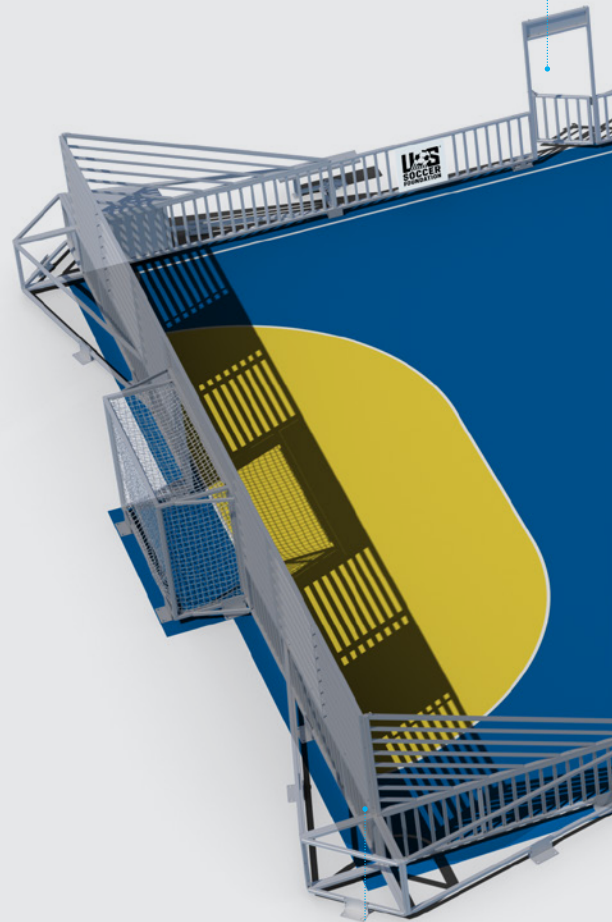
## Control-Link® Service

Your system will be supported by Musco's Control-Link control and monitoring service.

- Manage your lights instantly, from anywhere, with a touch of a smart phone.
- 24/7 support from the Musco Team includes proactive monitoring and scheduling assistance.
- Get a real, live voice on the other end of the phone anytime you call Control-Link Central™ service center.

Lighting control system  
with 24/7 monitoring

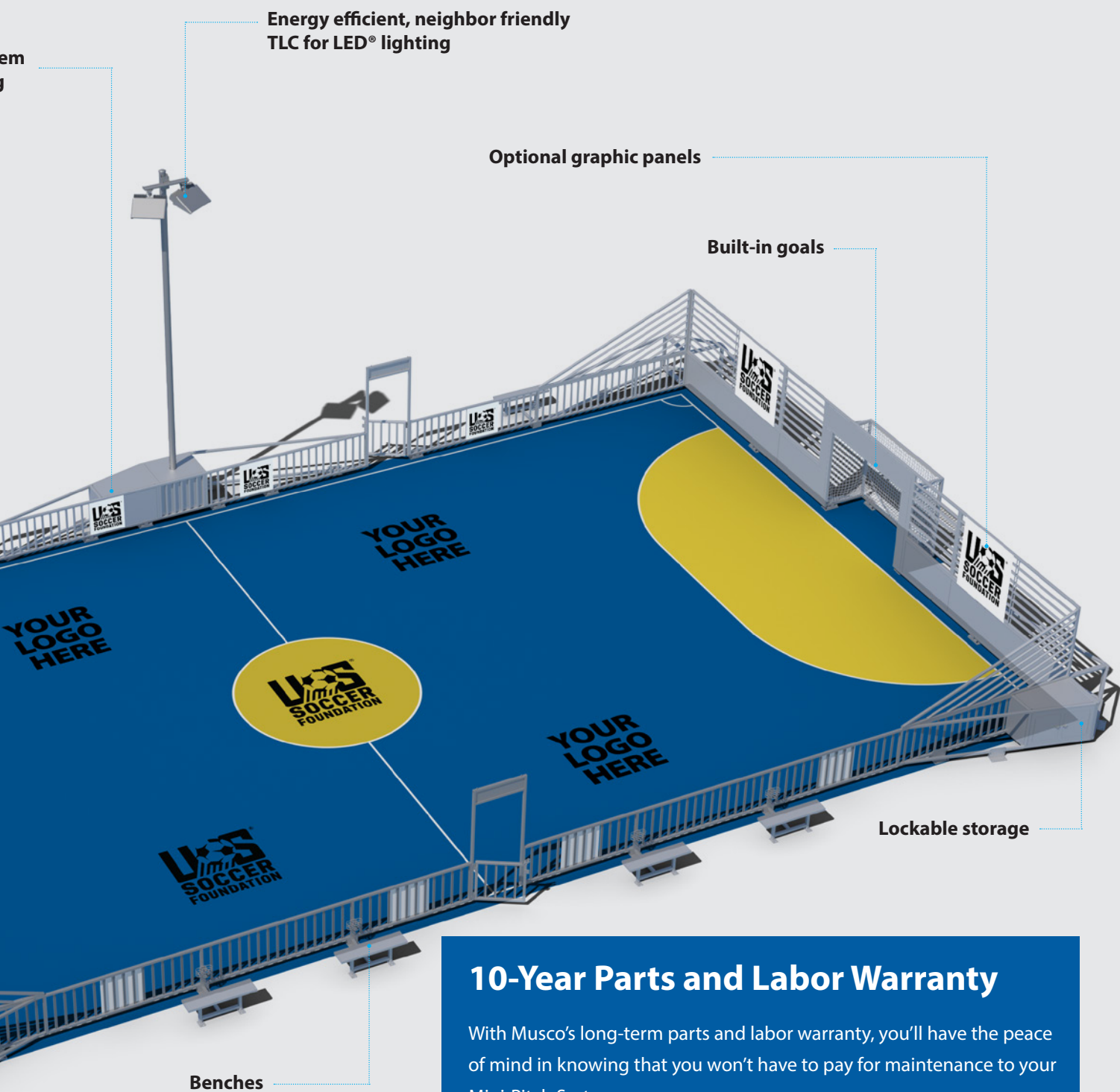
ADA-compliant access



Galvanized  
and structural

Surfaces provided by others, evaluated on a project-by-project basis.





## 10-Year Parts and Labor Warranty

With Musco's long-term parts and labor warranty, you'll have the peace of mind in knowing that you won't have to pay for maintenance to your Mini-Pitch System.

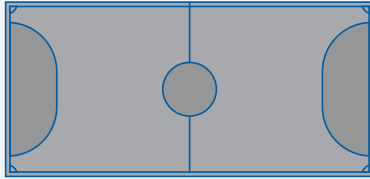
- No maintenance costs for the next decade.
- Every part and all labor covered.
- Supported by Musco's regionally-based technicians.

And with the 24/7 proactive monitoring of Control-Link, if any issues with your mini-pitch lighting arise we'll probably know before you do.

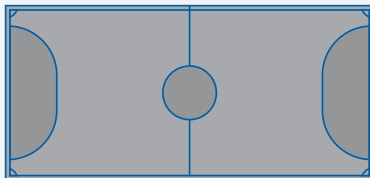
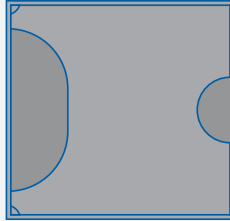
*Separate playing surface warranty is provided by the surface contractor.*

The Mini-Pitch System™ modular sports solution gives

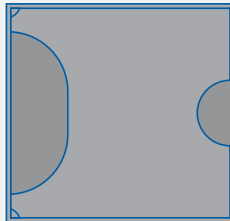
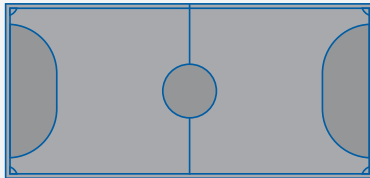
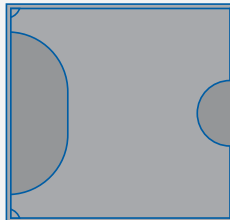
**Size**



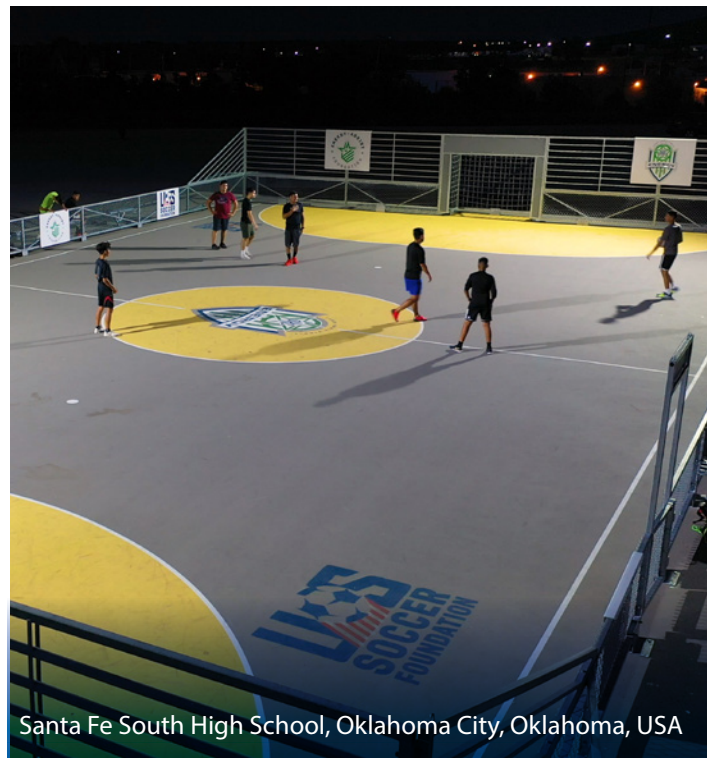
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12 m x 25 m



76 ft x 84 ft  
23 m x 25 m



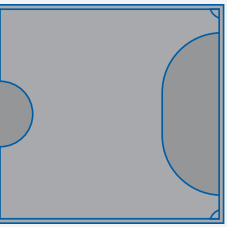
Desert West, Phoenix, Arizona, USA



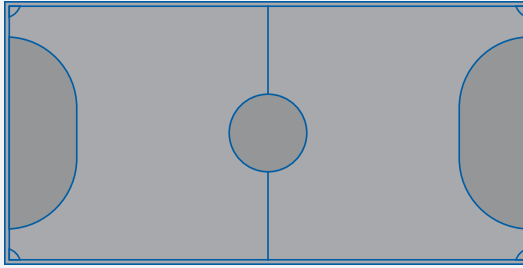
Santa Fe South High School, Oklahoma City, Oklahoma, USA

## Your Way

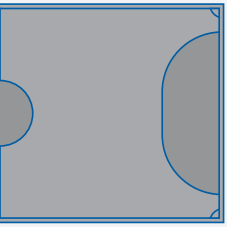
you customization options to meet your exact needs.



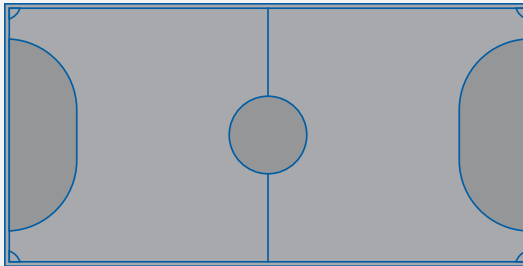
50 ft x 104 ft  
15 m x 31 m



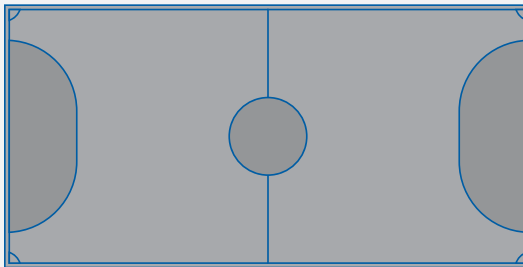
60 ft x 120 ft  
18 m x 36 m



96 ft x 104 ft  
29 m x 32 m



116 ft x 120 ft  
35 m x 36 m



Eakin Elementary School, Columbus, Ohio, USA



Oklahoma State University – Oklahoma City Campus  
Oklahoma City, Oklahoma



**We Make It Happen®**

[www.musco.com](http://www.musco.com)  
e-mail: [lighting@musco.com](mailto:lighting@musco.com)



[www.usoccerfoundation.org](http://www.usoccerfoundation.org)  
e-mail: [info@usoccerfoundation.org](mailto:info@usoccerfoundation.org)

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U.S. and foreign patents issued and pending.

US Soccer Foundation is a registered trademark in the United States to United States Soccer Foundation.

RESOLUTION NO. 2021-54

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE DEPUTY CITY MANAGER / DIRECTOR OF COMMUNICATIONS AND COMMUNITY SERVICES TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE U.S. SOCCER FOUNDATION TO PROCESS ANY DOCUMENTS AND OBTAIN ALL PERMITS RELATED TO TWO MINI-PITCH / FUTSAL COURTS LOCATED AT WASHINGTON PARK

WHEREAS, the US Soccer Foundation provides ongoing grants to fund mini pitch systems in underutilized park areas; and

WHEREAS, the City Council of the City of Escondido (“City”) authorizes the submittal of the Memorandum of Understanding (“MOU”) with the US Soccer Foundation (“USSF”) to identify a funding source for two Mini-Pitch/Futsal Courts in Washington Park; and

WHEREAS, the City Council of the City of Escondido authorizes the Deputy City Manager / Director of Communications and Community Services to execute all documents and take all actions necessary for the management and completion of the potential project, including, but not limited to, those related to grant(s), budget adjustments, and entitlement applications; and

WHEREAS, through this resolution, the City Council of the City of Escondido is authorizing the exploration of a potential project rather than approving a project. This exploration is not a project, as defined by the California Environmental Quality Act (CEQA), and does not commit the City to taking any action on the potential entitlement and implementation of the proposed project.

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

1. The above recitations are true.
2. The City Council hereby directs and authorizes the Deputy City Manager / Director of Communications and Community Services or her designee to execute the MOU with the US Soccer Foundation which is attached hereto and incorporated by this reference, subject to final approval as to form by the City Attorney.
3. The City Council hereby directs and authorizes the Deputy City Manager / Director of Communications and Community Services to execute all documents necessary for the management and completion of the grant and processing of any necessary entitlement application(s).



*U.S. Soccer Foundation Mini-Pitch Initiative*  
Memorandum of Understanding

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**My signature and initials below confirm that the appropriate representative(s) from my organization understand that it has been considered for U.S. Soccer Foundation (“Foundation”) mini-pitch(es), and as such, we would be responsible for the following. Please initial each line on page 1, sign page 2, initial on Attachment A attached hereto and incorporated by this reference, and return an electronic copy of the document in full.**

\_\_\_\_\_ Upon completion of the mini-pitch(es), provide proof of commercial general liability, workers’ compensation liability, participant accident liability, and umbrella liability insurance, or comparable self-insurance, and add the U.S. Soccer Foundation as “Additional Insured” on insurance documentation

\_\_\_\_\_ Confirm ownership or long-term lease (minimum of 10 years) of the property on which the mini-pitch(es) is/are to be installed

\_\_\_\_\_ Allow the Foundation, and other funders, to have their logos placed on both the mini-pitch surface(s), as well as on the associated signage, for the useful life of the mini-pitch(es), as seen on Attachment A

\_\_\_\_\_ Provide electrical access to the location of the mini-pitch(es) within the property as needed

\_\_\_\_\_ Allow the Foundation to act as the project manager, using their approved vendors who carry all requisite insurance to perform installation of the mini-pitch project(s)

\_\_\_\_\_ Obtain all necessary consents, approvals, permits and/or licenses required to install the mini-pitch(es)

\_\_\_\_\_ Provide before and after photos of the mini-pitch(es) to Foundation upon request

**Execution of this Memorandum of Understanding signifies that all involved parties have reviewed this Memorandum of Understanding and are prepared to execute a formal Grant Agreement within 30 days of being selected for a U.S. Soccer Foundation mini-pitch grant.**

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Name of Organization

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Name and Title (please print)

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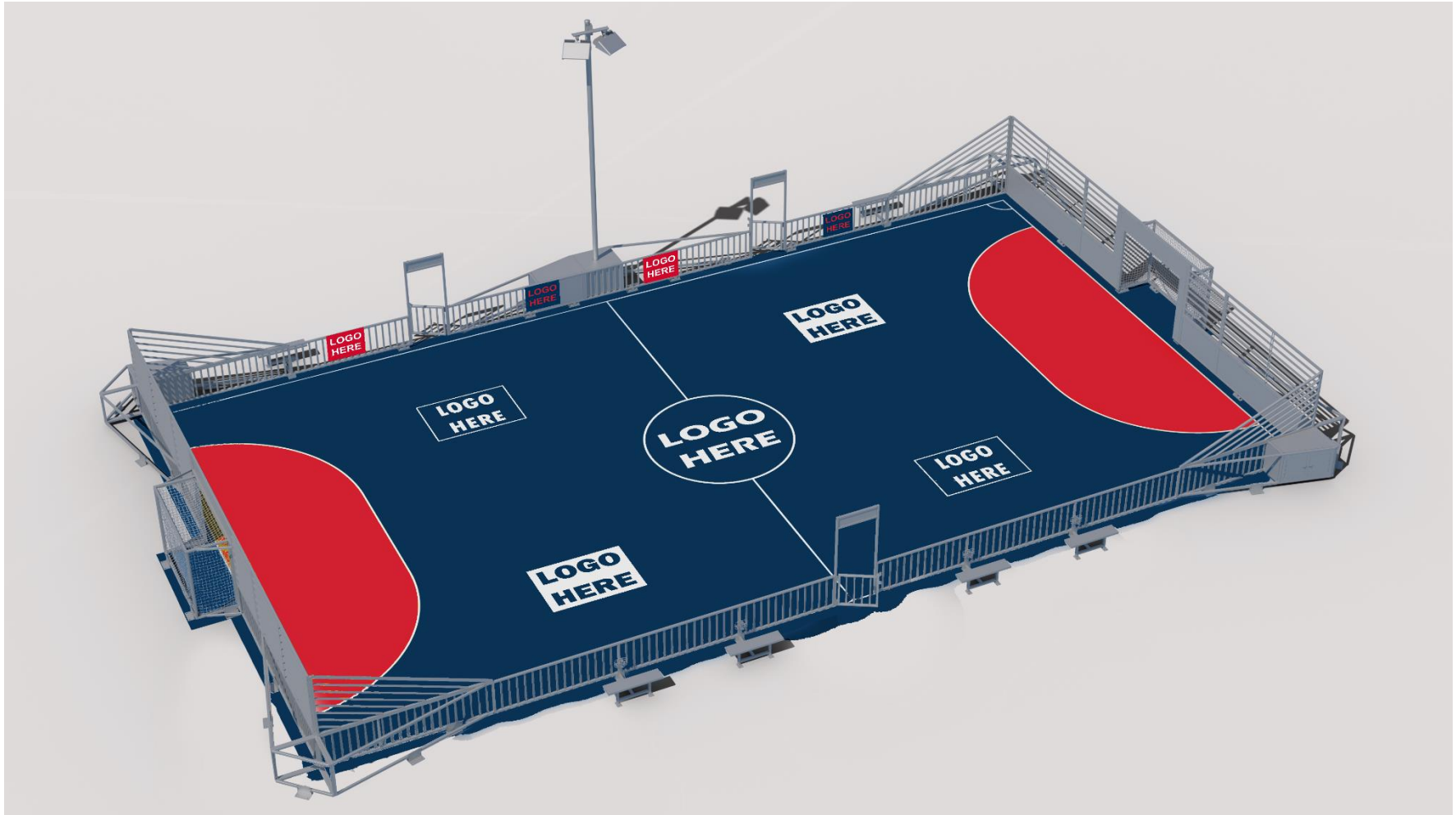
Authorized Signature

---

Date

ATTACHMENT A

\_\_\_\_\_ (Initials)





## CITY COUNCIL STAFF REPORT

**Current Business Item No. 11**

**April 7, 2021**

**File No. 0230-31**

SUBJECT: Daley Ranch Mitigation Bank Credits

DEPARTMENT: Community Development Department, Planning Division  
and Utilities Department, Water Division, Lakes & Open Space

RECOMMENDATION:

Receive and file.

FISCAL ANALYSIS:

The current Daley Ranch conservation credit prices were updated in 2018 (Table #2 on Page 4). The City Council has authority to establish Daley Ranch Conservation Bank credit prices at their discretion. A total of \$4,905,693 in habitat credits have been sold to date representing approximately 25 percent of cumulative credits. If all remaining publicly available Daley Ranch habitat credits could be sold at their current prices, the City of Escondido ("City") could generate approximately \$143,190,169.

The Daley Ranch Conservation Bank Implementation Agreement signed by the City, state, and federal governments stipulates that \$500 per habitat credit sold be deposited into an Endowment Fund, and that interest earnings from the Fund be used for long-term management efforts in Daley Ranch. The Endowment Fund currently totals \$361,476. Of that balance, \$253,937 are permanently restricted funds, and \$107,539 are interest earnings accumulated over time that can be spent in accordance with the agreement. Until the Endowment Fund is fully funded upon the sale of the City's last habitat credit, the City is not required to spend more than \$80,000 per year on management obligations.

The Implementation Agreement also stipulates that fifty percent of the habitat sale proceeds be earmarked in a Restoration Fund, to finance obligations with respect to restoration of the property. \$500,000 is the minimum balance required for the City to maintain in this fund. The Agreement allows that once the Restoration Fund has a balance of \$500,000, the City is not required to make any further payments to this fund.

The remaining balance of revenue generated from the sale of Daley Ranch habitat credits is allocated to the General Fund for use as the City Council determines.

PREVIOUS ACTION:

On March 10, 2021, the City's 2021 Climate Action Plan ("CAP") was adopted. Chapter 5 of the CAP directs the City to, "Maximize mitigation benefits locally by prioritizing Escondido community specific

(i.e.,p local) mitigation for GHG emissions and biological impacts/habitat loss. If no local mitigation credits or mitigation opportunities are available, allow project applicants to seek out regional solutions first. If no regional solutions are available then State solutions, with a preference to proximity.”

New projects will have to demonstrate consistency with the CAP, including this adaptation measure.

On May 8, 2019, the City Council unanimously adopted Resolution No. 2019-59 in order to implement a strategy for increasing Daley Ranch conservation habitat credit sales by:

- 1) Offering a five percent price reduction to purchasers of negotiated habitat credits from competing mitigation banks for the sale of comparable Daley Ranch habitat credits.
- 2) Proactively approaching developers in the region who require habitat mitigation and informing them of opportunities to save five percent by purchasing conservation credits in Daley Ranch.

On January 24, 2018, the City Council approved adjusting the Daley Ranch Conservation Bank credit prices of habitat types available to purchase as off-site mitigation for public and private development projects to ten percent below advertised prices listed at other regional conservation banks (Table #2 on Page 4). The City Council also:

1. Amended the *Daley Ranch Conservation Bank Credit Purchase Agreement & Acknowledgment* standard terms and conditions to require credit purchasers who re-sell their credits on the open market to evenly split any profit with the City gained from the sale, and to require payment of credit purchases within 90 days of the City’s execution of the purchase agreement.
2. Established a minimum balance of habitat credits to be reserved solely for future municipal projects allowing for the sale of all remaining credits on the open market (Table #2 on Page 4).

#### BACKGROUND:

Daley Ranch is a 3,058-acre site acquired and managed in perpetuity by the City for the preservation of a biologically unique and diverse habitat area of regional importance, while providing recreational and educational opportunities in a historically significant setting. The State of California Department of Fish & Wildlife and the U.S. Fish & Wildlife Service approved Daley Ranch as a Conservation Bank in 1997 with 2,842 habitat credits for use as off-site mitigation for five categories of species and habitat (Table #2 on Page 4, Column 1). The Conservation Bank apportions 2,642 credits to the City of Escondido, and 200 credits to the former property owner, Shea Homes.

Each “habitat” or “conservation” credit equals one acre of a specific category of species and habitat. The credits may be purchased in any fraction from the City for public and private projects from the Pacific Ocean to the inland mountain ranges, from the U.S./Mexico border to Riverside County. A total of 509.34 habitat credits have been sold since Daley Ranch was established in 1997.

Table #1: Habitat Credit Sale History			
Calendar Year	Credit Sales	Credits Sold	Revenue
2020-Present	1	0.52	\$ 29,016
2019	4	1.50	\$105,570
2018	3	2.96	\$147,832
2017	7	12.05	\$201,400
2016	10	12.71	\$295,405
2015	6	16.51	\$223,000
2014	8	31.64	\$497,831
2013	2	2.00	\$ 30,000
2012	4	17.27	\$257,600
2011	2	2.59	\$ 38,850
2010	8	11.39	\$173,950
2009	5	7.99	\$ 93,325
Totals	60	119.13	\$2,103,779
12-year average	5	9.93	\$175,315

Conservation credits are NOT Development Impact Fees. Projects are only required to secure these credits if they must mitigate their impacts through the purchase of offsite habitat at an approved conservation bank, of which there are several in the region. Daley Ranch is the only municipally operated conservation bank in the region; others are owned and managed by private and/or non-profit agencies. The eligibility of a development project anywhere in the region for use of Daley Ranch Conservation Credits is determined by the Resource Agencies on a case-by-case basis during the environmental review process for each project.

The process for purchasing Daley Ranch conservation credits is coordinated through the Planning Division. A project's environmental mitigation measure(s) will include the requirement to purchase conservation credits. Daley Ranch credit prices vary by habitat category and are all-inclusive, including the management and restoration expenses. City staff tracks the sale price and credit allocations with an executed *Credit Purchase Agreement and Acknowledgement*. This information is also monitored by state and federal resource agencies.

Typically, the applicant will secure the credits during the post entitlement process prior to constructing the project. After the purchase of habitat credits required for each project, applicants have no additional costs for on-going mitigation lands management. See Table #2 on the following page for details on conservation credits, their original amounts, credits sold, and prices.

<b>Table #2: DALEY RANCH CONSERVATION BANK</b>						
<b>Daley Ranch Habitat Type</b>	<b>Original Habitat Credits</b>	<b>Habitat Credits Sold to Date</b>	<b>Habitat Credits Reserved only for Future Municipal Projects</b>	<b>Remaining Habitat Credits for Sale</b>  Column 2 minus Columns 3 and 4	<b>Adopted Price per Credit</b>	<b>Remaining Credits if sold at Adopted Price</b>  Column 5 multiplied by Column 6
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>	<b>Column 6</b>	<b>Column 7</b>
Chaparral & Coastal Sage Scrub	2,098.00	269.90	50.00	1,778.10	<b>\$72,000</b>	<b>\$128,023,200</b>
Coast Live Oak Woodland	145.00	25.37	15.00	104.63	<b>\$54,000</b>	<b>\$5,650,020</b>
Englemann Oak Woodland	79.00	4.20	5.00	69.80	<b>\$54,000</b>	<b>\$3,769,200</b>
Water Dependent Habitat	15.00	4.00	4.00	7.00	<b>\$450,000</b>	<b>\$3,150,000</b>
Non-Native Grasslands	305.00	205.87	50.00	49.13	<b>\$52,875</b>	<b>\$2,597,748.75</b>
<b>Totals</b>	<b>2,642.00</b>	<b>509.34</b>	<b>124.00</b>	<b>2,008.66</b>		<b>\$143,190,168.75</b>

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:  
*Christopher McKinney*, Deputy City Manager/Director of Utilities  
 04/01/21 9:21 a.m.

*Mike Strong*, Director of Community Development  
 04/01/21 9:45 a.m.

## CITY COUNCIL STAFF REPORT

**Current Business Item No. 12**

**April 7, 2021**

**File No. 0220-55**

SUBJECT: American Rescue Plan Act Update

DEPARTMENT: Christina Holmes, Director of Finance

RECOMMENDATION:

Receive an update on the American Rescue Plan Act of 2021, and provide preliminary policy comments.

FISCAL ANALYSIS:

The American Rescue Plan Act will provide the City of Escondido (“City”) an estimated one-time amount of \$45 million to cover expenses, make up for lost revenue, and ease the overall economic impact from the COVID-19 pandemic. All funds must be spent by December 31, 2024.

BACKGROUND:

On March 11, 2021, President Joe Biden signed the American Rescue Plan Act of 2021 (“ARPA”), which contains \$1.9 trillion in overall national spending to support relief and economic recovery efforts. ARPA provides \$350 billion in assistance to state, local, and tribal governments, of which \$65 billion is directly portioned to local governments. This direct funding is allocated based on a modified Community Development Block Grant (CDBG) formula for those cities considered to be an entitlement community, generally defined as populations of 50,000 or more. The current estimated allocation to Escondido is \$45 million.

The money received from the ARPA will not address the City’s structural budget gap because it is not an ongoing source of revenue. Funds should be treated as one-time money. Moreover, the amount of the ARPA funds (\$45 million) is less than 25% of the total estimated shortfall (\$220 million) which the City will confront over the next 20 years.

As noted below, City staff, as with other cities, are awaiting additional guidance from the United States Department of the Treasury as to the specific and permissible purposes for expending funds. However, based simply on the language in the Act itself, the funding is to be used for various relief programs due to the ongoing COVID-19 pandemic, and eligible uses of these funds include:

- To respond to the COVID-19 emergency and address the negative economic impacts of COVID-19, including economic recovery, assistance to small businesses, households, non-profits, and hard-hit industries such as tourism, travel, and hospitality,
- Revenue replacement for the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency, relative to revenues collected in the

most recent fiscal year prior to the emergency,

- Provide premium pay for essential workers or grants to their employers (cannot exceed \$13 per hour or \$25,000 per worker),
- Investments in water, sewer, and broadband infrastructure

The statute itself contains certain restrictions on the uses of these funds. Specifically, that state and local governments cannot use the funds to make pension payments. The Treasury regulations may contain additional restrictions. Regular reports to the federal government regarding the use of funds will be required, including a detailed accounting of the use of funds.

In addition to the funding that the City will be receiving, the ARPA also designates separate funding for recovery in specific industries including but not limited to restaurants, shuttered venues operators (i.e. the California Center for the Arts, Escondido), education, and healthcare. The guidance from the National League of Cities encourages cities to save local fiscal relief recovery funds for gaps and priorities not eligible for these other federal and state assistance programs.

To receive the allocation of funds, all jurisdictions will be required to complete a certification process and agree that it will use any payment in compliance with the use of fund restrictions. ARPA requires that the funds be released in two tranches, or portions – the first within 60 days of the enactment of the legislation, and the second no earlier than 12 months after the first payment. Based on this timeline, the first portion of funds, 50% of the total amount allocated to the City, is expected to be received by June 2021. All funds must be spent by December 31, 2024.

The U.S. Treasury Department is responsible for the oversight of this funding and will be providing specific guidance on the program requirements and the eligible uses of funds not described in the statute. As with previous COVID-19 relief packages, implementation will be an extensive process as new or updated guidance and FAQs are developed and released. City staff are closely monitoring for the release of this additional guidance.

As additional details on eligible expenditures and program requirements are provided by the U.S. Treasury Department, and after review of guidance from the National League of Cities, Cal Cities, and other jurisdictions, City staff will return to City Council for additional policy direction on a program to make the best use of these funds to benefit Escondido, including Council priorities and recommendations for the use of funds.

#### PRIOR FEDERAL STIMULUS FUNDING:

It is anticipated that the range of options for use of this round of federal stimulus will be much broader than prior relief. The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act signed last year provided \$2.2 trillion in federal funds to respond to the COVID-19 emergency. Under the CARES Act, the Treasury provided direct funding only to counties and municipalities with populations greater than 500,000. All other funding was provided to states to distribute as they deemed appropriate.

Escondido was allocated \$1,889,210 from the State and \$2,713,486 from the County of San Diego; a total of \$4,602,696.

The CARES Act required that the payments from this former stimulus only be used to cover expenses that: (1) were necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); and (2) were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act). All funds were required to be expended by September 30, 2020.

The CARES Act funds were used by Escondido for payroll costs of personnel and services that were diverted to a substantially different use, such as Community Services staff delivering Senior Meals, as well as the costs incurred for public safety and public health employees who were substantially dedicated to mitigating or responding to COVID-19 public health emergency. The funds were all also used to purchase personal protective equipment and the supplies needed to support public health and the measures undertaken in response to the emergency.

Economic development and increasing the City's technology capabilities to enhance teleworking and video conferencing availability were a priority for spending the remaining funds. Equipment was purchased to support and improve the teleworking capabilities of staff. In addition, \$60,000 was allocated to the the Escondido Union School District for wireless hotspot equipment, and \$40,000 was allocated to the Escondido Union High School District for the purchase of student electronic devices. To support the City's business community, \$1.0 million in grants were awarded to 103 local businesses.

Additionally, the CARES Act also included funds for the Community Development Block Grant ("CDBG-CV") program and for the Emergency Solutions Grant ("ESG-CV") program to "prevent, prepare for and respond to the coronavirus pandemic ("COVID-19")." The City received \$2,394,882 in CDBG-CV funds and \$4,487,427 in ESG-CV funds; a total of \$6,882,309.

Activities funded with CDBG-CV or ESG-CV were required to: 1) be consistent with a jurisdiction's Consolidated Plan, 2) must assist low- and moderate-income individuals (CDBG-CV) or individuals and families who are homeless or are at risk of homelessness (ESG-CV), and 3) must prevent, prepare for, or respond to COVID-19 (CDBG-CV/ESG-CV).

Through previous amendments to the City's Annual Action Plan, City Council approved the use of the grant funding to support multiple programs within the City including the Senior Nutrition program, Meals on Wheels of San Diego County, the Legal Aid Society of San Diego for eviction prevention support, rental and utility assistance programs, homelessness prevention and outreach programs, the Rapid Rehousing program, and Emergency Shelter program.

CONCLUSION

Staff encourages feedback from the City Council regarding the most appropriate expenditures of ARPA funds as a starting point for determining specific expenditure recommendations and will return following additional guidance on permissible uses of the funds.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Christina Holmes*, Director of Finance

04/01/21 9:10 a.m.





**APPOINTMENT AND DIRECTION**  
**REGARDING A HOUSING**  
**SUBCOMMITTEE, AND RELATED**  
**DETAILS SUCH AS SCOPE,**  
**DURATION, AND STAFF**  
**SUPPORT-**

**No materials available. Council**  
**discussion only.**



## FUTURE CITY COUNCIL AGENDA ITEMS

Updated April 1, 2021

*AGENDA ITEMS AND CITY COUNCIL MEETING DATES ARE SUBJECT TO CHANGE.  
CHECK WITH THE CITY CLERK'S OFFICE AT (760) 839-4617*

**April 14, 2021 -  
CANCELLED**

**April 21, 2021  
5:00 p.m.**

**CONSENT CALENDAR**

**Bid Award for the Skate Spot Construction Project**  
(D. Lopez)

*It requested that the City Council approve the awarded bid for the Skate Spot Construction Project.*

**Approval of the FY2020-21 Traffic Signal Priority List for New Traffic Signals and for Signal Modification Projects**  
(J. Procopio)

*It is requested that the City Council adopt Resolution No. 2021-36 approving the FY 2020-21 Traffic Signal Priority List for new traffic signal projects and for modification of existing traffic signals, as recommended by the Transportation and Community Safety Commission. Established ranking criteria, including accident data and delay, has been used to set the order of priority for signal projects that will be budgeted as a part of the Capital Improvement Program.*

**PUBLIC HEARINGS**

**Public Hearing for the City of Escondido Landscape Maintenance District Zones 1 through 38**  
(J. Procopio)

*The City Council has previously approved the Preliminary Assessment Engineer's Report Zones 1 through 38 with Resolution No. 2021-19. It is requested that the City Council hold a public hearing to receive input on the levy of the proposed annual assessments for the City of Escondido Landscape Maintenance District (LMD) Zones 1 through 38.*

**Public Hearing and Adoption of the Updated Traffic Impact Analysis Guidelines**  
(J. Procopio)

*It is requested that the City Council hold a public hearing and approve Resolution No. 2021-47 adopting the Traffic Impact Analysis Guidelines.*

**One-Year Action Plan for Fiscal Year 2021-2022 Home Funds for Affordable Housing Activities, CDBG Funds for Community Development Programs and Projects, and ESG Funds for Homeless Priorities**  
(M. Strong)

*It is requested that the City Council adopt Resolution No. 2021-50 approving Fiscal Year 2021-2022 HOME, CDBG, and ESG budget and allocation to projects. It is requested that the City Council adopt Resolution No. 2021-51 approving the City of Escondido's One Year Action Plan and approving the submittal to HUD. This is a required hearing for the Annual Action Plan for allocating federal HOME, CDBG, and ESG funds for projects and programs.*

**CURRENT BUSINESS**

**Single-Use Plastics Policy**  
(P. McNamara)

*At the March 10, 2021 City Council meeting, Mayor McNamara requested that the City Council consider including a Single-Use Plastics Policy in the Climate Action Plan.*

**Mountain View Park Update**  
(D. Lopez)

*It is requested that the City Council receive the update on the Mountain View Park Survey, the Field House historic assessment, and the business proposal to place a vineyard on the knoll area of the park.*

**FUTURE AGENDA ITEMS**

**April 28, 2021 NO MEETING (Spring Break)**

**May 5, 2021 NO MEETING (Spring Break)**



April 7, 2021

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## CITY MANAGER'S WEEKLY ACTIVITY REPORT

- Please refer to the City's website at <https://www.escondido.org/latest-news-from-the-city-managers-office.aspx>