# City of Escondido

Council Meeting Agenda

## Wednesday, September 02, 2026

**4:00 PM - Closed Session (City Attorney Conference Room)**
**5:00 PM - Regular Session**
**Escondido City Council Chambers, 201 North Broadway, Escondido, CA 92025**

**Welcome to Your City Council Meeting**

We welcome your interest and involvement in the legislative process of Escondido. This agenda includes information about topics coming before the City Council and the action recommended by City staff.

**Mayor**
Dane White

**Deputy Mayor**
Joe Garcia (District 2)

**Councilmembers**
Consuelo Martinez (District 1)
Christian Garcia (District 3)
Judy Fitzgerald (District 4)

**City Manager**
Sean McGlynn

**City Attorney**
Michael McGuinness

**City Clerk**
Zack Beck

**How to Watch**

The City of Escondido provides three ways to watch a City Council meeting:

| In Person | On TV | Online |
| --- | --- | --- |
| 201 N. Broadway | Cox Cable Channel 19 and U-verse Channel 99 | www.escondido.gov |

## HOW TO PARTICIPATE

The City of Escondido provides three ways to communicate with the City Council during a meeting:

**In Person**

Fill out Speaker Slip and Submit to City Clerk

**In Writing**

escondido-ca.municodemeetings.com

**Online**

https://publiccomment.escondido.gov/

## ASSISTANCE PROVIDED

If you need special assistance to participate in this meeting, please contact our ADA Coordinator at 760-839-4869. Notification 48 hours prior to the meeting will enable to city to make reasonable arrangements to ensure accessibility. Listening devices are available for the hearing impaired – please see the City Clerk.

# CITY of ESCONDIDO

COUNCIL MEETING AGENDA

Wednesday, September 02, 2026

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**CLOSED SESSION**
4:00 PM

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**CALL TO ORDER**

1. Roll Call: Fitzgerald, C. Garcia, J. Garcia, Martinez, White

**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. Speakers are limited to only one opportunity to address the Council under Oral Communications.

**CLOSED SESSION**

I. **CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION (Government Code § 54956.9(d)(1))**
   a. Edward Bustin
      Workers' Compensation Appeals Board Case No. ADJ20428345

II. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION (Government Code § 54956.9(d)(4))**
   a. Potential initiation of litigation against Las Ventanas Village Partnership, L.P.

**ADJOURNMENT**

# CITY of ESCONDIDO

COUNCIL MEETING AGENDA

Wednesday, September 02, 2026

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**REGULAR SESSION**
5:00 PM Regular Session

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**MOMENT OF REFLECTION**

**FLAG SALUTE**

The City Council conducts the Pledge of Allegiance at the beginning of every City Council meeting.

**CALL TO ORDER**

Roll Call: Fitzgerald, C. Garcia, J. Garcia, Martinez, White

**PROCLAMATION**

Pollution Prevention Month

**CLOSED SESSION REPORT**

**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. Speakers are limited to only one opportunity to address the Council under Oral Communications.

**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**
   Request the City Council approve the City Council and Housing Successor Agency warrants issued between August 17, 2026 to August 23, 2026.

   Staff Recommendation: Approval (Finance Department: Christina Holmes, Director of Finance)

3. **APPROVAL OF MINUTES: Regular meeting of August 26, 2026**

4. **WAIVER OF READING OF ORDINANCES AND RESOLUTIONS**

5. **APPROVAL OF CALPERS INDUSTRIAL DISABILITY RETIREMENT FOR POLICE OFFICER CHRISTIAN BAECHLI**
   Request the City Council adopt Resolution No. 2026-113, approving the California Public Employees' Retirement System (CalPERS) Industrial Disability Retirement for Police Officer Christian Baechli.

   Staff Recommendation: Approval (Human Resources Department: Jessica Perpetua, Director of Human Resources)

   Presenter: Jessica Perpetua, Director of Human Resources

   a) Resolution No. 2026-113

6. **REQUEST FOR AUTHORITY TO ACCEPT GRANT FUNDS AND EXECUTION OF GRANT AGREEMENTS AND FORMS FOR THE PROJECT BPMP-5081(032) – CITY WIDE BRIDGE MAINTENANCE PROJECT**
   Request the City Council adopt Resolution No. 2026-141 authorizing City officers, or their designees, on behalf of the City, to accept grant funds in the amount of $252,074 and to execute all grant forms and agreements necessary for funding and completion of the City-Wide Bridge Maintenance Project.

   Staff Recommendation: Approval (Development Services Department: Kevin Snyder, Development Services Director)

   Presenter: Jason Christman, Interim City Engineer

   a) Resolution No. 2026-141

**CURRENT BUSINESS**

7. **APPOINTMENT OF INTERIM CITY ATTORNEY AND AUTHORIZATION TO ENTER INTO EMPLOYMENT AGREEMENT**
   Request the City Council adopt Resolution No. 2026-145 (1) appointing M. Dare DeLano as Interim City Attorney and (2) authorizing the Mayor to execute an employment agreement for the Interim City Attorney.

   Staff Recommendation: Approval (Human Resources Department: Jessica Perpetua, Director of Human Resources; City Attorney's Office: Michael McGuinness, City Attorney)

   Presenter: Jessica Perpetua, Director of Human Resources

   a) Resolution No. 2026-145

**8.** **HOMELESS UPDATE**

Request the City Council adopt Resolution No. 2026-151 (1) authorizing the Chief of Police to facilitate and conduct two Request for Proposal ("RFP") processes: for services related to temporary sobering services, including a sobering center and for homeless outreach services; (2) approving the execution of documents on behalf of the City following the RFP process by authorized City officers; and (3) approving the budget adjustments necessary to fund costs related to the procurement, implementation, and operation of temporary sobering services and homeless outreach services.

Staff Recommendation: Approval (Police Department: Ken Plunkett, Chief of Police)

Presenter: Ken Plunkett, Chief of Police

a) Resolution No. 2026-151

**FUTURE AGENDA**

**9.** **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, City Clerk)

**COUNCILMEMBERS SUBCOMMITTEE REPORTS AND OTHER REPORTS**

**CITY MANAGER'S REPORT**

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

**ADJOURNMENT**

**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. Speakers are limited to only one opportunity to address the Council under Oral Communications.

**UPCOMING MEETING SCHEDULE**

| | | |
|---|---|---|
| Wednesday, September 16, 2026 | 4:00 & 5:00 PM | Closed Session, Regular Meeting, *Council Chambers* |
| Wednesday, September 30, 2026 | 4:00 & 5:00 PM | Closed Session, Regular Meeting, *Council Chambers* |

**SUCCESSOR AGENCY**

Members of the Escondido City Council also sit as the Successor Agency to the Community Development Commission, Escondido Joint Powers Financing Authority, and the Mobilehome Rent Review Board.

**CEQA STATEMENT**

Unless stated otherwise on the agenda, every item on the agenda is exempt from CEQA under Guideline Sections 15060(c), 15061(b), 15273, 15378, 15301, 15323 and/or Public Resources Code Section 21065

**Consent Item No. 1** **September 2, 2026**

# A F F I D A V I T S

# OF

# I T E M

# P O S T I N G – NONE

# STAFF REPORT

September 02, 2026
File Number 0400-40

**SUBJECT**

**APPROVAL OF WARRANT REGISTER**

**DEPARTMENT**

Finance

**RECOMMENDATION**

Approval for City Council and Housing Successor Agency warrants issued between August 17, 2026 to August 23, 2026

Staff Recommendation: Approval (Finance Department: Christina Holmes)

**ESSENTIAL SERVICE –** Internal requirement per Municipal Code Section 10

**COUNCIL PRIORITY –**

**FISCAL ANALYSIS**

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

| | |
|---|---|
| Dates | 08/17/2026 to 08/23/2026 |
| Total | $2,217,707.40 |
| Number of Warrants | 204 |

**BACKGROUND**

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

# CITY of ESCONDIDO

COUNCIL MEETING MINUTES

**CLOSED SESSION**
4:00 PM

**CALL TO ORDER**

1. Roll Call: Fitzgerald, C. Garcia, J. Garcia, Martinez, White

**ORAL COMMUNICATIONS**

None

**CLOSED SESSION**

**I. <u>Public Employee Appointment (Government Code § 54957(b))</u>**

a. Consideration of Appointment of Interim City Attorney

**ADJOURNMENT**

Mayor White adjourned the meeting at 4:45 p.m.

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MAYOR CITY CLERK

# CITY of ESCONDIDO

COUNCIL MEETING MINUTES

**REGULAR SESSION**
5:00 PM Regular Session

**MOMENT OF REFLECTION**

**FLAG SALUTE**

The City Council conducts the Pledge of Allegiance at the beginning of every City Council meeting.

**CALL TO ORDER**

Roll Call: Fitzgerald, C. Garcia, J. Garcia, Martinez, White

**CLOSED SESSION REPORT**

**ORAL COMMUNICATIONS**

Gregg Oliver – Requested the City Council add a local vendor preference clause in its contract/bidding process.

**CONSENT CALENDAR**

Motion: White; Second: C. Garcia; Approved: 5-0

1. **AFFIDAVITS OF PUBLICATION, MAILING, AND POSTING (COUNCIL/RRB)**

2. **APPROVAL OF WARRANT REGISTER**
   Request the City Council approve the City Council and Housing Successor Agency warrants issued between August 03, 2026 to August 16, 2026.

   Staff Recommendation: Approval (Finance Department: Christina Holmes, Director of Finance)

3. **APPROVAL OF MINUTES: Regular meetings of August 5, 2026 and August 12, 2026**

4. **WAIVER OF READING OF ORDINANCES AND RESOLUTIONS**

5. **TREASURER'S INVESTMENT REPORT FOR THE QUARTER ENDED JUNE 30, 2026**
   Request the City Council approve the Quarterly Investment Report for the quarter ended June 30, 2026. (File Number 0490-55)

# CITY of ESCONDIDO

COUNCIL MEETING MINUTES

Staff Recommendation: Approval (Finance Department: Douglas Shultz, City Treasurer)

Presenter: Douglas Shultz, City Treasurer

6. **CALIFORNIA CENTER FOR THE ARTS, ESCONDIDO, KITCHEN SEWER REPLACEMENT PROJECT FIRST AMENDMENT AND BUDGET ADJUSTMENT**
Request the City Council adopt Resolution No. 2026-132 authorizing the Mayor to execute a construction change order for the CCAE Kitchen Sewer Replacement Project in the amount of $291,685 and authorize a budget adjustment in the amount of $160,467 of Measure I funds. (File Number 0910-20; 0430-80)

   Staff Recommendation: Approval (Public Works Department: Joseph Goulart, Director of Public Works)

   Presenter: Ed Vasquez, Project Manager

   a) Resolution No. 2026-132

7. **NEIGHBORHOOD REINVESTMENT PROGRAM GRANT AND BUDGET ADJUSTMENT**
Request the City Council adopt Resolution No. 2026-138 authorizing the Escondido Fire Department to accept Neighborhood Reinvestment Program grant funds in the amount of $59,230; authorize the Fire Chief or his designee to execute grant documents on behalf of the City and approve budget adjustments needed to accept and spend grant funds. (File Number 0480-70)

   Staff Recommendation: Approval (Fire Department: Tyler Batson, Interim Fire Chief)

   Presenter: Tyler Batson, Interim Fire Chief
   a) Resolution No. 2026-138

**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.)

8. **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE A TEMPORARY LICENSE AND ACCESS AGREEMENT FOR PROPERTY AT 510 N. BROADWAY, ESCONDIDO, CALIFORNIA, AS PART OF THE ESCONDIDO CREEK TRAIL PROJECT (FILE NUMBER 0600-10; A-3611)**

   Approved on August 5, 2026 with a vote of 5/0.

a) Ordinance No. 2026-17 (Second Reading and Adoption)

**PUBLIC HEARINGS**

9. **INTERIM URGENCY ORDINANCE PROHIBITING DATA CENTERS WITHIN THE CITY OF ESCONDIDO**

Request the City Council adopt Ordinance No. 2026-18, approving an Interim Ordinance to prohibit the establishment, expansion, or intensification of Data Centers and other similar high-intensity computing uses within the City of Escondido. (File Number 0680-10)

Staff Recommendation: Approval (Development Services Department: Kevin Snyder, Director of Development Services)

Presenter: Garrett Smith, City Planner

a) Ordinance No. 2026-18 (First Reading and Introduction)

Gregg Oliver – Expressed support for the item

Kristina Miller – Expressed support for the item

Motion: C. Garcia; Second: White; Approved: 5-0

10. **ESCONDIDO POLICE DEPARTMENT MILITARY EQUIPMENT REPORT**

Request the City Council adopt Ordinance No. 2026-16 approving the Escondido Police Department Annual Military Equipment Report in accordance with state law requirements as set for in Assembly Bill No. 481 ("AB 481"). (File Number 0110-10)

Staff Recommendation: Approval (Police Department: Ken Plunkett, Chief of Police)

Presenters: Erik Witholt, Police Captain; and Lisa Rodelo, Assistant Director of Police Support Services

a) Ordinance No. 2026-16 (First Reading and Introduction)

Motion: Martinez; Second: C. Garcia; Approved: 5-0

11. **BICYCLES, NONMOTORIZED VEHICLES, AND MOBILITY DEVICES**

Request that City Council adopt Ordinance No. 2026-07, amending Chapters 5, 10, 18, and 28 of the Escondido Municipal Code to regulate Bicycles, Nonmotorized Vehicles, and Mobility Devices, and related enforcement activities. (File Number 0680-10)

Staff Recommendation: Approval (Police Department: Ken Plunkett, Chief of Police)

CITY of ESCONDIDO

COUNCIL MEETING MINUTES

Presenter: Craig Miller, Lieutenant, Traffic Division

a) Ordinance No. 2026-07 (First Reading and Introduction)

Kristina Miller – Expressed support for the item

Motion: Fitzgerald; Second: J. Garcia; Approved: 4-1 (White – No)

**CURRENT BUSINESS**

12. **RESOLUTION IN OPPOSITION TO PROPOSITION 44**
Request the City Council consider, and take such action as it deems appropriate on, Resolution No. 2026-146, expressing the City Council's opposition to Proposition 44, an initiative statute that will appear before California voters at the November 3, 2026 Statewide General Election. (File Number 0600-00)

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

Presenter: Mayor Dane White, Councilmember Christian Garcia, Neighborhood Healthcare

a) Resolution No. 2026-146

Motion: White; Second: Fitzgerald; Approved: 5-0

**FUTURE AGENDA**

13. **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)

White / C. Garcia – Resolution in support of Assembly Bill 844

J. Fitzgerald / White - Letter of support for Valley Center Working Group regarding evacuation routes

**COUNCILMEMBERS SUBCOMMITTEE REPORTS AND OTHER REPORTS**

**CITY MANAGER'S REPORT**

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

**ORAL COMMUNICATIONS**

None

**ADJOURNMENT**

Mayor White adjourned the meeting at 6:35 p.m.

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MAYOR CITY CLERK

# STAFF REPORT

**ITEM NO. 4**

**SUBJECT**

**WAIVER OF READING OF ORDINANCES AND RESOLUTIONS –**

**ANALYSIS**

The City Counci/RRB has adopted a policy that is sufficient to read the title of ordinances at the time of introduction and adoption, and that reading of the full text of ordinances and the full text and title of resolutions may be waived.

Approval of this consent calendar item allows the City Council/RRB to waive the reading of the full text and title of all resolutions agendized in the Consent Calendar, as well as the full text of all ordinances agendized in either the Introduction and Adoption of Ordinances or General Items sections. **This particular consent calendar item requires unanimous approval of the City Council/RRB.**

Upon approval of this item as part of the Consent Calendar, all resolutions included in the motion and second to approve the Consent Calendar shall be approved. Those resolutions removed from the Consent Calendar and considered under separate action may also be approved without the reading of the full text and title of the resolutions.

Also, upon the approval of this item, the Mayor will read the titles of all ordinances included in the Introduction and Adoption of Ordinances section. After reading of the ordinance titles, the City Council/RRB may introduce and/or adopt all the ordinances in one motion and second.

**RECOMMENDATION**

Staff recommends that the City Council/RRB approve the waiving of reading of the text of all ordinances and the text and title of all resolutions included in this agenda. Unanimous approval of the City Council/RRB is required.

Respectfully Submitted,

Zack Beck
City Clerk

# STAFF REPORT

September 2, 2026
File Number 0170-57

**SUBJECT**

**APPROVAL OF CALPERS INDUSTRIAL DISABILITY RETIREMENT FOR POLICE OFFICER CHRISTIAN BAECHLI**

**DEPARTMENT**

Human Resources

**RECOMMENDATION**

Request the City Council adopt Resolution No. 2026-113, approving the California Public Employees' Retirement System (CalPERS) Industrial Disability Retirement for Police Officer Christian Baechli.

Staff Recommendation: Approval (Human Resources: Jessica Perpetua, Director of Human Resources)

Presenter: Jessica Perpetua, Director of Human Resources

**ESSENTIAL SERVICE –** Internal Requirement

**COUNCIL PRIORITY –**

**FISCAL ANALYSIS**

None

**PREVIOUS ACTION**

None

**BACKGROUND**

Officer Christian Baechli filed for Industrial Disability Retirement on June 18, 2026. He was employed by the City of Escondido for 6 years, prior to an Industrial Disability Retirement. His last day of employment was on September 1, 2026. The basis for Officer Christian Baechli's Industrial Disability Retirement application is confirmed by the medical reports received from Dr. Dayang Jaya. Officer Baechli's condition is orthopedic in nature. Accordingly, Officer Christian Baechli is incapacitated within the meaning of the Public Employees' Retirement Law for performance of his usual and customary duties in the position of Police Officer.

Under state law, CalPERS requires the City Council to adopt a resolution stating that competent medical evidence supports the granting of an Industrial Disability Retirement. Based on medical evidence, staff recommends the City Council adopt Resolution No. 2026-113, approving the CalPERS Industrial Disability Retirement for Officer Christian Baechli to be effective September 02, 2026.

**RESOLUTIONS**

a. Resolution No. 2026-113

RESOLUTION NO. 2026-113

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, APPROVING THE CALPERS INDUSTRIAL DISABILITY RETIREMENT FOR FORMER POLICE OFFICER CHRISTIAN BAECHLI

WHEREAS, the City of Escondido (the "City") is a contracting agency of the California Public Employees' Retirement System ("CalPERS"); and

WHEREAS, the California Public Employees' Retirement Law (Government Code Section § 20000 et seq.) ("California law") requires that the City determine whether an employee classified as a local safety member is disabled for purpose of the California law and whether such disability is "industrial" within the meaning of such law; and

WHEREAS, Christian Baechli ("Employee") filed an application with CalPERS on June 18, 2026, for an industrial disability retirement due to an orthopedic injury of the lumbar spine; and

WHEREAS, the Employee, was employed by the City in the position of Police Officer; and

WHEREAS, the City Council of the City of Escondido has reviewed the medical and other evidence relevant to this industrial disability.

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 does hereby find and determine that Employee is incapacitated within the meaning of the California Public Employees' Retirement Law for performance of his duties in the position of Police Officer.

3. That the City Council certifies Resolution No. 2026-113 in accordance with Government Code Section § 21156, that this determination was made on the basis of competent medical opinion, and was not used as a substitute for the disciplinary process.

4. That the Employee had filed a Workers' Compensation claim for his disabling condition. The City accepted the Employee's Workers' Compensation claim.

5. That neither Employee nor the City of Escondido has applied to the Worker's Compensation Appeals Board for a determination pursuant to Government Code Section § 21166 whether such disability is industrial.

6. His last day on paid status was September 1, 2026; the employee was separated on September 2, 2026, effective date of retirement September 2, 2026.

7. That there is not a possibility of third-party liability.

8. That the City will make monthly Advanced Disability Pension Payments of $5,628.60, beginning October 1, 2026, until CalPERS begins making retirement payments. The City will also make a one-time advance disability payment of $5,440.98, for the remaining twenty-nine days of September 2026. CalPERS will send the reimbursement check to: City of Escondido Workers' Compensation Department at 201 N. Broadway, Escondido, CA 92025.

9. That the primary disabling condition is an orthopedic injury to his lumbar spine, and arose out of and in the course of employment.

10. That there is competent medical opinion certifying the disabling condition to be permanent.

11. That based on information and belief, and on the information provided by City staff, the City Council certifies under penalty of perjury that all statements in this Resolution are true and correct.

# STAFF REPORT

September 2, 2026
File Number 0480-70

**SUBJECT**

**REQUEST FOR AUTHORITY TO ACCEPT GRANT FUNDS AND EXECUTION OF GRANT AGREEMENTS AND FORMS FOR THE PROJECT BPMP-5081(032) – CITY WIDE BRIDGE MAINTENANCE PROJECT**

**DEPARTMENT**

Development Services, Engineering Services

**RECOMMENDATION**

Request the City Council adopt Resolution No. 2026-141 authorizing City officers, or their designees, on behalf of the City, to accept grant funds in the amount of $252,074 and to execute all grant forms and agreements necessary for funding and completion of the City-Wide Bridge Maintenance Project.

Staff Recommendation: Approval (Development Services: Kevin Snyder, Development Services Director)

Presenter: Jason Christman, Interim City Engineer

**ESSENTIAL SERVICE –** Yes, Public Works/Infrastructure; Keep City Clean for Public Health and Safety

**COUNCIL PRIORITY –** Eliminate Structural Deficit; Improve Public Safety

**FISCAL ANALYSIS**

As part of the Bridge Preventive Maintenance Program (“HPMP”), administered through the Highway Bridge Program (“HBP”), the City has been awarded $252,074. The City’s total grant application was for $315,093, including the specified matching funds of 20%. The adopted Capital Improvement Project (“CIP”) budget includes $63,019 in the City’s matching funds programmed under Gas Tax funds during Fiscal Year 2026/2027 and Fiscal Year 2027/2028.

**PREVIOUS ACTION**

None

**BACKGROUND**

The City has successfully received HBP funds to conduct preventive maintenance repair to 16 of the bridges. The terms of the Federal HBP funding requirements are as follows: Preliminary Engineering (“PE”) authorization must occur in the current fiscal year (“FY”). Construction Authorization (“CA”) can be scheduled for future fiscal years. HBP Funds requires 20% local match, hence the City must budget for its matching share in the current FY for PE and allocate additional matching funds in future FYs for the Construction phase. The local match funds will be programmed under Gas tax funds.

Furthermore, the repairs include removing the unsound concrete around steel reinforcing bars, surface cleaning and patching with suitable structural concrete patching material, replace compression seals at abutments, clean and seal the joint with pourable sealant, remove all unsound concrete along the top of the pier wall, grind and overlay which are in compliance with the terms of the HBP funds.

In the interest of efficacy and as required by the HPMP grant administrator, it is requested that the City Council adopt Resolution No. 2026-141 authorizing City officers as appropriate, or their designees, to accept grant funds in the amount of $252,074 and to execute all grant forms and agreements necessary for funding and completion of the City-Wide Bridge Maintenance Project. Such forms include but are not limited to the Program Supplement No. F030 to Administering Agency-State Agreement for Federal-Aid Projects No. 11-5081F15, attached to Resolution No. 2026-141 as Exhibit “A”. For reference, the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on July 21, 2017 is attached hereto as Attachment “1”.

**RESOLUTIONS**

a. Resolution No. 2026-141
b. Resolution No. 2026-141—Exhibit “A"—Program Supplement No. F030 to Administering Agency-State Agreement for Federal-Aid Projects No. 11-5081F15

**ATTACHMENTS**

a. Attachment “1”—Master Agreement Administering Agency-State Agreement for Federal Aid Projects dated July 21, 2017
b. Attachment “2”—Federal Bridge Preventative Maintenance List of Escondido Priority Locations

RESOLUTION NO. 2026-141

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO AUTHORIZING THE RECEIPT OF GRANT FUNDS AND EXECUTION OF GRANT AGREEMENTS AND FORMS FOR THE PROJECT BPMP-5081(032) – CITY WIDE BRIDGE MAINTENACE PROJECT

WHEREAS, the City of Escondido ("City") is eligible to receive federal and/or state funding for certain transportation projects, through the California Department of Transportation; and

WHEREAS, the City submitted a grant application for the of the City-Wide Bridge Maintenance Project ("Project") and, as part of the Bridge Preventive Maintenance Program ("HPMP"), administered through the Highway Bridge Program, has been awarded $252,074 as a result of said application; and

WHEREAS, various forms and other documents including but not limited to Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements and/or Fund Transfer Agreements (collectively referred to herein as "Grant Agreements") must be executed with the California Department of Transportation before the awarded $252,074 grant funds can be claimed by the City; and

WHEREAS, the City Council wishes to delegate authorization to authorized City officers, including the City Manager and the Director of Development Services, as apprpriate, to execute said Grant Agreements.

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 herey delegates authority to authorized City officers, including the City Manager and the Director of Development Services, as

appropriate, to execute all Grant Agreements, attached hereto as Exhibit "A" with California Department of Transportation which may be necessary for receipt of the $252,074 in HPMP grant funds for the Project, and any additional documents and budget adjustments as required to expend the funds anticipated from the grant.

Item6.

**PROGRAM SUPPLEMENT NO.** F030
**to**
**ADMINISTERING AGENCY-STATE AGREEMENT**
**FOR FEDERAL-AID PROJECTS NO** 11-5081F15

Adv. Project ID
1126000214

**Date:** June 12, 2026
**Location:** 11-SD-0-ESD
**Project Number:** BPMP-5081(032)
**E.A. Number:**
**Locode:** 5081

This Program Supplement hereby adopts and incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on 07/21/2017 and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. approved by the Administering Agency on (See copy attached).

The Administering Agency further stipulates that as a condition to the payment by the State of any funds derived from sources noted below obligated to this PROJECT, the Administering Agency accepts and will comply with the special covenants or remarks set forth on the following pages.

**PROJECT LOCATION:** Various Bridges in the City of Escondido

**TYPE OF WORK:** Bridge Rehabilitation and Reconstruction **LENGTH:** 0.0(MILES)

| Estimated Cost | Federal Funds | | Matching Funds | | |
|---|---|---|---|---|---|
| | Y001 | $252,074.00 | LOCAL | | OTHER |
| $315,093.00 | | | $63,019.00 | | $0.00 |

**CITY OF ESCONDIDO**

**By** ______________________

**Title** ______________________

**Date** ______________________

**Attest** ______________________

**STATE OF CALIFORNIA**
**Department of Transportation**

**By** ______________________

**Chief, Office of Project Management Oversight**
**Division of Local Assistance**

**Date** ______________________

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

**Accounting Officer** Kam Wong **Date** 6/16/2026 $252,074.00

## SPECIAL COVENANTS OR REMARKS

1. A. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.

B. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).

C. STATE and ADMINISTERING AGENCY agree that any additional funds which might be made available by future Federal obligations will be encumbered on this PROJECT by use of a STATE-approved "Authorization to Proceed" and Finance Letter. ADMINISTERING AGENCY agrees that Federal funds available for reimbursement will be limited to the amounts obligated by the Federal Highway Administration.

D. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days of project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Attention is directed to Section 15.6 "Award Package" of the Local Assistance Procedures Manual.

E. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the funds are encumbered for each phase by the execution of this Project Program Supplement Agreement, or by STATE's approval of an applicable Finance Letter. STATE reserves the right to suspend future authorizations/obligations for Federal aid projects, or encumbrances for State funded projects, as well as to suspend invoice payments for any on-going or future project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY agrees to submit for each phase a written explanation of the absence of PROJECT activity along with target billing date and target billing amount.

ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current Local Assistance Procedures Manual.

## SPECIAL COVENANTS OR REMARKS

F. Administering Agency shall not discriminate on the basis of race, religion, age, disability, color, national origin, or sex in the award and performance of any Federal-assisted contract or in the administration of its DBE Program Implementation Agreement. The Administering Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Federal-assisted contracts. The Administering Agency's DBE Implementation Agreement is incorporated by reference in this Agreement. Implementation of the DBE Implementation Agreement, including but not limited to timely reporting of DBE commitments and utilization, is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Administering Agency of its failure to carry out its DBE Implementation Agreement, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

G. Any State and Federal funds that may have been encumbered for this project are available for disbursement for limited periods of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act to the applicable fund Reversion Date shown on the State approved project finance letter. Per Government Code Section 16304, all project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested by the ADMINISTERING AGENCY and approved by the California Department of Finance.

ADMINISTERING AGENCY should ensure that invoices are submitted to the District Local Assistance Engineer at least 75 days prior to the applicable fund Reversion Date to avoid the lapse of applicable funds. Pursuant to a directive from the State Controller's Office and the Department of Finance; in order for payment to be made, the last date the District Local Assistance Engineer can forward an invoice for payment to the Department's Local Programs Accounting Office for reimbursable work for funds that are going to revert at the end of a particular fiscal year is May 15th of the particular fiscal year. Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement involving applicable funds that is not received by the Department's Local Programs Accounting Office at least 45 days prior to the applicable fixed fund Reversion Date will not be paid. These unexpended funds will be irrevocably reverted by the Department's Division of Accounting on the applicable fund Reversion Date.

H. As a condition for receiving federal-aid highway funds for the PROJECT, the Administering Agency certifies that NO members of the elected board, council, or other key decision makers are on the Federal Government Exclusion List. Exclusions can be found at www.sam.gov.

## SPECIAL COVENANTS OR REMARKS

2. A. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of Federal Regulation (CFR) and 2 CFR Part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.

B. Invoices shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.

C. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.

D. Indirect Cost Allocation Plan/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.

E. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or $40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

F. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

## SPECIAL COVENANTS OR REMARKS

G. ADMINISTERING AGENCY agrees to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards.

H. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items.

I. Every sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR, Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), and other applicable STATE and FEDERAL regulations.

J. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, 23 CFR, 48 CFR, Chapter 1, Part 31, and other applicable STATE and FEDERAL regulations, are subject to repayment by ADMINISTERING AGENCY to STATE.

K. STATE reserves the right to conduct technical and financial audits of PROJECT WORK and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by the following paragraph:

ADMINISTERING AGENCY, ADMINISTERING AGENCY'S contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above referenced parties shall make such AGREEMENT, PROGRAM SUPPLEMENT, and contract materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of submission of the final expenditure report by the STATE to the FHWA.

L. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system

## SPECIAL COVENANTS OR REMARKS

of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices set to or paid by STATE.

M. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of 2 CFR 200 if it expends $750,000 or more in Federal Funds in a single fiscal year of the Catalogue of Federal Domestic Assistance.

N. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with 2 CFR, Part 200.

O. ADMINISTERING AGENCY shall not award a non-A&E contract over $5,000, construction contracts over $10,000, or other contracts over $25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

P. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain provisions B, C, F, H, I, K, and L under Section 2 of this agreement.

3. In the event that construction of this project of the initial federal authorization for right of way is not started by the close of the twentieth fiscal year following the fiscal year in which the right of way is authorized, the ADMINISTERING AGENCY shall repay the Federal Highway Administration through Caltrans the sum of Federal funds paid under the terms of this agreement.

   Authorizing the ROW phase of a project as Advance Construction does not exempt the project from the provisions of 23 U.S.C. 108(a)(2), and 23 CFR 630.112(c)(1).

4. Appendix E of the Title VI Assurances (US DOT Order 1050.2A)

   During the performance of this agreement, the ADMINISTERING AGENCY, ADMINISTERING AGENCY'S contractors and subcontractor, (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

   Pertinent Nondiscrimination Authorities:

   A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR

## SPECIAL COVENANTS OR REMARKS

Part 21.
B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
C. Federal-Aid Highway Act of 1973, (23 U.S.C. 324 et seq.), (prohibits discrimination on the basis of sex);
D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 et seq.), (prohibits discrimination on the basis of age);
F. Airport and Airway Improvement Act of 1982, (49 U.S.C. 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or
activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
H. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
I. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
J. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
K. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Item6.

# MASTER AGREEMENT
# ADMINISTERING AGENCY-STATE AGREEMENT FOR FEDERAL-AID PROJECTS

| 11 | City of Escondido |
|---|---|
| District | Administering Agency |

Agreement No. 11-5081F15

This AGREEMENT, is entered into effective this 21 day of July, 2017, by and between City of Escondido, hereinafter referred to as "ADMINISTERING AGENCY," and the State of California, acting by and through its Department of Transportation (Caltrans), hereinafter referred to as "STATE", and together referred to as "PARTIES" or individually as a "PARTY."

RECITALS:

1. WHEREAS, the Congress of the United States has enacted the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and subsequent Transportation Authorization Bills to fund transportation programs; and

2. WHEREAS, the Legislature of the State of California has enacted legislation by which certain federal-aid funds may be made available for use on local transportation related projects of public entities qualified to act as recipients of these federal-aid funds in accordance with the intent of federal law; and

3. WHEREAS, before federal funds will be made available for a specific program project, ADMINISTERING AGENCY and STATE are required to enter into an agreement to establish terms and conditions applicable to the ADMINISTERING AGENCY when receiving federal funds for a designated PROJECT facility and to the subsequent operation and maintenance of that completed facility.

NOW, THEREFORE, the PARTIES agree as follows:

## ARTICLE I - PROJECT ADMINISTRATION

1. This AGREEMENT shall have no force or effect with respect to any program project unless and until a project-specific "Authorization/Agreement Summary", herein referred to as "E-76" document, is approved by STATE and the Federal Highway Administration (FHWA).

2. The term "PROJECT", as used herein, means that authorized transportation related project and related activities financed in part with federal-aid funds as more fully-described in an "Authorization/ Agreement Summary" or "Amendment/Modification Summary", herein referred to as "E-76" or "E-76 (AMOD)" document authorized by STATE and the Federal Highway Administration (FHWA).

3. The E-76/E-76 (AMOD) shall designate the party responsible for implementing PROJECT, type of work and location of PROJECT.

4. The PROGRAM SUPPLEMENT sets out special covenants as a condition for the ADMINISTERING AGENCY to receive federal-aid funds from/through STATE for designated PROJECT. The PROGRAM SUPPLEMENT shall also show these federal funds that have been initially encumbered for PROJECT along with the matching funds to be provided by ADMINISTERING AGENCY and/or others. Execution of PROGRAM SUPPLEMENT by the PARTIES shall cause ADMINISTERING AGENCY to adopt all of the terms of this AGREEMENT as though fully set forth therein in the PROGRAM SUPPLEMENT. Unless otherwise expressly delegated in a resolution by the governing body of ADMINISTERING AGENCY, and with written concurrence by STATE, the PROGRAM SUPPLEMENT shall be approved and managed by the governing body of ADMINISTERING AGENCY.

5. ADMINISTERING AGENCY agrees to execute and return each project-specific PROGRAM SUPPLEMENT within ninety (90) days of receipt. The PARTIES agree that STATE may suspend future authorizations/obligations and invoice payments for any on-going or future federal-aid project performed by ADMINISTERING AGENCY if any project-specific PROGRAM SUPPLEMENT is not returned within that ninety (90) day period unless otherwise agreed by STATE in writing.

6. ADMINISTERING AGENCY further agrees, as a condition to the release and payment of federal funds encumbered for the PROJECT described in each PROGRAM SUPPLEMENT, to comply with the terms and conditions of this AGREEMENT and all of the agreed-upon Special Covenants or Remarks incorporated within the PROGRAM SUPPLEMENT, and Cooperative/Contribution Agreement where appropriate, defining and identifying the nature of the specific PROJECT.

7. Federal, state and matching funds will not participate in PROJECT work performed in advance of the approval of the E-76 or E-76 (AMOD), unless otherwise stated in the executed project-specific PROGRAM SUPPLEMENT. ADMINISTERING AGENCY agrees that it will only proceed with the work authorized for that specific phase(s) on the project-specific E-76 or E-76 (AMOD). ADMINISTERING AGENCY further agrees to not proceed with future phases of PROJECT prior to receiving an E-76 (AMOD) from STATE for that phase(s) unless no further federal funds are needed or for those future phase(s).

8. That PROJECT or portions thereof, must be included in a federally approved Federal Statewide Transportation Improvement Program (FSTIP) prior to ADMINISTERING AGENCY submitting "Request for Authorization".

9. ADMINISTERING AGENCY shall conform to all state statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of Federal Regulation (CFR) and 2 CFR part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.

10. If PROJECT is not on STATE-owned right of way, PROJECT shall be constructed in accordance with LOCAL ASSISTANCE PROCEDURES that describes minimum statewide design standards for local agency streets and roads. LOCAL ASSISTANCE PROCEDURES for projects off the National Highway System (NHS) allow STATE to accept either the STATE's minimum statewide design standards or the approved geometric design standards of ADMINISTERING AGENCY. Additionally, for projects off the NHS, STATE will accept ADMINISTERING AGENCY-approved standard specifications, standard plans, materials sampling and testing quality assurance programs that meet the conditions described in the then current LOCAL ASSISTANCE PROCEDURES.

11. If PROJECT involves work within or partially within STATE-owned right-of-way, that PROJECT shall also be subject to compliance with the policies, procedures and standards of the STATE Project Development Procedures Manual and Highway Design Manual and, where appropriate, an executed Cooperative Agreement between STATE and ADMINISTERING AGENCY that outlines the PROJECT responsibilities and respective obligations of the PARTIES. ADMINISTERING AGENCY and its contractors shall each obtain an encroachment permit through STATE prior to commencing any work within STATE rights of way or work which affects STATE facilities.

12. When PROJECT is not on the State Highway System but includes work to be performed by a railroad, the contract for such work shall be prepared by ADMINISTERING AGENCY or by STATE, as the PARTIES may hereafter agree. In either event, ADMINISTERING AGENCY shall enter into an agreement with the railroad providing for future maintenance of protective devices or other facilities installed under the contract.

13. If PROJECT is using STATE funds, the Department of General Services, Division of the State Architect, or its designee, shall review the contract PS&E for the construction of buildings, structures, sidewalks, curbs and related facilities for accessibility and usability. ADMINISTERING AGENCY shall not award a PROJECT construction contract for these types of improvements until the State Architect has issued written approval stating that the PROJECT plans and specifications comply with the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.

14. ADMINISTERING AGENCY will advertise, award and administer PROJECT in accordance with the current LOCAL ASSISTANCE PROCEDURES unless otherwise stated in the executed project-specific PROGRAM SUPPLEMENT.

15. ADMINISTERING AGENCY shall provide or arrange for adequate supervision and inspec of each PROJECT. While consultants may perform supervision and inspection work for PROJ with a fully qualified and licensed engineer, ADMINISTERING AGENCY shall provide a full-time employee to be in responsible charge of each PROJECT who is not a consultant.

16. ADMINISTERING AGENCY shall submit PROJECT-specific contract award documents to STATE's District Local Assistance Engineer within sixty (60) days after contract award. A copy of the award documents shall also be included with the submittal of the first invoice for a construction contract by ADMINISTERING AGENCY.

17. ADMINISTERING AGENCY shall submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure by ADMINISTERING AGENCY to submit a "Report of Expenditures" within one hundred eighty (180) days of project completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current LOCAL ASSISTANCE PROCEDURES.

18. ADMINISTERING AGENCY shall comply with: (i) section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in federally assisted programs; (ii) the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination on the basis of disability irrespective of funding; and (iii) all applicable regulations and guidelines issued pursuant to both the Rehabilitation Act and the ADA.

19. The Congress of the United States, the Legislature of the State of California and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. ADMINISTERING AGENCY agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM (Exhibit A attached hereto) and the NONDISCRIMINATION ASSURANCES (Exhibit B attached hereto). ADMINISTERING AGENCY further agrees that any agreement entered into by ADMINISTERING AGENCY with a third party for performance of PROJECT-related work shall incorporate Exhibits A and B (with third party's name replacing ADMINISTERING AGENCY) as essential parts of such agreement to be enforced by that third party as verified by ADMINISTERING AGENCY.

## ARTICLE II - RIGHTS OF WAY



1. No contract for the construction of a federal-aid PROJECT shall be awarded until all necessary rights of way have been secured. Prior to the advertising for construction of PROJECT, ADMINISTERING AGENCY shall certify and, upon request, shall furnish STATE with evidence that all necessary rights of way are available for construction purposes or will be available by the time of award of the construction contract.

2. ADMINISTERING AGENCY agrees to indemnify and hold STATE harmless from any liability that may result in the event the right of way for a PROJECT, including, but not limited to, being clear as certified or if said right of way is found to contain hazardous materials requiring treatment or removal to remediate in accordance with Federal and State laws. The furnishing of right of way as provided for herein includes, in addition to all real property required for the PROJECT, title free and clear of obstructions and encumbrances affecting PROJECT and the payment, as required by applicable law, of relocation costs and damages to remainder real property not actually taken but injuriously affected by PROJECT. ADMINISTERING AGENCY shall pay, from its own non-matching funds, any costs which arise out of delays to the construction of PROJECT because utility facilities have not been timely removed or relocated, or because rights of way were not available to ADMINISTERING AGENCY for the orderly prosecution of PROJECT work.

3. Subject to STATE approval and such supervision as is required by LOCAL ASSISTANCE PROCEDURES over ADMINISTERING AGENCY's right of way acquisition procedures, ADMINISTERING AGENCY may claim reimbursement from federal funds for expenditures incurred in purchasing only the necessary rights of way needed for the PROJECT after crediting PROJECT with the fair market value of any excess property retained and not disposed of by ADMINISTERING AGENCY.

4. When real property rights are to be acquired by ADMINISTERING AGENCY for a PROJECT, said ADMINISTERING AGENCY must carry out that acquisition in compliance with all applicable State and Federal laws and regulations, in accordance with State procedures as published in State's current LOCAL ASSISTANCE PROCEDURES and STATE's Right-of-Way Manual, subject to STATE oversight to ensure that the completed work is acceptable under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

5. Whether or not federal-aid is to be requested for right of way, should ADMINISTERING AGENCY, in acquiring right of way for PROJECT, displace an individual, family, business, farm operation, or non-profit organization, relocation payments and services will be provided as set forth in 49 CFR, Part 24. The public will be adequately informed of the relocation payments and services which will be available, and, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from his/her dwelling or to move his/her business or farm operation without at least ninety (90) days written notice from ADMINISTERING AGENCY. ADMINISTERING AGENCY will provide STATE with specific assurances, on each portion of the PROJECT, that no person will be displaced until comparable decent, safe and sanitary replacement housing is available within a reasonable period of time prior to displacement, and that ADMINISTERING AGENCY's relocation program is realistic and adequate to provide orderly, timely and efficient relocation of PROJECT-displaced persons as provided in 49 CFR, Part 24.

Item6.

6. ADMINISTERING AGENCY shall, along with recording the deed or instrument evidencing title in the name of the ADMINISTERING AGENCY or their assignee, also record an Agreement Declaring Restrictive Covenants (ADRC) as a separate document incorporating the assurances included within Exhibits A and B and Appendices A, B, C and D of this AGREEMENT, as appropriate.

## ARTICLE III - MAINTENANCE AND MANAGEMENT

1. ADMINISTERING AGENCY will maintain and operate the property acquired, developed, constructed, rehabilitated, or restored by PROJECT for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, ADMINISTERING AGENCY or its successors in interest in the PROJECT property may transfer this obligation and responsibility to maintain and operate PROJECT property for that intended public purpose to another public entity.

2. Upon ADMINISTERING AGENCY's acceptance of the completed federal-aid construction contract or upon contractor being relieved of the responsibility for maintaining and protecting PROJECT, ADMINISTERING AGENCY will be responsible for the maintenance, ownership, liability, and the expense thereof, for PROJECT in a manner satisfactory to the authorized representatives of STATE and FHWA and if PROJECT falls within the jurisdictional limits of another Agency or Agencies, it is the duty of ADMINISTERING AGENCY to facilitate a separate maintenance agreement(s) between itself and the other jurisdictional Agency or Agencies providing for the operation, maintenance, ownership and liability of PROJECT. Until those agreements are executed, ADMINISTERING AGENCY will be responsible for all PROJECT operations, maintenance, ownership and liability in a manner satisfactory to the authorized representatives of STATE and FHWA. If, within ninety (90) days after receipt of notice from STATE that a PROJECT, or any portion thereof, is not being properly operated and maintained and ADMINISTERING AGENCY has not satisfactorily remedied the conditions complained of, the approval of future federal-aid projects of ADMINISTERING AGENCY will be withheld until the PROJECT shall have been put in a condition of operation and maintenance satisfactory to STATE and FHWA. The provisions of this section shall not apply to a PROJECT that has been vacated through due process of law with STATE's concurrence.

3. PROJECT and its facilities shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians as PROJECT reasonably requires. Said operations and maintenance staff may be employees of ADMINISTERING AGENCY, another unit of government, or a contractor under agreement with ADMINISTERING AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the complete PROJECT improvements.

## ARTICLE IV - FISCAL PROVISIONS

1. All contractual obligations of STATE are subject to the appropriation of resources by the Legislature and the allocation of resources by the California Transportation Commission (CTC).

2. STATE'S financial commitment of federal funds will occur only upon the execution of this AGREEMENT, the authorization of the project-specific E-76 or E-76 (AMOD), the execution of each project-specific PROGRAM SUPPLEMENT, and STATE's approved finance letter.

3. ADMINISTERING AGENCY may submit signed invoices in arrears for reimbursement of participating PROJECT costs on a regular basis once the project-specific PROGRAM SUPPLEMENT has been executed by STATE.

4. ADMINISTERING AGENCY agrees, at a minimum, to submit invoices at least once every six (6) months commencing after the funds are encumbered on either the project-specific PROGRAM SUPPLEMENT or through a project-specific finance letter approved by STATE. STATE reserves the right to suspend future authorizations/obligations, and invoice payments for any on-going or future federal-aid project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six (6) month period.

5. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.

6. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.

7. Payments to ADMINISTERING AGENCY can only be released by STATE as reimbursement of actual allowable PROJECT costs already incurred and paid for by ADMINISTERING AGENCY.

8. Indirect Cost Allocation Plans/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.

9. Once PROJECT has been awarded, STATE reserves the right to de-obligate any excess federal funds from the construction phase of PROJECT if the contract award amount is less than the obligated amount, as shown on the PROJECT E-76 or E-76 (AMOD).

10. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or $40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

11. The estimated total cost of PROJECT, the amount of federal funds obligated, and the required matching funds may be adjusted by mutual consent of the PARTIES hereto with a finance letter, a detailed estimate, if required, and approved E-76 (AMOD). Federal-aid funding may be increased to cover PROJECT cost increases only if such funds are available and FHWA concurs with that increase.

12. When additional federal-aid funds are not available, ADMINISTERING AGENCY agrees that the payment of federal funds will be limited to the amounts authorized on the PROJECT specific E-76 / E-76 (AMOD) and agrees that any increases in PROJECT costs must be defrayed with ADMINISTERING AGENCY's own funds.

13. ADMINISTERING AGENCY shall use its own non-federal funds to finance the local share of eligible costs and all expenditures or contract items ruled ineligible for financing with federal funds. STATE shall make the determination of ADMINISTERING AGENCY's cost eligibility for federal fund financing of PROJECT costs.

14. ADMINISTERING AGENCY will reimburse STATE for STATE's share of costs for work performed by STATE at the request of ADMINISTERING AGENCY. STATE's costs shall include overhead assessments in accordance with section 8755.1 of the State Administrative Manual.

15. Federal and state funds allocated from the State Transportation Improvement Program (STIP) are subject to the timely use of funds provisions enacted by Senate Bill 45, approved in 1997, and subsequent STIP Guidelines and State procedures approved by the CTC and STATE.

16. Federal funds encumbered for PROJECT are available for liquidation for a period of six (6) years from the beginning of the State fiscal year the funds were appropriated in the State Budget. State funds encumbered for PROJECT are available for liquidation only for six (6) years from the beginning of the State fiscal year the funds were appropriated in the State Budget. Federal or state funds not liquidated within these periods will be reverted unless a Cooperative Work Agreement (CWA) is submitted by ADMINISTERING AGENCY and approved by the California Department of Finance (per Government Code section 16304). The exact date of fund reversion will be reflected in the STATE signed finance letter for PROJECT.

17. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

18. ADMINISTERING AGENCY agrees to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards.

19. ADMINISTERING AGENCY agrees, and will ensure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items.

20. Every sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR, Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), and other applicable STATE and FEDERAL regulations.

21. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, 23 CFR, 48 CFR, Chapter 1, Part 31, and other applicable STATE and FEDERAL regulations, are subject to repayment by ADMINISTERING AGENCY to STATE.

22. Should ADMINISTERING AGENCY fail to refund any moneys due upon written demand by STATE as provided hereunder or should ADMINISTERING AGENCY breach this AGREEMENT by failing to complete PROJECT without adequate justification and approval by STATE, then, within thirty 30 days of demand, or within such other period as may be agreed to in writing between the PARTIES, STATE, acting through the State Controller, the State Treasurer, or any other public entity or agency, may withhold or demand a transfer of an amount equal to the amount paid by or owed to STATE from future apportionments, or any other funds due ADMINISTERING AGENCY from the Highway Users Tax Fund or any other sources of funds, and/or may withhold approval of future ADMINISTERING AGENCY federal-aid projects.

23. Should ADMINISTERING AGENCY be declared to be in breach of this AGREEMENT or otherwise in default thereof by STATE, and if ADMINISTERING AGENCY is constituted as a joint powers authority, special district, or any other public entity not directly receiving funds through the State Controller, STATE is authorized to obtain reimbursement from whatever sources of funding are available, including the withholding or transfer of funds, pursuant to Article IV - 22, from those constituent entities comprising a joint powers authority or by bringing of an action against ADMINISTERING AGENCY or its constituent member entities, to recover all funds provided by STATE hereunder.

24. ADMINISTERING AGENCY acknowledges that the signatory party represents the ADMINISTERING AGENCY and further warrants that there is nothing within a Joint Powers Agreement, by which ADMINISTERING AGENCY was created, if any exists, that would restrict or otherwise limit STATE's ability to recover State funds improperly spent by ADMINISTERING AGENCY in contravention of the terms of this AGREEMENT.

## ARTICLE V
## AUDITS, THIRD PARTY CONTRACTING, RECORDS RETENTION AND REPORTS

1. STATE reserves the right to conduct technical and financial audits of PROJECT work and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by paragraph three (3) of ARTICLE V.

2. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by STATE.

3. ADMINISTERING AGENCY, ADMINISTERING AGENCY's contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above referenced parties shall make such AGREEMENT, PROGRAM SUPPLEMENT and contract materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of submission of the final expenditure report by the STATE to the FHWA.

4. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of 2 CFR 200 if it expends $750,000 or more in Federal Funds in a single fiscal year. The Federal Funds received under a PROGRAM SUPPLEMENT are a part of the Catalogue of Federal Domestic Assistance (CFDA) 20.205.

5. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with 2 CFR, Part 200.

6. ADMINISTERING AGENCY shall not award a non-A&E contract over $5,000, construction contract over $10,000, or other contracts over $25,000 (excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)) on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

7. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEME shall contain provisions 5, 6, 17, 19 and 20 of ARTICLE IV, FISCAL PROVISIONS, and provis 1, 2, and 3 of this ARTICLE V, AUDITS, THIRD-PARTY CONTRACTING RECORDS RETENTION AND REPORTS.

8. To be eligible for local match credit, ADMINISTERING AGENCY must ensure that local match funds used for a PROJECT meet the fiscal provisions requirements outlined in ARTICLE IV in the same manner as required of all other PROJECT expenditures.

9. In addition to the above, the pre-award requirements of third-party contractor/consultants with ADMINISTERING AGENCY should be consistent with the LOCAL ASSISTANCE PROCEDURES.

# ARTICLE VI - FEDERAL LOBBYING ACTIVITIES CERTIFICATION



1. By execution of this AGREEMENT, ADMINISTERING AGENCY certifies, to the best of the signatory officer's knowledge and belief, that:

A. No federal or state appropriated funds have been paid or will be paid, by or on behalf of ADMINISTERING AGENCY, to any person for influencing or attempting to influence an officer or employee of any STATE or federal agency, a member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any STATE or federal contract, including this AGREEMENT, the making of any STATE or federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any STATE or federal contract, grant, loan, or cooperative contract.

B. If any funds other than federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this AGREEMENT, grant, local, or cooperative contract, ADMINISTERING AGENCY shall complete and submit Standard Form-LLL, "Disclosure Form to Rep Lobbying," in accordance with the form instructions.

C. This certification is a material representation of fact upon which reliance was placed when this AGREEMENT and each PROGRAM SUPPLEMENT was or will be made or entered into. Submission of this certification is a prerequisite for making or entering into this AGREEMENT imposed by Section 1352, Title 31, United States Code. Any party who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

2. ADMINISTERING AGENCY also agrees by signing this AGREEMENT that the language of this certification will be included in all lower tier sub-agreements which exceed $100,000 and that all such sub-recipients shall certify and disclose accordingly.

## ARTICLE VII - MISCELLANEOUS PROVISIONS



1. ADMINISTERING AGENCY agrees to use all state funds reimbursed hereunder only for transportation purposes that are in conformance with Article XIX of the California State Constitution and the relevant Federal Regulations.

2. This AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or adopted by the CTC that may affect the provisions, terms, or funding of this AGREEMENT in any manner.

3. ADMINISTERING AGENCY and the officers and employees of ADMINISTERING AGENCY, when engaged in the performance of this AGREEMENT, shall act in an independent capacity and not as officers, employees or agents of STATE or the federal government.

4. Each project-specific E-76 or E-76 (AMOD), PROGRAM SUPPLEMENT and Finance Letter shall separately establish the terms and funding limits for each described PROJECT funded under the AGREEMENT. No federal or state funds are obligated against this AGREEMENT.

5. ADMINISTERING AGENCY certifies that neither ADMINISTERING AGENCY nor its principals are suspended or debarred at the time of the execution of this AGREEMENT. ADMINISTERING AGENCY agrees that it will notify STATE immediately in the event a suspension or a debarment occurs after the execution of this AGREEMENT.

6. ADMINISTERING AGENCY warrants, by execution of this AGREEMENT, that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ADMINISTERING AGENCY for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this AGREEMENT without liability, pay only for the value of the work actually performed, or in STATE's discretion, to deduct from the price of consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

7. In accordance with Public Contract Code section 10296, ADMINISTERING AGENCY hereby certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against ADMINISTERING AGENCY within the immediate preceding two (2) year period because of ADMINISTERING AGENCY's failure to comply with an order of a federal court that orders ADMINISTERING AGENCY to comply with an order of the National Labor Relations Board.

8. ADMINISTERING AGENCY shall disclose any financial, business, or other relationship with STATE, FHWA or Federal Transit Administration (FTA) that may have an impact upon the outcome of this AGREEMENT. ADMINISTERING AGENCY shall also list current contractors who may have a financial interest in the outcome of this AGREEMENT.

9. ADMINISTERING AGENCY hereby certifies that it does not have nor shall it acquire any financial or business interest that would conflict with the performance of PROJECT under this AGREEMENT.

10. ADMINISTERING AGENCY warrants that this AGREEMENT was not obtained or secu through rebates, kickbacks or other unlawful consideration either promised or paid to any STA employee. For breach or violation of this warranty, STATE shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the work actually performed, or to deduct from the PROGRAM SUPPLEMENT price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

11. Any dispute concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by the STATE's Contract Officer who may consider any written or verbal evidence submitted by ADMINISTERING AGENCY. The decision of the Contract Officer, issued in writing, shall be conclusive and binding on the PARTIES on all questions of fact considered and determined by the Contract Officer.

12. Neither the pending of a dispute nor its consideration by the Contract Officer will excuse ADMINISTERING AGENCY from full and timely performance in accordance with the terms of this AGREEMENT.

13. Neither ADMINISTERING AGENCY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the ADMINISTERING AGENCY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this AGREEMENT.

14. Neither STATE nor any officer or employee thereof shall be responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under, or in connection with, any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that ADMINISTERING AGENCY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under this AGREEMENT.

15. STATE reserves the right to terminate funding for any PROJECT upon written notice to ADMINISTERING AGENCY in the event that ADMINISTERING AGENCY fails to proceed with PROJECT work in accordance with the project-specific PROGRAM SUPPLEMENT, the bonding requirements if applicable, or otherwise violates the conditions of this AGREEMENT and/or PROGRAM SUPPLEMENT, or the funding allocation such that substantial performance is significantly endangered.

16. No termination shall become effective if, within thirty (30) days after receipt of a Notice of Termination, ADMINISTERING AGENCY either cures the default involved or, if not reasonably susceptible of cure within said thirty (30) day period, ADMINISTERING AGENCY proceeds thereafter to complete the cure in a manner and time line acceptable to STATE. Any such termination shall be accomplished by delivery to ADMINISTERING AGENCY of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this AGREEMENT is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, ADMINISTERING AGENCY and STATE shall meet to attempt to resolve any dispute. In the event of such termination, STATE may proceed with the PROJECT work in a manner deemed proper by STATE. If STATE terminates funding for PROJECT with ADMINISTERING AGENCY, STATE shall pay ADMINISTERING AGENCY the sum due ADMINISTERING AGENCY under the PROGRAM SUPPLEMENT and/or STATE approved finance letter prior to termination, provided, however, ADMINISTERING AGENCY is not in default of the terms and conditions of this AGREEMENT or the project-specific PROGRAM SUPPLEMENT and that the cost of PROJECT completion to STATE shall first be deducted from any sum due ADMINISTERING AGENCY.

17. In case of inconsistency or conflicts with the terms of this AGREEMENT and that of a project-specific PROGRAM SUPPLEMENT, the terms stated in that PROGRAM SUPPLEMENT shall prevail over those in this AGREEMENT.

18. Without the written consent of STATE, this AGREEMENT is not assignable by ADMINISTERING AGENCY either in whole or in part.

19. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the PARTIES, and no oral understanding or agreement not incorporated herein shall be binding on any of the PARTIES.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT by their duly authorized officers.

| STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION | City of Escondido |
|---|---|
| By Nahu/Abdin | By Sam Abed |
| | Sam Abed, Mayor of Escondido |
| | Representative Name and Title |
| | Date 6-28-17 |
| Chief, Office of Project Implementation Division of Local Assistance | By Diane Halverson |
| | Diane Halverson, Escondido City Clerk |
| | Representative Name and Title |
| Date 7/21/2017 | Date 6-28-17 |

# EXHIBIT A

## FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, ADMINISTERING AGENCY will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ADMINISTERING AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. ADMINISTERING AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of the ADMINISTERING AGENCY'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. ADMINISTERING AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

4. ADMINISTERING AGENCY will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which ADMINISTERING AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that ADMINISTERING AGENCY has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by ADMINISTERING AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to ADMINISTERING AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure ADMINISTERING AGENCY's breach of this Agreement.

# EXHIBIT B

## NONDISCRIMINATION ASSURANCES

ADMINISTERING AGENCY HEREBY AGREES THAT, as a condition to receiving any federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (hereinafter referred to as the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which ADMINISTERING AGENCY receives federal financial assistance from the Federal Department of Transportation. ADMINISTERING AGENCY HEREBY GIVES ASSURANCE THAT ADMINISTERING AGENCY will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the REGULATIONS.

More specifically, and without limiting the above general assurance, ADMINISTERING AGENCY hereby gives the following specific assurances with respect to its federal-aid Program:

1. That ADMINISTERING AGENCY agrees that each "program" and each "facility" as defined in subsections 21.23 (e) and 21.23 (b) of the REGULATIONS, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.

2. That ADMINISTERING AGENCY shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the federal-aid Program and, in adapted form, in all proposals for negotiated agreements:

ADMINISTERING AGENCY hereby notifies all bidders that it will affirmatively ensure that in any agreement entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

3. That ADMINISTERING AGENCY shall insert the clauses of Appendix A of this assurance in every agreement subject to the ACT and the REGULATIONS.

4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed effecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where ADMINISTERING AGENCY receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where ADMINISTERING AGENCY receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That ADMINISTERING AGENCY shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the ADMINISTERING AGENCY with other parties:

Appendix C;

(a) for the subsequent transfer of real property acquired or improved under the federal-aid Program; and

Appendix D;

(b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the federal-aid Program.

8. That this assurance obligates ADMINISTERING AGENCY for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein, or structures, or improvements thereon, in which case the assurance obligates ADMINISTERING AGENCY or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which ADMINISTERING AGENCY retains ownership or possession of the property.

9. That ADMINISTERING AGENCY shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that ADMINISTERING AGENCY, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the Agreement.

10. That ADMINISTERING AGENCY agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.

11. ADMINISTERING AGENCY shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. ADMINISTERING AGENCY shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in the award and administration of STATE assisted contracts. ADMINISTERING AGENCY'S DBE Implementation Agreement is incorporated by reference in this AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved DBE Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31USC 3801 et seq.)

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to ADMINISTERING AGENCY by STATE, acting for the U.S. Department of Transportation, and is binding on ADMINISTERING AGENCY, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

# APPENDIX A TO EXHIBIT B

During the performance of this Agreement, ADMINISTERING AGENCY, for itself, its assignees and successors in interest (hereinafter collectively referred to as ADMINISTERING AGENCY) agrees as follows:

(1) Compliance with Regulations: ADMINISTERING AGENCY shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

(2) Nondiscrimination: ADMINISTERING AGENCY, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. ADMINISTERING AGENCY shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by ADMINISTERING AGENCY for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by ADMINISTERING AGENCY of the ADMINISTERING AGENCY's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: ADMINISTERING AGENCY shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to ADMINISTERING AGENCY's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of ADMINISTERING AGENCY is in the exclusive possession of another who fails or refuses to furnish this information, ADMINISTERING AGENCY shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts ADMINISTERING AGENCY has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of ADMINISTERING AGENCY's noncompliance with the nondiscrimination provisions of this agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to ADMINISTERING AGENCY under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: ADMINISTERING AGENCY shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. ADMINISTERING AGENCY shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event ADMINISTERING AGENCY becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, ADMINISTERING AGENCY may request STATE enter into such litigation to protect the interests of STATE, and, in addition, ADMINISTERING AGENCY may request the United States to enter into such litigation to protect the interests of the United States.

The following clauses shall be included in any and all deeds effecting or recording the transfe PROJECT real property, structures or improvements thereon, or interest therein from the Un States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that ADMINISTERING AGENCY will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the ADMINISTERING AGENCY all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto ADMINISTERING AGENCY and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on ADMINISTERING AGENCY, its successors and assigns.

ADMINISTERING AGENCY, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

(1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (;) (and) *

(2) that ADMINISTERING AGENCY shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (;) and

(3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed.*

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

# APPENDIX C TO EXHIBIT B

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7(a) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY and its assigns.

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

## APPENDIX D TO EXHIBIT B

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7 (b) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that:

(1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.,) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY, and its assigns.

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* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

RESOLUTION NO. 2017-54

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE, ON BEHALF OF THE CITY, MASTER AGREEMENTS FOR FEDERAL-AID PROJECTS

WHEREAS, the Congress of the United States has enacted the Intermodal Surface Transportation Efficiency Act of 1991 ("ISTEA") and subsequent Transportation Authorization Bills to fund Transportation Programs; and

WHEREAS, the State of California and the City of Escondido entered into Local Agency-State Master Agreement No. 11-5081R for Federal-Aid Projects and Local Agency-State Master Agreement No. 00323S for State Funded Projects on September 15, 2010, and September 30, 2010, respectively; and

WHEREAS, Master Agreement No. 11-5081R for Federal-Aid Projects is being replaced to incorporate various changes in regulations and policies, and Master Agreement No. 00323S for State Funded Projects remains in effect; and

WHEREAS, before Federal-Aid funds will be made available for a specific Program Project, the City of Escondido and State are required to enter into a new Master Agreement for Federal-Aid Projects relative to prosecution of said project and maintenance of the completed facility; and

WHEREAS, the Director of Engineering Services recommends the execution of Master Agreement No. 11-5081F15 with the California Department of Transportation for Federal-Aid Projects, and that the Director of Engineering Services be delegated the authority to execute Program Supplemental Agreements to Master Agreements Nos. 11-5081F15 and S00323S ("Master Agreements"); and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve said master agreements;

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

1. That the above recitations are true.

2. That the City Council accepts the recommendation of the Director of Engineering Services.

3. The Director of Engineering Services is authorized to execute all Program Supplemental Agreements to the said Master Agreements.

4. That the Mayor and the City Clerk are authorized to execute, on behalf of the City, Master Agreements with the California Department of Transportation for Federal-Aid Projects. Copies of the Master Agreements are attached as Exhibit "1" and Exhibit "2" to this resolution and are incorporated by this reference.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 26th day of April, 2017 by the following vote to wit:

AYES : Councilmembers: DIAZ, GALLO, MASSON, MORASCO, ABED

NOES : Councilmembers: NONE

ABSENT : Councilmembers: NONE

APPROVED:

Sam Abed

SAM ABED, Mayor of the
City of Escondido, California

ATTEST:

Diane Halverson

DIANE HALVERSON, City Clerk of the
City of Escondido, California

RESOLUTION NO. 2017-54

# Attachment "2"

**City of Escondido**

Federal Fiscal Year 2022/2023 Bridge Preventive Maintenance Program

| Priority (Lowest Number Is Top Priority) | Bridge Number from Inspection Report | Year built | Facility Carried | Feature Intersected | Location | Sufficiency Rating | Functional Class (item 26) Capacity Factor / Weight reduction Factor | SD/FO Status | Work Description | Deck Area ($ft^2$) | Unit Cost ($\$/ft^2$) | Federal Share | Local Share | Total Particip. Cost |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 57C0446 | 1967 | Tulip Street | Escondido Creek | 0.12 m N/O Valley Pwky | 95.0 | Collector Urban | | Remove unsound concrete, abrasive blast rebar and patch with structural concrete patching material and replace the compression "Type B" joint seals and replace with new "Type A" pourable joint seal. | 7,257.46 | 10.50 | 60,962 | 15,241 | 76,203 |
| 2 | 57C0443 | 1966 | Lincoln Ave | Reidy Creek | 0.3 m E/O Rock Springs Rd | 87.3 | Local Urban | | Remove unsound concrete, abrasive blast rebar and patch with structural concrete patching material. | 4,373.38 | 10.50 | 36,736 | 9,184 | 45,920 |
| 3 | 57C0447 | 1965/1990 | Quince Street | Escondido Creek | 0.1 m N/O Valley Pwky | 94.1 | Collector Urban | | Grind and overlay Replace joint seals and repair and patch exposed rebar on the box girder. | 4,030.01 | 9.00 | 29,016 | 7,254 | 36,270 |
| 4 | 57C0451 | 1966 | Juniper Street | Escondido Creek | 0.1 mi S/O RTE 78 | 99.7 | Collector Urban | | Remove unsound concrete around bars, abrasive blast and patch with suitable structural concrete patching material, replace compression seals at both abutments, clean and seal the joint with pourable sealant, remove all unsound concrete along the top of the pier wall, abrasive blast exposed steel and patch with suitable structural concrete patching material. Clean deck and place 1" polyester concrete overlay | 2,836.51 | 13.50 | 30,634 | 7,659 | 38,293 |
| 5 | 57C0592 | 1988 | Harding Street | Escondido Creek | 0.1 mi N Valley Pkwy | 96.5 | Collector Urban | | Repair and patch spall around utility opening 24x4x2 inches and repair edge spall along abutment joint | 5,436.31 | 7.00 | 30,443 | 7,611 | 38,054 |
| 6 | 57C0445 | 1967 | Harmony Grove Rd | Escondido Creek | 0.1 mi E/O Howard St | 87.7 | Collector Urban | | Remove and reconstruct cracked top portion of NW wingwall and replace all pourable and compression joint seals abutments and bent. | 3,010.13 | 10.50 | 25,285 | 6,321 | 31,606 |
| 7 | 57C0444 | 1966 | Washington Ave | Reidy Creek | 0.4m E/O RTE 15 | 96.6 | Minor Arterial Urban | | Grind and overlay, remove unsounds concrete and patch spalls. | 3,148.44 | 8.50 | 21,410 | 5,352 | 26,762 |
| 8 | 57C0452 | 1966 | Hickory Street | Escondido Creek | 0.1 mi S/O RTE 78 | 99.7 | Local Urban | | Clean and seal the deck with HMW methacrylate, replace compression joint seals, inject epoxy and remove fractured section and rebuild, remove all unsound material and patch the spalls along the pier wall. | 3,086.01 | 7.50 | 18,516 | 4,629 | 23,145 |
| 10 | 57C0448 | 1966 | Escondido Blvd | Escondido Creek | 0.3 mi S Washington Bl | 93.3 | Minor Arterial Urban | | Remove all delaminated deck area and place polyester overlay, repair and patch spall (6x48x3), replace all pourable joint seals. | 2,434.80 | 10.50 | 20,452 | 5,113 | 25,565 |
| 13 | 57C0455 | 1970 | Midway Drive | Escondido Creek | 0.2 mi N/O Valley Pkwy | 92.4 | | | Abrasive blast deck and seal entire deck with methacrylate | 3,571.47 | 7.00 | 20,000 | 5,000 | 25,000 |
| 15 | 57C0454 | 1970 | Rose Avenue | Escondido Creek | 0.1 mi N/O Valley Pkwy | 94.7 | Collector Urban, Safe Load rating being reviewed | | Replace cracked type B joint seal | 2,836.51 | 3.00 | 6,808 | 1,702 | 8,510 |
| 17 | 57C0356 | 1973 | El Norte Parkway | Escondido Creek | 0.2 m W/O Valley Pkwy | 92.8 | Minor Arterial Urban / 2-way traffic | | Joint possible replacement, clean and seal the deck with HMW methacrylate | 2,136.10 | 9.50 | 16,234 | 4,059 | 20,293 |

# Attachment "2"

**City of Escondido**

Federal Fiscal Year 2022/2023 Bridge Preventive Maintenance Program

| Priority (Lowest Number Is Top Priority) | Bridge Number from Inspection Report | Year built | Facility Carried | Feature Intersected | Location | Sufficiency Rating | Functional Class (item 26) Capacity Factor / Weight reduction Factor | SD/FO Status | Work Description | Deck Area ($ft^2$) | Unit Cost ($\$/ft^2$) | Federal Share | Local Share | Total Particip. Cost |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 19 | 57C0408R | 1948 | Center City Parkway | Escondido Creek | Center City Parkway 0.11 miles north of Valley Parkway | 67.5 | Moinor Arterial | | 1. repair and patch the spall on the bottom edge of the slab located at NE corner on span 2<br>2. pin the temp k-rail to the curbing on which it sits (**not included in the participation cost)**<br>3. replace deteriorated components of the rails that have been removed/corroded | 3,635.00 | | 310,600 | 77,650 | 388,250 |
| 20 | 57C0546 | 1982 | Auto Parkway | Escondido Creek | Auto Parkway 550 ft west of W.Valley Parkway | 76.8 | Minor Arterial | | 1. seal entire deck with methacrylate<br>2. remove unsound concrete and patch severe vertical cracks located NW corner of bridge rail<br>3. replace type B joint seal at abutment 1<br>4. repair and patch the spall with exposed rebar, located on SE corner of abutment | 6,362.00 | | 139,400 | 34,850 | 174,250 |
| 21 | 57C0458 | 1954 | Broadway | Escondido Creek | 0.55 miles south of Route 78 | 78.6 | Moinor Arterial | | 1. replace deterirorated components of rusting out steel rails.<br>2. remove all unsound concrete delaminations at both ends of the pier wall and patch them | 4,573.00 | | 149,000 | 37,250 | 186,250 |
| 22 | 57C0456 | 1971 | Citrus Avenue | Escondido Creek | Citrus Avenue 0.3 miles north of Valley Parkway | 77.9 | Major Collector | | 1. clean the deck by abrasive blasting and seal the deck with methacrylate<br>2. clean type B joint at the south side, which is filled with dirt and debris to the top of the armored edging (**not included in the participation cost)** | 2,332.00 | | 92,800 | 23,200 | 116,000 |
| | | | | | | | | | | | **Grand Total =** | **$ 1,008,296** | **$ 252,075** | **$ 1,260,371** |

HBP Requested Programming

| | Total Participating | Federal (Participating) | Local (Participating | Local (Non-Participating) |
|---|---|---|---|---|
| 25% PE | 315,093 | 252074.2 | 63,019 | |
| 75% CON | 945,278 | 756222.6 | 189,056 | |
| Total | 1,260,371 | 1,008,297 | 252,074 | 10,000 |

**Project Prioritization**

Local Agencies must develop objective procedures to prioritize their preventive maintenance projects. These procedures must be included in the project files for review in future audits. High priority projects should include the repair of scour countermeasure, embankment erosion control and the repair, restoration, and strengthening of structural elements.

Priority should be given to bridges that are not eligible for rehabilitation or replacement under the Federal Highway Bridge Program. The intent of the program is to keep these bridges in structurally good condition to maximize their service life and to conserve limited funds available for bridges that do require major rehabilitation or replacement. (Bridges eligible for rehabilitation or replacement are rated SD or FO and have a sufficiency rating of 80 or less.)

**Deadlines:**

Local agency transmits the BPMP with cover letter certifying compliance with these program guidelines. The electronic copy (any spreadsheet format) should be included with the paper transmittal letter. The DLAE's must receive the BPMPs by September 30th for funds to be obligated in the next FFY year, and January 30th of each year for adjustments. No time extensions will be granted.

**Accountability:**

Local Agencies are responsible for understanding and complying with the program requirements defined in the "Bridge Preventive Maintenance Program Guidelines For Local Agencies."

# STAFF REPORT

September 2, 2026
File Number 0610-70

**SUBJECT**

**APPOINTMENT OF INTERIM CITY ATTORNEY AND AUTHORIZATION TO ENTER INTO EMPLOYMENT AGREEMENT**

**DEPARTMENT**

Human Resources and City Attorney Offices

**RECOMMENDATION**

Request the City Council adopt Resolution No. 2026-145 (1) appointing M. Dare DeLano as Interim City Attorney and (2) authorizing the Mayor to execute an employment agreement for the Interim City Attorney.

Staff Recommendation: Approval (Department Name: Human Resources, Jessica Perpetua, Director of Human Resources; City Attorney's Office: Michael McGuinness, City Attorney)

Presenter: Jessica Perpetua, Director of Human Resources

**ESSENTIAL SERVICE –** Yes, Municipal Code requirement for appointment of City Attorney

**COUNCIL PRIORITY –** Build Trust and Accountability; Restore Organizational Capacity

**FISCAL ANALYSIS**

The proposed employment agreement includes a standard 10% increase to Ms. DeLano's current Assistant City Attorney salary to assume the increased duties of the position during the Interim period but that increase is offset by the reduction of the current City Attorney's salary. The salary paid during the interim will be $277,200. The fiscal impact of the appointment of the permanent City Attorney will be dependent on a negotiated salary and further benefits as may be provided by an employment agreement.

**PREVIOUS ACTION**

In February 2017, pursuant to Resolution No. 2017-31, current City Attorney Michael McGuinness was appointed as the Interim City Attorney. An At Will Employment Agreement was executed by the City and Mr. McGuinness for that appointment. Thereafter, on or about May 10, 2017, and pursuant to Resolution No. 2017-70 and a new employment agreement, Mr. McGuinness was appointed as the City Attorney by the City Council. That agreement was amended twice pursuant to Resolution No. 2018-108 and Resolution No. 2024-185 to increase the salary of the City Attorney and make other adjustments to

# CITY of ESCONDIDO

STAFF REPORT

available benefits. In March 2026, Mr. McGuinness gave notice that he was retiring effective September 4, 2026.

On May 20, 2026, the City Council formed an Ad Hoc Subcommittee ("Subcommittee") to undertake the appointment of a new City Attorney. The City retained Teri Black & Co., LLC to conduct a state-wide recruitment to fill the position. That recruitment process has not yet been completed.

On August 26, 2026, the Subcommittee and thereafter in Closed Session, the City Council met to discuss the status of the recruitment process and appointment of Ms. DeLano as Interim City Attorney during the pendency of the recruitment process.

Ms. DeLano has agreed to serve in the capacity of Interim City Attorney during the period prior to the final appointment.

**BACKGROUND**

1. Appointment of Interim City Attorney

The Escondido Municipal Code ("EMC"), at Article 4 of Chapter 2, provides for the creation and staffing of the Office of the City Attorney. Pursuant to EMC § 2-81, the City Council is required to appoint a city attorney who "shall hold office during the pleasure of the council or for such term as may be provided by an employment agreement between the city and the city attorney."

The City Attorney serves as the Chief Legal Officer for the City and, pursuant to EMC § 2-84, is required to provide certain duties including advising the city officials in all legal matters pertaining to city business, frame all ordinances and resolutions required by the council, and perform other legal services required from time to time by the council.

By Code, the City Attorney is responsible for the management and control over the City Attorney's Office. (EMC § 2-85). The Code does not provide for the responsibility to staff, manage or otherwise handle the legal affairs of the City to any person other than the City Attorney. As a result, with Mr. McGuinness' retirement, the City Council must appoint an Interim City Attorney to manage the City Attorney's Office until its recruitment for the permanent selection is concluded and the new City Attorney undertakes those duties.

Currently the City Attorney's Office is staffed with a total of eight attorneys and five staff. The office handles the vast majority of legal work of the City including claims administration and civil litigation; real property, land use and environmental matters; labor and employment; contracts and procurement; advising the Clerk's Office on Public Records requests; Code Compliance advice and enforcement; ordinance drafting; and a vast array of general municipal advice to the councilmembers and all City staff.

# CITY *of* ESCONDIDO

STAFF REPORT

2. Proposed Selection for Interim City Attorney

Beginning her City employment as the Senior Deputy City Attorney in June 2022, Ms. DeLano was promoted to Assistant City Attorney in October 2024. Prior to entering City employment, Ms. DeLano was a partner in the law firm DeLano & DeLano and her professional legal career dates back to 1994. Ms. DeLano received her B.A. from the University of Dallas, Texas, her Juris Doctorate degree from the University of Virginia School of Law, and an LL.M in International Legal Studies from New York University School of Law. She has been a member of the California Bar Association since 1998, as well as admitted to practice before the United States District Court for the Southern District of California, in addition to other courts.

Ms. DeLano's municipal expertise is broad and deep and she serves as the principal advisor on all legal issues handled by the City's Development Services Department including, but not limited to: Housing, Planning, Engineering, complex land use, cultural resources, zoning, and CEQA and environmental matters. She also serves as the legal advisor to the City's Planning Commission. She has served as the second-in-command and managed the office when the City Attorney has been absent. Further, she regularly attends Senior Management and Leadership meetings and is fully involved in all aspects of the City Attorney's Office's currently handling of its cases and matters.

3. Employment Agreement

As noted, by Code, the Interim and permanent City Attorney serves pursuant to an employment contract. Resolution No. 2026-145, includes as Attachment "A" a proposed contract between the City and Ms. DeLano providing for the salary and benefits, as well as employment status, of Ms. DeLano during the pendency of the interim appointment.

On August 26, 2026, the City Council met in Closed Session to consider this appointment and the terms of an employment agreement.

**CONCLUSION**

In light of the foregoing, it is recommended that the City Council adopt Resolution No. 2026-145 to appoint Ms. DeLano as Interim City Attorney and authorize the Mayor to execute an employment agreement containing satisfactory terms with Ms. DeLano to serve in the role of Interim City Attorney until such time as the effective date of the appointment of the permanent City Attorney.

**RESOLUTION**

a. Resolution No. 2026-145
b. Resolution No. 2026-145 - Exhibit "A" At Will Employment Agreement

RESOLUTION NO. 2026-145

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPOINTING M. DARE DELANO, ESQ. AS INTERIM CITY ATTORNEY AND AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, AN EMPLOYMENT AGREEMENT FOR THE INTERIM CITY ATTORNEY

WHEREAS, Article 4 of Chapter 2 of the Escondido Municipal Code (“Code”) provides for the creation of the Office of the City Attorney; and

WHEREAS, pursuant to Sections 2-81 and 2-85 of the Code, the City Council shall appoint a City Attorney, who shall hold that office at the pleasure of the City Council for such time as may be provided by an employment agreement and be responsible for the management and control over that department; and

WHEREAS, Michael R. McGuinness, Esq. has served in the role as the appointed Interim City Attorney and permanent City Attorney since February 22, 2017 and May 3, 2017, respectively; and

WHEREAS, in March 2026, Mr. McGuinness advised the City Council of his upcoming retirement effective at the close of business September 4, 2026; and

WHEREAS, the recruitment for the position of City Attorney is currently underway and an appointment of the permanent City Attorney has not been completed; and

WHEREAS, upon Mr. McGuinness’ retirement, the City is required to appoint either a City Attorney or Interim City Attorney and enter into an employment contract with that individual to provide the services required by Code; and

WHEREAS, Assistant City Attorney M. Dare DeLano, Esq. has the experience and qualifications to serve in the capacity of Interim City Attorney while the recruitment for the permanent appointment is being concluded; and

WHEREAS, the City Council and Ms. DeLano desire and deem it is in the best interests of the City to appoint Ms. DeLano as Interim City Attorney effective at close of business September 4, 2026, and the term of such appointment will expire upon the effective date of the appointment of the City Attorney, and enter into an employment agreement for those services as required by the Code.

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 appoints M. Dare DeLano as the Interim City Attorney effective September 4, 2026, and she shall serve until such time as the City Attorney's appointment is effective, and she shall have those rights, duties and responsibilities as the City Attorney as provided for in the Code and as may otherwise be required in the employment agreement.

3. The City Council authorizes the Mayor to execute, on behalf of the City, an employment agreement with Ms. DeLano to serve as Interim City Attorney, a copy of which is attached hereto as Exhibit "A" and as may be approved by the current City Attorney.

ESCONDIDO

# INTERIM CITY ATTORNEY
# EMPLOYMENT AGREEMENT

This Interim City Attorney Employment Agreement ("Agreement") is entered into as of the date this Agreement is approved by the City Council for the City of Escondido, by and between the City of Escondido, California, a municipal corporation ("Employer"), and M. Dare DeLano, an individual ("Employee"). Employer and Employee are sometimes individually referred to as a "Party" and collectively as the "Parties."

| | |
|---|---|
| Between: | CITY OF ESCONDIDO<br>201 N. Broadway<br>Escondido, California 92025<br>("Employer") |
| And: | M. Dare DeLano<br>201 N. Broadway<br>Escondido, CA 92025<br>("Employee") |

## RECITALS

WHEREAS, Employer and Employee wish to enter into an Agreement providing for Employee to serve as the Interim City Attorney for the City of Escondido, as provided by the California Government Code and Chapter 2, Article 4 of the Escondido Municipal Code; and

WHEREAS, Employee has been employed by Employer as an Assistant City Attorney since 2022; and

WHEREAS, it is the desire of Employer to provide certain benefits and establish certain conditions of employment of Employee for the purpose of securing and retaining the services of Employee; and

WHEREAS, Employee desires to be employed as the Interim City Attorney for the City of Escondido.

## AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants set forth below, the Parties agree as follows:

SECTION 1. Duties.

Employer employs Employee as the Interim City Attorney of the City of Escondido to perform the functions and duties specified by law and in the Escondido Municipal Code, and to perform such other legally permissible and proper duties and functions as the Council shall from time-to-time assign. It is acknowledged by Employer and Employee that, as provided in Escondido Municipal Code Sections 2-81 and 2-84, the City Attorney takes direction from the Council as a whole, provided that the Council may expressly authorize a Council subcommittee, the Mayor, or other council member to give direction on particular matters and such subcommittee, the Mayor, or council member may give direction to the City Attorney within the scope of such Council authorization. Employer and Employee understand that no such direction from the Council shall be contrary to or in violation of law or applicable California Rules of Preferred Conduct. With respect to such authorizations, the Council acts only through duly enacted resolutions, ordinances, or minute action.

SECTION 2. Term.

(a) This Agreement shall be effective as of September 4, 2026, and shall terminate as provided elsewhere in this Agreement.

(b) Employee understands that she is an "at will" employee under controlling law and is "at will" serving at the pleasure of the Council pursuant to Chapter 2, Article 4 of the Escondido Municipal Code. Nothing in this Agreement is intended to, nor shall it, prevent, limit or otherwise interfere with the right of Employer, in Employer's discretion, to terminate the services of Employee at any time in accordance with said laws and the provisions of this Agreement.

(c) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from his position with Employer, provided she shall first provide forty-five (45) days advance written notice of such resignation to Employer.

SECTION 3. Salary and Benefits.

(a) Employer will pay Employee a base salary of Two Hundred, Seventy-seven Thousand, Two Hundred dollars ($277,200) per year ("Salary"). Such Salary shall be payable at the time as other employees of Employer are paid.

(b) Employer may from time to time adjust the monthly Salary and/or other benefits of Employee in such amounts and to such extent as the City Council may determine is appropriate, taking into account the City's budgetary needs, its financial resources, and such other factors as the Council may determine to be relevant at the time, provided that no decrease shall be made that is any different than is made to unclassified City employees generally.

(c) In addition to such Salary, Employee shall further be entitled to all benefits she currently receives and such others as are provided to other management employees generally.

SECTION 4. Termination.

This Agreement may be terminated at any time as follows:

(a) By Employer.

Employer may terminate this Agreement at any time, either with or without cause, by majority vote of the total membership of the City Council. Termination shall be under one or more of the following subparagraphs:

(1) For Cause:

(A) <u>Misconduct.</u> In the event that Employer 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 Employee, Employer shall give Employee notice of termination, which at the option of the 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, Employee shall have the right to present any rebuttal information to the Council, in writing, no later than 10 calendar days after the termination.

In the event that the Council gives notice of an intent to terminate at a future date, Employee shall have the right to present any rebuttal information to the Council, in writing, prior to the effective date of the termination. In either case, Employee shall have the right to be represented and to have a hearing before the Council, in open or closed session as authorized by the Brown Act, within 14 days following termination. The Council shall review any rebuttal information provided by Employee and any other relevant material and shall then determine whether to uphold the termination or to rescind it. The Council's decision shall be final. Any actions of Employer taken under this paragraph shall occur only after the majority vote of the total authorized membership of the City Council.

(B) <u>Material Uncorrected Failure to Perform.</u> In the event that Employer determines there is good cause to terminate this Agreement that does not rise to the level of seriousness addressed above in subparagraph 4(a)(1)(A), such as (1) a repeated material failure to meet stated, reasonable performance objectives that are within Employee's control, or (2) uncorrected, material failure to present a positive image to the Council, staff, public or media on behalf of Employer, Employer may terminate the Agreement for cause provided Employer (1) first gives notice to Employee in writing of the alleged failure in performance and a reasonable opportunity to cure the problem, and (2) gives Employee a reasonable opportunity to present evidence to the Council in rebuttal to any alleged failure in performance or of any extenuating circumstances showing that the failure was beyond the control of Employee. Employer will not terminate for cause under this subparagraph 4(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 Council, including any evidence presented by Employee. Any actions of Employer taken under this paragraph shall occur only after the majority vote of the total authorized membership of the City Council.

(C) <u>No Severance Benefits.</u> In the event that this Agreement is terminated by Employer pursuant to Subparagraph 4(a)(1) for cause, Employee shall not be entitled to any severance benefits under this Agreement or under any other provision of law or Employer policy or procedure, except for previously accrued vacation and management leave to which Employee is otherwise entitled.

(2) For Convenience:

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

(b) By Employee.

Employee may terminate this Agreement at any time, with or without cause, by (1) giving Employer forty-five (45) days advance written notice of her intent to terminate, or (2) may terminate sooner by mutual agreement with Employer. In the event that Employee exercises her right to terminate, she shall not be entitled to the severance benefits set forth below under Section 5 or to any other similar termination benefits under law or Employer's rules or regulations, provided however, that Employee shall be entitled to payment for any vacation, management leave and sick leave earned and unused at the time his notice of termination is effective.

SECTION 5. Severance.

In the event that Employee's employment is terminated by Employer for convenience pursuant to Section 4(a)(2) above, Employee shall be offered and shall be entitled to the severance benefits stated in this Section 5, as follows:

(a) Computation; Items included.

Employer shall offer to Employee, and subject to Employee's exercise of her right to accept or decline severance benefits as set forth below, to pay salary and benefits but exclude other benefits provided by this Agreement, for a period of three hundred sixty-five (365) days from the date of termination. Such severance benefits shall be paid in addition to payment of any accrued vacation, sick leave, or management leave otherwise payable to Employee. However, in lieu of the severance benefits set forth in this paragraph, and at Employer's sole discretion, Employer may elect to make a bona fide, realistic and good faith opportunity for Employee to return to and continue in her position as Assistant City Attorney at the same salary and benefits as Employee was receiving prior to executing this Agreement.

(b) Separately Negotiated; Waiver.

The parties expressly acknowledge and agree that these severances pay provisions have been independently negotiated. Acceptance by Employee 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 Employee may have, or have had, at any time, in the past or in the future, arising out of Employee's employment by Employer, including but not limited to claims for wrongful termination of this Agreement. If Employee wishes to retain any such rights, Employee must decline to accept the severance benefits provided by this paragraph. Employee shall notify Employer 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 Employee as to all claims, known or unknown, and Employee specifically waives the provisions of California 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.

(c) The severance provisions of this Agreement shall not apply in the event Employee is terminated for cause.

(d) Regardless of the term of this Agreement, if this Agreement is terminated, any cash settlement related to the termination that Employee may receive from Employer shall be fully reimbursed to Employer if Employee is convicted of a crime involving abuse of Employee's office or position.

SECTION 6. Management Leave.

In addition to Employee's entitlement to holiday and vacation leave on the same basis as is available to other management employees generally in accordance with Section 3(c) of this Agreement, Employee shall be entitled to the same management leave available to members of the City management team generally.

SECTION 7. Conversion of Unused Leave Time to Salary.

In addition to any other provision of the City Code or this Agreement authorizing conversion of unused leave time to salary, Employee shall be entitled, as she may determine at her sole discretion, to convert up to fifteen (15) days of unused leave time (whether vacation, management or reserve time leave) each year during the term of this Agreement to salary. Employee shall exercise her right to convert leave time to salary by giving notice in writing to the payroll staff stating the number of days of leave time, if any, which shall be converted to salary. Such notice shall be given between July 1st and October 1st for each year for the term of this Agreement. Employer shall pay Employee the salary equivalent of the leave time, if any, so converted within thirty (30) days of delivery of such notice. Any such converted leave time shall not be included in computation of severance benefits pursuant to Section 5.

SECTION 8. Evaluation.

The City Council may review and evaluate the performance of the Interim City Attorney on a regular basis. Normally, a review and evaluation may occur on an annual schedule and pursuant to an evaluation form developed by the City Council. Copies of any written evaluation will be provided to the Interim City Attorney and he shall be given an opportunity to discuss her evaluation with the City Council.

SECTION 9. Dispute Resolution.

(a) Informal Meet and Confer.

The Parties agree to meet and confer informally as the first step towards resolution of any dispute between them arising out of or related to this Agreement. The Council may be represented by a representative of its choosing, and Employee may be represented as well.

(b) Council Resolution.

If the parties are unable to resolve the matter informally through meet and confer, the matter shall be submitted to the Council for final resolution at a meeting to be held by the Council within 30 days of submittal, and the Council shall promptly make a final decision, unless Employee and the Council mutually agree to a longer period.

(c) Litigation.

Neither Party shall commence any litigation, arbitration, or other formal dispute resolution process until the above referenced informal meet and confer session and final Council determination have occurred.

SECTION 10. Government Code § 53243, *et. seq*.

(a) In the event that the City provides paid leave to the Interim City Attorney pending an investigation of a crime involving abuse of her office or position covered by Government Code § 53243, and should that investigation lead to either a criminal conviction or a civil or administrative penalty by the FPPC or any similarly authorized agency, the Interim City Attorney shall fully reimburse the City for any salary provided for that purpose.

(b) In the event that the City provides funds for the legal criminal defense of the Interim City Attorney pending an investigation of a crime involving abuse of her office or position covered by Government Code § 53243, and should that investigation lead to either a criminal conviction or a civil or administrative penalty by the FPPC or any similarly authorized agency, the Interim City Attorney shall fully reimburse the City for any funds provided for that purpose.

(c) In the event that the City provides the Interim City Attorney with severance, or any other type of cash settlement related to the termination of the Interim City Attorney, and the Interim City Attorney is subsequently convicted of a crime, or subjected to civil or administrative penalties resulting from abuse of her office or position covered by Government Code § 53243, the Interim City Attorney shall fully reimburse the City for any such severance or cash payment.

This provision shall not be interpreted or construed as creating any contractual obligation on the City to provide paid leave, a legal criminal defense, or cash payment related to an investigation or termination of the Interim City Attorney.

SECTION 11. General Provisions.

(a) Governing Law.

This Agreement shall be interpreted and enforced in conformance with California law.

(b) Entire Agreement.

This Agreement together with the exhibits represents the entire Agreement between the Parties and supersedes any prior agreements, written or oral, and any representations, written or oral, not expressly included herein.

(c) Venue.

The venue for any litigation to interpret or enforce this Agreement shall be the San Diego Superior Court, North County Division.

(d) Integration Clause.

If any part, provision, paragraph or subparagraph of this Agreement shall be held to be void or unenforceable by a final judgment of a court of competent jurisdiction, then unless that provision is found in such proceeding to be material to this Agreement, said void or unenforceable provision shall be severed from this Agreement and the balance of this Agreement shall remain in full force and effect. In the event that the void or unenforceable provision is found to be material to this Agreement then the entire Agreement shall be voided.

(e) Attorney's Fees.

The prevailing party in any litigation to interpret or enforce this Agreement shall be entitled to recover her or its attorney's fees in addition to costs.

(f) Independent Review; Interpretation.

Employer and Employee affirm in signing this Agreement that they have each had an opportunity to review and consider this Agreement, and to have it reviewed and to receive advice from independent advisors of their own choosing, including attorneys, and that each knowingly and voluntarily enters into this Agreement. Employer and Employee further affirm that this Agreement was the mutual product of their negotiations, including give and take, and that neither party shall be considered the drafter of this Agreement such that the Agreement is interpreted against that party.

[Signature Page to follow]

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. 2026-145, and Employee has signed and executed this Agreement set forth below.

CITY OF ESCONDIDO

Date: ___________________

_____________________________________
Dane White, Mayor

EMPLOYEE

Date: ___________________

_____________________________________
M. Dare DeLano

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, CITY ATTORNEY

BY: ____________________________

DATE: __________________

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

# STAFF REPORT

September 2, 2026
File Number 0260-45

**SUBJECT**

**HOMELESS UPDATE**

**DEPARTMENT**

Police; Public Works; Fire Departments

**RECOMMENDATION**

Request the City Council adopt Resolution No. 2026-151 (1) authorizing the Chief of Police to facilitate and conduct two Request for Proposal ("RFP") processes: for services related to temporary sobering services, including a sobering center and for homeless outreach services; (2) approving the execution of documents on behalf of the City following the RFP process by authorized City officers; and (3) approving the budget adjustments necessary to fund costs related to the procurement, implementation, and operation of temporary sobering services and homeless outreach services.

Staff Recommendation: Approval (Police Department: Ken Plunkett, Chief of Police)

Presenter: Ken Plunkett, Chief of Police

**ESSENTIAL SERVICE –** Yes, Police Services; Fire/EMS Services; Keep City Clean for Public Health and Safety; Public Works/Infrastructure; Maintenance of Parks facilities/Open Spaces

**COUNCIL PRIORITY –** Be Business Friendly; Build Trust and Accountability; Drive Community and Land Development; Prioritize Public Safety; Measure I Investments

**FISCAL ANALYSIS**

The proposed action will require an estimated $350,000 annually, consisting of approximately $250,000 for homeless outreach services and $100,000 for costs associated with temporary sobering services. Service total for two years will cost approximately $700,000.

**BACKGROUND**

Staff providing updates on state of homelessness prevention and intervention.

**RESOLUTION**

a. Resolution No. 2026-151

# CITY of ESCONDIDO

STAFF REPORT

**ATTACHMENTS**

a. Attachment “1”—Budget Adjustment

RESOLUTION NO. 2026-151

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE CHIEF OF POLICE TO CREATE RFP FOR SERVICES RELATED TO TEMPORARY SOBERING SERVICES AND HOMELESS OUTREACH SERVICES; AUTHORIZING CITY OFFICERS TO EXECUTE DOCUMENTS IMPLEMENTING THE RFPS; AND APPROVING ALL NECESSARY BUDGET ADJUSTMENTS

WHEREAS, the City of Escondido desires to fund services for temporary sobering services and homeless outreach services (“Services); and

WHEREAS, the Escondido Police Department has been designated to create Request for Proposals (“RFP”) for the Services.

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

1. That the above recitations are true.

2. That the City Council authorizes (1) the Chief of Police of the City of Escondido to create RFPs for the Services; and (2) appropriate City officials to execute all documents necessary for the management of the Services, including any extensions and amendments thereof.

3. That the City Council approves the budget adjustment of $700,000 to fund the Services projects.

Attachment "1"

Item8.

# BUDGET ADJUSTMENT REQUEST

| | | |
|---|---|---|
| Department: | Police | **For Finance Use Only** |
| Department Contact: | Ken Plunkett, x4706 | BA # ____________ |
| City Council Meeting Date: *(attach staff report)* | September 2, 2026 | Fiscal Year ________ |

## EXPLANATION OF REQUEST

Budget adjustments needed for homeless outreach services and sobering services for FY 26 and FY 27.

## BUDGET ADJUSTMENT INFORMATION

| Project/Account Description | Account Number | Amount of Increase | Amount of Decrease |
|---|---|---|---|
| Homeless outreach | Measure I - New Project | $700,000 | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

## APPROVALS

| Signed by: Ken Plunkett 581C2D657E4C403... | 8/25/2026 | Signed by: Christina Holmes B56F52D8C10540B... | 8/25/2026 |
|---|---|---|---|
| **DEPARTMENT HEAD** | **DATE** | **FINANCE** | **DATE** |

KEY-
CONSENT CALENDAR CURRENT BUSINESS
PUBLIC HEARING WORKSHOP PROCLAMATION

Item9.

# CITY of ESCONDIDO

FUTURE AGENDA

**9/9/2026 - NO MEETING**

**9/16/2026**

PROCLAMATION - **NATIONAL COMMUNITY PLANNING MONTH**

**PRESENTATION - SAN DIEGO RESCUE MISSION**

**PRESENTATION - SPECIAL EVENTS UPDATE**

CONSENT CALENDAR **– (K. SNYDER) – FIRST AMENDMENT TO CONSULTING AGREEMENT WITH DUDEK**

CONSENT CALENDAR **– (K. SNYDER) – APPROVE SDG&E EASEMENT FOR FAMILY HEALTH CENTER**

CONSENT CALENDAR **- (J. GOULART) - APPROVAL OF PSA FOR SENIOR NUTRITION PROGRAM**

CONSENT CALENDAR **- (D. DELANO)- 2026 CONFLICT OF INTEREST CODE UPDATE**

CONSENT CALENDAR **- (D. PETERSON) - FIRST AMENDMENT TO THE PUBLIC SERVICES AGREEMENT WITH NORTH STATE ENVIRONMENTAL FOR HAZARDOUS WASTE DISPOSAL SERVICES - Request the City Council adopt Resolution No. 2026-144, authorizing the Mayor to execute, on behalf of the City, a First Amendment to the Public Services Agreement with North State Environmental in the amount of $40,000, bringing the total contract not-to-**

CURRENT BUSINESS **- (C. MCKINNEY) - APPEAL OF PUBLIC ART COMMISSION DECISION**

CURRENT BUSINESS **- (C. MCKINNEY) - A CONSULTING SERVICES AGREEMENT WITH JONES LANG LASALLE AMERICAS, INC. FOR REAL PROPERTY**

WORKSHOP **- (K. SNYDER) – DEVELOPMENT SERVICES STREAMLINING UPDATE**

**9/23/2026 - NO MEETING**