



CITY of ESCONDIDO

COUNCIL MEETING AGENDA

WEDNESDAY, SEPTEMBER 21, 2022

4:00 PM - Closed Session

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

Paul McNamara

DEPUTY MAYOR

Tina Inscoe (District 2)

COUNCILMEMBERS

Consuelo Martinez (District 1)

Joe Garcia (District 3)

Michael Morasco (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



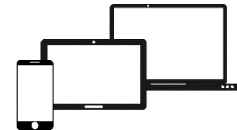
201 N. Broadway

On TV



Cox Cable Channel 19 and U-verse Channel 99

Online



www.escondido.org



CITY of ESCONDIDO

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WEDNESDAY, SEPTEMBER 21, 2022

HOW TO PARTICIPATE

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

In Person



Fill out Speaker Slip and Submit to City Clerk

In Writing



<https://escondido-ca.municodemeetings.com>

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 the 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 21, 2022

CLOSED SESSION

4:00 PM

CALL TO ORDER

1. Roll Call: Garcia, Inscoc, Martinez, Morasco, McNamara

ORAL COMMUNICATIONS

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

CLOSED SESSION

- 1. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION (Government Code section 54956(d)(1))**

- a. Case Name:** City of Escondido v. All Interested Persons in the Matter of the Issuance and Sale of Pension Obligation Bonds etc. (Validation Action)

Case No.: San Diego Superior Court Case No. 37-2022-00025425-CU-PT-NC

- b. Case Name:** Building Industry Association of San Diego County v. City of Escondido

Case No.: San Diego Superior Court Case No. 37-2021-00008423-CU-MC-NC

- c. Case Name:** Touchstone MF Fund I, LLC v. City of Escondido

Case No.: San Diego Superior Court Case No. 37-2020-00020856-CU-BC-NC

ADJOURNMENT



CITY of ESCONDIDO

COUNCIL MEETING AGENDA

WEDNESDAY, SEPTEMBER 21, 2022

REGULAR SESSION

5:00 PM Regular Session

MOMENT OF REFLECTION

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

FLAG SALUTE

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

CALL TO ORDER

Roll Call: Garcia, Inscoc, Martinez, Morasco, McNamara

PROCLAMATIONS

Pollution Prevention Week, September 19-25

CLOSED SESSION REPORT

ORAL COMMUNICATIONS

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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) -



CITY of ESCONDIDO

COUNCIL MEETING AGENDA

WEDNESDAY, SEPTEMBER 21, 2022

2. APPROVAL OF WARRANT REGISTER (COUNCIL) -

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

366707 – 366780 dated September 7, 2022.

Staff Recommendation: Approval (Finance Department: Christina Holmes)

3. APPROVAL OF MINUTES: None

4. AWARD OF CONTRACT FOR CONSTRUCTION OF THE KIT CARSON PARK LIGHTING PROJECT

Request the City Council approve to adopt Resolution No. 2022-121, awarding the construction contract to Precision Electric Company, determined to be the lowest responsive and responsible bidder, and authorizing the Mayor to execute, on behalf of the City, a Public Improvement Agreement in the amount of \$747,803.21 for the Kit Carson Park Lighting Project (“Project”).

Staff Recommendation: Approval (Development Services Department: Andrew Firestine, Development Services Director and Julie Procopio, City Engineer)

Presenter: Marissa Padilla, Associate Engineer

a) Resolution No. 2022-121

5. CITY CONFLICT OF INTEREST CODE UPDATE

Request the City Council approve to adopt Resolution No. 2022-137, amending the Conflict of Interest Code for the City of Escondido pursuant to the Political Reform Act to update the list of designated public employees and public officials who are required to file a statement of economic interest and the disclosure categories.

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

Presenter: Alma Gurrola, Deputy City Attorney

a) Resolution No. 2022-137

CURRENT BUSINESS

6. CONSIDERATION OF PARTICIPATING IN THE NATIONAL LEAGUE OF CITIES

Request the City Council discuss the consideration of participating in the National League of Cities.

Staff Recommendation: Provide Direction (City Clerk's Office: Zack Beck)

Presenter: Councilmember Joe Garcia



CITY of ESCONDIDO

COUNCIL MEETING AGENDA

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FUTURE AGENDA

7. 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)

COUNCILMEMBERS SUBCOMMITTEE REPORTS AND OTHER REPORTS

CITY MANAGER'S WEEKLY ACTIVITY REPORT

The most current information from the City Manager regarding Economic Development, Capital Improvement Projects, Public Safety, and Community Development. This report is also available on the City's website, www.escondido.org.

ORAL COMMUNICATIONS

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ADJOURNMENT

UPCOMING MEETING SCHEDULE

Wednesday, September 28, 2022	4:00 & 5:00 PM	Regular Meeting, <i>Council Chambers</i>
Wednesday, October 12, 2022	4:00 & 5:00 PM	Regular Meeting, <i>Council Chambers</i>

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.



A F F I D A V I T S
O F
I T E M
P O S T I N G – N O N E



STAFF REPORT

September 21, 2022
File Number 0400-40

SUBJECT

APPROVAL OF WARRANT REGISTER (COUNCIL)

DEPARTMENT

Finance

RECOMMENDATION

Request approval for City Council and Housing Successor Agency warrant numbers 366707 – 366780 dated September 7, 2022.

Staff Recommendation: Approval (Finance Department: Christina Holmes)

FISCAL ANALYSIS

The total amount of the warrants for the period of September 1 – September 7, 2022, is \$406,648.89.

BACKGROUND

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



Consent Item No. 3

September 21, 2022

APPROVAL
OF
MINUTES



STAFF REPORT

September 21, 2022
File Number 0600-10; A-3431

SUBJECT

AWARD OF CONTRACT FOR CONSTRUCTION OF THE KIT CARSON PARK LIGHTING PROJECT

DEPARTMENT

Development Services

RECOMMENDATION

Request that the City Council adopt Resolution No. 2022-121 awarding the construction contract to Precision Electric Company, determined to be the lowest responsive and responsible bidder, and authorizing the Mayor to execute, on behalf of the City, a Public Improvement Agreement in the amount of \$747,803.21 for the Kit Carson Park Lighting Project ("Project").

Staff Recommendation: Approval (Andrew Firestine, Development Services Director and Julie Procopio, City Engineer)

Presenter: Marissa Padilla, Associate Engineer

FISCAL ANALYSIS

Park Development Funds in the amount of \$843,052 are available in the adopted Capital Improvement Program budget for this Project. Remaining funds are adequate to cover anticipated costs associated with this Project, including for construction, contingency, inspection, and testing of materials.

PREVIOUS ACTION

On June 16, 2021, the Council adopted Resolution No. 2021-89 rejecting all bids for the Kit Carson Park Lighting project ("Project") and authorizing staff to value engineer and re-bid the Project.

BACKGROUND

The Project includes the removal of 48 low-pressure sodium light fixtures, poles, and foundations and their replacement with 15 new energy efficient LED light fixtures, poles and foundations within the parking lot between the outdoor amphitheater and Eagle Scout Lake as well as the Sports Center Complex parking lot. The Project will also retrofit ten fixtures on existing poles within the Sports Center Complex with new LED fixtures. In addition, the Project will include the removal and replacement of electrical conduit and wiring and the installation of conduit for a future security system.



CITY of ESCONDIDO

STAFF REPORT

After receiving bids that exceeded the project budget, staff worked with the design engineer to value-engineered the project design and bidding approach in an effort to reduce the bid amount. Revisions to the project included incorporating additive alternate bid items to ensure that lighting would be installed or replaced in the highest priority areas of the park.

On September 1, 2022, six (6) sealed bids were received in response to the advertised request for bids for the Project. The confirmed totals for the total base and additive alternate bid items are listed below:

Precision Electric Company	\$ 772,303.21
Blue Pacific Engineering & Construction	\$1,047,100.00
Southwest Traffic Signal Services, Inc.	\$1,068,694.93
Palm Engineering Construction Company, Inc.	\$1,195,000.00
Wier Construction Corp.	\$1,253,480.00
Ace Electric, Inc.	\$1,632,820.00

Staff recommends that the bid submitted by Precision Electric Company be considered the lowest responsive and responsible bid. Staff further recommends that the Additive Alternate Bid Items E-2 and E-3 that include additional lighting to the parking lots for the youth softball and baseball fields be included as part of the contract awarded to Precision Electric Company for the Project in the total amount of \$747,803.21.

RESOLUTIONS

- a. Resolution No. 2022-121
- b. Resolution No. 2022-121 – Exhibit A – Public Improvement Agreement

RESOLUTION NO. 2022-121

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, A PUBLIC IMPROVEMENT AGREEMENT FOR THE KIT CARSON PARK LIGHTING PROJECT

WHEREAS, the City Council has allocated funding in the adopted Capital Improvement Program budget for the Kit Carson Park Lighting Project; and

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

WHEREAS, pursuant to said notice, six sealed bids for the project were opened and evaluated on September 1, 2022; and

WHEREAS, Precision Electric Company was determined to be the lowest responsive and responsible bidder; and

WHEREAS, the City Council desires at this time and deems it to be in the best public interest to authorize a Public Improvement Agreement with Precision Electric Company in the amount of \$747,803.21.

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

1. That the above recitations are true.
2. That the City Council authorizes the Mayor to execute, on behalf of the City, a Public Improvement Agreement with Precision Electric Company, in a substantially similar form to that which is attached and incorporated to this Resolution as Exhibit "A", and subject to final approval as to form by the City Attorney.



CITY OF ESCONDIDO
PUBLIC IMPROVEMENT AGREEMENT

This Public Improvement Agreement (“Agreement”) is made and entered into as of this ____ day of _____, 2022 (“Effective Date”),

Between: CITY OF ESCONDIDO
a California municipal corporation
201 N. Broadway
Escondido, CA 92025
Attn: Marissa Padilla
760-839-4098
("CITY")

And: G.A. ABELL INC. DBA PRECISION ELECTRIC COMPANY
a California corporation
8137 Winter Gardens Blvd.
Lakeside CA 92040
Attn: Adam Cox
619-390-2991
("CONTRACTOR").

(The CITY and CONTRACTOR each may be referred to herein as a “Party” and collectively as the “Parties.”)

WHEREAS, the Parties desire to enter into this Agreement for the performance of work relating to the Kit Carson Park Lighting Project (“Project”), occurring on property located at 3333 Bear Valley Parkway, Escondido, CA 92025 and having assessor’s parcel numbers (APN) 760-244-19-00 (“Property”), as further described herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, and conditions set forth herein, and the mutual benefits derived therefrom, the Parties hereby agree as follows:

1. Project Documents. The Notice Inviting Sealed Bids/Notice to Contractors, Instructions to Bidders, Bid Form, Designation of Subcontractors, Workers' Compensation Certificate, Change Orders, Shop Drawing Transmittals, Information Required of CONTRACTOR, Non-collusion Affidavit, Insurance Certificates, Guarantees, General Conditions, Supplementary General Conditions, Special Conditions, Plans, Drawings, Specifications, the Agreement, and all modifications, addenda, and amendments thereto (“Project Documents”) are incorporated herein by this reference as if fully set forth herein. The Project Documents are complementary, and what is called for by any one shall be as binding as if called for by all.

2. Description and Performance of Work. CONTRACTOR shall furnish all work described in the Project Documents (“Work”). All Work to be performed and materials to be furnished shall be completed in a good workmanlike manner, free from defects, in strict accordance with the plans, drawings, specifications, and requirements set forth in the Project Documents and all provisions of this Agreement.
3. Compensation. In exchange for CONTRACTOR’s completion of the Work, the CITY shall pay, and CONTRACTOR shall accept in full, an amount not to exceed the sum of \$747,803.21 (“Contract Price”). CONTRACTOR shall be compensated only for performance of the Work described in this Agreement. No compensation shall be provided for any other work or services without the CITY’s prior written consent.
4. Term and Time of Performance. CONTRACTOR shall commence work within one week from the CITY’s notice to proceed. CONTRACTOR shall diligently perform and complete the Work with professional quality and technical accuracy by within 20 working days from the date listed on the NTP (“Completion Date”). Extension of terms or time of performance shall be subject to the CITY’s sole discretion.
5. Time Is of the Essence. If the Work is not completed by the Completion Date, it is understood that the CITY will suffer damage. It being impractical and infeasible to determine the amount of actual damage, in accordance with Government Code section 53069.85, the Parties agree that CONTRACTOR shall pay to the CITY as fixed and liquidated damages, and not as a penalty, the sum of \$500 per day for each calendar day of delay until the Work is completed and accepted (“Liquidated Damages Amount”). The Liquidated Damages Amount shall be deducted from any payments due to, or that become due to, CONTRACTOR. CONTRACTOR and CONTRACTOR’S surety shall be liable for the Liquidated Damages Amount.
6. Insurance Requirements.
 - a. CONTRACTOR shall procure and maintain, at its own cost, during the entire term of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Work, and the results of such Work, by CONTRACTOR, its agents, representatives, employees, or subcontractors. Insurance coverage shall be at least as broad as the following:
 - (1) *Commercial General Liability.* Insurance Services Office (“ISO”) Form CG 0001 11188 covering Commercial General Liability on an “occurrence” basis, including products and completed operations, property damage, bodily injury (including emotional distress), sickness, disease, or death of any person other than the CONTRACTOR’s employees, and personal and advertising injury, and damages because of injury or destruction of tangible property, including loss of use resulting there from, with limits no less than \$3,000,000 combined single limit coverage per occurrence for bodily injury and property damage; or, if a general aggregate limit is applicable, either: (i) the general aggregate limit shall specifically apply to the project identified in the bid specifications or to the location of such project which is the subject of these bid specifications with coverage to be no less than \$3,000,000, or (ii) the general aggregate shall be at least \$3,000,000 combined single limit coverage per occurrence for bodily injury and property damage.
 - (2) *Automobile Liability.* ISO Form CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired (Code 8) and non-owned autos (Code 9), including damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile

equipment, and vehicles moving under CONTRACTOR's control and engaged in the Work, with limits no less than \$3,000,000 combined single limit per accident for bodily injury and property damage.

- (3) *Workers' Compensation.* Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
 - (4) *Risk/"All Risk" Insurance.* The CONTRACTOR, during the progress of the Work and until final acceptance of the Work by CITY, shall maintain Builder's Risk/"All Risk," course-of-construction insurance satisfactory to CITY issued on a completed value basis of all WORK pursuant to this Agreement. Coverage is to provide extended coverage and insurance against vandalism, theft, malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, earthquake, collapse, flood, wind, lightning, smoke, riot, debris removal (including demolition), and reasonable compensation for the Engineer's services and expenses required as a result of such insured loss upon the Work, including completed Work and Work in progress to the full insurable value thereof. Such insurance shall include the CITY and the City Engineer as an additional named insured and any other person with an insurable interest designated.
 - (5) If CONTRACTOR maintains broader coverage and/or higher limits than the minimums otherwise required by this Agreement, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by CONTRACTOR.
- b. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:
- (1) *Compliance with General Condition Requirements.* Insurance coverage shall comply with and meet all requirements set forth in Article 5.2 of General Conditions
 - (2) *Acceptability of Insurers.* Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A-VII, or as approved by the CITY.
 - (3) *Additional Insured Status.* Both the Commercial General Liability and the Automobile Liability policies must name the CITY (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of *both* CG 20 10, CG 20 26, CG 20 33, or CG 20 38, *and* CG 20 37 if a later edition is used. The Automobile Liability additional insured endorsement shall be at least as broad as ISO Form CA 20 01.
 - (4) *Primary Coverage.* CONTRACTOR's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the CITY, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, officers, agents, employees, or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
 - (5) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.

- (6) *Subcontractors.* If applicable, CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated within this Agreement, and CONTRACTOR shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.
 - (7) *Waiver of Subrogation.* CONTRACTOR hereby grants to the CITY a waiver of any right to subrogation that any insurer of CONTRACTOR may acquire against the CITY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this subsection shall apply regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Agreement shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONTRACTOR, its agents, representatives, employees and subcontractors.
 - (8) *Self-Insurance.* CONTRACTOR may, with the CITY's prior written consent, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-insurance. CONTRACTOR shall only be permitted to utilize such self-insurance if, in the opinion of the CITY, CONTRACTOR's (i) net worth and (ii) reserves for payment of claims of liability against CONTRACTOR are sufficient to adequately compensate for the lack of other insurance coverage required by this Agreement. CONTRACTOR's utilization of self-insurance shall not in any way limit the liabilities assumed by CONTRACTOR pursuant to this Agreement.
 - (9) *Self-Insured Retentions.* Self-insured retentions must be declared to and approved by the CITY.
- c. *Verification of Coverage.* At the time CONTRACTOR executes this Agreement, CONTRACTOR shall provide the CITY with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting the insurance coverage required by this Agreement), which shall meet all requirements under this Agreement. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Agreement, at any time.
 - d. *Special Risks or Circumstances.* The CITY reserves the right, at any point during the term of this Agreement, to modify the insurance requirements in this Agreement, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
 - e. *No Limitation of Obligations.* The insurance requirements within this Agreement, including the types and limits of insurance coverage CONTRACTOR must maintain, and any approval of such insurance by the CITY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant to this Agreement, including but not limited to any provisions within this Agreement concerning indemnification.
 - f. *Compliance.* Failure to comply with any of the insurance requirements in this Agreement, including but not limited to a lapse in any required insurance coverage during the term of this Agreement, shall be a material breach of this Agreement. Compliance by CONTRACTOR with the requirement to carry insurance and furnish certificates, policies, Additional Insured Endorsement and Declarations Page evidencing the same shall not relieve the CONTRACTOR from liability assumed under any provision of this Agreement, including, without limitation, the obligation to defend and indemnify the CITY and the City Engineer. In

the event that CONTRACTOR fails to comply with any insurance requirement set forth in this Agreement, in addition to any other remedies the CITY may have, the CITY may, at its sole option, (i) immediately terminate this Agreement; or (ii) order CONTRACTOR to stop Work under this Agreement and/or withhold any payment that becomes due to CONTRACTOR until CONTRACTOR demonstrates compliance with the insurance requirements in this Agreement.

7. Indemnification, Duty to Defend, and Hold Harmless.

- a. CONTRACTOR (including CONTRACTOR's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "Claims"), of every nature caused by, arising out of, or in connection with CONTRACTOR's (including CONTRACTOR's agents, employees, and subcontractors, if any) Work pursuant to this Agreement or its failure to comply with any of its obligations contained herein, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY.
- b. CONTRACTOR (including CONTRACTOR's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all Claims caused by, arising under, or resulting from any violation, or claim of violation, of the San Diego Municipal Storm Water Permit (Order No. R9-2013-0001, as amended) of the California Regional Water Quality Control Board, Region 9, San Diego, that the CITY might suffer, incur, or become subject to by reason of, or occurring as a result of, or allegedly caused by, any Work performed pursuant to this Agreement.
- c. All terms and provisions within this Section 7 shall survive the termination of this Agreement.

8. Bonds.

- a. CONTRACTOR shall furnish and deliver to the CITY, simultaneously with the execution of this Agreement, the following surety bonds:
 - (1) *Faithful Performance Bond.* CONTRACTOR shall furnish to the CITY a surety bond in an amount equal to the Contract Price as security for faithful performance of this Agreement.
 - (2) *Labor and Materials Bond.* CONTRACTOR shall furnish to the CITY a surety bond in an amount equal to the Contract Price as security for payment to persons performing labor and furnishing materials in connection with the Project.
- b. All bonds furnished to the CITY pursuant to this Agreement shall be in the form set forth herein and approved by the City Attorney.
- c. All bonds shall be executed by sureties that are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

- d. If the surety on any bond furnished by the CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Work is located, the CONTRACTOR shall, within seven days thereafter, substitute another bond and surety, which must be acceptable to the CITY. No portion of the Work shall be performed without bonds, in a form and issued by a surety acceptable to the City. If one or more of such bonds shall, at any time, not be in full force and effect, CONTRACTOR shall immediately cease performance of the Work until CONTRACTOR is in full compliance with the bonding requirements of this Agreement and California law. All delays and costs incurred or resulting from such occurrence shall be to the exclusive account of CONTRACTOR. Failure of the CONTRACTOR to promptly cure any failure to have the necessary bonds in full force and effect shall be grounds for immediate termination of this Agreement.
 - e. All bonds shall be obtained from surety companies that are duly licensed or authorized in the State of California. Such surety companies shall also meet any additional requirements and qualifications as may be provided in the Supplementary General Conditions.
9. Substitution of Securities. This Agreement is subject to California Public Contract Code section 22300, which permits the substitution of securities for any monies withheld by the CITY to ensure performance of this Agreement. At the request and expense of the CONTRACTOR, securities equivalent to the amount withheld shall be deposited with the CITY, or with a state- or federally-chartered bank in this state as the escrow agent, who shall then pay those moneys to CONTRACTOR. Upon satisfactory completion and acceptance of the Work, such securities shall be returned to the CONTRACTOR.
10. Contractor Default. In the event CONTRACTOR, for a period of 10 calendar days after receipt of written demand from the CITY to do so ("Cure Period"), fails to furnish tools, equipment, or labor in the necessary quantity or quality required by this Agreement, or fails to prosecute the Work and all parts thereof in a diligent and workmanlike manner, or after commencing to do so within the Cure Period, fails to continue to do so, then the CITY in its sole discretion may exclude the CONTRACTOR from the Property, or any portion thereof, and take exclusive possession of the Property or any portion thereof, together with all material and equipment thereon, and may complete the Work or any portion of the Work, either by (i) furnishing the necessary tools, equipment, labor, or materials; or (ii) letting the unfinished portion of the work, or any portion thereof, to another contractor; or (iii) demanding the surety hire another contractor; or (iv) any combination of such methods. The CITY's procuring of the completion of the Work, or the portion of the Work taken over by the CITY, shall be a charge against the CONTRACTOR and may be deducted from any money due or to become due to CONTRACTOR from the CITY, or the CONTRACTOR shall pay the CITY the amount of such charge, or the portion thereof unsatisfied. The sureties provided for under this Agreement shall become liable for payment if CONTRACTOR fails to pay in full any such cost incurred by the CITY. The permissible charges for any such procurement of the completion of the Work include actual costs and fees incurred to third party individuals and entities (including but not limited to consultants, attorneys, inspectors, and designers) and actual costs incurred by the CITY for the increased dedication of time of the CITY's employees to the Project.
11. Other Legal Requirements Incorporated. Each and every provision of law and clause required by law to be inserted in this Agreement or its attachments shall be deemed to be inserted herein, and this Agreement shall be read and enforced as though such law or clause were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either Party, the Agreement shall forthwith be physically amended to make such insertion or correction, without further changes to the remainder of the Agreement.

12. Merger Clause. This Agreement, together with its attachments or other documents described or incorporated herein, if any, constitutes the entire agreement and understanding of the CITY and CONTRACTOR concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. In the event of any conflict between the provisions of this Agreement and any of its attachments or related documents, if any, the provisions of this Agreement shall prevail.
13. Attorney's Fees and Costs. In any action to enforce the terms and conditions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs.
14. Independent Contractor. CONTRACTOR is an independent contractor, and no agency or employment relationship is created by the execution of this Agreement.
15. Amendment. This Agreement shall not be amended except in a writing signed by the CITY and CONTRACTOR, and pursuant to action of the Escondido City Council.
16. Anti-Waiver Clause. None of the provisions of this Agreement shall be waived by the CITY because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived by the CITY, in whole or in part.
17. Severability. This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.
18. Governing Law. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Venue for any action arising from this Agreement shall be conducted only in the state or federal courts of San Diego County, California.
19. Counterparts. This Agreement may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement by electronic means, including an attachment to an email, shall be effective as delivery of an executed original. The Agreement on file with the City is the copy of the Agreement that shall take precedence if any differences exist between or among copies or counterparts of the Agreement.
20. Provisions Cumulative. The foregoing provisions are cumulative to, in addition to, and not in limitation of any other rights or remedies available to the CITY.
21. Business License. CONTRACTOR shall obtain a City of Escondido Business License prior to execution of this Agreement and shall maintain such Business License throughout the term of this Agreement.
22. Compliance with Laws, Permits, and Licenses. CONTRACTOR shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements in effect during the term of this Agreement. This shall include, but shall not be limited to, all California Labor Code laws regarding payment of prevailing wages and all OSHA regulations. CONTRACTOR shall obtain any and all permits, licenses, and other authorizations necessary to perform the work under this Agreement. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.
23. Prevailing Wages and Department of Industrial Relations Compliance. Pursuant to California Labor Code section 1770 et seq., CONTRACTOR agrees that a prevailing rate and scale of

wages, in accordance with applicable laws, shall be paid in performing this Agreement. CONTRACTOR shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements pertaining to the payment of prevailing wages, including but not limited to the keeping of certified payroll records, overtime pay, employment of apprentices, and workers' compensation coverage, as further set forth in the General Conditions. CONTRACTOR shall file the required workers' compensation certificate before commencing work under this Agreement. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. CONTRACTOR shall post all job site notices required by regulation. CONTRACTOR, as well as any subcontractors, shall be registered pursuant to California Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal (subject to the requirements of Public Contract Code section 4104), or engage in the performance of any public works contract subject to the requirements of Division 2, Part 7, Chapter 1 of the California Labor Code. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.

24. Immigration Reform and Control Act of 1986. CONTRACTOR shall keep itself informed of and shall comply with the Immigration Reform and Control Act of 1986 ("IRCA"). CONTRACTOR represents and warrants that all of its employees and the employees of any subcontractor retained by CONTRACTOR who perform any portion of the Work under this Agreement are and will be authorized to perform the Work in full compliance with the IRCA. CONTRACTOR affirms that as a licensed contractor and employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will perform the Work. CONTRACTOR agrees to comply with the IRCA before commencing any portion of the Work, and continuously throughout the performance of the Work and the term of this Agreement.
25. Effective Date. Unless a different date is provided in this Agreement, the effective date of this Agreement shall be the latest date of execution set forth by the names of the signatories below.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, this Agreement is executed by the Parties or their duly authorized representatives as of the Effective Date:

CITY OF ESCONDIDO

Date: _____

Paul McNamara, Mayor

PRECISION ELECTRIC COMPANY

Date: _____

Signature

Name & Title (please print)

Contractor's License No.

Tax ID/Social Security No.

APPROVED AS TO FORM:

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

BY: _____

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



STAFF REPORT

September 21, 2022
File Number 0640-30

SUBJECT

CITY CONFLICT OF INTEREST CODE UPDATE

DEPARTMENT

City Attorney

RECOMMENDATION

It is recommended that the City Council adopt Resolution No. 2022-137, amending the Conflict of Interest Code for the City of Escondido pursuant to the Political Reform Act to update the list of designated public employees and public officials who are required to file a statement of economic interest and the disclosure categories.

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

Presenter: Alma Gurrola, Deputy City Attorney

FISCAL ANALYSIS

None.

PREVIOUS ACTION

The City adopted the Conflict of Interest Code pursuant to the requirements of the Political Reform Act in 1980. The City Council last amended the Conflict of Interest Code for the City of Escondido with Resolution No. 2020-128.

BACKGROUND

The City of Escondido and its agencies are subject to the requirements of the Political Reform Act (California Government Code Section 81000, *et seq.*) and regulations governing conflicts of interest. Government Code Section 87200 specifically lists officials who are required to file a statement of economic interest including Council Members, the City Manager, the City Attorney, the City Treasurer, Planning Commissioners, and City officials and employees who manage public investments (i.e. the City of Escondido Director of Finance).

In addition to these statutory filing requirements, the Political Reform Act requires the City of Escondido and its agencies to adopt and promulgate a Conflict of Interest Code that includes a list of designated positions and disclosure categories. The City designates positions based on the individuals in those



CITY of ESCONDIDO

STAFF REPORT

positions making or participating in governmental decisions. Making a decision means voting on a matter, approving the budget, adopting policy, making purchasing decisions and entering into contracts. Participation means negotiating the terms of a contract, writing the specifications of a bid, or advising or making recommendations to the decision maker or governing body without significant intervening substantive review. Participation does not mean clerical, secretarial or ministerial tasks.

The Political Reform Act requires each local government agency to review its Conflict of Interest Code biennially. As part of a biennial review, the proposed Resolution adopts the latest version of the California Fair Political Practices Commission (“FPPC”) standard conflict of interest code and updates the City’s list of designated positions. The employees, consultants and contractors who fill designated positions will be required to complete FPPC Form 700 (Statement of Economic Interests) each year.

PROPOSED CHANGES

The proposed changes primarily reflect reorganization efforts and should have little substantive impact on the reporting requirements of individual employees and officials. The following table shows the key changes in designated positions:

DESIGNATED POSITIONS	DISCLOSURE CATEGORY	CHANGE
COMMUNITY DEVELOPMENT		
Director of Community Development	3, 4, 6	Delete
Director of Development Services	3, 4, 6	Add
Assistant Planning Director	3, 4, 6	Delete
City Planner	3, 4, 6	Add
Code Enforcement Manager	3, 4, 6	Delete
Code Compliance Manager	3, 4, 6	Add
COMMUNITY SERVICES		
Director of Communications & Community Services	2, 4, 6	Delete



CITY of ESCONDIDO

STAFF REPORT

DESIGNATED POSITIONS	DISCLOSURE CATEGORY	CHANGE
Deputy City Manager/Director of Communications & Community Services	2, 4, 6	Add
Communications Manager	6	Delete
Deputy Director of Communications	6	Add
Community Services Manager	7	Delete
Deputy Director of Community Services	7	Add
ENGINEERING SERVICES		
Director of Engineering Services/City Engineer	2, 4, 6	Delete
City Engineer	2, 4, 6	Add
City Traffic Engineer	2, 3, 4, 6	Add
FINANCE		
Revenue Manager	6	Add
HUMAN RESOURCES		
Insurance Manager	6	Delete
Risk & Safety Manager	6	Add
FIRE DEPARTMENT		
Deputy Fire Chief	7	Add
Deputy Fire Marshal	3, 7	Add
INFORMATION SYSTEMS		
Director of Information Systems	6	Delete



CITY of ESCONDIDO

STAFF REPORT

DESIGNATED POSITIONS	DISCLOSURE CATEGORY	CHANGE
Chief Information Officer	6	Add
Applications Development Manager	6	Delete
Deputy Director of Information Systems	6	Add
POLICE DEPARTMENT		
Police Business Manager	2, 3, 6	Delete
Deputy Director of Police Support Services	2, 3, 6	Add
Public Safety Communications Manager	7	Add
UTILITIES		
Director of Utilities	2, 3, 4, 6	Delete
Deputy City Manager/Director of Utilities	2, 3, 4, 6	Add
CONSULTANTS		Delete
CONSULTANTS/NEW POSITIONS		Add
New Positions	1	Add

Staff recommends updating the City’s Conflict of Interest Code, based upon the state’s model code, attached as Exhibit A to Resolution No. 2022-137. The state’s model of the Conflict of Interest Code changed in two places. Both changes reflect raising the reportable gift limit from \$500 to \$520 in a calendar year.

RESOLUTIONS

- a. 2022-137
- b. 2022-137 – Exhibit “A”

RESOLUTION NO. 2022-137

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING THE CITY'S CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT

WHEREAS, the Political Reform Act, (California Government Code section 81000, et seq.) requires the City of Escondido ("City") and all local government agencies adopt and promulgate a conflict of interest code, adopt disclosure categories, and designate those public officials and employees who must comply with the requirements of the Code; and

WHEREAS, the California Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. section 18730) that contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code; and

WHEREAS, after public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act; and

WHEREAS, on July 9, 1980, the City originally adopted the Fair Political Practices Commission's standard model Conflict of Interest Code by Resolution No. 80-141, and has continued to maintain such a code in effect, together with disclosure categories and a list of those positions subject to the requirements of the Conflict of Interest Code; and

WHEREAS, the Political Reform Act requires every local government agency to review its conflict of interest code biennially to determine whether the Code must be amended; and

WHEREAS, the City Council last revised the City's Conflict of Interest Code with Resolution No. 2020-128, and the City now desires to amend and update its Conflict of Interest Code including the

list of designated positions.

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

1. That the above recitations are true.
2. That Exhibit "A" is adopted and incorporated by this reference and shall be known as the City of Escondido Conflict of Interest Code.

City of Escondido Conflict of Interest Code

The Political Reform Act (Gov. Code Sec. 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. Sec. 18730) that contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendix, designating positions and establishing disclosure requirements, shall constitute the conflict of interest code of the City of Escondido.

Designated employees shall file their statements of economic interests with the City Clerk, who will make the statements available for public inspection and reproduction. (Gov. Code Sec. 81008) Upon receipt of the statement for those positions listed in Government Code Section 87200, the City Clerk shall make and retain copies and forward the originals to the Fair Political Practices Commission. All other statements will be retained by the City Clerk.

California Fair Political Practices Commission Standard Code

2 CCR § 18730. Provisions of Conflict of Interest Codes.

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Section 87300 or the amendment of a conflict of interest code within the meaning of Section 87306 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Sections 81000, *et seq.* The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:

Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (Regulations 18110, *et seq.*), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests.

Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Sections 87200, *et seq.*

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

- (A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;
- (B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Section 87200; and
- (C) The filing officer is the same for both agencies.¹

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in the employee's statement of economic interests those economic interests the employee has which are of the kind described in the disclosure categories to which the employee is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories are the kinds of economic interests which the employee foreseeably can affect materially through the conduct of the employee's office.

Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict of interest code.²

Section 5. Statements of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter,

each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1. If a person reports for military service as defined in the Servicemember's Civil Relief Act, the deadline for the annual statement of economic interests is 30 days following the person's return to office, provided the person, or someone authorized to represent the person's interests, notifies the filing officer in writing prior to the applicable filing deadline that the person is subject to that federal statute and is unable to meet the applicable deadline, and provides the filing officer verification of the person's military status.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

Sections 5.1, 5.2, 5.3 and 5.4. Omitted.

Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided the person did not make or participate in the making of, or use the person's position to influence any decision and did not receive or become entitled to receive any form of payment as a result of the person's appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

- (1) File a written resignation with the appointing power; and
- (2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation the person did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements.

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) Contents of Assuming Office Statements.

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later, or for a board or commission member subject to Section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to Regulation 18754.

(D) Contents of Leaving Office Statements.

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure.

When an investment or an interest in real property³ is required to be reported,⁴ the statement shall contain the following:

1. A statement of the nature of the investment or interest;
2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
3. The address or other precise location of the real property;
4. A statement whether the fair market value of the investment or interest in real property equals or exceeds \$2,000, exceeds \$10,000, exceeds \$100,000, or exceeds \$1,000,000.

(B) Personal Income Disclosure. When personal income is required to be reported,⁵ the statement shall contain:

1. The name and address of each source of income aggregating \$500 or more in value, or \$50 or more in value if the income was a gift, and a general description of the business activity, if any, of each source;
2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was \$1,000 or less, greater than \$1,000, greater than \$10,000, or greater than \$100,000;
3. A description of the consideration, if any, for which the income was received;
4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;
5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,⁶ the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;
2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than \$10,000.

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which the employee is a director, officer, partner, trustee, employee, or in which the employee holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on the member's or employee's statement of economic interests.

(B) This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(C) Subdivisions (a), (b), and (c) of Section 89501 shall apply to the prohibitions in this section.

(D) This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Section 89506.

Section 8.1. Prohibition on Receipt of Gifts in Excess of \$520.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$520 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on the member's or employee's statement of economic interests.

(B) This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(C) Subdivisions (e), (f), and (g) of Section 89503 shall apply to the prohibitions in this section.

Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of the election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of the election to office through the date that the officer vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular

course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while the official holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.
2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
3. Loans from a person which, in the aggregate, do not exceed \$500 at any given time.
4. Loans made, or offered in writing, before January 1, 1998.

Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of the officer's election to office through the date the officer vacates office, receive a personal loan of \$500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.
2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.
2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:
 - a. The date the loan was made.
 - b. The date the last payment of \$100 or more was made on the loan.
 - c. The date upon which the debtor has made payments on the loan aggregating to less than \$250 during the previous 12 months.

(B) This section shall not apply to the following types of loans:

1. A loan made to the campaign committee of an elected officer or a candidate for elective office.
2. A loan that would otherwise not be a gift as defined in this title.
3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.
4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.
5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use the employee's official position to influence the making of any governmental decision which the employee knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of the official's immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth \$2,000 or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth \$2,000 or more;

(C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$500 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

Sections 9.1 and 9.2. Omitted.

Section 9.3. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent the employee's participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make the employee's participation legally required for purposes of this section.

Section 9.4. Omitted.

Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use the official's official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of the official's immediate family has, within 12 months prior to the time when the official action is to be taken:

(A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value \$1,000 or more.

Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that the employee should not make a governmental decision because the employee has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

Section 11. Assistance of the Commission and Counsel.

Any designated employee who is unsure of the duties under this code may request assistance from the Fair Political Practices Commission pursuant to Section 83114 and Regulations 18329 and 18329.5 or from the attorney for the employee's agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

Section 12. Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Section 87100 or 87450 has occurred may be set aside as void pursuant to Section 91003.

Endnotes

¹ Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Section 81004.

² See Section 81010 and Regulation 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

³ For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

⁴ Investments and interests in real property which have a fair market value of less than \$2,000 are not investments and interests in real property within the meaning of the

Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

⁵ A designated employee's income includes the employee's community property interest in the income of the employee's spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

⁶ Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87103(e), 87300-87302, 89501, 89502 and 89503, Government Code.

APPENDIX

City of Escondido Designated Positions/Form 700 Filing Required

<u>DESIGNATED POSITIONSⁱ</u>	<u>DISCLOSURE CATEGORY</u>
CITY ATTORNEY'S OFFICE	
Assistant City Attorney	2, 4, 6
Senior Deputy City Attorney	2, 4, 6
Deputy City Attorney	2, 4, 6
CITY CLERK	
City Clerk	2, 4, 6
Assistant City Clerk	2, 4, 6
Deputy City Clerk	2, 4, 6
CITY MANAGER'S OFFICE	
Assistant City Manager	2, 4, 6
Deputy City Manager	2, 4, 6
Deputy Director of Economic Development	2, 4, 6
COMMUNITY DEVELOPMENT	
Director of Development Services	3, 4, 6
City Planner	3, 4, 6
Senior Planner	3, 4, 6
Associate Planner	3, 4, 6
Principal Planner	3, 4, 6
Building Official	3, 4, 6
Deputy Building Official	3, 4, 6
Code Compliance Manager	3, 4, 6

COMMUNITY SERVICES	
Deputy City Manager/Director of Communications & Community Services	2, 4, 6
Assistant Director of Community Services	2, 4, 6
Deputy Director of Communications	6
Deputy Director of Community Services	7
Communications Officer	6
City Librarian	6
ENGINEERING SERVICES	
City Engineer	2, 4, 6
Assistant City Engineer	2, 3, 4, 6
City Traffic Engineer	2, 3, 4, 6
Design and Construction Project Manager	2, 3, 4, 6
Principal Engineer	3, 4, 7
Real Property Manager	2, 3, 4, 6
PUBLIC WORKS	
Director of Public Works	2, 3, 4, 6
Public Works Superintendent	2, 3, 4, 6
Deputy Director of Public Works/Maintenance	2, 3, 4, 6
Building Maintenance Superintendent	3, 6
Fleet Maintenance Superintendent	3, 6
FINANCE	
Director of Finance	2, 4, 6
Finance Manager	6
Collections Officer	6
Purchasing Supervisor	6
Budget Manager	6
Revenue Manager	6

HUMAN RESOURCES	
Director of Human Resources	6
Human Resources Manager	6
Risk & Safety Manager	6
Senior Human Resources Analyst	6
FIRE DEPARTMENT	
Fire Chief	2, 3, 4, 6
Deputy Fire Chief	7
Fire Division Chief	3, 7
Fire Battalion Chief	3, 7
Fire Marshal	3, 7
Deputy Fire Marshal	3, 7
Fire Administrative Services Manager	6
Emergency/Disaster Preparedness Manager	6
Emergency Medical Services Program Coordinator	6
INFORMATION SYSTEMS	
Chief Information Officer	6
Deputy Director of Information Systems	6
Network Manager	6
Geographic Information Systems Manager	6
Public Safety Systems Manager	6
POLICE DEPARTMENT	
Chief of Police	2, 3, 6
Police Captain	2, 3, 6
Deputy Director of Police Support Services	2, 3, 6
Police Lieutenant	2, 3, 6
Public Safety Communications Manager	7

UTILITIES	
Director of Utilities	2, 3, 4, 6
Deputy Director of Utilities/Construction & Engineering	2, 3, 4, 6
Deputy Director of Utilities/Wastewater	2, 3, 4, 6
Deputy Director of Utilities/Water	2, 3, 4, 6
Utilities Construction Project Manager	2, 3, 4, 6
Canal Superintendent	3, 6
Wastewater Treatment Plant Superintendent	3, 6
Water Distribution Superintendent	3, 6
Water Treatment Plant Superintendent	3, 6
Utilities Maintenance Superintendent	3, 6
Lakes and Open Space Superintendent	3, 6
BOARDS AND COMMISSIONS	
Building Advisory and Appeals Board	3, 7
Historic Preservation Commission	3, 7
Library Board of Trustees	3, 7
Public Art Commission	3, 7
Transportation and Community Safety Commission	3, 7
Independent Districting Commission	1
CONSULTANTSⁱⁱ/NEW POSITIONSⁱⁱⁱ	
Consultants	1
New Positions	1

Disclosure Categories

Category 1: All investments, business positions, and sources of income (including loans, gifts, and travel payments) from sources located or doing business in the City of Escondido; All interests in real property located in the City of Escondido or within two miles of any land owned or used by the City of Escondido;

- Category 2: All interests in real property located in the City of Escondido;
- Category 3: All investments, interests in real property and sources of income (including loans, gifts, and travel payments) subject to the regulatory, permit or licensing authority of the City of Escondido;
- Category 4: Investments in business entities and sources of income (including loans, gifts, and travel payments) which engage in land development, construction or the acquisition or sale of real property;
- Category 5: All interests in real property located within two miles of any land owned or used by the City of Escondido;
- Category 6: Investments in business entities and sources of income (including loans, gifts, and travel payments) of the type which, within the past two years, have contracted with the City of Escondido to provide services, supplies, materials, machinery, or equipment;
- Category 7: Investments in business entities and sources of income (including loans, gifts, and travel payments) of the type which, within the past two years, have contracted with the designated employee's department or board or commission, to provide services, supplies, materials, machinery or equipment.

ⁱ *Designated Employees* are those positions within this city who may exercise independent judgment and make or participate in the making of governmental decisions which may foreseeably have a material effect on any financial interest.

The following positions are not covered by the code because they must file under Government Code Section 87200 and, therefore, are listed for informational purposes only:

- Mayor and City Council Members**
- City Manager**
- City Attorney**
- Planning Commissioners**
- City Treasurer**

Individuals holding the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices makes the final determination whether a position is covered by Government Code Section 87200.

ii *Consultant* means an individual who, pursuant to a contract with a state or local government agency:

(A) makes a governmental decision whether to

- (1) approve a rate, rule or regulation;
- (2) adopt or enforce a law;
- (3) issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order or similar authorization or entitlement;
- (4) authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval;
- (5) grant agency approval to a contract which requires agency approval and in which the agency is a party or to the specifications for such a contract;
- (6) grant agency approval to a plan, design, report, study, or similar item;
- (7) adopt, or grant agency approval of policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(B) serves in a staff capacity with the agency and in that capacity performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code.

iii Consultants/New Positions are included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation:

The City Manager or designee may determine in writing that a particular consultant or new position, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's or new position's duties and, based upon that description, a statement of the extent of disclosure requirements. Alternatively, the City Manager or designee may complete Form 805, which satisfies the requirements of 2 California Code of Regulations Section 18734. The City Manager or designee's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Gov. Code Sec. 81008.)



STAFF REPORT

September 21, 2022
File Number 0145-30

SUBJECT

CONSIDERATION OF PARTICIPATING IN THE NATIONAL LEAGUE OF CITIES

DEPARTMENT

City Clerk

RECOMMENDATION

Request the City Council discuss the consideration of participating in the National League of Cities.

Staff Recommendation: Provide Direction (City Clerk's Office: Zack Beck)

Presenter: Councilmember Joe Garcia

BACKGROUND

On August 24, 2022, Councilmember Joe Garcia requested that an item be placed on the Future Agenda for the City Council to consider participating in the National League of Cities.



CITY of ESCONDIDO

FUTURE AGENDA

9/28/2022

PROCLAMATION - NATIONAL FIRE PREVENTION WEEK, OCTOBER 9-15, 2022

CONSENT CALENDAR - (J. PERPETUA) - APPROVAL OF CALPERS INDUSTRIAL DISABILITY RETIREMENT FOR POLICE OFFICER JUSTIN P. MILLER - It is requested that the City Council adopt Resolution No. 2022-138, approving the California Public Employees' Retirement System (CalPERS) Industrial Disability Retirement for Police Officer Justin P. Miller

CONSENT CALENDAR - (J. PERPETUA) - CITYWIDE HOLIDAY CALENDAR

PUBLIC HEARING - (A. FIRESTINE) APPEAL OF PLOT PLAN APPROVAL FOR 1401 S. ESCONDIDO BOULEVARD (PL21-0304)

PUBLIC HEARING - (A. FIRESTINE) APPEAL OF PLOT PLAN APPROVAL FOR 1600 S. ESCONDIDO BOULEVARD (PL22-0032)

CURRENT BUSINESS - (J. SCHOENECK) - SIFI CONTRACT - Request the City Council Approve a Right-of-Way Encroachment Agreement with Sifi Network Oceanside, LLC to allow the installation of a citywide fiber communications system, and authorize the City Manager to execute the agreement.

CURRENT BUSINESS - (M. MCGUINNESS) LEGAL UPDATE ON SAFE SIDEWALK VENDING ACT (AB 946) AND CONSIDERATION OF LOCAL REGULATIONS - Request that the City Council receive and file report and give direction to staff on future actions, if any.

10/5/2022 - NO MEETING

10/12/2022

CONSENT CALENDAR - (A. FIRESTINE) - AWARD CONTRACT FOR CONSTRUCTION OF THE JUNIPER ELEMENTARY BIKE/PEDESTRIAN IMPROVEMENT PROJECT - It is requested that the City Council adopt Resolution No. 2022-129 awarding the contract to the lowest responsible and responsive bidder and authorizing the Mayor to execute the Public Improvement Agreement for the Juniper Elementary Bike/Pedestrian Improvement Project.

PUBLIC HEARING - (J. SCHOENECK) -ORDINANCE OF INTENT TO VACATE A PORTION OF VALLEY BOULEVARD, GRAPE STREET, FIG STREET

CURRENT BUSINESS - (J. SCHOENECK) - PARKLETS