



CITY of ESCONDIDO

COUNCIL MEETING AGENDA

WEDNESDAY, JUNE 26, 2024

4:00 PM - Closed Session (Parkview 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

Christian Garcia (District 3)

COUNCILMEMBERS

Consuelo Martinez (District 1)

Joe Garcia (District 2)

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



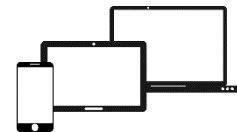
201 N. Broadway

On TV



Cox Cable Channel 19 and U-verse Channel 99

Online



www.escondido.gov



CITY of ESCONDIDO

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WEDNESDAY, JUNE 26, 2024

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, JUNE 26, 2024

CLOSED SESSION

4:00 PM

CALL TO ORDER

1. Roll Call: C. Garcia, J. Garcia, Martinez, Morasco, 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 – EXISTING LITIGATION (Government Code § 54956.9(d)(1))**
 - a. *Noah Werner, et. al v. City of Escondido*
San Diego Superior Court Case No. 37-2021-00011594-CU-OR-NC
 - b. *Jay Norris v. City of Escondido*
Workers' Compensation Claim No. 22-164106
- II. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION (Government Code § 54956.9(e)(1))**
 - a. One Matter

ADJOURNMENT



CITY *of* ESCONDIDO

COUNCIL MEETING AGENDA

WEDNESDAY, JUNE 26, 2024

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: C. Garcia, J. Garcia, Martinez, Morasco, White

PRESENTATION

Miss Escondido Court Members

PROCLAMATION

Parks and Recreation Month

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.



CITY of ESCONDIDO

COUNCIL MEETING AGENDA

WEDNESDAY, JUNE 26, 2024

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

2. APPROVAL OF WARRANT REGISTERS (COUNCIL)

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

- 384690 – 384836 dated June 12, 2024

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

3. APPROVAL OF MINUTES: None

4. WAIVER OF READING OF ORDINANCES AND RESOLUTIONS

5. AWARD CONSTRUCTION CONTRACT FOR THE RYAN PARK FIELD EXPANSION AND LED LIGHTING RETROFIT PROJECT

Request the City Council adopt Resolution No. 2024-51 awarding the Ryan Park Field Expansion and LED Lighting Retrofit Project (“Project”) to ACE Electric, Inc. determined to be the lowest responsible and responsive bidder, and authorizing the Mayor, on behalf of the City, to execute a Public Improvement Agreement in the amount of \$495,000.

Staff Recommendation: Approval (Development Services Department: Christopher McKinney, Deputy City Manager/Interim Director of Development Services and Owen Tunnell, Interim City Engineer)

Presenter: Owen Tunnell, Interim City Engineer

a) Resolution No. 2024-51

6. ON-CALL DEVELOPMENT SERVICES CONTRACT AWARD

Request the City Council adopt Resolution No. 2024-82, authorizing the Mayor to execute, on behalf of the City, a Consulting Agreement with Glenn A. Rick Engineering and Development Company, a California corporation (“Rick Engineering”), for one-year with three (3) options to extend the Consulting Agreement for one (1) year each in an amount not to exceed \$539,340.

Staff Recommendation: Approval (Development Services Department: Christopher McKinney, Deputy City Manager/Interim Director of Development Services)

Presenter: Megan Crooks, Management Analyst

a) Resolution No. 2024-82



CITY of ESCONDIDO

COUNCIL MEETING AGENDA

WEDNESDAY, JUNE 26, 2024

7. APPROVAL OF AGREEMENT WITH LIBRARY SYSTEMS & SERVICES LLC. TO OPERATE THE ESCONDIDO PUBLIC LIBRARY THROUGH JUNE 30, 2026 AND TERMINATION OF EXISTING PROFESSIONAL SERVICES AGREEMENT

Request the City Council adopt Resolution No. 2024-87 terminating the existing Professional Services Agreement (“PSA”) with Library Systems and Services (“LS&S”) for the operation of the Escondido Public Library effective June 30, 2024; and adopt Resolution No. 2024-85 authorizing the Mayor to execute a new Professional Services Agreement (“Agreement”) with LS&S effective July 1, 2024 through June 30, 2026.

Staff Recommendation: Approval (Community Services Department: Jennifer Schoeneck, Director of Economic Development)

Presenter: Robert Rhoades, Assistant Director of Community Services

a) Resolution 2024-85

b) Resolution No. 2024-87

8. FISCAL YEAR 2024-2029 COUNTY OF SAN DIEGO CALIFORNIA IDENTIFICATION (CAL-ID) PROGRAM SPECIALIST FUNDING AND BUDGET ADJUSTMENT

Request the City Council adopt Resolution No. 2024-80 and accept funding from the County of San Diego for the Fiscal Year 2024-2029 California Identification (“Cal-ID”) Program Specialist; authorize the Mayor to execute contract documents on behalf of the City of Escondido; and approve budget adjustments related to reimbursement funding.

Staff Recommendation: Approval (Police Department: Edward Varso, Chief of Police)

Presenter: Edward Varso, Chief of Police

a) Resolution No. 2024-80

9. BID AWARD FOR RFB NO. 24-10 LIVE CHANNEL CATFISH

Request the City Council adopt Resolution No. 2024-81, authorizing the Mayor to execute, on behalf of the City of Escondido (“City”), a Public Services Agreement with Imperial Catfish for the purchase of Live Channel Catfish to stock Dixon Lake and Lake Wohlford (“Agreement”) in an amount not to exceed \$375,900.

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

Presenter: Brian Thill, Lakes and Open Space Manager

a) Resolution No. 2024-81



CITY of ESCONDIDO

COUNCIL MEETING AGENDA

WEDNESDAY, JUNE 26, 2024

PUBLIC HEARINGS

10. SHORT-FORM RENT INCREASE APPLICATION FOR WESTWINDS MOBILEHOME PARK (FILE NO. 0697-20-10302)

Request the City Council hold a public hearing to review and consider Westwinds Mobilehome Park Short-Form Application and adopt Resolution No. RRB 2024-61.

Staff Recommendation: Approval (Development Services Department: Christopher McKinney, Deputy City Manager/Interim Director of Development Services)

Presenter: Danielle Lopez, Housing and Neighborhood Services Manager

a) Resolution No. RRB 2024-61

11. CONSIDERATION AND INTRODUCTION OF ORDINANCE REGULATING ENCAMPMENTS ON PUBLIC PROPERTY

Request the City Council introduce and adopt Ordinance No. 2024-06 repealing Escondido Municipal Code § 17-8 and enacting Escondido Municipal Code §§ 17-8.1 through 17-8.7 relating to regulations of encampments on public property.

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

Presenter: Michael McGuinness, City Attorney

a) Ordinance No. 2024-06 (First Reading and Introduction)

CURRENT BUSINESS

12. RATIFICATION OF LOCAL EMERGENCY PROCLAMATION AND APPROVE EMERGENCY REPAIRS OF THE TRUNK SEWER MAIN PIPELINE

Request the City Council adopt Resolution No. 2024-86, ratifying Proclamation No. 2024-02 by the Director of Emergency Services and declaring that pursuant to the California Public Contract Code and Escondido Municipal Code, the City Council affirms that it was appropriate for City staff to forego competitive bidding procedures and to award a contract for emergency repairs of sections of the trunk sewer pipeline.

Staff Recommendation: Approval (Utilities Department: Angela Morrow, Director of Utilities)

Presenter: Stephanie Roman, Principal Engineer

a) Resolution No. 2024-86



CITY of ESCONDIDO

COUNCIL MEETING AGENDA

WEDNESDAY, JUNE 26, 2024

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)

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.gov.

ORAL COMMUNICATIONS

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ADJOURNMENT

UPCOMING MEETING SCHEDULE

Wednesday, July 10, 2024 4:00 & 5:00 PM Closed Session, Regular Meeting, *Council Chambers*
Wednesday, July 17, 2024 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.



AFFIDAVITS
OF
ITEM
POSTING – NONE



STAFF REPORT

June 26, 2024
File Number 0400-40

SUBJECT

APPROVAL OF WARRANT REGISTERS (COUNCIL)

DEPARTMENT

Finance

RECOMMENDATION

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

384690 – 384836 dated June 12, 2024

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

ESSENTIAL SERVICE – Internal requirement per Municipal Code Section 10-49

COUNCIL PRIORITY –

FISCAL ANALYSIS

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

June 6, 2024 – June 12, 2024 is \$3,021,433.41

PREVIOUS ACTION – None

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

June 26, 2024

APPROVAL
OF
MINUTES



STAFF REPORT

ITEM NO. 4

SUBJECT

WAIVER OF READING OF ORDINANCES AND RESOLUTIONS –

ANALYSIS

The City Council/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

June 26, 2024

File Number 0600-10; A-3514

SUBJECT

AWARD CONSTRUCTION CONTRACT FOR THE RYAN PARK FIELD EXPANSION AND LED LIGHTING RETROFIT PROJECT

DEPARTMENT

Development Services

RECOMMENDATION

It is requested that the City Council adopt Resolution No. 2024-51 awarding the Ryan Park Field Expansion and LED Lighting Retrofit Project (“Project”) to ACE Electric, Inc. determined to be the lowest responsible and responsive bidder, and authorizing the Mayor, on behalf of the City, to execute a Public Improvement Agreement in the amount of \$495,000.

Staff Recommendation: Approval (Chris Mc Kinney, Deputy City Manager and Owen Tunnell, Acting City Engineer)

Presenter: Owen Tunnell, Interim City Engineer

ESSENTIAL SERVICE – Yes, Maintenance of Parks Facilities/Open Spaces

COUNCIL PRIORITY – Increase Retention and Attraction of People and Businesses to Escondido

FISCAL ANALYSIS

Adequate funding for this contract and its administration is programmed in the Capital Improvement Project budget, that includes American Rescue Plan Act Funds and Park Development Funds.

PREVIOUS ACTION

None

BACKGROUND

This project consists of installation of City-procured Musco sports light poles and LED retrofit to be compatible and upgraded with the existing Musco light fixtures at the Ryan Field Park. This includes furnishing and installation of lighting cabinets, foundations including installation of controls and related equipment.



CITY of ESCONDIDO

STAFF REPORT

This will increase usability during the winter months and provide additional field space for practices, tournaments and public use in the late afternoon and evening hours when demand is highest for field space.

On May 9, 2024, one sealed bid was received in response to the advertised request for bids for the Project. Staff reached out to other contractors however due to high demand and limited bidding resources in this specialized field, the City received only one Bid. Staff recommends awarding the construction contract at this time.

The total for the one bid submitted is listed below:

ACE Electric, Inc	\$495,000
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Staff has evaluated the bids and determined that the bid submitted by ACE Electric, Inc is the lowest responsive and responsible bid. The lowest bid was 8 percent higher than the Engineer’s Estimate of \$455,000. Staff recommends that the bid submitted by ACE Electric, Inc. be considered the lowest responsive and responsible bid, and that a contract be awarded in the amount of \$495,000.

RESOLUTIONS

- a. Resolution No. 2024-51
- b. Resolution No. 2024-51 – Exhibit “A” – Public Improvement Agreement

RESOLUTION NO. 2024-51

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 RYAN PARK FIELD EXPANSION AND LED LIGHTING RETROFIT PROJECT

WHEREAS, the City Council has allocated funding in the adopted Capital Improvement Program budget for the Ryan Park Field Expansion and LED Lighting Retrofit (“Project”); and

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

WHEREAS, pursuant to said notice, one sealed bid for the project was opened and evaluated on May 9, 2024; and

WHEREAS, ACE Electric, Inc., was determined to be the lowest responsive and responsible bidder; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to authorize a Public Improvement Agreement with ACE Electric, Inc. in the amount of \$495,000.

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

1. That the above recitations are true.
2. That the City Council authorizes the Mayor to execute, on behalf of the City, a Public Improvement Agreement with ACE Electric, Inc. 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 the last date of signature below (“Effective Date”),

Between: CITY OF ESCONDIDO
a California municipal corporation
201 N. Broadway
Escondido, CA 92025
Attn: Ani Mehra
760-839-4096
("CITY")

And: Ace Electric, Inc.
a California corporation
6061 Fairmount Avenue
San Diego, CA 92120
Attn: Christopher Hinds
619-521-9740
("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 Ryan Park Field Expansion and LED Lighting Retrofit Project (“Project”), located at Ryan Park and having assessor’s parcel number (APN) 2401105200 (“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 **\$495,000** ("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 within **45 working days** after Notice to Proceed. 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 **\$1,000 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) 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.

1. The Parties acknowledge that Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") administrated by the U.S Department of Treasury ("Federal Awarding Agency") under the American Rescue Plan Act of 2021 ("ARPA") will be used to fund all or a portion of this Agreement. The CONTRACTOR shall comply with all applicable federal laws, regulations, executive orders, policies, procedures, and directives relating to such federal funds.
2. Equal Employment Opportunity. During the performance of this Agreement, the contractor agrees as follows:
 - a. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - b. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - c. The CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
 - d. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - e. The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - f. The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of

Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- g. In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h. The CONTRACTOR will include the portion of the sentence immediately preceding subpart a of this section and the provisions of subparts a through h in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

3. Compliance with the Davis-Bacon Act.

- a. All transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The CONTRACTOR shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week

4. Compliance with the Copeland "Anti-Kickback" Act.

- a. Contractor. The CONTRACTOR shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.
- b. Subcontracts. The CONTRACTOR and any subcontractors shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

5. Clean Air Act. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. CONTRACTOR agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Awarding Agency, and the appropriate Environmental Protection Agency Regional Office. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the Federal Awarding Agency.

6. Federal Water Pollution Control Act. CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. CONTRACTOR agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Awarding Agency, and the appropriate Environmental Protection Agency Regional Office. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the Federal Awarding Agency.

7. Debarment and Suspension.

- a. This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, CONTRACTOR is required to verify that none of CONTRACTOR's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. CONTRACTOR shall comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction CONTRACTOR enters into.
- c. This certification is a material representation of fact relied upon by the CITY. If it is later determined that CONTRACTOR did not comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, in addition to remedies available to the CITY, the federal

government may pursue available remedies, including but not limited to suspension and/or debarment.

- d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).

- a. Prior to entering into this Agreement, CONTRACTOR shall file the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended)). Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the Federal Awarding Agency.
- b. Required Certification. At the time CONTRACTOR executes this Agreement, CONTRACTOR shall provide the CITY with a completed Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying. A blank Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying is attached to this Agreement as Attachment "A" and incorporated herein by this reference.

9. Procurement of Recovered Materials. In the performance of this Agreement, CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (1) competitively within a timeframe providing for compliance with the Agreement's performance schedule, (2) meeting Agreement performance requirements, or (3) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines website, located at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. CONTRACTOR shall also comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

10. Access to Records. The following access to records requirements apply to this Agreement: (1) CONTRACTOR agrees to provide the CITY, the Federal Awarding Agency Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of CONTRACTOR that are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. CONTRACTOR agrees to provide the Federal Awarding Agency Administrator or their authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement. In compliance with the Disaster Recovery Act of 2018, the CITY and CONTRACTOR acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the Federal Awarding Agency Administrator or the Comptroller General of the United States.

11. Federal Awarding Agency Seal, Logo, and Flags. CONTRACTOR shall not use the Federal Awarding Agency seal(s), logos, crests, or reproductions of flags or likenesses of Federal Awarding Agency officials without specific Federal Awarding Agency pre-approval.

12. No Obligation by Federal Government. The United States Federal Government is not a party to this Agreement and is not subject to any obligations or Agreement to the CITY, CONTRACTOR, or any other party pertaining to any matter resulting from this Agreement.

13. Program Fraud and False or Fraudulent Statements or Related Acts. CONTRACTOR acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to CONTRACTOR's actions pertaining to 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.

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

CITY OF ESCONDIDO

Date: _____

Dane White, Mayor

Ace Electric Inc.

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.

ATTACHMENT "A"

Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Ace Electric, Inc., a California corporation ("Contractor"), certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date



Bond No.: _____
Premium: _____

FAITHFUL PERFORMANCE BOND

KNOW ALL BY THESE PRESENTS,

WHEREAS, The City Council of the City of Escondido, State of California, and Ace Electric Inc., a California Corporation ("Principal"), have entered into that certain Public Improvement Agreement dated _____ ("Agreement," hereby referred to and made a part hereof), whereby Principal has agreed to install and complete certain designated public improvements associated with the Ryan Park Field Expansion and LED Lighting Retrofit Project.

WHEREAS, the Principal is required under the terms of the Agreement to furnish a bond for the faithful performance of the Agreement.

NOW, THEREFORE, we, the Principal and _____, a _____ organized and existing under the laws of the State of California and authorized to act as a surety in the State of California ("Surety"), are held and firmly bound unto the City of Escondido, a California municipal corporation ("City") in the penal sum of four hundred and ninety five thousand dollars and zero cents (\$495,000), lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

THE CONDITION of this obligation is such that if the Principal, or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and provisions in the Agreement and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and the Surety hereby waives notice of any such change, extension of time, alteration, or addition to the terms of the Agreement or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, as of this _____ day of _____, 2024.

Name of Principal

By: _____
Signature of Person Signing on Behalf of Principal

Address of Principal

Name of Person Signing on Behalf of Principal

Title of Person Signing on Behalf of Principal

Name of Surety

By: _____
Signature of Person Signing on Behalf of Surety

Address of Surety

Name of Person Signing on Behalf of Surety

Title of Person Signing on Behalf of Surety

(ACKNOWLEDGMENTS OF EXECUTION BY PRINCIPALS AND SURETY MUST BE ATTACHED.)

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

BY: _____



Bond No.: _____
Premium: _____

LABOR AND MATERIALS BOND

KNOW ALL BY THESE PRESENTS,

WHEREAS, The City Council of the City of Escondido, State of California, and Ace Electric Inc. a California Corporation ("Principal"), have entered into a that certain Public Improvement Agreement dated _____ ("Agreement," hereby referred to and made a part hereof), whereby Principal has agreed to install and complete certain designated public improvements associated with the Ryan Park Field Expansion and LED Lighting Retrofit Project.

WHEREAS, under the terms of the Agreement, the Principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Escondido, a California municipal corporation ("City"), to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

NOW, THEREFORE, the Principal and _____, a _____ organized and existing under the laws of the State of California and authorized to act as a surety in the State of California ("Surety"), are held firmly bound unto the City and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the Agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of four hundred and ninety five thousand dollars and zero cents (\$495,000), lawful money of the United States of America, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

If the condition of this bond is fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, as of this _____ day of _____, 2024.

Name of Principal

By: _____
Signature of Person Signing on Behalf of Principal

Address of Principal

Name of Person Signing on Behalf of Principal

Title of Person Signing on Behalf of Principal

Name of Surety

By: _____
Signature of Person Signing on Behalf of Surety

Address of Surety

Name of Person Signing on Behalf of Surety

Title of Person Signing on Behalf of Surety

(ACKNOWLEDGMENTS OF EXECUTION BY PRINCIPALS AND SURETY MUST BE ATTACHED.)

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

BY: _____



City of Escondido
Business License Division
201 N Broadway
Escondido, CA 92025

CITY OF ESCONDIDO BUSINESS LICENSE CERTIFICATE

Item5.

Ace Electric, Inc.
PO Box 601071
San Diego, CA 92160

Business License No: 208849
Expiration Date: 07/31/2024
Business Type: CONTRACT
Ownership: CORPORATION

IMPORTANT INFORMATION

- Please verify all information. If any changes occur, please contact the Business License Division at (760) 839-4659.
- Remember to renew your Business License within one month of the Expiration Date, even if you don't receive a Renewal Notice. Payments postmarked or paid on-line after the Penalty Date will incur late penalties of 25% per month.
- Closing your business or no longer working in Escondido? You must sign, date and return your Renewal Notice to close your account.
- Please display the Certificate below in public view.
- Escondido's business licenses are issued for revenue purposes. The issuance or possession of a license confers no rights or privileges and only serves to prove that a business tax has been paid for the period specified on the license certificate. Licenses are not deemed regulatory in any way and are not proof of compliance with zoning, building, or any other regulations of the city.
- Pursuant to California state law AB 1607 and Civil Code Section 51.6(g), the City is concurrently providing you with a notice regarding prohibitions on gender-based discrimination and related posting requirements for your business on the following pages.

Thank you for doing business in the City of Escondido!

FOLD OR DETACH HERE FOR DISPLAY

BUSINESS LICENSE CERTIFICATE

This certificate is to be displayed at your place of business. It is issued without verification that the holder is subject to or exempt from licensing by the State of California. This certificate does not constitute a permit to operate a business in violation of any law or ordinance.

Business License Number: 208849

Business Name: Ace Electric Inc
Business Location: 6061 Fairmount Ave
San Diego, CA 92120
Business Phone: 619-814-4763
Owner/Officer: Christopher Hinds
NPDES:



CITY OF ESCONDIDO

201 N Broadway
Escondido, CA 92025
(760) 839-4659

Expiration Date: 07/31/2024
NAICS#: 238210 - Electrical Contractors and
Other Wiring Installation Contractors

SIC#: 1731 - Electrical Work

Conditions/Remarks:

POST IN A CONSPICUOUS PLACE - NOT TRANSFERABLE



CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Cavnagac 451 A Street, Suite 1800 San Diego CA 92101	CONTACT NAME: Certificate Department PHONE (A/C No. Ext): 619-744-0574 FAX (A/C, No): 619-234-8601 E-MAIL ADDRESS: certificates@cavnagac.com	
	INSURER(S) AFFORDING COVERAGE	
INSURED Ace Electric, Inc. PO Box 601071 San Diego, CA 92160	INSURER A: Travelers Property Casualty Company of America ACEEL00001	NAIC # 25674
	INSURER B: Arch Insurance Company	11150
	INSURER C: Continental Casualty Co.	20443
	INSURER D: Berkley Assurance Company	39462
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 2100445371

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	Y	ZAGLB9263000	10/1/2023	10/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	ZACAT9303400	10/1/2023	10/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP1X468835	10/1/2023	10/1/2024	EACH OCCURRENCE \$ 8,000,000 AGGREGATE \$ 8,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	ZAWCI9763400	10/1/2023	10/1/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Scheduled Equipment			7040177642	10/1/2023	10/1/2024	Limit \$267,034
D	Professional Liability			PCXDB50242981023	10/18/2023	10/1/2024	Each Claim/ Aggregate \$2,000,000
D	Pollution Liability			PCXDB50242981023	10/18/2023	10/1/2024	Each Occ./ Aggregate \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Ryan Park Field Expansion and LED Lighting Retrofit Project. Additional Insured coverage applies to General Liability and Automobile Liability for the City of Escondido (including its officials, officers, agents, employees, and volunteers) per policy form. Primary coverage applies to General Liability and Automobile Liability per policy form. Waiver of subrogation applies to General Liability, Automobile Liability, and Workers Compensation per policy form. Excess/Umbrella policy follows form over underlying policies: General Liability, Auto Liability & Employers Liability (additional insured and waiver of subrogation apply when afforded on underlying policies). Property - Special form, replacement cost. Professional Liability - Claims made form, defense costs included within limit. Pollution Liability is included in the Professional Liability policy. If the insurance company elects to cancel or non-renew coverage for any reason other than nonpayment of premium Cavnagac will provide 30 days notice of such cancellation or nonrenewal.

CERTIFICATE HOLDER**CANCELLATION**

City of Escondido
 201 N. Broadway
 Escondido CA 92025

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

SCHEDULE

Name of Person(s) or Organization(s):

AS AGREED PER WRITTEN CONTRACT OR WRITTEN
AGREEMENT

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

Under **Covered Autos Liability Coverage**, the **Who is An Insured** provision is amended to include as an "insured" the person(s) or organization(s) named in the Schedule above, but only with respect to their legal liability for your acts or omissions or acts or omissions of any person for whom **Covered Auto Liability Coverage** is afforded under this policy.

All other terms and conditions of this Policy remain unchanged.

Endorsement Number:

Policy Number: ZACAT9303400

Named Insured: ACE ELECTRIC, INC.

This endorsement is effective on the inception date of this Policy unless otherwise stated herein:

Endorsement Effective Date: 10/1/2023

POLICY NUMBER: ZACAT9303400

COMMERCIAL AUTO
CA 04 44 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: Ace Electric, Inc.
Endorsement Effective Date: 10/01/2023

SCHEDULE

Name(s) Of Person(s) Or Organization(s): AS AGREED PER WRITTEN CONTRACT OR WRITTEN AGREEMENT
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

Policy No. ZACAT9303400

**COMMERCIAL AUTO
CA 04 49 11 16**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- A.** The following is added to the **Other Insurance Condition** in the Business Auto Coverage Form and the **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form and supersedes any provision to the contrary:
- This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:
1. Such "insured" is a Named Insured under such other insurance; and
 2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".
- B.** The following is added to the **Other Insurance Condition** in the Auto Dealers Coverage Form and supersedes any provision to the contrary:
- This Coverage Form's Covered Autos Liability Coverage and General Liability Coverages are primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:
1. Such "insured" is a Named Insured under such other insurance; and
 2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

POLICY NUMBER: ZAGLB9263000

COMMERCIAL GENERAL LIABILITY
CG 20 10 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
AS AGREED PER WRITTEN CONTRACT OR WRITTEN AGREEMENT	ANY PREMISES WHERE REQUIRED BY WRITTEN CONTRACT

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

POLICY NUMBER: ZAGLB9263000

COMMERCIAL GENERAL LIABILITY
CG 20 37 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
AS AGREED PER WRITTEN CONTRACT OR WRITTEN AGREEMENT	ANY PREMISES WHERE REQUIRED BY WRITTEN CONTRACT
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

Policy No. ZAGLB9263000

**COMMERCIAL GENERAL LIABILITY
CG 20 01 04 13**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY –
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

POLICY NUMBER: ZAGLB9263000

COMMERCIAL GENERAL LIABILITY
CG 24 04 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
ELECTRONIC DATA LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES
POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

SCHEDULE

Name Of Person(s) Or Organization(s):

AS AGREED PER WRITTEN CONTRACT OR WRITTEN AGREEMENT

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions:**

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

POLICY NUMBER: **ZAWCI9763400**

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT - CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be **2** % of the California workers' compensation premium otherwise due on such remuneration.

SCHEDULE

PERSON OR ORGANIZATION

JOB DESCRIPTION

AS AGREED BY WRITTEN CONTRACT OR WRITTEN AGREEMENT

ALL JOBS UNDER CONTRACT

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. (The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **10-01-23** Policy No. **ZAWCI9763400** Endorsement No.
Insured **ACE ELECTRIC, INC.** Premium \$ **INCL.**
Insurance Company **ARCH INSURANCE COMPANY**

Countersigned By _____

DATE OF ISSUE: **09-28-23**

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

(Ed. 4-84)

POLICY NUMBER: ZAWCI9763400

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

AS AGREED BY WRITTEN CONTRACT OR WRITTEN AGREEMENT

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 10/01/2023

Policy No. ZAWCI9763400

Endorsement No.

Insured ACE ELECTRIC, INC.

Premium INCL.

Insurance Company ARCH INSURANCE COMPANY

DATE OF ISSUE: 09-28-23

Countersigned By _____

WC 00 03 13

(Ed. 4-84)

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STAFF REPORT

June 26, 2024

File Number 0600-10; A-3515

SUBJECT

ON-CALL DEVELOPMENT SERVICES CONTRACT AWARD

DEPARTMENT

Development Services Department

RECOMMENDATION

Request the City Council adopt Resolution No. 2024-82, authorizing the Mayor to execute, on behalf of the City, a Consulting Agreement with Glenn A. Rick Engineering and Development Company, a California corporation ("Rick Engineering"), for one-year with three (3) options to extend the Consulting Agreement for one (1) year each in an amount not to exceed \$539,340.

Staff Recommendation: Approval (Development Services: Christopher McKinney, Deputy City Manager)

Presenter: Megan Crooks, Management Analyst

ESSENTIAL SERVICE – Yes, Land Use/Development; Clean Water; Sewer

COUNCIL PRIORITY – Encourage Housing Development

FISCAL ANALYSIS

For FY 2024/25, the Planning Division has budgeted \$250,000 for contract consultant services to provide additional staffing capacity and technical assistance in the event that the quantity and complexity of entitlement applications received by the City of Escondido ("City") exceed the capacity and capability of City staff to manage and process. For FY 2024/25, the Engineering Division budgeted the same amount for similar purposes. The Planning Division is awaiting a grant extension award from the San Diego Association of Governments ("SANDAG") in the amount of \$175,000.

The contract award totals \$539,340 and is split between Engineering for \$166,680 and Planning for \$200,000 with the remaining \$172,660 reserved for a one-time contingent scope item pending approval of grant funds. Services would be paid for by the division utilizing the services. The Engineering Division budget will have \$83,320 remaining in the professional services budget for additional consultant services for areas where greater expertise in certain subject matters may be needed. Based on capacity and availability of the consultant, the total contract authorization for Rick Engineering over the one-year term of the contract is not to exceed \$539,340.



CITY of ESCONDIDO

STAFF REPORT

PREVIOUS ACTION

The City currently contracts with Rick Engineering for on-call consultant services for staff augmentation in order to address capacity limitations within the Planning Division. The contract was entered into in June 2022 for a term of six months, and was extended twice to an expiration date of December 30, 2023. Staff has engaged a new contract to see the Planning on-call services through to June 30, 2024.

The City of Escondido released a Request for Proposals (“RFP”) for on-call development services on April 6, 2023, including: 1) building permit plan check review services and building permit inspections; 2) on-call environmental services; and 3) on-call staffing in support of planning and engineering land development functions. The City received a total of eight proposals directed toward on-call staffing in support of planning and engineering land development functions. The proposals were reviewed by a committee and evaluated not only the experience of the firms in the provision of on-call staffing support functions, but their capacity to serve the City of Escondido and ability to meet the City’s service expectations. Following this review, Rick Engineering was identified as the most qualified in the ability to meet the City’s service needs.

BACKGROUND

The City of Escondido Development Services Department (“Department”) integrates all land development planning, engineering, and building decisions in one department to streamline services to the public and the construction industry. The Department is responsible for all plan check review and inspections of commercial and residential construction projects; preparation and peer-review of environmental documents and technical studies pursuant to the California Environmental Quality Act (“CEQA”) and other environmental regulations; review and analysis of planning and land development engineering applications, land alteration, review and approval of tentative and final tract maps and parcel maps, street vacations/dedications, lot line adjustment/parcel map waivers, and related documents for compliance with the California State Subdivision Map Act; and review of storm water quality management plans (“SWQMP”) for land development projects in conformance with the Escondido Storm Water Design Manual and Municipal Separate Storm Sewer System (MS4) Permit.

The Department’s services are critical to ensuring construction projects within the City are processed in a safe, efficient, and legally compliant manner. Contracted services are an integral part of the performance of the Department. The Planning and Engineering divisions have experienced significant challenges in terms of capacity and workload. While the Department has been successful in filling several positions, new vacancies have occurred therefore the need for continued contract services is present.

The Engineering Division will utilize on-call services specific for the expertise in reviewing SWQMPs for land development projects which will allow staff to focus on other areas of the land development review process. The Planning Division will utilize on-call services for review of planning entitlement applications, expertise in areas such as historical preservation and accessory dwelling units which is a high-volume



CITY of ESCONDIDO

STAFF REPORT

counter service, and for the provision of third-party review of environmental documents. Additionally, should the Planning Division receive approval of the SANDAG grant extension, the on-call services will be assigned to complete the mandated Safety and Environmental Justice Elements of the General Plan and produce the appropriate environmental document which is a project that has previously not been completed due to the lack of staffing capacity.

RESOLUTIONS

- a. Resolution No. 2024-82
- b. Resolution No. 2024-82- Exhibit "A"- Consulting Agreement

RESOLUTION NO. 2024-82

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, A CONSULTING AGREEMENT TO GLENN A. RICK ENGINEERING AND DEVELOPMENT COMPANY FOR ON-CALL CONSULTANT SERVICES FOR ADDITIONAL STAFFING CAPACITY AND TECHNICAL ASSISTANCE FOR THE DEVELOPMENT SERVICES DEPARTMENT

WHEREAS, the City of Escondido (“City”) desires to engage the services of a consultant to provide additional staffing capacity and technical assistance for the Planning and Engineering divisions of the Development Services Department (“Department”); and

WHEREAS, a notice soliciting firms to respond to the Request for Proposal was duly published; and

WHEREAS, the City received eight timely responses to the Request for Proposal; and

WHEREAS, Glenn A. Rick Engineering and Development Company was determined to be the most qualified consultant to provide the best value to the City; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to authorize the Mayor to execute a consulting agreement with Glenn A. Rick Engineering and Development Company in the amount not to exceed \$539,340.

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 Mayor is authorized to execute, on behalf of the City, a consulting agreement with

Glenn A. Rick Engineering and Development Company, which is attached and incorporated to this Resolution as Exhibit "A", and subject to final approval as to form by the City Attorney.

3. That the City Manager retains the authority to approve contract amendments in accordance with the Municipal Code.



CITY OF ESCONDIDO
CONSULTING AGREEMENT

This Consulting Agreement (“Agreement”) is made and entered into as of the last signature date set forth below (“Effective Date”),

Between: CITY OF ESCONDIDO
a California municipal corporation
201 N. Broadway
Escondido, CA 92025
Attn: Megan Crooks, Management Analyst II
760-839-4021
("CITY")

And: GLENN A. RICK ENGINEERING AND DEVELOPMENT CO.
a California corporation
5620 Friars Road
San Diego, CA 92110
Attn: Brooke Peterson
619-291-0707
("CONSULTANT").

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

WHEREAS, the CITY has determined that it is in the CITY’s best interest to retain the professional services of a consultant to provide on-call services in the areas of storm water plan review, planning entitlement application review, environmental document review and planning policy expertise; and

WHEREAS, CONSULTANT is considered competent to perform the necessary professional services for the CITY; and

WHEREAS, the CITY and CONSULTANT desire to enter into this Agreement for the performance of the Services 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. Description of Services. CONSULTANT shall furnish all of the Services described in the Scope of Work, which is attached to this Agreement as Attachment “A” and incorporated herein by this reference (“Services”).

2. Compensation. In exchange for CONSULTANT's completion of the Services, the CITY shall pay, and CONSULTANT shall accept in full, an amount not to exceed the sum of **\$539,340**. CONSULTANT shall be compensated only for performance of the Services described in this Agreement. No compensation shall be provided for any other work or services without the CITY's prior written consent. If this Agreement is amended at any time, additional compensation of CONSULTANT contained in any subsequent amendments shall not exceed a cumulative total of 25% of the maximum payment provided for in this Section 2, unless approved by resolution of the City Council.
3. Performance. CONSULTANT shall faithfully perform the Services in a proficient manner, to the satisfaction of the CITY, and in accord with the terms of this Agreement. CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other information furnished by CONSULTANT pursuant to this Agreement, except that CONSULTANT shall not be responsible for the accuracy of information supplied by the CITY.
4. Personnel. The performance of the Services by certain professionals is significant to the CITY. As such, CONSULTANT shall only assign the persons listed on Attachment "B", attached to this Agreement and incorporated herein by this reference ("Personnel List"), to perform the Services. CONSULTANT shall not add or remove persons from the Personnel List without the City's prior written consent. If CONSULTANT has not designated a person to perform a component of the Services, CONSULTANT shall not assign such component of the Services to a person without obtaining the City's prior written consent. CONSULTANT shall not subcontract any component of the Services without obtaining the City's prior written consent.
5. Termination. The Parties may mutually terminate this Agreement through a writing signed by both Parties. The CITY may terminate this Agreement for any reason upon providing CONSULTANT with 10 days' advance written notice. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of any notice of termination. If the CITY terminates this Agreement due to no fault or failure of performance by CONSULTANT, then CONSULTANT shall be compensated based on the work satisfactorily performed at the time of such termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the Services.
6. City Property. All original documents, drawings, electronic media, and other materials prepared by CONSULTANT pursuant to this Agreement immediately become the exclusive property of the CITY, and shall not be used by CONSULTANT for any other purpose without the CITY's prior written consent.
7. Insurance Requirements.
 - a. CONSULTANT 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 Services, and the results of such work, by CONSULTANT, 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 00 01 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 general aggregate.
 - (2) *Automobile Liability.* ISO Form CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage, unless waived by the CITY and approved in writing by the CITY's Risk and Safety Division.

- (3) *Workers' Compensation.* Worker's 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) *Professional Liability (Errors and Omissions).* Professional Liability (Errors and Omissions) appropriate to CONSULTANT's profession, with limits no less than \$2,000,000 per occurrence or claim and \$2,000,000 aggregate.
 - (5) If CONSULTANT 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 CONSULTANT.
- b. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:
- (1) *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-: FSC VII, or as approved by the CITY.
 - (2) *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 endorsement shall be at least as broad as ISO Form CA 20 01.
 - (3) *Primary Coverage.* CONSULTANT'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 CONSULTANT's insurance and shall not contribute with it.
 - (4) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.
 - (5) *Subcontractors.* If applicable, CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated within this Agreement, and CONSULTANT shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.
 - (6) *Waiver of Subrogation.* CONSULTANT hereby grants to the CITY a waiver of any right to subrogation that any insurer of CONSULTANT may acquire against the CITY by virtue of the payment of any loss under such insurance. CONSULTANT 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 CONSULTANT, its agents, representatives, employees, and subcontractors.
 - (7) *Self-Insurance.* CONSULTANT 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. CONSULTANT shall only be permitted to utilize such self-insurance if, in the opinion of the CITY, CONSULTANT's (i) net worth and (ii) reserves for payment of claims of liability against CONSULTANT are sufficient to adequately compensate for the lack of

other insurance coverage required by this Agreement. CONSULTANT's utilization of self-insurance shall not in any way limit the liabilities assumed by CONSULTANT pursuant to this Agreement.

(8) *Self-Insured Retentions*. Self-insured retentions must be declared to and approved by the CITY.

- c. *Verification of Coverage*. At the time CONSULTANT executes this Agreement, CONSULTANT 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 in this Agreement, including the types and limits of insurance coverage CONSULTANT 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 CONSULTANT pursuant to this Agreement, including but not limited to any provisions in this Agreement concerning indemnification.
- f. 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. In the event that CONSULTANT fails to comply with any such insurance requirements 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 CONSULTANT to stop work under this Agreement and/or withhold any payment that becomes due to CONSULTANT until CONSULTANT demonstrates compliance with the insurance requirements in this Agreement.

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

- a. CONSULTANT (including CONSULTANT'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 CONSULTANT's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except where caused by the sole negligence or willful misconduct of the CITY.
- b. CONSULTANT (including CONSULTANT'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 8 shall survive the termination of this Agreement.

9. Anti-Assignment Clause. Because the CITY has relied on the particular skills of CONSULTANT in entering into this Agreement, CONSULTANT shall not assign, delegate, subcontract, or otherwise transfer any duty or right under this Agreement, including as to any portion of the Services, without the CITY's prior written consent. Any purported assignment, delegation, subcontract, or other transfer made without the CITY's consent shall be void and ineffective. Unless CONSULTANT assigns this entire Agreement, including all rights and duties herein, to a third party with the CITY's prior written consent, CONSULTANT shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.
10. 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.
11. Independent Contractor. CONSULTANT is an independent contractor, and no agency or employment relationship is created by the execution of this Agreement.
12. Amendment. This Agreement shall not be amended except in a writing signed by the CITY and CONSULTANT.
13. 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 CONSULTANT 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. Notice. Any statements, communications, or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated herein, and the CITY and CONSULTANT shall promptly provide the other Party with notice of any changes to such contact information.

20. Business License. CONSULTANT 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.
21. Compliance with Laws, Permits, and Licenses. CONSULTANT 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. CONSULTANT shall obtain any and all permits, licenses, and other authorizations necessary to perform the Services. 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 CONSULTANT to comply with this section.
22. Prevailing Wages. If applicable, pursuant to California Labor Code section 1770 et seq., CONSULTANT agrees that a prevailing rate and scale of wages, in accordance with applicable laws, shall be paid in performing this Agreement. CONSULTANT 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. The prevailing rate and scale to be paid shall be the same as the applicable "General Prevailing Wage Determination" approved by the Department of Industrial Relations as of the Effective Date of this Agreement, which are available online at <http://www.dir.ca.gov/oprl/dprevwagedetermination.htm> and incorporated into this Agreement by this reference. 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 CONSULTANT to comply with this section.
23. Immigration Reform and Control Act of 1986. CONSULTANT shall keep itself informed of and shall comply with the Immigration Reform and Control Act of 1986 ("IRCA"). CONSULTANT represents and warrants that all of its employees and the employees of any subcontractor retained by CONSULTANT who perform any of the Services under this Agreement, are and will be authorized to perform the Services in full compliance with the IRCA. CONSULTANT 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 Services. CONSULTANT agrees to comply with the IRCA before commencing any Services, and continuously throughout the performance of the Services and the term of this Agreement.
24. 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: _____

Dane White, Mayor

GLENN A. RICK ENGINEERING AND DEVELOPMENT CO.

Date: _____

Brooke Peterson, Associate Principal

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

BY: _____

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

ATTACHMENT "A"

Scope of Work

A. General

Glenn A. Rick Engineering and Development Co., a California corporation ("Consultant") will provide the City of Escondido, a California municipal corporation ("City") with consulting services related to storm water plan review, planning entitlement application review, environmental document review, and as-needed planning policy expertise.

B. Location

Consultant to provide services in relation to the City's Development Services Department's storm water plan review, planning discretionary review, and planning environmental and project expertise. It is anticipated that services will be provided at both Escondido City Hall located at 201 N. Broadway, Escondido, CA 92025, and various remote locations.

C. Services

Consultant shall provide services as described in **Exhibit 1** to this Scope of Work, which is attached hereto and incorporated by this reference. In the event of a conflict between this Agreement (including this Scope of Work) and Exhibit 1, the terms of this Agreement shall prevail. Services shall include Engineering and Planning on-call services regarding storm water plan review, planning entitlement application review, environmental document review, and as-needed planning policy expertise.

1. Engineering On-Call Services

- a. Technical assistance for the review of Storm Water Quality Management Plans (SWQMP) for land development projects.
 - i. Services will be provided for up to two days per week with one being on-site and for up to 25 unique SWQMPs.
 - ii. All reviews shall confirm compliance with the Escondido Storm Water Design Manual and Municipal Separate Storm Sewer System (MS4) Permit.
 - iii. Typical reviews may consist of Minor, Standard, or Priority Development Projects (PDP), SWQMPs and Hydromodification Management Plans (HMPs).
- b. Project management and reporting (quality control) shall be provided up to 2 hours per month.

2. Planning On-Call Services

- a. Planning review for entitlement applications to include the following:
 - i. Project management of various entitlement applications (conditional use permits, plot plans, etc.);
 - ii. Review of environmental documents associated to the entitlement application;
 - iii. Review of post-entitlement plans (building, grading, landscaping, etc.) for compliance with conditions of approval;
 - iv. Preparation of staff reports; and
 - v. Other duties related to Planning Division activities.
- b. Environmental document review in support of staff-assigned entitlement applications or for larger environmental projects.
- c. Planning expertise as-needed to include, but not limited to; historical preservation, long range planning, or cultural resources.

3. Contingent Scope Item: Planning Grant Project Services

- a. This scope item is contingent on the receipt of grant funds. Should funding not be available for this scope item, City is not obligated to any payment toward the proposed fee of \$172,660 for this scope item described as follows:
 - i. Planning project management toward the completion of the Safety and Environmental Justice Element policy and language updates to the General Plan;
 - ii. Environmental Review and determination of the appropriate environmental document pursuant to the California Environmental Quality Act (CEQA) for the Safety and Environmental Justice Elements inclusive of final outreach and public comment; and
 - iii. Project management shall meet the task deliverables and timelines as described in the final grant agreement scope of work.

D. Scheduling

Consultant to schedule specific dates of work in advance by contacting the following staff members respective to the areas of work:

Storm Water Review	Owen Tunnell	otunnell@escondido.org
Planning Services	Veronica Morones	vmorones@escondido.org

Further instructions will be provided upon scheduling.

E. Contract Price and Payment Terms

The contract price shall not exceed **\$539,340**; with \$166,680 assigned to Engineering on-call services, \$200,000 assigned to Planning on-call services, and \$172,660 assigned to Planning project management contingent upon the receipt of grant funds. Consultant shall submit monthly invoices to the City, and the City shall pay Consultant for invoiced services within 30 days of receipt of an invoice. Consultant shall not bill the City for any transportation costs associated with travel to and from the project site.

Rates for services as described in **Exhibit 2** to this Scope of Work, which is attached hereto and incorporated by this reference, shall remain firm throughout the term of this Agreement.

F. Term

The term of this Agreement shall be from the Effective Date of the Agreement through **June 30, 2025**.

G. Other

1. Consultant acknowledges that this Agreement is being entered into on an interim basis and shall only remain in effect while the City undertakes the filling of staff positions in its Planning Division necessary to meet entitlement application processing demands. As Planning Division staff positions become filled, Consultant may be requested to continue the review of assigned projects to completion while no new projects will be assigned.
2. The Parties acknowledge that Transnet Smart Growth Incentive Program (SGIP) Grant Funds, administered by the San Diego Association of Governments (SANDAG), will be used to fund all or a portion of this Agreement. As a sub-contractor of the CITY, the CONSULTANT shall comply with all applicable federal laws, regulations, executive orders, policies, procedures, and directives relating to such funds, including but not limited to all applicable provisions and requirements of the SGIP SANDAG Contract, which is attached hereto as **Exhibit 3** and incorporated herein by this reference.

ATTACHMENT "B" Personnel List

Pursuant to Section 4 of the Agreement, CONSULTANT shall only assign performance of Services to persons listed below.

1. Brooke Peterson, AICP, Director of Planning and Design/Associate Principal
bpeterson@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
2. Brian Mooney, Principal
bmooney@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
3. Greg Mattson, AICP, Senior Planner II
gmattson@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
4. Vicrim Chima, Senior Planner II
vchima@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
5. Shannon Baer, Senior Planner I
sbaer@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
6. Adam Mercieca, Associate Planner
amercieca@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
7. Julia Hill, Associate Planner
jhill@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
8. Sabrina Sessarego, Assistant Planner
ssessarego@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
9. Sydney Rankmore, Assistant Planner
srankmore@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
10. Teresa Wilkinson, Director of Environmental Services
twilkinson@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
11. Venkat Gummadi, Associate Principal
vgummadi@rickengineering.com
Glenn A. Rick Engineering and Development Co.;

12. Sal Sanchez, Assistant project Engineer/Manager
ssanchez@rickengineering.com
Glenn A. Rick Engineering and Development Co.;
13. Jennifer Campos, Project Director
jcampos@reconenvironmental.com
RECON Environmental (Sub-Consultant);
14. Lori Spar, Environmental Project Manager
lspar@reconenvironmental.com
RECON Environmental (Sub-Consultant);
15. Nick Larkin, Senior Environmental Project Manager
nlarkin@reconenvironmental.com
RECON Environmental (Sub-Consultant);
16. Bronwyn Brown, Environmental Project Manager
bbrown@reconenvironmental.com
RECON Environmental (Sub-Consultant);
17. Cailin Lyons, Biology Director
clyons@reconenvironmental.com
RECON Environmental (Sub-Consultant);
18. Carmen Zepeda-Herman, Senior Archaeologist
czepeda@reconenvironmental.com
RECON Environmental (Sub-Consultant);
19. Jessica Fleming, Noise, Air Quality and GHG Specialist
jfleming@reconenvironmental.com
RECON Environmental (Sub-Consultant);
20. Frank McDermott, GIS/UAV Manager
fmcdermott@reconenvironmental.com
RECON Environmental (Sub-Consultant);

CONSULTANT shall not add or remove persons from this Personnel List without the City's prior written consent. If CONSULTANT has not designated a person to perform a component of the Services, CONSULTANT shall not assign such component of the Services to a person without obtaining the City's prior written consent. CONSULTANT shall not subcontract any component of the Services without obtaining the City's prior written consent.

Acknowledged by:

Date: _____

Brooke Peterson, Associate Principal



STAFF REPORT

June 26, 2024

File Number 0600-10; A-3516

SUBJECT

APPROVAL OF AGREEMENT WITH LIBRARY SYSTEMS & SERVICES LLC. TO OPERATE THE ESCONDIDO PUBLIC LIBRARY THROUGH JUNE 30, 2026 AND TERMINATION OF EXISTING PROFESSIONAL SERVICES AGREEMENT

DEPARTMENT

Community Services Department

RECOMMENDATION

Request the City Council (1) adopt Resolution No. 2024-87 terminating the existing Professional Services Agreement (“PSA”) with Library Systems and Services (“LS&S”) for the operation of the Escondido Public Library effective June 30, 2024; and (2) adopt Resolution No. 2024-85 authorizing the Mayor to execute a new Professional Services Agreement (“Agreement”) with LS&S effective July 1, 2024 through June 30, 2026.

Staff Recommendation: Approval (Community Services: Jennifer Schoeneck, Director of Economic Development)

Presenter: Robert Rhoades, Assistant Director of Community Services

ESSENTIAL SERVICE – No

COUNCIL PRIORITY – Eliminate Structural Deficit

FISCAL ANALYSIS

Given significant fiscal constraints to the City of Escondido’s (“City”) General Fund, the City is unable to appropriate funds to meet the financial obligations to LS&S under the existing PSA with LS&S through the end of its term in 2027. The PSA allows for a termination of that contract upon a failure to appropriate funding in a fiscal year.

With the approval of this new Agreement, the City will use available American Rescue Plan Act (“ARPA”) funding to sustain library operations for two fiscal years. This eliminates more than \$3 million annually from the General Fund thereby reducing the estimated \$10 million structural budget deficit for the next two fiscal years.



CITY of ESCONDIDO

STAFF REPORT

PREVIOUS ACTION

On August 23, 2017, the City Council authorized the City Manager and City Attorney to negotiate an agreement with LS&S to provide day-to-day operational services at the Escondido Public Library.

On October 18, 2017, the City Council approved Resolution No. 2017-139 which authorized the mayor, on behalf of the City of Escondido, to execute the PSA with LS&S to provide for the daily operation of the Escondido Public Library. The PSA is set to expire on June 30, 2027.

On January 31, 2024, the City Council approved a change in the approach of expending ARPA funding to operate the Escondido Public Library for two fiscal years ending June 30, 2026. The City Council directed staff to allocate ARPA funds to continue library operations with LS&S to provide continuing services to the residents of this City, a service which would have to be eliminated without the use of these federal funds.

BACKGROUND

The City and LS&S entered into a long-term agreement to provide for the management of the Escondido Public Library’s day-to-day operations, which will expire on June 30, 2027. Over the previous seven years of the agreement, LS&S has maintained community programming and offered ongoing opportunities to address community issues such as unemployment, educational needs, and improving literacy.

As the City faces a multi-million-dollar structural budget deficit, the Escondido City Council has identified essential services and priorities to guide staff when making operational decisions.

Essential Services

- Police Services
- Fire/EMS Services
- Keep City Clean for Public Health and Safety
- Land Use/Development
- Clean Water; Sewer
- Public Works/Infrastructure
- Maintenance of Parks facilities/Open Spaces

Council Priorities

- Eliminate Structural Deficit
- Improve Public Safety
- Increase Retention and Attraction of People and Businesses to Escondido



CITY of ESCONDIDO

STAFF REPORT

- Encourage Housing Development

In reviewing these essential services and priorities, on January 31, 2024, staff recommended to City Council a revised proposal for the distribution of ARPA funding for various projects and service areas. It was proposed to use \$6,157,990 from ARPA to fund the LS&S management services for the next two fiscal years thereby reducing the impact to the General Fund of this expenditure. Without this new allocation, funding for continued library management services was difficult to identify.

Once the existing PSA with LS&S is terminated by adoption of Resolution No. 2024-87, and the City Council adopts Resolution No. 2024-85 authorizing the mayor to execute the Agreement, LS&S's services for the City will remain substantively unchanged. LS&S will continue to manage the day-to-day operations of the Escondido Public Library under the guidance of the Library Board of Trustees and the City Staff Liaison.

This Agreement is only for two fiscal years ending on June 30, 2026 and at that time, the City Council will again need to identify new funding sources to continue library operations and services.

RESOLUTIONS

- a. Resolution 2024-85
- b. Resolution 2024-85- Exhibit "A"- Public Service Agreement- LS&S
- c. Resolution No. 2024-87

RESOLUTION NO. 2024-85

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, A MANAGEMENT SERVICES AGREEMENT WITH LIBRARY SYSTEMS & SERVICES FOR THE OPERATION OF THE ESCONDIDO PUBLIC LIBRARY THROUGH JUNE 30, 2026.

WHEREAS, the City of Escondido is a full-service city which includes the operation of a public library; and

WHEREAS, the Escondido City Council (“City Council”) is and has been experiencing significant structural budget deficits and desires to maintain existing levels of services for its residents; and

WHEREAS, the City Council has identified essential services and council priorities to guide staff when making operational decisions; and

WHEREAS, City staff have been tasked with making progress to accomplishing these priorities in an effort to achieving financial sustainability; and

WHEREAS, Library Services & Systems LLC (“LS&S”) has been competently and professionally providing library management services to the City of Escondido pursuant to a Professional Services Agreement for the Operation of the Escondido Public Library (“PSA”) for seven years; and

WHEREAS, the PSA was set to expire by its terms in 2027 but, due to the current budget deficit and that anticipated for the next several years, the City is unable to appropriate sufficient budget funds to compensate LS&S under the PSA through its contract term; and

WHEREAS, the City has access to certain funding pursuant to the American Rescue Plan Act (“ARPA”) and the lawful and appropriate use of such APRA funding for a contract with LS&S for

management services of the library will save the City's General Fund over \$3 million annually for two years and allow for continued library services for the benefit of City residents.

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 Mayor to execute, on behalf of the City, a Professional Services Agreement with Library Services & Systems to provide daily operational services at the Escondido Public Library, 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.

PROFESSIONAL SERVICES AGREEMENT FOR THE OPERATION OF THE ESCONDIDO PUBLIC LIBRARY

This Professional Services Agreement ("Agreement") is entered into on July 1, 2024 ("Effective Date") by and between the CITY OF ESCONDIDO, a California municipal corporation ("CITY") and LIBRARY SYSTEMS & SERVICES, LLC, a Maryland limited liability company ("LS&S") regarding library management services. (The CITY and LS&S each may be referred to herein as a "Party" and collectively as the "Parties.")

RECITALS

1. It has been determined to be in the CITY's best interest to enter into this Agreement with LS&S to provide special services for the operation of the Escondido Public Library located at 239 S Kalmia St, Escondido, CA 92025 ("Library"); and
2. LS&S is considered competent to perform the necessary professional Library services as described herein for CITY.

AGREEMENT

NOW, THEREFORE, it is mutually agreed by and between CITY and LS&S as follows:

1. Scope of Services.
 - A. LS&S will furnish and perform all of the services and provide the goods as described in **Attachment A**, which is attached hereto and incorporated by this reference ("Services").
 - B. While performing the Services provided for in this Agreement, LS&S will use appropriate and generally accepted professional standards of practice existing at the time of the performance utilized by persons engaged in providing similar services.
 - C. CITY will continuously monitor LS&S's Services. CITY agrees to notify LS&S of any deficiencies in satisfying the requirements of this Agreement and LS&S will have 30 days after such notification to cure any shortcomings to CITY's reasonable satisfaction. All costs associated with curing the deficiencies shall be borne solely by LS&S.
 - D. LS&S will be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other services furnished by LS&S under this Agreement, except that LS&S will not be responsible for the accuracy of information supplied by the CITY.
2. Compensation.
 - A. The CITY will pay LS&S in accordance with the conditions specified in **Attachment A and Schedules and A thereto**.
 - B. The compensation paid under this Agreement by CITY shall be for LS&S's overall performance of all Services performed on behalf of CITY and not compensation for the specific individuals employed at CITY's facilities that are solely and exclusively in the employ of and work for LS&S.

- C. LS&S will be compensated for performance of Services specified in **Attachment A** only. If LS&S believes work outside the scope specified in **Attachment A** ("Additional Work") is necessary, then LS&S shall notify the CITY advance written notice of LS&S's desire to provide such Additional Work. The advance written notice shall include: (1) a specific description of the proposed Additional Work, (2) reasons for the Additional Work, (3) why the Additional Work could not have been anticipated at the time this Agreement was entered into, and (4) a detailed cost proposal for completion of the Additional Work. No compensation will be provided for any Additional Work without specific prior written consent from the CITY.
 - D. If LS&S fails to correct a breach or deficiency within 30 days of the CITY's written notice, the CITY shall not be obligated to pay or otherwise compensate LS&S for any disputed or unauthorized services.
3. Term.
- A. The initial term of this Agreement shall be from the Effective Date through June 30, 2026 ("Initial Term").
 - B. The CITY shall have the option, in its sole discretion, to extend the Initial Term for up to two successive periods of five-year periods by providing LS&S 180 days advance written notice and executing a written amendment to this Agreement.
4. Time for Performance.
- A. LS&S will not perform any Services under this Agreement until all Parties have executed this Agreement and CITY has provided LS&S with a written Notice to Proceed ("NTP"). CITY and LS&S shall coordinate establishing the date for the commencement of the provision of Services to be included in the NTP but such date shall be no later than 90 days from the Effective Date. Any work performed by LS&S prior to the date for the commencement of services established the NTP shall be at its own risk and without compensation.
5. Changes in Scope of Services.
- A. CITY may request changes to the scope of services detailed in **Attachment A**, including the addition, revision, or deletion of Services within the general scope of this Agreement. The contract price and time for performance of such Services, if different than that included herein, shall be committed to an amendment of this Agreement executed by LS&S and the CITY. Any additional cost or credit to the CITY shall be determined and detailed in an amendment to this Agreement regarding such change in scope of Services.
6. Familiarity with Work.
- A. LS&S agrees that it has:
 - 1. Carefully investigated and considered the extent of the scope of Services to be performed to satisfy the terms of this Agreement, including **Attachment A**;
 - 2. Carefully investigated and considered the facilities, collections, equipment, data, personnel, and budgets to the extent provided by CITY to perform this Agreement;

3. Satisfied itself that it can comply with all terms of the Agreement and deliver all services described in the Scope of Services within the budgets and pricing identified in this Agreement and Attachments hereto; and
 4. Satisfied itself that it has the financial resources; insurance; service experience; existing in-house personnel; staffing capacity; current workload; licenses; completion ability; private consultants; vendors; and experience in dealing with individual volunteers, volunteer organizations, community groups, non-profit and charitable organizations, established Library Boards, public agencies and their staff, to satisfy and comply with all terms and conditions of this Agreement.
- B. LS&S agrees that should it discover any circumstances or condition(s) which may materially affect its performance of Service under this Agreement, it will immediately inform the CITY in writing of such fact(s).
7. Conflict of Interest. LS&S covenants that neither it nor any officer or principal of the firm have any interests nor shall they acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of Services described herein. LS&S further covenants that in the performance of this Agreement, it shall employ no person having such interest as an officer, employee, agent or subcontractor. LS&S, by and through its officers, employees and agents, agrees to familiarize itself and comply with the CITY's conflict of interest laws and regulations. LS&S further covenants and agrees that it, including its officers, employees and agents, will make no monetary contributions to any political campaign of any CITY officer, council member or employee.
 8. Library Board of Trustees. The Parties to this Agreement covenant and agree that the Escondido Public Library Board of Trustees shall continue to have the rights, duties and responsibilities provided for in California Education Code section 18900 et. seq., and as otherwise provided for in state and local law.
 9. Volunteers. The Parties hereto agree that LS&S shall not engage or manage any volunteers at the CITY Library or any Library-related facility. CITY will maintain responsibility for the engagement or management of any volunteers at the CITY Library or any Library-related facility. LS&S will coordinate with such agencies or entities involved in the organization and assignment of any volunteers who chose to donate personal services at any CITY Library or Library-related facility. Any donated personal services will be outside the Scope of Services described in this Agreement. LS&S agrees that it may satisfy all obligations under this Agreement without reliance on volunteers.
 10. Termination.
 - A. CITY may terminate this Agreement for material breach at any time after LS&S fails to cure any material breach identified by CITY in accordance with the terms of this Agreement. provided herein of this Agreement within 30 days from CITY's written notice of default.
 - B. LS&S may terminate this Agreement at any time for material breach or CITY's failure to make payments of undisputed or contested amounts as provided for in this Agreement when due if the CITY fails to cure such material breach within 30 days of LS&S's written notice of material breach.
 - C. This Agreement may be terminated upon mutual written agreement of the Parties.

- D. In the event that funds for the following CITY fiscal year are not appropriated for the Library, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The CITY shall immediately notify LS&S in writing of any such non-allocation of funds.
 - E. Upon receiving a termination notice from CITY in conformance with this Agreement, LS&S shall immediately cease performance under this Agreement unless otherwise provided for in the termination notice or agreed by the Parties in writing. Except as otherwise provided for in the Agreement or the termination notice, any work performed by LS&S after receiving the CITY's written termination notice will be performed at LS&S's own cost and CITY will not be obligated to compensate LS&S for such work.
 - F. If this Agreement is terminated by either Party or mutually by the Parties in conformance with the provisions herein, all finished or unfinished documents, data, studies, surveys, reports, and other materials, in any form, prepared by LS&S specifically for the CITY will, at the CITY's option and upon final payment to LS&S of all amounts due under this Agreement or extensions or amendments thereto, become CITY's property. LS&S shall receive reasonable compensation for any work satisfactorily performed under this Agreement to the effective date of any termination notice.
 - G. Upon any termination of this Agreement, each Party shall: (i) immediately discontinue all use of the other Party's Confidential Information; (ii) delete the other Party's Confidential Information from its computer storage or any other media, including, but not limited to, online and off-line libraries; and (iii) shall return to the other Party or, at the other Party's option, destroy, all copies of such other Party's Confidential Information then in its possession (including the Documentation).
 - H. Should the Agreement be terminated by either Party pursuant to this Section, CITY may obtain on its own terms services similar to those terminated.
11. Permits and Licenses. LS&S, at its sole expense, will obtain and maintain current during the term of this Agreement, all necessary permits, licenses and certificates for itself and its employees and agents that may be required by any agency or entity having jurisdiction over the services covered by this Agreement.
12. CITY Property. All physical property of any kind, including buildings, fixtures, furniture, equipment, books, collections, art, and other tangible property owned by CITY at the commencement of this term of this Agreement, and all such property acquired for the benefit of the CITY and paid for by the compensation provided herein, however described, shall at all times be CITY property and LS&S shall have no ownership interest therein.
13. Format of Electronic Data. Any and all electronic documents or files provided to the CITY by LS&S, or any of its sub-consultants or vendors, shall use Microsoft Office Suite application software for Windows or a format pre-approved in writing by the CITY.
14. Confidential Information and Intellectual Property.
- A. Confidential Information. In the performance of this Agreement, LS&S may be exposed to information regarding the identity of the CITY's patrons, CITY may be exposed to information regarding LS&S's proprietary library management techniques, and either Party may be exposed to other written or oral information, disclosed by either Party to the other, related to either Party or a third party that has been identified as confidential or that by the

nature of the circumstances surrounding disclosure ought reasonably to be treated as confidential (collectively, "Confidential Information"). Each Party shall:

1. Use the same care to protect the other Party's Confidential Information from disclosure that such Party uses to protect its own information of like importance;
2. Limit duplication of Confidential Information to the extent needed to perform this Agreement; and
3. Disclose Confidential Information only to employees having a need to know in connection with performance of this Agreement, and who are informed of the contents of this provision prior to disclosure.

This provision shall survive termination or expiration of this Agreement; and, on such termination or expiration, each Party shall return all Confidential Information, including all copies, to the owner of such information and, if requested, shall certify in writing that all such information has been returned. Because the damage resulting from a breach of this provision would be difficult or impossible to quantify and remedy at law, in case of such breach, or the threat of such breach, the Party whose Confidential Information is threatened to be disclosed shall be entitled to injunctive or other equitable relief.

- B. Exceptions. Notwithstanding the foregoing, the provisions of Section 14(A) above, shall not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required: (1) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party such that the other Party may, at its sole cost and expense, seek a protective order against disclosure; or (2) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.
- C. Intellectual Property. Subject to the terms and conditions of this Agreement, LS&S hereby grants to CITY a limited, non-exclusive, non-transferable, non-sublicensable right and license to use the Documentation (defined below), as provided by LS&S, during the term of this Agreement, solely for CITY's internal business purposes. CITY shall not use the Documentation for any purposes beyond the scope of the license granted in this Agreement. Without limiting the generality of the foregoing, CITY shall not (i) market or distribute the Documentation; (ii) make any copies of the Documentation; (iii) assign, sublicense, sell, lease, or otherwise transfer or convey, or pledge as security or otherwise encumber, CITY's rights under the license granted in this Section 14(C); or (iv) modify the Documentation, except with prior written consent of LS&S. The Parties acknowledge and agree that if CITY modifies or improves the Documentation, all such modifications or improvements shall be considered part of the
- D. Documentation, and shall be owned by LS&S, and CITY hereby assigns to LS&S all right and title to such modifications or improvements. Other than as set forth in this paragraph, nothing in this Agreement confers any license or right to use any trademark, service mark, copyright or other intellectual property right, whether now owned or hereafter developed, of either Party. For the purposes of this Agreement, "Documentation" means the standard user manuals, instructions and related documentation made available by LS&S to CITY.

15. Insurance.

- A. LS&S 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 Services, and the results of such work, by LS&S, 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 00 01 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 general aggregate.
 2. *Automobile Liability*. ISO Form CA 00 01 covering any auto (Code 1), or if LS&S has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage, unless waived by the CITY and approved in writing by the CITY's Risk and Safety Division.
 3. *Workers' Compensation*. Worker's 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. If LS&S 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 LS&S.
- B. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:
1. *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-: FSC VII, or as approved by the CITY.
 2. *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 endorsement shall be at least as broad as ISO Form CA 20 01.
 3. *Primary Coverage*. LS&S'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 LS&S's insurance and shall not contribute with it.
 4. *Notice of Cancellation*. Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.
 5. *Subcontractors*. If applicable, LS&S shall require and verify that all subcontractors maintain insurance meeting all the requirements stated in this Agreement, and LS&S shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.

6. *Waiver of Subrogation.* LS&S hereby grants to the CITY a waiver of any right to subrogation that any insurer of LS&S may acquire against the CITY by virtue of the payment of any loss under such insurance. LS&S 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 LS&S, its agents, representatives, employees and subcontractors.
 7. *Self-Insurance.* LS&S 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. LS&S shall only be permitted to utilize such self-insurance if, in the opinion of the CITY, LS&S's (i) net worth and (ii) reserves for payment of claims of liability against LS&S are sufficient to adequately compensate for the lack of other insurance coverage required by this Agreement. LS&S's utilization of self-insurance shall not in any way limit the liabilities assumed by LS&S pursuant to this Agreement.
 8. *Self-Insured Retentions.* Self-insured retentions must be declared to and approved by the CITY.
- C. *Verification of Coverage.* At the time LS&S executes this Agreement, LS&S 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 in this Agreement, including the types and limits of insurance coverage LS&S 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 LS&S pursuant to this Agreement, including but not limited to any provisions in this Agreement concerning indemnification.
 - F. 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. In the event that LS&S fails to comply with any such insurance requirements 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 LS&S to stop work under this Agreement and/or withhold any payment that becomes due to LS&S until LS&S demonstrates compliance with the insurance requirements in this Agreement.
16. Warranties: Disclaimers.
- A. The CITY represents and warrants that it has all requisite power and authority to execute and deliver this Agreement and to carry out the provisions of this Agreement. All approvals on the part of the CITY necessary for the CITY's authorization of this Agreement and the performance of all obligations of the CITY hereunder have been taken. This Agreement, when executed and delivered, will be valid and binding obligations of the CITY enforceable

in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, (b) general principles of equity that restrict the availability of equitable remedies, and (c) as required by court order. Notwithstanding the foregoing, the Parties agree that the obligations specified in Section 18 shall survive termination, expiration, or rescission of this Agreement. No governmental orders, permissions, consents, approvals or authorizations are required to be obtained by the CITY in connection with the CITY's execution and delivery of this Agreement or the CITY's obligations hereunder. The CITY will not violate any applicable statute, rule, regulation, order or restriction of any domestic or foreign government or any instrumentality or agency thereof in connection with the CITY's performance of all obligations of the CITY hereunder.

- B. LS&S has all requisite power and authority to execute and deliver this Agreement and to carry out the provisions of this Agreement. All approvals on the part of LS&S necessary for LS&S' authorization of this Agreement and the performance of all obligations of LS&S hereunder has been taken. This Agreement, when executed and delivered, will be valid and binding obligations of LS&S enforceable in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, (b) general principles of equity that restrict the availability of equitable remedies, and (c) as required by court order. Notwithstanding the foregoing, the Parties agree that the obligations specified in Section 19 shall survive termination, expiration, or rescission of this Agreement. No governmental orders, permissions, consents, approvals or authorizations are required to be obtained by LS&S in connection with LS&S' execution and delivery of this Agreement or LS&S' obligations hereunder. LS&S will not violate any applicable statute, rule, regulation, order or restriction of any domestic or foreign government or any instrumentality or agency thereof in connection with the LS&S' performance of all obligations of LS&S hereunder.
 - C. LS&S warrants that it will perform hereunder with at least the care, diligence, and expertise generally accepted in the library service industry. Other than as set forth expressly herein, there are no other warranties, express or implied, including warranties of merchantability or fitness for a particular purpose.
17. **Limitation of Liability.** Exclusive of any breaches of Section 14, in no event shall either Party be liable to the other Party for any incidental, special, consequential or punitive damages, regarding of the nature of the claim, including, without limitation, lost profits, costs of delay, any failure of delivery, business interruption, costs of lost or damaged data or documentation or liabilities to third parties arising from any source, even if such party has been advised of the possibility of such damages. This limitation upon damages and claims is intended to apply without regard to whether other provisions of this Agreement have been breached or have proved ineffective. Exclusive of obligations related to Section 19(B), the cumulative liability of each Party to the other Party, for all claims arising from or related to this Agreement, including, without limitation, any cause of action sounding in contract, tort, or strict liability, shall not exceed the lesser of: (1) the actual damages suffered by the aggrieved Party, or (2) \$500,000.
18. **Indemnification.**
- A. To the fullest extent permitted by law, LS&S shall indemnify, defend (with counsel reasonably acceptable to the CITY), 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 damages, attorney's fees, and other related litigation costs and expenses (collectively, "Claims"), of every nature caused by, arising out of, or in connection with LS&S's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except where caused by the sole negligence or willful misconduct of the CITY.

- B. CITY does not and shall not waive any rights that it may have against LS&S by reason of this Indemnification provision because of the acceptance by CITY, or deposit with CITY, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless, defense and indemnification provision shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, judgment, damage, liability, loss, cost or expense, including attorney's fees as identified herein.
19. Waiver. Neither LS&S' nor CITY's review or acceptance of, or payment for, Services or work product completed by either Party under the Agreement shall be construed to operate as a waiver of any rights the other Party may have under the Agreement or of any cause of action arising from either Party's performance. A waiver by either Party of any breach of any term, covenant, or condition contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement.
20. Anti-Assignment Clause. Neither Party may assign, delegate or transfer any interest or duty under this Agreement without advance written approval of the other Party, and any attempt to do so will immediately render this entire Agreement null and void; except that LS&S may subcontract or delegate portions of the Services with the CITY's prior written approval, which approval shall not be unreasonably withheld; provided, however, that in no case shall CITY be liable to any party other than LS&S, or for any amount in excess of the price specified on Attachment A, plus any additional charges permitted hereunder. LS&S shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.
21. Costs and Attorney's Fees. In the event that legal action is required to enforce the terms and conditions of this Agreement, the prevailing Party will be entitled to reasonable attorneys' fees and costs.
22. Independent Contractor.
- A. LS&S is an independent contractor and no agency or employment relationship of any kind, either express or implied, is created by the execution of this Agreement.
- B. The provision of library services to government entities is an integral part of the regular business operations of LS&S. LS&S will have exclusive control over all work performed by its employees and the manner in which it is performed. LS&S employees performing services related to this Agreement will be interviewed, screened, hired, trained, managed, evaluated, transferred, promoted, demoted, disciplined and terminated by LS&S. LS&S shall have exclusive control over the determination of the skills required for specific workers and tasks; the source of the instrumentalities and tools used by its employees, subcontractors, consultants, and vendors, if any; the duration of the employment relationship between LS&S and its employees; its employees' salaries and benefits, including increases or reductions thereto; employee work schedules, duty assignments, location of employment; the selection of managers; and timesheet approval. LS&S shall have the exclusive right to assign additional projects to its employees, to determine hours worked, and to determine whether its employees may hire and pay assistants. LS&S

employee salary and benefits structure and amounts shall be determined independent of the compensation received from CITY under this Agreement.

- C. LS&S shall be exclusively responsible for paying appropriate employer taxes, social security and government insurance payments in accordance with state and federal law.
 - D. LS&S is permitted to contract for similar services to other entities, local governments or employers while this Agreement is in effect.
 - E. LS&S and its employees are not entitled to participate in any CITY pension or retirement plan, insurance program, bonus payouts, or similar benefits CITY regularly provides to CITY employees.
 - F. Any provision of this Agreement, or services performed by LS&S during the term of this Agreement, which may appear to give the CITY the right to direct LS&S as to the details of doing the work or to exercise a measure of control over the work, shall only constitute general guidance and direction as to end results consistent with the terms and spirit of this Agreement.
 - G. Because the Parties expressly believe and agree that LS&S employees working at any CITY facility are not CITY employees, common law or otherwise, and have no claims to any California Public Employee Retirement System ("CalPERS") benefits beyond those that are vested and known at the time this Agreement becomes effective, should CalPERS or any administrative or judicial body of competent jurisdiction make any finding that such employees are entitled to CalPERS compensation or benefits not anticipated by the Parties at the time this Agreement becomes effective, this Agreement may be terminated by CITY or LS&S by providing the other party with 30 days written notice.
 - H. The Parties expressly believe and agree that any CITY Employee who accepts an offer of employment with LS&S, and thereby becomes an LS&S employee, is not upon acceptance of such employment represented by a union or collective bargaining unit and does not have any rights under state or federal law to representation in collective bargaining for compensation, benefits or workplace conditions. If any adjudicative or administrative body of competent jurisdiction determines otherwise, LS&S shall be solely and exclusively responsible for meeting its legal obligations to bargain and the results of any such bargaining with its employees and/or their representatives.
23. Non-solicitation. CITY acknowledges and agrees that the employees and consultants of LS&S who perform the Services are a valuable asset to LS&S and are difficult to replace. Accordingly, CITY agrees that, during the Term of the Agreement, and for a period of one year after the termination or expiration of this Agreement, it shall not solicit (whether as an employee, independent contractor or consultant) any LS&S employee or consultant who performs any of the Services. Notwithstanding the foregoing, this restriction shall not apply to any individual employed by the other who voluntarily seeks employment in response to general employment advertisements in the public commercial media.
24. Right to Audit. LS&S shall maintain complete and accurate records with respect to all services and matters covered by this Agreement. CITY will have access at all reasonable times to such records, and the right to examine and audit the same and to make transcript therefrom, and to inspect all program data, documents, proceedings and activities.
25. American Rescue Plan Act of 2021 Funds. CITY has determined that it is eligible to receive Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") administered by the U.S Department of Treasury ("Federal Awarding Agency") and established by the American Rescue Plan Act of 2021 ("ARPA") and that such ARPA funds can be used to fund all or a portion of this Agreement. LS&S shall comply with all applicable federal

law, regulations, executive orders, SLFRF policies, procedures, and directives relating to such funds. In addition to the Financial Reporting Requirements detailed in Section 16, above, LS&S shall comply with all the federal funding requirements set forth in this Section 27.3 to the extent applicable to LS&S as a service provider to CITY. LS&S shall have no liability (i) for CITY's compliance with ARPA requirements, or (ii) in the event it is determined that ARPA funds are not available for use in connection with the Services covered by this Agreement.

- A. SLFRF Eligible Uses. All ARPA funded activities under this Agreement must meet one of the SLFRF fund eligible use categories as specified in the Final Rule adopted by the US Treasury on January 6, 2022, which will become effective on April 1, 2022 ("Eligible Uses"). The Final Rule may be accessed at the following link: <https://www.federalregister.gov/documents/2022/01/27/2022-00292/coronavirus-state-and-local-fiscal-recovery-funds>.

LS&S certifies that all ARPA funded services provided under this Agreement will meet the SLFRF fund eligible use category of Responding to the far-reaching public health and negative economic impacts of the pandemic. Libraries have been at the forefront of keeping communities connected during the COVID-19 pandemic, and continue to play key roles in addressing education, employment, and health needs during the ongoing recovery. The Library provide services to the community, including workforce assistance and internet and digital services to disadvantaged community members. This building is accessed by the Impacted General Public, Impacted Households that experienced increased food or housing insecurity, and disproportionately impacted low-income households and populations and is also located in a Qualified Census Tract. The Library provides services for patrons seeking jobs, education, and lifelong learning. In response to the COVID-19 pandemic, the Escondido Library was forced to modify its services for the health and safety of patrons. After reopening and during the pandemic, the demand for new and innovative services increased. Technology that allows for more virtual services is needed. Library services are necessary to meet the ever-growing need of the community during the recover as well as support the many programs and grants coming forward during this time. In addition, the assistance provides entry level clerical and public service jobs to our community, especially in the Qualified Census Tract, that provides the experience to open up future opportunities.

- B. Budget. LS&S shall adhere to the budget specified in **Attachment A, and Schedule A thereto**, which is attached hereto and incorporated herein by this reference ("Budget"). Any changes to the Budget may only be made by written amendment signed by both the CITY and LS&S. LS&S is responsible for complying with the Cost Principles set forth in 2 CFR Part 200 Subpart E. LS&S must have adequate financial management systems and internal controls in place to account for the expenditure of federal funds. LS&S must ensure that all expenditures for services provided under this Agreement comply with restrictions related to administrative costs.
- C. General Compliance. Throughout the term of this Agreement, LS&S shall comply with all requirements applicable to use of SLFRF funds including adherence to future guidelines that may be established by the U.S. Treasury during the term of this Agreement. LS&S shall comply with all applicable federal, state, and local laws, regulations, and policies governing the funds provided under this Agreement. At all times during the term of this Agreement, LS&S shall comply with the Grant Award Terms and Conditions. LS&S may request, and LS&S shall supply to the CITY, any additional information from the LS&S as needed to meet any additional guidelines regarding the Eligible Uses and/or use of SLFRF funds that may be established by the U.S. Treasury during the term of this Agreement.
- D. Restricted or Ineligible Uses of SLFRF Funds. If at any time during the term of this Agreement, the CITY determines that any portion of the services provided by LS&S

hereunder constitute a restricted or ineligible use of SLFRF funds, then the CITY may terminate or suspend this Agreement as more particularly described in Section 29.4. Within 30 of written notice from the CITY of the restricted or ineligible use of SLFRF funds, LS&S shall refund the CITY all SLFRF funds paid by the CITY to LS&S in connection with the restricted or ineligible use. Restricted/Ineligible uses of ARPA funds include, but are not limited to: usage of funds to either directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation or administrative interpretation during the covered period that reduces any tax or delays the imposition of any tax or tax increase; damages covered by insurance; usage of funds as a deposit into any pension fund; expenses that have been or will be reimbursed under any federal program; debt service costs; contributions to a "rainy day" fund; and legal settlements.

- E. Clean Air Act. LS&S agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. LS&S agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Awarding Agency, and the appropriate Environmental Protection Agency Regional Office. LS&S agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the Federal Awarding Agency.
- F. Federal Water Pollution Control Act. LS&S agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. LS&S agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Awarding Agency, and the appropriate Environmental Protection Agency Regional Office. LS&S agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the Federal Awarding Agency.
- G. Debarment and Suspension.
 - 1. This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, LS&S is required to verify that none of LS&S's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - 2. LS&S shall comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction LS&S enters into.
 - 3. This certification is a material representation of fact relied upon by the CITY. If it is later determined that LS&S did not comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, in addition to remedies available to the CITY the federal government may pursue available remedies, including but not limited to suspension and/or debarment.
 - 4. LS&S agrees to comply with the requirements of 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. LS&S further agrees to include a provision requiring such compliance in its lower tier covered transactions.
- H. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).

1. Prior to entering into this Agreement, LS&S shall file the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended)). Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the Federal Awarding Agency.
 2. Required Certification. At the time LS&S executes this Agreement, LS&S shall provide the CITY with a completed Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying. A blank Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying is attached to this Agreement as **Attachment C** and incorporated herein by this reference.
- I. Procurement of Recovered Materials. In the performance of this Agreement, LS&S shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (1) competitively within a timeframe providing for compliance with the Agreement’s performance schedule, (2) meeting Agreement performance requirements, or (3) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines website, located at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. LS&S shall also comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
 - J. Access to Records. The following access to records requirements apply to this Agreement: (1) LS&S agrees to provide the CITY, the Federal Awarding Agency Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of LS&S that are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions; (2) LS&S agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed; and (3) LS&S agrees to provide the Federal Awarding Agency Administrator or their authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement. In compliance with the Disaster Recovery Act of 2018, the CITY and LS&S acknowledges and agrees that no language in this Agreement is intended to prohibit audits or internal reviews by the Federal Awarding Agency Administrator or the Comptroller General of the United States.
 - K. Federal Awarding Agency Seal, Logo, and Flags. LS&S shall not use the Federal Awarding Agency seal(s), logos, crests, or reproductions of flags or likenesses of Federal Awarding Agency officials without specific Federal Awarding Agency pre-approval.
 - L. No Obligation by Federal Government. The United States Federal Government is not a party to this Agreement and is not subject to any obligations or Agreement to the CITY, LS&S, or any other party pertaining to any matter resulting from this Agreement.

M. Program Fraud and False or Fraudulent Statements or Related Acts. LS&S acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to LS&S's actions pertaining to this Agreement.

N. Records.

1. Records Maintenance. Records, in their original form, must be maintained in accordance with requirements prescribed by the CITY with respect to all matters specified in this Agreement. Original forms are to be maintained on file for all documents specified in this Agreement. Such records must be retained for a period three years after termination of this Agreement and after final disposition of all pending matters. "Pending matters" include, but are not limited to, an audit, litigation or other actions involving records. Records, in their original form pertaining to matters covered by this Agreement, must at all times be retained within the County of San Diego unless authorization to remove them is granted in writing by the CITY.
2. Records Inspections. At any time during normal business hours and as often as either the CITY, Inspector General acting pursuant to the Inspector General Act of 1978, or the Auditor General of the State of California may deem necessary, LS&S must make available for examination all of its records with respect to all matters covered by this Agreement. The CITY, Inspector General, and the Auditor General of the State of California each have the authority to audit, examine and make excerpts or transcripts from records, including all LS&S's invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. LS&S agrees to provide any reports requested by the CITY regarding performance of this Agreement. With respect to inspection of LS&S's records, the CITY may require that LS&S provide supporting documentation to substantiate LS&S's expenses with respect to the LS&S's use or expenditure of the grant amount.

O. Reporting Requirements. In order to ensure compliance with the existing ARPA guidelines set forth by the U.S. Treasury – while also ensuring that all expenditures within the scope of this Agreement adhere to future guidelines that may be established by the U.S. Treasury during the term of this Agreement – LS&S, when requesting reimbursement for costs incurred for Eligible Uses, shall provide to the CITY a comprehensive and detailed list of all such expenditures on an itemized invoice, and shall also provide any backup documentation to support such expenditures. Said invoice must include a statement, signed by the LS&S, indicating that all expenditures therein comport with guidelines and requirements applicable to SLFRF funds as set forth by the U.S. Treasury. Reimbursement requests shall be submitted to the CITY no more than once per month.

P. Timeline Regarding the Dissemination of Funds to Subrecipient. Upon receipt of the LS&S's complete reimbursement request, the CITY shall disseminate funds for all Eligible Uses therein within 30 days of receipt of said reimbursement request. The dissemination of SLFRF funds shall only occur after the CITY reviews LS&S's reimbursement request to ensure that all expenditures detailed therein qualify for reimbursement in accordance with all published federal, state, and local guidance regarding the use of SLFRF funds as specified in the ARPA. All payments from the CITY to LS&S are contingent on the availability of SLFRF funds to the CITY, and further subject to all applicable federal, state, and local laws regarding the governance of SLFRF funds within the ARPA.

Q. Civil Rights. Recipients of Federal financial assistance from the U.S. Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory

use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the U.S. Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

26. Miscellaneous.

- A. Merger Clause. This Agreement, including its Attachments, is the entire understanding of the Parties, and there are no other terms or conditions, written or oral, controlling the agreement of the Parties for the subject matter described herein.
- B. Severability. The invalidity in whole or in part of any provision of this Agreement will not void or affect the validity or enforceability of any other provisions of this Agreement.
- C. Choice of Law. This Agreement is governed by the laws of the State of California. Venue for all actions arising from this Agreement must be exclusively in the state or federal courts located in San Diego County, California.
- D. Interpretation of Agreement. The Parties agree that this Agreement and each of its terms was negotiated at arms-length and each party has had the opportunity to independently review this Agreement with legal counsel. Accordingly, this Agreement, and each of its terms and Attachments, will be construed as a whole in accordance with its fair and reasonable meanings and will not be interpreted against either Party.
- E. Multiple Copies of Agreement/Counterparts. Multiple copies and/or counterparts of this Agreement may be executed, including duplication by photocopy or by computerized scanning device. Each duplicate will be deemed an original with the same effect as if all the signatures were on the same instrument. However, the parties agree that the Agreement on file in the office of the Escondido City Clerk is the copy of the Agreement that shall take precedence should any differences exist among copies or counterparts of the document.
- F. Notices to Parties. Any statements, communications or notices to be provided pursuant to this Agreement must be sent to the attention of the persons indicated below.

If to LS&S:
Library Systems & Services, LLC
2600 Tower Oaks Blvd., Suite 510
Rockville, MD 20852
Attn: President

If to CITY:
City of Escondido
201 N. Broadway
Escondido, CA 92025
Attn: City Manager

Any such written communications by mail will be conclusively deemed to have been received by the addressee upon deposit thereof in the United States mail, postage prepaid and properly addressed as noted above. In all other instances, notice will be deemed given at the time of actual delivery. Each Party agrees to promptly send notice of any changes of this information to the other Party, at the address first above written.

- G. Business License. LS&S is required to obtain a City of Escondido Business License prior to execution of this Agreement.
- H. Third-Party Beneficiaries. Except as specifically provided in **Attachment A**, this Agreement and every provision herein is for the exclusive benefit of CITY and LS&S and not for the benefit of any other person, entity or party.
- I. Compliance with Applicable Laws, Permits, and Licenses. LS&S shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, and rules in effect during the term of this Agreement. LS&S shall obtain any and all licenses, permits, and authorizations necessary to perform services set forth in this Agreement. CITY, nor any elected or appointed boards, officers, officials, employees, or agents shall be liable, at law or in equity, as a result of any failure of LS&S to comply with this section.
- J. Force Majeure. Should performance of this Agreement be prevented due to fire, flood, explosion, acts of terrorism, war, non-CITY government action, civil or military authority, the natural elements, or other similar causes beyond the parties' reasonable control, the Agreement will immediately terminate without obligation of either Party to the other.
- K. Immigration Reform and Control Act of 1986. LS&S shall keep itself informed of and comply with the Immigration Reform and Control Act of 1986. LS&S affirms that as an employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will be employed on this public project. LS&S agrees to comply with such provisions before commencing and continuously throughout the performance of this Agreement.
- L. Captions. The captions of the paragraphs in this Agreement and Attachments thereto are for convenience of reference only and are not intended to be material to the obligations of the parties and shall not affect the interpretation of the Agreement.
- M. Authority to Enter into Agreement. The Parties represent and warrant that all necessary action has been taken by the parties to authorize the undersigned to execute the Agreement and to undertake the respective duties assumed by each party herein.
- N. Provisions Cumulative. The foregoing provisions are cumulative and in addition to and not in limitation of any other rights or remedies available to the parties under law.
- O. Prevailing Wages. If applicable, pursuant to California Labor Code section 1770 et seq., LS&S agrees that a prevailing rate and scale of wages, in accordance with applicable laws, shall be paid in performing this Agreement. LS&S 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. The prevailing rate and scale to be paid shall be the same as the applicable "General Prevailing Wage Determination" approved by the Department of Industrial Relations as of the Effective Date of this Agreement, which are available online at

<http://www.dir.ca.gov/oprl/dprewagedetermination.htm> and incorporated into this Agreement by this reference. 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 LS&S to comply with this section.

(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: _____

Dane White
Mayor

LIBRARY SYSTEMS & SERVICES, LLC

Date: _____

Signature

Name & Title (please print)

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

BY: _____

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

Attachment A
Scope of Services

A. Scope of Services.

Library Systems & Services, LLC. ("LS&S") will administer the operations of the City of Escondido's ("City") Public Library facilities (collectively "Library"), including the accounting for, purchase of, and payment for payroll services and goods; services from vendors for budgeted supplies; other direct operating expenditures; Library Materials (as defined herein); and Capital Items (as defined below) sufficient to operate the Library in accordance with the policies and guidelines approved by the City and Escondido Public Library Board of Trustees ("Library Board") and as provided for herein.

LS&S shall provide, by and through its own employees or independent contractors ("LS&S Staff" or "Library Staff"), any labor LS&S deems necessary for the operation of the Library as required to perform under this Agreement. All costs of the LS&S Staff shall be paid by LS&S and are included in the Operating Budget (as defined below).

LS&S shall have the sole and absolute right for setting Library Staff compensation and benefits. City Employees currently working at the Library ("Current Employees") may apply and interview for positions with LS&S. City and LS&S agree that the hiring of Current Employees would be in the parties' best interests in order to retain existing institutional knowledge and expertise, and aid in the swift and smooth transition of operational management for both Current Employees and the general public. LS&S shall have the sole right to hire, manage, evaluate and/or terminate the employment of the Library Staff from time to time to perform work under this Agreement.

LS&S will provide the appropriate staffing levels to keep the Library open to the public at least for sixty (60) hours per week. The Library will follow the published City Holiday Schedule plus any other holidays agreed upon writing by the City and LS&S. The Library will close at 5:00 pm in alignment with City Hall on the following holidays if the Library is normally scheduled to remain open until 7:00 pm or later: Thanksgiving Eve, Christmas Eve, and New Year's Eve. In addition, the Library will be closed one mutually agreed upon day each year for staff development day and/or staff training.

The hours of operation of the Library will be as follows, unless otherwise provided herein or agreed to by the parties:

Monday - Friday.	9:30 a.m. - 7 p.m. (47.5 hours)
Saturday	9:30 a.m. - 6 p.m. (8.5 hours)
Sunday	1 p.m. - 5 p.m. (4 hours)

LS&S will develop and implement a written Strategic Plan ("Strategic Plan") for the Library, in cooperation with the City, elected and appointed local officials, including the Library Board, community stakeholders, and the Library Staff. Using current professional standards and practice, the Strategic Plan will include, but not be limited to, a service needs assessment of Escondido residents (sampling all demographic and geographic segments of the community), a five (5) year forecast of Library maintenance and growth, Library expansion plan and/or potential Bond Measure for construction of a new library facility, Library programming enhancements and/or additions to be phased in as recommended, and a comprehensive identification of recommended technology and library material needs. Also included within the Strategic Plan should be staffing resource requirements and budgetary analysis for each item addressed in the plan. The plan shall identify challenges and opportunities for the Library Staff and corresponding strategic responses, including specific, measurable goals and objectives. The Strategic Plan will be developed at least 180 days after the date of commencement of Agreement services provided in the Notice to Proceed and will be updated each year this Agreement is in effect within 30 days prior to the expiration of any current Strategic Plan.

This Strategic Plan, when approved by the City and Library Board, will help govern the direction and focus of the fulfillment of the mission of providing effective and efficient Library service to meet the personal, professional, and lifelong learning needs of the citizens served by the Library.

B. List of Services LS&S Agrees to Perform.

1. General:

- a. Administer all aspects of the day-to-day operations of the Library, in accordance with generally accepted practices and principles of the public library profession.
- b. Periodically review program development, collections, and community development involvement activities, ensuring that programming, services, and collections are in line with community needs and input.
- c. Comply with all California laws and regulations pertaining to public library services, including, but not limited to, the California Municipal Libraries Act and California Library Services Act.
- d. Represent the City of Escondido at relevant library meetings, including but not limited to the annual California Library Association State Librarians' Meeting and meetings of the Serra Library Cooperative including the Director's Meeting, Youth Services Committee Meeting, and STARC Committee Meeting.

2. Community Relations:

- a. Develop and maintain effective working relationships with City staff, elected City officials, the Library Board, other advisory boards if any, other appointed officials, and community groups such as the Friends of the Library and Escondido Library Foundation. A representative from LS&S shall be present at all Library Board and Friends of the Library meetings and should be present at City Council meetings on a routine basis and as requested.

- b. Utilize and potentially expand upon the existing marketing plan to promote all Library services to the residents of the City; effectively disseminate information; and promote use of the Library, resources, and services.
- c. Work cooperatively with Library support groups to coordinate Library-marketing efforts.
- d. Prepare, coordinate and disseminate relevant website and social media news releases following established standards and guidelines for professional appearance.

3. Fiscal Responsibility:

- a. Be responsible for the proper administration of the overall Library budget, of which the contracted services are a part. The City will provide the detailed annual budget for the current fiscal year that corresponds to the approved FY17-18 budget attached as Schedule A. This will serve as the "Base Budget." In future years an annual expenditure budget will be provided to LS&S by the City which covers Automation Maintenance, Software and Licensing costs as well as Collection Procurement identified to take place during each Fiscal Year during the Term of this Agreement. Increased spending beyond the Base Budget will be the responsibility of the City to fund and billed in addition to the amounts specified in Section E.1. LS&S is authorized to spend funds for the purpose of fulfilling this contract. City staff will provide LS&S with the approved budget on or before July first (1st) of each year. If for any reason, LS&S expends money outside the scope of this agreement without prior written approval and authorization or expends funds which exceed the Operating Budget as Specified in Section E.1, LS&S is responsible for those expenditures as incurred. LS&S will bill the City for variable costs breaking out each category on the invoices with detailed expenditure descriptions and supporting documentation of each item.
- b. Be the City's principal liaison with the California State Library with respect to library statistical reporting and funding matters.
- c. Collect and account for fines and fees, and remit same to the City. All revenues resulting from Library operations and programs, including rents charged if any, shall belong to the City.
- d. Follow the City's prescribed financial reporting procedures related to but not limited to the following:
 - Follow and provide any necessary documents pertaining to delinquent library patron accounts to the City
 - Collection and deposit of room rental fees
 - Collection and deposit of printer and copier fees
 - Collection and deposit of fines, fees, and donations
- e. All Library Staff responsible for handling cash receipts shall be trained in and

adhere to City cash handling procedures.

- f. At the request of the City Manager and/or Library Board, provide monthly and annual financial statements to the requesting party or his/her designee that provides an overview of the costs associated with operation of the Library. An agreed upon form for such information will be designed and agreed upon prior to the first submission.
- g. Review all aspects of Library operation and service for efficiency and cost effectiveness, while making recommendations for changes as appropriate.
- h. At the request of the City Manager and/or Library Board, prepare annual financial statements for expenditures relating to the operation of the Library. Retain necessary and relevant financial files, and submit to financial audit of all agreement-related records upon request of the City or Library Board, said audit to be at City's expense.
- i. Explore supplemental Library funding opportunities, and apply for those which meet the Library's objectives including, but not limited to, application and administration services for CENIC Broadband Internet Grant and or Federal E-Rate funding. Any costs associated with implementing these opportunities will be the responsibility of the City.
- j. Continue to seek innovative means of adding value to the City at little or no additional cost, including the research of, and application for, grants. Grants must be submitted to the City's Grant Committee and the Library Board prior to application.
- k. Make recommendations to the City on fine and fee schedules, and investigate and recommend supplemental revenue sources.

4. Management and Reporting:

- a. Prepare and provide quarterly reports to the City and/or Library Board, describing Library activities and recommending changes in policies, procedures, and operations as necessary and appropriate.
- b. Prepare and provide monthly statistical and financial reports in a form acceptable to the City and Library Board on Library activities. Prepare and provide a comprehensive report relating to Library services annually. These reports will be received by the City Manager or his/her designee and the Library Board and evaluated for compliance with the terms of the Agreement.
- c. At least annually, survey and gather information from residents (not just Library users) for use in Library planning and customer satisfaction. The form and type of survey to be mutually agreed upon by City, the Library Board and LS&S. Share the results of this annual survey with the City Manager or his/her designee, the Library Board and the community through a public forum to be

mutually agreed upon by City, the Library Board and LS&S.

- d. LS&S shall identify a City Librarian who shall communicate with the City Manager or his/her designee and the Library Board on all matters relating to the Library. City Librarian will also serve as Library staff liaison to the Library Board, Friends of the Library, the Escondido Library Foundation and/or other Library support groups.
- e. All documents pertaining to City's library operations shall be retained in the City's name in accordance with the City's Records Retention Policy. The Pioneer Room staff shall retain responsibility for interfacing with the City Clerk's office for the transfer of records appropriate for the Pioneer Room Collection.
- f. LS&S shall be responsible for ensuring that its participation in all notices, agendas, Library Board meetings and related minutes of such meetings related to the Library and governed by the Ralph M. Brown Act (Government Code sections 54950 *et seq.*) will conform to California law.

5. Staff Development and Coaching:

- a. Provide orientation, training, and professional development of all Library Staff including, but not limited to, a staff development day each year.
- b. Provide leadership and guidance to maximize Library Staff effectiveness in Library operations.
- c. LS&S will provide harassment, discrimination, and retaliation training to all supervisory employees at a minimum of every two years or as otherwise required by law, with the initial training to take place within ninety (90) days of the effective date of this Agreement for current supervising employees, and within ninety (90) days of new assignments for future incoming supervisory employees.

6. Public Services:

- a. Provide prompt, friendly, and accurate assistance in the use of all Library services.
- b. Provide prompt and accurate circulation, information, and reference services.
- c. Provide requested material promptly.
- d. Mirror and emulate the Escondido Public Library's Mission, Vision and Values Statements.
- e. Mirror and emulate a dress code policy for Library Staff similar to that of the City.
- f. Comply with established City processes and protocols for Library volunteers,

including required background checks. The City will determine the annual budget for background checks. LS&S will bill the costs of background checks for any volunteers that are not screened by the City directly.

- g. Comply with all federal, state and local laws of any kind.
- h. Maintain and pay the annual membership fees for the following, if included in the Base Budget: Serra Library Cooperative System (Serra) to provide delivery services and cooperative purchasing agreements; Califa Purchasing Consortium Membership; California Library Association Institutional Membership; Southern California Library Literacy Network Membership; and Innovative Users Group Membership (for at least the duration of the existing ILS Agreement).

7. Circulating and Reference Materials:

- a. In conjunction with adhering to the Collection Development Policy approved by the Library Board, establish a Collection Development Plan ("Collection Plan") which identifies a comprehensive set of procedures to guide the retention of existing materials and selection of new materials to be consistent with local community needs and best library practices. This Collection Plan should outline a schedule for regular, ongoing weeding of the collection, how analytics will be used to determine budget allocations, timeline and turnaround time for receiving and responding to review lists from the Centralized Support Unit ("CSU"), and the staff competencies required for those performing collection development duties.
- b. Review the Collection Plan on a regular basis to ensure it continues to reflect community needs. Written recommendations for any Collection Plan updates will be made with deference to local input with final decisions on any updates reasonably made by the City and/or Library Board.
- c. Provide in-depth collection development and management including a comprehensive analysis of the age; usage; relationship of print, non-print, and electronic resources; and imbalances in various areas utilizing evidenced based selection tools to allocate the materials budget. The collection should maintain a balanced representation of classic literature, foreign language materials, high-interest popular titles, and educational resources representing multiple, opposing viewpoints and diverse perspectives on each topic even if usage of certain titles is low. Patron-driving acquisitions, either through the established Purchase Suggestion process or through a mutually agreed-upon alternative method must be employed.
- d. Provide ongoing and systematic evaluation and refresh of existing materials, and recommend longer term collection growth in relation to the City's financial resources.
- e. Follow the established policy and procedures for Reconsideration of Library Materials approved by the Library Board.

8. Inter-Library Loan Program:

- a. To the extent this cost previously exists in the base budget; Maintain membership

in OCLC (Online Computer Library Center) in order to provide a high quality and appropriate inter-library loan program.

9. Programming:

- a. Provide high-quality, effective educational, recreational, and cultural programs of interest to all age groups present in the community.
- b. All programs currently in place will continue and be analyzed with recommendations provided for the long-range plan documents (Strategic Plan) and information on new program additions will be provided, in writing, to the City Manager or his/her designee and the Library Board. The Library Board has the right to discontinue any of the current programs. The City Manager or his/her designee has the right to discontinue any of the current programs if funding is unavailable. To the extent the Library Board or City Manager choose to continue the current programs during the Agreement term, LS&S agrees to provide the following programming/events and pay all program/event related expenses identified in the Base Budget or otherwise provided by volunteers or through other community support and funding, if any.
 - Weekly baby, toddler, and pre-school story times including bilingual instruction.
 - Monthly book clubs for children, teens, and adults including a bilingual adult book club.
 - Monthly teen programs that provide opportunities for earning community service credit, developing leadership skills, and contributing to the direction of teen-related programming.
 - Minimum monthly Science, Technology, Engineering, Arts, and Mathematics (STEAM) programming for children, teens, and adults.
 - Minimum 7-week Summer Reading Challenge for adults, teens, children, and babies including weekly events.
 - Monthly special programs for all ages that celebrate local, regional, and national holidays and festivities; ALA (American Library Association)-sponsored campaigns; genealogy; Escondido's local history (Pioneer Room); educational seminars related to health, finances, technology; programs addressing trending topics such as coding, adult crafting, virtual reality, and 3-D printing; author events; writers' groups.
 - Monthly concert
 - Annual Food for Fines program where patrons can donate canned goods to eliminate up to \$20 in overdue fines and/or fees from their accounts
 - To the extent these programs exist at the execution of this agreement, continue existing content creation programs, Library YOU and Pop-Up Podcast.
 - Read Local, Shop Local partnership with local businesses to provide discounts to Library cardholders.
 - Continue the partnership with San Diego Children's Discovery Museum to provide free, circulating passes for museum admission. To the extent partners are willing to participate, expand upon this program to include additional museums and institutions including but not limited to the California Center for the Arts, Escondido; Roynon Museum of Earth Sciences & Paleontology; San Diego Archaeological Center, and the Safari Park.
- c. Conduct regular outreach efforts including visits to school classrooms, attend back-to-school nights, and present at meetings of community groups, school media tech meetings, service clubs, and other local organizations, in addition

to hosting tours of the Library, to promote the services, resources, and value of the Library. Partner with City departments to participate in City-sponsored community events such as but not limited to – Cruisin’ Grand, Educator’s Night Out, Neighborhood Services events, Farmer’s Market, National Night Out Against Crime, etc.

- d. Ensure that all non-City program providers are properly permitted and insured and appropriate waivers have been executed by all participants in conformance with established City policy.

10. Facilities and Equipment:

- a. Work with Library Board, Library Staff and City officials to ensure effective building maintenance by promptly identifying and reporting problems with the facility.
- b. Provide daily janitorial services in Library facilities.

11. Systems:

- a. IT support is provided through shared services and is the responsibility of the City. LS&S will be responsible for supporting the City IT Department and the City Library's Integrated Library System (“ILS”) required to effectively operate the Library. The pricing schedule provided for in this Agreement includes an adequate number of ILS seat licenses to effectively operate the Library. If any new branch libraries or outlets are added in the future, the costs for the additional ILS seat licenses required to support those locations are not included in the pricing schedule. Additional licenses will be the responsibility of the City. Established procedures shall be followed and expanded upon for regular maintenance of the ILS, including but not limited to software upgrades recommended by the vendor, regular weeding of inactive accounts based on 5 years on inactivity, removal of inactive email addresses, and regular clean-up of bibliographic records.
- b. Be responsible for supporting the City’s IT acquisition and maintenance of any servers/hardware required for the ILS.
- c. Be responsible for coordinating with the City IT on any contingency plans or alternative solutions for planned or unplanned circumstances when the ILS is unavailable.
- d. Be responsible for reporting system outages and problems proactively via the use of the vendor’s Support Portal and the City’s IT Helpdesk system.
- e. Advise the Library Board and City as to recommendations in the area of automation that would enhance service and/or decrease overall operating costs. Technology professionals from LS&S will meet with technology professionals from the City on a semi-annual basis to discuss new technologies and opportunities to streamline library operations.

- f. Any equipment purchased by and belonging to LS&S and used for Library purposes must be asset tagged. It is the responsibility of LS&S to label any of its equipment accordingly. Any unlabeled equipment shall remain with the City
- g. The use of City-supplied computer equipment and software as well as internet and e-mail use requires the appropriate, efficient, ethical, and legal utilization of City computer hardware and network resources. The use of computer hardware and network resources must support the City's and the Library Board's objectives and be consistent with their missions. Users must abide by the City's and Library Board's policies, administrative directives, procedures, rules, regulations, and guidelines. If a user violates any such provisions, his/her access to the computer network and the use of computer equipment may be denied. The City reserves the right to disallow any LS&S employee who violates any of the City provisions to provide Library services under this Agreement.
- h. LS&S understands and agrees to provide written acknowledgement from each employee providing Library services for the City that the employee has read and agrees to comply with City and Library Board's adopted procedures concerning the appropriate use of City computer and acceptable internet and email use on City's computers.
- i. LS&S will maintain participation in the CENIC Broadband Internet Project with the provision of a minimum 1 gbps fiber internet speed. Costs associated with the maintenance and upgrade of required corresponding hardware and software are included in the Operating Budget.
- j. LS&S will maintain participation in the FCC's Schools and Libraries Program, known as the e-Rate Program, for discounted internet access. In the absence of an existing third-party vendor to provide this internet service, LS&S will engage a third-party vendor and the costs of this vendor will be applied against the fees received.
- k. City IT will maintain Child Internet Protection Act (CIPA) compliance or similar federal and state laws by filtering internet access for users under the age of 18.
- l. City IT will maintain software licenses that provide for the protection of privacy of patrons utilizing public internet computers and ensure that any data downloaded to local hardware will be deleted between users.
- m. All technology software and maintenance costs for the automation system and Library specific software programs will be paid by LS&S as invoiced by vendors at a not-to-exceed amount identified within the City's Library Budget and agreed upon by LS&S as part of the annual budgeting process. LS&S will subsequently include the items on the next monthly City invoice for reimbursement at actual cost incurred.

12. Planning and Performance Monitoring:

- a. Work in partnership with the City and Library Board on positioning the Library for the future by assisting all stakeholders in Space and Service Planning for the existing and potential new library facility in order to optimize and expand

the Library's capacity for collections, programs and related services. LS&S will prepare, at no additional expense to City, a comprehensive Needs Assessment and will reach out and work with all local stakeholders to provide community outreach and education efforts for a public funding initiative. LS&S will establish short- and long-term goals and objectives, to be approved by the City and Library Board, reflecting a course of action that continually improves Library service, and administrative procedures and policies that meet the changing requirements of the Library.

- b. As part of the development of the Strategic Plan, City, the Library Board, and LS&S shall work cooperatively to develop core Library performance measurements by which LS&S's performance under this Agreement can be objectively measured and compile monthly, quarterly, and annual reports to the City and Library Board regarding the same. California State Library Public Library Statistics for FY 2016-17 will be the minimum reported benchmark measurements. LS&S will be responsible for submitting statistics to the California State Library and Institute of Museum and Library Services on an annual basis.
- c. LS&S, the Library Board and the City Manager or his/her designee shall meet annually to review and evaluate LS&S's performance during the term of this Agreement.

C. Excluded Services.

LS&S shall have no responsibility for administration, purchase or payment of, or any liability or duty to defend claims for:

1. Any Capital Items, which shall mean any capital acquisitions, improvements, or replacements of any of the properties, facilities, equipment, furniture, furnishings, fixtures, or leasehold improvements of the Library.
2. Any amount of costs for unbudgeted repairs, maintenance, and/or upkeep of Capital Items owned by the City.
3. Any patron accommodations or structural improvements regarding the Library facilities required by the Americans with Disabilities Act (ADA) or any similar federal, state, or local regulations.
4. The City will be responsible for major facility projects and upgrades concerning Library buildings, grounds, building systems, landscaping, HVAC, lighting, telecommunications, Internet access, and will be responsible for any capital improvements at Library facilities.
5. The City will be responsible for providing routine maintenance, including landscaping, phone, waste removal, recycling, pest control, fire extinguishers, and alarms in Library facilities. This includes the interior and exterior of the structure, all restrooms, electrical, building systems, and the heating and air conditioning system. LS&S will be responsible for janitorial services. LS&S shall work with Library Staff,

the Library Board and City to ensure effective building maintenance by promptly identifying and reporting problems with the facilities. LS&S shall be responsible for utilities (gas, electric, water, sewer) at the base year rate of \$137,900; any increases above the base rate would be the City's responsibility at the actual cost incurred.

6. City will be responsible for insuring the Library property, facilities, fixtures, and furnishing against all perils and risk of loss.
7. City is responsible for providing any security services and equipment for the Library and surrounding areas as may be desired by City. City is responsible for the configuration and maintenance of the security cameras and associated equipment and network at the Library. Library Staff shall be responsible for reviewing security camera "video" in the event of an incident and contacting law enforcement authorities as appropriate.
8. The Library Board and City are responsible for setting all general policies that govern the operations of the Library and which are not inconsistent with the terms of this Agreement and the Library Board's management, including the Code of Conduct Policy, but excluding policies related to staffing for which LS&S shall be responsible.
9. The City will provide and, when necessary, replace, all necessary software, hardware and related peripherals, for use by Library Staff for Library operations only and for the service of the general public including periodic replacement of aged or obsolete equipment as outlined in Schedule B. City will provide day-to-day maintenance and servicing of said software, hardware, and related peripherals. The City will provide, maintain, and service computer networks and the telephone system/network and equipment. City will maintain valid and current licensing and maintenance on all equipment and systems.
10. City will be responsible for all copier and printer costs, costs of operations and maintenance, toner, paper and other consumables.
11. City will be responsible for any future increases in wages and salaries mandated by Federal, State or Local regulations or legislation and unknown at the execution of this agreement that exceeds 3% in any given year.
12. City will be responsible for any goods or services, including payroll, that were rendered to the City prior to the Effective Date.
13. City will be responsible for alleged unfair labor practices, grievances, or any claims or litigation whatsoever arising out of the hiring and/or firing, layoff, subcontracting, assignment, reassignment or discipline of any Library staff not employed by LS&S at the time of the relevant incident.
14. City will be responsible for any worker's compensation or other claims arising from injuries sustained prior to the Effective Date by any Library staff not employed by LS&S at the time of such injuries.
15. City will be responsible for any costs of any current or future employee benefits,

including payroll taxes, retirement benefits, voluntary retirement incentives, pension contributions, employee buyouts or other similar programs adopted by City.

D. Library Materials and Materials Handling Fee.

The responsibility for adopting Library collection development policies will remain with the City and Library Board, and all Library Materials selections, in cooperation with the City and Library Board, will be the responsibility of Library Staff employed by LS&S. If and when requested by the City or Library Board, LS&S will, on behalf and for the benefit of those parties, attempt to negotiate favorable discounts and prices from library suppliers for the purchase of all Library materials, which shall include books, periodicals, newspapers, microfilms, electronic database subscriptions, standing orders, electronic materials (eBooks, eAudiobooks, eMagazines), audio and video materials and cases, automated reference services, binding, cataloging, and processing costs (collectively, "Library Materials").

If and when requested to purchase Library Materials by the City or Library Board, LS&S will have sole authority to select vendors, place orders with the suppliers and perform the accounting functions related to those orders, including prompt payment of the invoices, and in accounting for the cost of the Library Materials, LS&S shall include a fee of five percent (5%) of the cost of the Library Materials ordered ("Materials Handling Fee").

E. Operating Budget, Charges and Payments.

1. Operating Budget and Charges.

Period	Charges ("Operating Budget")*		Min Library Materials
	Annualized	Monthly	
July 1, 2024 to June 30, 2025	\$3,034,685	\$252,890.39	\$250,000
July 1, 2025 to June 30, 2026	\$3,121,925	\$260,160.43	\$250,000

* Library Materials are not included in the Operating Budget amounts indicated above. The City will determine the amount to be budgeted for Library Materials on an annual basis, the total amount of which will include sales tax, shipping, processing fees, and, the Materials Handling Fee. Payment by the City for Library Materials ordered and purchased by LS&S for the Library shall be made only on a reimbursement basis following submission of an invoice and documentation of expenditures.

On or before the first (1st) day of January of each calendar year that this Agreement is in effect, LS&S will provide the City and Library Board with the projected budget for the next Fiscal Year period (July 1 – June 30). The City and Library Board will review, comment, and negotiate the proposed budget with LS&S and approve the draft next Fiscal Year budget on or before May 1 pending final approval of the overall Library Budget by City Council. If the Parties have not

reached such agreement thirty (30) days before the end of such Period, then the new charge shall be equal to the Charge for the last month of such Period multiplied by twelve (12) or the number of Remaining Months, whichever is less, plus three percent (3%).

The Operating Budget is contingent on other existing contractual terms, obligations, and responsibilities remaining the same, except as expressly noted herein.

2. Payments.

LS&S shall invoice the City twice-monthly in advance on or before the 1st and 15th of each month. City shall pay LS&S on a twice-monthly basis any invoiced reimbursables, as well as a pro-rata share of the annualized "Operating Budget" amounts. Such payment shall be made by the 15th and 30th of each month.

F. Staffing.

1. LS&S will employ qualified Library Staff sufficient to provide services and programs during all hours of Library operations and the necessary orientation and ongoing training and professional development to the Library Staff.
2. City Librarian or LS&S Corporate staff shall provide City and Library Board with notice whenever staff begin or end employment with LS&S at the Library so City can collect/distribute keys and equipment as well as enable/disable computer accounts and security codes. City Librarian shall maintain a checklist that is to be completed whenever staff are hired or shall no longer work at Library.
3. All personnel employed to perform the services necessary to operate the Library and to perform the other functions of LS&S shall be employees of LS&S, which shall pay all costs related to their employment.
4. LS&S's Library Staff will consist of a **minimum** of twenty-two (22) Full Time Equivalent (FTE) positions.

The staffing allocation shall be as follows:

- One (1.0 FTE) City Librarian*
- Two (2.0 FTE) Librarians**
- Four (4.0 FTE) Professional Support Positions (including Marketing/Outreach Coordinator, Program Coordinator, City Volunteer Coordinator and Literacy Coordinator)
- Thirteen (13 FTE) Library Support Personnel
- One (1.0 FTE) Office Manager/Administrative Assistant
- One (1.0 FTE) Janitor

* Desirable Experience and Education: Master's degree in Library Science, Library and Information Science, or similar field from an ALA accredited college or university; five (5) years of progressively responsible professional library experience, including two or more years in a supervisory or lead capacity; or an equivalent combination of training and experience. Appointment of an individual to this position shall be subject to the approval of the Library Board and City Manager or his/her designee.

** Desirable Experience and Education: Master's degree in Library Science, Library and Information Science, or similar field from an ALA accredited college or university; one (1) years of progressively responsible professional library experience; or an equivalent combination of training and experience.

From time to time, actual staffing levels may fluctuate due to normal turnover and attrition. LS&S agrees it will make a good faith effort to recruit and select qualified employees to fill vacancies within a reasonable period of time in order to maintain appropriate and necessary staffing levels. LS&S commits to giving a preference to qualified local residents to fill any such vacant positions to the extent permissible by law.

5. LS&S agrees to conduct background checks, to include a check for criminal and sex offender history, for all employees working within the Library facilities or for the Library in any capacity as part of its Library Staff. In addition, LS&S will comply with established City processes and protocols for Library volunteers, including any required background checks. The City will manage the annual budget and cover the costs of volunteer background checks.

G. Special Conditions.

LS&S may purchase goods for use in the administration and operation of the Library. Title to all tangible items purchased by LS&S on behalf of the City shall at all times reside in the City. If LS&S furnishes any goods to the City pursuant to this provision, LS&S will use good faith efforts to extend the manufacturer's warranty, if any, to the City. All goods, services, and materials designated within this Agreement are the responsibility of LS&S to procure. There are no other warranties, express or implied, including warranties of merchantability or fitness for particular purpose as to any such goods and items.

Schedule A
Base Budget

(Attached)

Schedule B Technology Support Services

Section 1: Purpose

The purpose of this Schedule B is to set forth additional terms of the Agreement regarding the responsibilities of the City, acting through its Information Services Department and LS&S, acting through its employees assigned to operate the Library.

Section 2: Definitions

The words and phrases used in this Schedule B shall have the same meaning as provided in the Agreement. In addition, the following words, phrases, and abbreviations shall have the following meanings:

“**ILS**” means Integrated Library System.

“**IS Department**” means City’s Information Services Department.

“**IS Director**” means City’s Director of Information Services or designee.

“**Library Director**” means LS&S’s employee serving in the position of Director of the Library.

“**Library Staff**” means LS&S’s employees, including the Library Director, assigned by LS&S to perform the on-site services provided by LS&S to City pursuant to this Agreement.

“**PC**” is the abbreviation used for “personal computer.”

“**UPS**” is the abbreviation for “uninterruptible power supply”, which is a device that provides battery backup when the electrical power fails or drops to an unacceptable voltage level.

Section 3: Scope and Responsibilities

A. Administration and Management

- (1) *Technology Coordination.* The IS Director will meet with the Library Director and the LS&S Technology Representative approximately every six months, at a mutually agreeable date and time, to discuss technology needs, upcoming initiatives and any service or support concerns relating to Library operations.
- (2) *Technology Procurements.* City shall be responsible for establishing the appropriate standards and providing update or refreshment schedules for City provided hardware and software. Any non-standard hardware or software request must be justified and approved by the IS Director. City shall be responsible for purchasing and replacing all City-provided computing hardware and associated peripherals, including desktop PC’s, laptops, monitors, mice, keyboards, printers, copiers, fax machines, scanners, etc.
- (3) *Vendor service agreements and contracts.* City will enter into and maintain applicable service agreements or support contracts on City-provided computer equipment. The City will be responsible for maintain equipment is good working order at all times. Licensing will be appropriate and valid for the Library systems

and software. Maintenance agreements and software support agreements will be kept current and accessible for support requirements.

- (4) *Technology planning and budgeting.* Library Staff and LS&S IT shall be responsible for preparing a written annual Technology Plan that defines the needs and technology solutions to meet those needs. Library shall solicit and receive comments and suggestions from City staff and other interested parties identified by the City in defining existing problems, necessary changes, and/or desired enhancements to technology services at the Library. LS&S, through the Library Director and LS&S IT, and City, through the IS Director, shall work together to review and define the Library's technology needs for purposes of long range planning, development of mid-year and fiscal year budgets and inclusion in the annually updated Technology Plan.
 - (5) *Equipment inventory and lifecycle management.* The City IS Department shall be responsible for maintaining and updating inventories of City-owned technology assets, including the software loaded on all City-owned computers. The IS Department shall be responsible for picking up and properly preparing City-owned equipment for disposal, including a process for ensuring that all data is removed from the equipment. The IS Department will update the inventory and provide inventory revisions to the Library Director upon request.
 - (6) *Audit and Review of Third-Party Network Connections.* Any third-party systems or connections into the City's computer network must be pre-approved and will be subject to initial and periodic security review by the City. Any required corrective actions are to be implemented immediately, and closure is to be confirmed by the IS Director.
 - (7) *Internet content filtering management.* City shall be responsible for:
 - (a) Administering and monitoring the Internet Filter that serves the Library patron computers; and
 - (b) Providing annual support and maintenance costs associated with the filtering software for public terminals.
- Library computers will be filtered for protection against Web-based threats, such as: malware, spyware, malicious sites, botnets and key loggers.
- (8) *Library website and URL namespace.* LS&S shall be responsible for the setup and maintenance of the Library's content on the Library's web portal. City will maintain the annual renewal for the Library's URL namespace. The City shall be responsible for hosting the library website in accordance with service levels outlined below.
 - (9) *Support requests.* Incidents or requests for support should be reported to the City IS Department Help Desk via any of the following means:
 - (a) User Support Portal - typing in URL in their internet browser (<http://helpdesk>)
 - (b) Calling (760) 839-4357
 - (c) Emailing SUPPORT@EASCONDIDO.ORG

If the incident is urgent, users should call the Help Desk, rather than using the support portal or emailing. IS Department support hours being 8:00 A.M. to

6:00 P.M. Monday through Thursday and 8:00 A.M. to 5:00 P.M. on Friday central time (except on City holidays). For urgent issues and outages, Library Staff may request IS Department emergency support outside of the standard support hours.

- (10) *Compliance with IT Department policies and procedures.* LS&S employees using City-provided computing technology and equipment will be expected to adhere to all City technology usage policies, requirements and standards.
- (11) *City-provided user and email accounts.* The IS Department shall be responsible for creation and maintenance of all City domain user accounts and City e-mail accounts. The Library Director shall inform the IS Director as soon as possible after any staff terminations so that user access to core information technology resources can be revoked in a timely manner. To the extent feasible, the Library Director shall inform the IS Director in advance of any employment termination date of a Library Staff employee if there is reason to believe the employee whose separation from employment may result in a risk to the condition or security of the hardware, software, or data to which said employee has access. The City will make appropriate allowances for LS&S employees' access to LS&S business systems such as Email, HQ, Timesheets, etc. for the purposes of conducting normal LS&S business operations. This may include the requirement to install non-City software or modify software to accommodate the normal operation.
- (12) *Inventory Lists; Support Matrix.* IS Department staff and Library Staff and LS&S IT shall coordinate and cooperate in the preparation and maintenance of an inventory list of the hardware, installed software, and other computing technology equipment located in or assigned for use as part of Library operations. The inventory shall set forth the owner or provider of the hardware, software or equipment. IS Department staff and Library Staff shall also coordinate and cooperate with respect to development of a support matrix relating to the above inventory setting forth the party responsible for obtaining and/or providing support relative to the hardware, software, and/or equipment shown on the inventory. The initial inventory of installed software subject to this Paragraph (12) is agreed to be as set forth in Exhibit 1 to this Schedule B.

B. City Facility

- (1) *Security cameras.* City is responsible for the configuration and maintenance of the security cameras and associated equipment and network at the Library. Library Staff shall be responsible for reviewing security camera "video" in the event of an incident and contacting law enforcement authorities as appropriate.
- (2) *Technology equipment rooms.* The City IS Department is responsible for coordinating and working with City's Facilities Management Department to maintain power, UPS, air conditioning, environmental monitoring of the functioning equipment rooms.
- (3) *Audio visual equipment.* City is responsible for providing maintenance and support for all new and existing audio/video, systems in use at the library. Support includes: projector lamps, supplies, parts, repairs, preventative maintenance and any necessary adjustments. LS&S shall be responsible for failures caused by improper operation, cleaning or maintenance; accidents, damage, misuse or abuse caused by a LS&S employee. The City will be responsible for providing appropriate documentation and training on the proper usage of the equipment.

C. Library Automation System (Polaris)

LS&S currently maintains Polaris on its Customers sites. Should the Customer choose to migrate to Polaris, at the Customers expense, LS&S will be responsible for providing and supporting the Polaris Integrated Library System (ILS), as well as other automation systems required for effective operation of the Library. LS&S shall be responsible for acquisition, licensing and maintenance of any service/hardware required for the Polaris automation systems.

D. Desktop Computing

- (1) *General.* All City-owned desktops and laptops will have antivirus and desktop management agents installed, where applicable. Only software provided by or approved by the City shall be loaded on City-owned computers. IS Department staff will not be required to install any additional software provided by LS&S without proof of purchase or a copy of the license agreement. Any computer, server or network hardware provided by LS&S or any third-party must be pre-approved by the IS Department and must adhere to City standards before being connected to City-owned computer hardware or the City's data network. Library Staff shall be responsible for ensuring that all City-owned equipment is well maintained operated in accordance with the manufacturer's instructions and the City's direction. LS&S shall be responsible for failures caused by improper operation, cleaning or maintenance; accidents, damage, misuse or abuse caused by a LS&S employee
- (2) *Staff computers.* The City IS Department is responsible for the support of all City-provided computers which are designated for use by Library staff in performing their job functions. Support includes: installation of hardware and software, configuration, installation of operating system patches and updates, and troubleshooting of hardware, software or network connectivity problems. IS Department staff will provide assistance with supported applications which shall include: installation and updating of software; troubleshooting of common problems; and help with basic usage. IS Department staff will help users perform their job functions using computer technology but will not perform those functions for them. For example, IS Department will not create documents or design databases or web pages for users.
- (3) *Patron computers.* City Staff is responsible for the support of all City provided computers which are designated for use by library patrons which shall include operating system patches and updates; the troubleshooting of hardware, software or network connectivity problems. IS Department staff will work in conjunction with Library Staff and LS&S IT to troubleshoot and resolve any connectivity issues that may be associated with the City-provided data network.
- (4) *Other LS&S owned and provided hardware/software.* Library Staff shall be responsible for the support and maintenance of all LS&S-owned or provided hardware and/or software.

E. Server Hardware and Operating Systems

- (1) *City provided Servers.* The City IS Department is responsible for the support of all City-provided servers which are housed at the Library or designated for use by Library Staff or patrons, which shall include: installation, configuration, installation of operating system patches and updates and the troubleshooting of hardware, software or network connectivity problems.
- (2) *LS&S provided Servers.* LS&S shall be responsible for acquisition; licensing and maintenance of any LS&S-provided computing system or service. Any computer, servers or network hardware provided by LS&S or any third-party must be pre-approved by the IS Director and adhere to City standards before being connected to City-owned computer hardware or the City's data network.

F. Telephone, Network, Internet, and Printers

- (1) *City network connectivity (to facility and to staff).* The City IS Department is responsible for the maintenance and operation of all City-provided network equipment, including the configuration, support and maintenance of all routers, switches, firewalls and associated Ethernet and fiber connectivity.
- (2) *Wireless network connectivity.* The City IS Department is responsible for the maintenance and operation of all City-provided wireless network equipment, including the configuration, support and maintenance of wireless access points and associated routers, firewalls and cabling.
- (3) *City internet connectivity.* The City IS Department is responsible for the maintenance and operation of City-provided internet connectivity, including: modems, routers, switches and associated cabling. As of the Effective Date, City provides internet connectivity for the use of library patrons and Library Staff computers.
- (4) *Telephone system.* The City IS Department is responsible for the maintenance and operation of all City provided voice communications equipment at the Library, including: VoIP/PBX equipment, handsets and associated cabling.
- (5) *Printers and Copiers.* City Staff is responsible for the support of all City provided printers and copiers which are designated for use by library patrons. The City shall be responsible for the paper, toner, maintenance and repair costs of all printers and copiers for use by library patrons.

Exhibit 1 to Schedule B

Software used in Library: as what is currently used by LS&S at the time this contract is executed.

Software	Operational Responsibility	Financial Responsibility
Polaris	LS&S	City
Cassie/Cassie Manager*	LS&S w/City IT support	City
Winselect on Enterprise Server	LS&S w/City IT support	City
Deep Freeze on Enterprise Server	LS&S w/City IT support	City
Magic Info	LS&S for content creation. City IT support for server	City
Websense*	LS&S	City
McAfee Antivirus	City	City
Windows	LS&S w/City IT support	City
MS Office	LS&S w/City IT support	City

*or equivalent software

Exhibit 2 to Schedule B

Service Level Agreements

This section is reserved for guidelines on measurable service level objectives. The intent of service level definition is to understand the expectations for key library and technology services and mechanisms for measurement.

Technology Metrics

The metrics identified are critical to the reliable service delivery and operations of a library.

Measurement

- Response to Troubles or Trouble Tickets – Response to priority 1 issues will be 4 hours after notification. Once issues are acknowledged, the responsible party will act appropriately to resolve the issue. Priority 1 issues will receive the highest response and activity until resolved or downgraded. Responses to lower priority items will be based on acknowledge and assignment of action within a time that is appropriate to the condition or impact.
- Wi-Fi and Circuit Availability – access to communications is critical to normal operations of a library. Patron access to reliable communications is to be maintained at or above 98% availability during normal business/library hours.
- Wi-Fi and Circuit Throughput and bandwidth – Libraries provide a necessary public service to patron and staff via wireless and internet communications. It is expected that these services be monitored and measured to ensure patrons are not experiencing consistent delays and packet latency. As a benchmark, latency to the internet should be under 30 ms Round Trip delay as measured to the nearest server on a public network. Upload and Download speeds will be appropriate to the size of the library community and will be monitored and adjusted as needed.
- Patron Computers and Printers – access to patron computers, printers, and copies are to be maintained to 98 % availability. Patron computers are to be protected by anti-spam and anti-virus and locked down in such a manner as to allow for normal user interaction without allowing installation and modification.
- Staff Computers – access to the LS&S library management systems is critical to the operations of a library. While staff systems have “off line” modes available with limited function, it is expected that all staff computers be maintained and provided at 99% availability. This availability is slightly higher than patron systems due to its role in the library. Updates to operating system are to be reviewed and applied routinely or minimally quarterly.
- Web Systems Availability – access to the library web site will be maintained to 98% availability.
- Security – systems integrity will be protected by firewalls, policies, and physical controls maintained by the City. Filters and changes to virus definitions are to be maintained and updated within 72 hours of release. Critical server updates are to be applied as per vendors release schedule.

Definitions

- Priority 1 issue is an out of service condition that impacts library operations and patron activity.
- Priority 2 issues are an equipment or process failure that is limited in scope or impact. Priority 2 issues can be a single system or process being out of service or impaired. Priority 2 impacts are limited as to scope and service delivery.
- Priority 3 issues are minor in scope or limited in span and impact. This can also include items that require order or installation.
- Notification – call, email, text, trouble ticket generation, or conversation indicating an issue.
- Response – initial notification and confirmation of an issue.
- Resolution – Ticket closure with satisfactory return to normal operations.

Attachment B

Budget

[RESERVED]

Attachment C

**ATTACHMENT 1 - Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying
Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

LIBRARY SYSTEMS & SERVICES, LLC, a Maryland limited liability company ("LS&S") certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CCAEF understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of LS&S's Authorized Official

Name and Title of LS&S's Authorized Official

Date

RESOLUTION NO. 2024-87

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE TERMINATION OF THE PROFESSIONAL SERVICES AGREEMENT FOR THE OPERATION OF THE ESCONDIDO PUBLIC LIBRARY WITH LIBRARY SYSTEMS & SERVICES LLC.

WHEREAS, the City of Escondido first entered into a Professional Services Agreement for the Operation of the Escondido Public Library (“PSA”) with Library Systems & Services LLC (“LS&S”) in October 2017; and

WHEREAS, due to operational needs, including COVID closures and limited access required under California law, the PSA was amended; and

WHEREAS, due to budget constraints and other priorities, the City has failed to appropriate funds for the Escondido Public Library from the General Fund for fiscal year 2024/2025; and

WHEREAS, this termination in no way reflects the excellent services performed by LS&S and its staff over the past seven years; and

WHEREAS, this termination will be effective June 30, 2024.

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

1. That the above recitations are true.
2. That the City Council approves the termination of the PSA with LS&S effective June 30, 2024

and authorizes the City Manager to execute all documents required to accomplish that termination.



STAFF REPORT

June 26, 2024

File Number 0480-70; 0600-10; A-3517

SUBJECT

FISCAL YEAR 2024-2029 COUNTY OF SAN DIEGO CALIFORNIA IDENTIFICATION (CAL-ID) PROGRAM SPECIALIST FUNDING AND BUDGET ADJUSTMENT

DEPARTMENT

Police Department

RECOMMENDATION

Request the City Council adopt Resolution No. 2024-80 and accept funding from the County of San Diego for the FY 2024-2029 California Identification (“Cal-ID”) Program Specialist; authorize the Mayor to execute contract documents on behalf of the City of Escondido; and approve budget adjustments related to reimbursement funding.

Staff Recommendation: Approval (Department Name: Edward Varso, Chief of Police)

Presenter: Edward Varso, Chief of Police

ESSENTIAL SERVICE – Yes, internal requirement in support of police services.

COUNCIL PRIORITY –Improve Public Safety

FISCAL ANALYSIS

This action will have no impact on the General Fund Budget. The San Diego County Sheriff’s Department will fund all costs associated with the FY 2024-2029 Cal-ID Program Specialist.

PREVIOUS ACTION

On April 22, 2019, the City Council accepted \$421,876 from the County of San Diego for the FY 2019-2024 Cal-ID Program Specialist.

BACKGROUND

The Cal-ID Network is a law enforcement resource that allows access to fingerprints, palm prints, and photos. On December 11, 2023, the San Diego County Cal-ID Remote Access Network (“RAN”) Board authorized usage of the Cal-ID revenue to fund a contracted Cal-ID Specialist from July 1, 2024 to June 30, 2025, with automatic annual renewals for an additional four years through June 30, 2029. The Cal-ID Program Specialist manages county-wide operations, training, and hardware maintenance of the Cal-ID



CITY of ESCONDIDO

STAFF REPORT

Network. Cal-ID Program costs for fiscal year 2024 through fiscal year 2029 will total \$494,170. All costs will be fully reimbursed by the County of San Diego from revenue generated from California Vehicle Code 9250.19.

The authorization of Resolution No. 2024-80 and approval to accept FY 2024-2029 County of San Diego Cal-ID Program Funding will ensure local and regional access to law enforcement information.

RESOLUTIONS

- a. Resolution No. 2024-80
- b. Resolution No. 2024-80- Exhibit "A"- Consulting Agreement

ATTACHMENT

- a. Attachment 1 – Budget Adjustment

RESOLUTION NO. 2024-80

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO ACCEPT THE FISCAL YEAR 2024 THROUGH FISCAL YEAR 2029 CAL-ID SPECIALIST SERVICES FUNDING PROVIDED BY THE SAN DIEGO SHERIFF'S DEPARTMENT IN THE AMOUNT OF \$494,170; AND EXECUTE ALL NECESSARY BUDGET ADJUSTMENTS.

WHEREAS, the City of Escondido Police Department ("City") participates in the San Diego County California Identification ("Cal-ID") Program; and

WHEREAS, the San Diego County Cal-ID Remote Access Network ("RAN") Board authorized the use of Cal-ID revenue to fund the contract of the Cal-ID Specialist; and

WHEREAS, the City and the County of San Diego executed an Memorandum of Agreement ("MOA") which provides funding to the City for a Cal-ID Program Specialist; and

WHEREAS, the City desires to enter into a Consulting Agreement with a Cal-ID Specialist to provide services funded by the MOA.

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

1. That the above recitations are true and correct.
2. That the City Council authorizes the Mayor to execute the Cal-ID Program Specialist Consulting Agreement, which is attached as Exhibit "A" and is incorporated by this reference.



CITY OF ESCONDIDO
CONSULTING AGREEMENT

This Consulting Agreement (“Agreement”) is made and entered into as of the last signature date set forth below (“Effective Date”),

Between: CITY OF ESCONDIDO
a California municipal corporation
201 N. Broadway
Escondido, CA 92025
Attn: Lisa Rodelo
760-439-4905
("CITY")

And: James Walker
a sole proprietor
1856 Rancho Judith
Alpine, CA 91901
Attn: James Walker
619-871-1659
("CONSULTANT").

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

WHEREAS, the CITY has determined that it is in the CITY’s best interest to retain the professional services of a consultant to provide automated fingerprint technologies for the City of Escondido Police Department;

WHEREAS, CONSULTANT is considered competent to perform the necessary professional services for the CITY; and

WHEREAS, the CITY and CONSULTANT desire to enter into this Agreement for the performance of the Services 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. Description of Services. CONSULTANT shall furnish all of the Services described in the Scope of Work, which is attached to this Agreement as Attachment “A” and incorporated herein by this reference (“Services”).
2. Compensation. In exchange for CONSULTANT’s completion of the Services, the CITY shall pay,

and CONSULTANT shall accept in full, an amount not to exceed the sum of **\$494,176**. CONSULTANT shall be compensated only for performance of the Services described in this Agreement. No compensation shall be provided for any other work or services without the CITY's prior written consent. If this Agreement is amended at any time, additional compensation of CONSULTANT contained in any subsequent amendments shall not exceed a cumulative total of 25% of the maximum payment provided for in this Section 2, unless approved by resolution of the City Council.

3. Performance. CONSULTANT shall faithfully perform the Services in a proficient manner, to the satisfaction of the CITY, and in accord with the terms of this Agreement. CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other information furnished by CONSULTANT pursuant to this Agreement, except that CONSULTANT shall not be responsible for the accuracy of information supplied by the CITY.
4. Personnel. The performance of the Services by certain professionals is significant to the CITY. As such, CONSULTANT shall only assign the persons listed on Attachment "B", attached to this Agreement and incorporated herein by this reference ("Personnel List"), to perform the Services. CONSULTANT shall not add or remove persons from the Personnel List without the City's prior written consent. If CONSULTANT has not designated a person to perform a component of the Services, CONSULTANT shall not assign such component of the Services to a person without obtaining the City's prior written consent. CONSULTANT shall not subcontract any component of the Services without obtaining the City's prior written consent.
5. Termination. The Parties may mutually terminate this Agreement through a writing signed by both Parties. The CITY may terminate this Agreement for any reason upon providing CONSULTANT with 10 days' advance written notice. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of any notice of termination. If the CITY terminates this Agreement due to no fault or failure of performance by CONSULTANT, then CONSULTANT shall be compensated based on the work satisfactorily performed at the time of such termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the Services.
6. City Property. All original documents, drawings, electronic media, and other materials prepared by CONSULTANT pursuant to this Agreement immediately become the exclusive property of the CITY, and shall not be used by CONSULTANT for any other purpose without the CITY's prior written consent.
7. Insurance Requirements.
 - a. CONSULTANT 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 Services, and the results of such work, by CONSULTANT, 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 00 01 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 general aggregate.
 - (2) *Automobile Liability*. ISO Form CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage, unless waived by the CITY and approved in writing by the CITY's Risk and Safety Division.

- (3) *Workers' Compensation.* Worker's 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) *Professional Liability (Errors and Omissions).* Professional Liability (Errors and Omissions) appropriate to CONSULTANT's profession, with limits no less than \$2,000,000 per occurrence or claim and \$2,000,000 aggregate.
 - (5) If CONSULTANT 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 CONSULTANT.
- b. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:
- (1) *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-: FSC VII, or as approved by the CITY.
 - (2) *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 endorsement shall be at least as broad as ISO Form CA 20 01.
 - (3) *Primary Coverage.* CONSULTANT'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 CONSULTANT's insurance and shall not contribute with it.
 - (4) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.
 - (5) *Subcontractors.* If applicable, CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated within this Agreement, and CONSULTANT shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.
 - (6) *Waiver of Subrogation.* CONSULTANT hereby grants to the CITY a waiver of any right to subrogation that any insurer of CONSULTANT may acquire against the CITY by virtue of the payment of any loss under such insurance. CONSULTANT 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 CONSULTANT, its agents, representatives, employees, and subcontractors.
 - (7) *Self-Insurance.* CONSULTANT 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. CONSULTANT shall only be permitted to utilize such self-insurance if, in the opinion of the CITY, CONSULTANT's (i) net worth and (ii) reserves for payment of claims of liability against CONSULTANT are sufficient to adequately compensate for the lack of

other insurance coverage required by this Agreement. CONSULTANT's utilization of self-insurance shall not in any way limit the liabilities assumed by CONSULTANT pursuant to this Agreement.

(8) *Self-Insured Retentions.* Self-insured retentions must be declared to and approved by the CITY.

- c. *Verification of Coverage.* At the time CONSULTANT executes this Agreement, CONSULTANT 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 in this Agreement, including the types and limits of insurance coverage CONSULTANT 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 CONSULTANT pursuant to this Agreement, including but not limited to any provisions in this Agreement concerning indemnification.
- f. 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. In the event that CONSULTANT fails to comply with any such insurance requirements 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 CONSULTANT to stop work under this Agreement and/or withhold any payment that becomes due to CONSULTANT until CONSULTANT demonstrates compliance with the insurance requirements in this Agreement.

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

- a. CONSULTANT (including CONSULTANT'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 CONSULTANT's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except where caused by the sole negligence or willful misconduct of the CITY.
- b. CONSULTANT (including CONSULTANT'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 8 shall survive the termination of this Agreement.

9. Anti-Assignment Clause. Because the CITY has relied on the particular skills of CONSULTANT in entering into this Agreement, CONSULTANT shall not assign, delegate, subcontract, or otherwise transfer any duty or right under this Agreement, including as to any portion of the Services, without the CITY's prior written consent. Any purported assignment, delegation, subcontract, or other transfer made without the CITY's consent shall be void and ineffective. Unless CONSULTANT assigns this entire Agreement, including all rights and duties herein, to a third party with the CITY's prior written consent, CONSULTANT shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.
10. 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.
11. Independent Contractor. CONSULTANT is an independent contractor, and no agency or employment relationship is created by the execution of this Agreement.
12. Amendment. This Agreement shall not be amended except in a writing signed by the CITY and CONSULTANT.
13. 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 CONSULTANT 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. Notice. Any statements, communications, or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated herein, and the CITY and CONSULTANT shall promptly provide the other Party with notice of any changes to such contact information.

20. Business License. CONSULTANT 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.
21. Compliance with Laws, Permits, and Licenses. CONSULTANT 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. CONSULTANT shall obtain any and all permits, licenses, and other authorizations necessary to perform the Services. 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 CONSULTANT to comply with this section.
22. Prevailing Wages. If applicable, pursuant to California Labor Code section 1770 et seq., CONSULTANT agrees that a prevailing rate and scale of wages, in accordance with applicable laws, shall be paid in performing this Agreement. CONSULTANT 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. The prevailing rate and scale to be paid shall be the same as the applicable "General Prevailing Wage Determination" approved by the Department of Industrial Relations as of the Effective Date of this Agreement, which are available online at <http://www.dir.ca.gov/oprl/dprevwagedetermination.htm> and incorporated into this Agreement by this reference. 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 CONSULTANT to comply with this section.
23. Immigration Reform and Control Act of 1986. CONSULTANT shall keep itself informed of and shall comply with the Immigration Reform and Control Act of 1986 ("IRCA"). CONSULTANT represents and warrants that all of its employees and the employees of any subcontractor retained by CONSULTANT who perform any of the Services under this Agreement, are and will be authorized to perform the Services in full compliance with the IRCA. CONSULTANT 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 Services. CONSULTANT agrees to comply with the IRCA before commencing any Services, and continuously throughout the performance of the Services and the term of this Agreement.
24. 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: _____

Dane White, Mayor

James Walker

Date: _____

Signature

Name & Title (please print)

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.

ATTACHMENT "A"

Scope of Work

A. General

James Walker ("CONSULTANT") shall provide consulting services related to automated fingerprint technologies for the City of Escondido Police Department ("CITY").

B. Location

CONSULTANT to provide services at Police and Fire Headquarters located at 1163 N. Centre City Parkway, Escondido, CA 92026.

C. Services

CONSULTANT shall provide the following services:

1. The CONSULTANT shall provide training, troubleshoot, and act as field representative regarding the use of Livescan, Mobile ID, Rapid ID (for rapid identification of subjects at the jail) and the countywide Mugshot system for City Police Officers.
2. The CONSULTANT shall act in the capacity of liaison between CITY and 3M Cogent Systems (the vendor for the countywide Automated Fingerprint Identification System, "AFIS");
3. The CONSULTANT shall expand the use of Mobile ID technology within the CITY. Mobile ID technology enhances the officers' ability to positively identify subjects in the field through the use of a portable device that will search fingerprints in AFIS.
4. The CONSULTANT shall maintain and upgrade as necessary the Livescan instruments for digital collection of fingerprints from adult and juvenile subjects.
5. On a regional (countywide) basis, the CONSULTANT shall:
 - a. Act as liaison with the San Diego County Sheriff's Department Data Services Division on countywide law enforcement database issues;
 - b. Train law enforcement agencies throughout the region on the use of Cal-ID equipment;
 - c. Act as liaison between the Cal-ID program and its sworn customers;
 - d. Act as liaison between the Cal-ID program and California Department of Justice on issues regarding Livescan;
 - e. Act as liaison between the Cal-ID program and hardware and software vendors;
 - f. Perform physical inventories of Cal-ID equipment for region;
 - g. Arrange for transfer or disposal of Cal-ID equipment;
 - h. Review Requests for Proposals for new Cal-ID equipment;
 - i. Troubleshoot issues relating to AFIS, Livescan, Mobile ID and Rapid ID;
 - j. Attend meetings relating to biometric identification; and
 - k. Attend Cal-ID staff meetings.

D. Scheduling

CONSULTANT to schedule specific dates of work in advance by contacting Sergeant Kyle Beierly at 760-839-4722 or kyle.beierly@escondido.gov.

E. Contract Price and Payment Terms

CITY will compensate CONSULTANT a total payment not to exceed the amount of **\$494,176** for the five-year Agreement. The payment for Fiscal Year 2024-2025 will be \$91,030. The Cal-ID/RAN Board will be provided the known compensation increases annually during the term of the Agreement, at the discretion of the County of San Diego.

- July 1, 2025 through June 30, 2026: 2.75% of annual contract, totalling \$93,534;
- July 1, 2026 through June 30, 2027: at the County's Discretion, compensation for services during the 2026-2027 Fiscal Year shall not exceed 5% increase from the prior fiscal year;
- July 1, 2027 through June 30, 2028: at the County's Discretion, compensation for services during the 2026-2027 Fiscal Year shall not exceed 5% increase from the prior fiscal year; and
- July 1, 2028 through June 30, 2029: at the County's Discretion, compensation for services during the 2026-2027 Fiscal Year shall not exceed 5% increase from the prior fiscal year.

Payment to CONSULTANT will be processed 30 days from receipt of monthly invoice. Each invoice shall list CONSULTANT'S name, address, phone number, invoice number, amount to be paid, and descriptions of services rendered. Payment to CONSULTANT is dependent of continued funding by the San Diego County Sherriff's Department from funding by the State of California pursuant to California Vehicle Code 92050.19.

F. Term

The term of this agreement will be in effect for a period of **five years**, commencing on the Effective Date through **June 30, 2029**. Services provided under this Agreement shall commence on **July 1, 2024**.

G. Other

The County of San Diego by and through the San Diego County Sheriff's Department shall:

Provide funding from the San Diego County Sheriff's Fingerprint ID Trust Fund to reimburse the actual cost of the contract for one Regional Contract Cal-ID Specialist for the term of this Agreement. Reimbursement to the CITY dependent on continuing receipt of funding from the State of California pursuant to California Vehicle Code 9250.19.

ATTACHMENT "B"
Personnel List

Pursuant to Section 4 of the Agreement, CONSULTANT shall only assign performance of Services to persons listed below.

- 1. N/A

CONSULTANT shall not add or remove persons from this Personnel List without the City's prior written consent. If CONSULTANT has not designated a person to perform a component of the Services, CONSULTANT shall not assign such component of the Services to a person without obtaining the City's prior written consent. CONSULTANT shall not subcontract any component of the Services without obtaining the City's prior written consent.

Acknowledged by:

Date: _____

James Walker, Consultant



BUDGET ADJUSTMENT REQUEST

Department:	Police Department	<u>For Finance Use Only</u> BA # _____ Fiscal Year _____
Department Contact:	Barbara MarLett	
City Council Meeting Date: <i>(attach staff report)</i>	June 26, 2024	

EXPLANATION OF REQUEST

Budget adjustments are needed to receive grant funds and establish a spending account for expenses related to the FY 2024-2029 CALID Grant Specialist James Walker.

(Request project# CAIDS1)

BUDGET ADJUSTMENT INFORMATION

Project/Account Description	Account Number	Amount of Increase	Amount of Decrease
Revenue	4127-451-new project number	\$494,170	
Police Grants	451-new project number	\$494,170	

APPROVALS

DocuSigned by: Edward Varso 6/19/2024 <small>DC4B0C7FA65B4BD...</small>	DocuSigned by: Lorena Rocha 6/19/2024 <small>99A33925FA6B449...</small>		
DEPARTMENT HEAD	DATE	FINANCE	DATE



STAFF REPORT

June 26, 2024

File Number 0600-10; A-3518

SUBJECT

BID AWARD FOR RFB NO. 24-10 LIVE CHANNEL CATFISH

DEPARTMENT

Utilities

RECOMMENDATION

Request the City Council adopt Resolution No. 2024-81, authorizing the Mayor to execute, on behalf of the City of Escondido (“City”), a Public Services Agreement with Imperial Catfish for the purchase of Live Channel Catfish to stock Dixon Lake and Lake Wohlford (“Agreement”) in an amount not to exceed \$375,900.

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

Presenter: Brian Thill, Lakes and Open Space Manager

ESSENTIAL SERVICE – Yes, Maintenance of Parks facilities/Open Spaces

COUNCIL PRIORITY – Increase Retention and Attraction of People and Businesses to Escondido

FISCAL ANALYSIS

The Agreement amount is an estimated annual cost based on anticipated quantities of catfish needed for stocking Dixon Lake and Lake Wohlford. Agreement renewal options are contingent upon budget appropriations and satisfactory performance by the contractor.

Agreement prices are firm for the first year. Any price increase under this Agreement renewal options are not to exceed five percent of the unit price per each renewal year, subject to approval by the City.

There are sufficient funds located in the Lakes Operating Budget 40070 (Dixon Lake) and 40074 (Lake Wohlford).

PREVIOUS ACTION

On May 25, 2020, Council adopted Resolution No. 2020-33 accepting the lowest responsive bid from Imperial Catfish and authorizing the execution of a Purchase Contract (“Contract”) to purchase 14,000 pounds of live channel catfish with the option to renew the Contract on an annual basis not to exceed a total of seven consecutive years.



CITY of ESCONDIDO

STAFF REPORT

The contract guaranteed the first two years at a locked-in price with the option of five additional years with a locked-in price increase set at three percent year-over-year through June 30, 2028, contingent on the mutual agreement between the City and Imperial Catfish.

Due to inflation, Imperial Catfish opted not to renew after the last guaranteed contract period, 2022-2023, as a three percent price increase was insufficient given the average rate of inflation experienced in calendar year 2022 was eight percent. Imperial Catfish submitted an updated quote to City staff to stock 14,000 pounds of live channel catfish for the 2023-2024 fiscal year. A purchase order was submitted for the 2023-2024 fiscal year with the knowledge that City staff would be required to go to bid on a new multi-year contract starting in the fiscal year 2024-2025.

BACKGROUND

The City operates and maintains two lakes, Dixon Lake and Lake Wohlford. These lakes offer various activities including fishing. The City stocks catfish at its lakes during the summer months to offer year-round fishing activities. An agreement to purchase live channel catfish is necessary to stock fish at these lakes. Load sizes vary between 500 and 3,000 pounds per lake and delivery will be approximately twelve times during the summer fishing season, which runs from May through August. Quantities required during the renewal years may vary taking into consideration the City’s needs and budget appropriations.

On April 17, 2024, the City published a Request for Bids No. 24-10 (“RFB 24-10”) for the purchase and delivery of 14,000 pounds of live channel catfish for the 2024-2025 fiscal year with the option to renew annually for four consecutive years. On May 23, 2024, the City Clerk hosted a formal bid opening for RFB 24-10 and received one responsive bid from Imperial Catfish for \$4.85 per pound.

As per the requirements set forth on RFB 24-10, Imperial Catfish will guarantee the first year, 2024-25, at a per unit rate of \$4.85 per pound. Upon completion of the initial contract term, and prior to commencement of the optional term of the contract, Imperial Catfish may request an increase in unit prices equal to the California Consumer Price Index (“CPI”), upon 90 days advance written notice to the City.

Contract pricing shall be as follows:

Year	Pounds	% Increase	Price	Total
1 (guaranteed)	14,000	0	\$4.85	\$67,900
2 (optional)	14,000	5%	\$5.10	\$71,400
3 (optional)	14,000	5%	\$5.36	\$75,040
4 (optional)	14,000	5%	\$5.63	\$78,820



CITY of ESCONDIDO

STAFF REPORT

5 (optional)	14,000	5%	\$5.91	\$82,740
TOTAL 5-YEAR CONTRACT PRICE				\$375,900

The apparent low bid received by Imperial Catfish has met all of RFB 24-10 bid requirements and has been deemed the lowest most responsive bid received. City staff recommends the award of RFB 24-10 to Imperial Catfish.

RESOLUTIONS

- a. Resolution No. 2024-81
- b. Resolution No. 2024-81 – Exhibit “A” – Public Services Agreement

RESOLUTION NO. 2024-81

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, A PUBLIC SERVICES AGREEMENT TO IMPERIAL CATFISH FOR THE PURCHASE AND DELIVERY OF LIVE CHANNEL CATFISH

WHEREAS, sufficient funds are available in the Lakes Operating Budget 40070 (Dixon Lake) and 40074 (Lake Wohlford); and

WHEREAS, on May 25, 2020, Council adopted Resolution No. 2020-33 accepting the lowest responsive bidder and authorizing the Mayor to execute a Purchasing Contract with Imperial Catfish effective June 24, 2020, through June 30, 2022, with the option to renew annually not to exceed seven consecutive years with a three percent price adjustment annually; and

WHEREAS, upon completion of the 2021-2022 term, Imperial Catfish opted to not renew for the third optional year due to inflation rates; and

WHEREAS, Imperial Catfish submitted updated pricing for the 2023-2024 fiscal year; and

WHEREAS, the City accepted the quote and placed a purchase order for 14,000 pounds of live channel catfish for the 2023-2024 fiscal year; and

WHEREAS, on April 17, 2024, the City duly published an invitation for unit price bids for live channel catfish, RFB No. 24-10; and

WHEREAS, on May 23, 2024, the City Clerk hosted a formal bid opening where one sealed bid was opened and evaluated; and

WHEREAS, Imperial Catfish was determined to be the lowest responsive and responsible bidder that conformed to the City’s bid specification and requirements; and

WHEREAS, Imperial Catfish has agreed to supply the City with live channel catfish at their unit bid price, with allowable increases for four additional one-year terms; and

WHEREAS, the Director of Public Works recommends awarding the Public Services Agreement to Imperial Catfish effective July 1, 2024, through June 30, 2029, in an amount not to exceed \$375,900, at a per unit rate of \$4.85 per pound for the initial contract term; and

WHEREAS, price increases under the contract renewal options are not to exceed five percent (5%) each renewal year, subject to approval by the City; and

WHEREAS, the contractor renewal options are conditional upon budget appropriations and satisfactory performance by the contractor; and

WHEREAS, the contract amount is an estimated annual cost based on anticipated quantities; and

WHEREAS, the City Council desires at the time and deems it to be in the best public interest to accept the recommendations of the Director of Public Works and award the bid to Imperial Catfish.

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

1. That the above recitations are true and correct.
2. That the City Council determines the bid submission by Imperial Catfish to be the lowest lost responsive bid which conformed to the City’s bid specifications and requirements.

3. That the City Council authorizes the bid award to Imperial Catfish for live channel catfish in the estimated amount not to exceed \$375,900, on a per unit basis, which may vary for renewal periods based on the City's needs and budget appropriations.

4. That the City Council authorizes the Mayor to execute, on behalf of the City, a Public Services Agreement with Imperial Catfish in 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 SERVICES AGREEMENT

This Public Services Agreement ("Agreement") is made and entered into as of the last signature date set forth below ("Effective Date"),

Between: CITY OF ESCONDIDO
a California municipal corporation
201 N. Broadway
Escondido, CA 92025
Attn: Brian Thill
760-839-4240
("CITY")

And: IMPERIAL CATFISH, LLC
a California limited liability company
P.O. Box 188
Imperial, CA 92251
Attn: Craig Elliot
714-343-0728
("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 the Services 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. Description of Services. CONTRACTOR shall furnish all of the Services described in the Scope of Work, which is attached to this Agreement as Attachment "A" and incorporated herein by this reference ("Services").
2. Compensation. In exchange for CONTRACTOR's completion of the Services, the CITY shall pay, and CONTRACTOR shall accept in full, an amount not to exceed the sum of **\$375,900**. CONTRACTOR shall be compensated only for performance of the Services described in this Agreement. No compensation shall be provided for any other work or services without the CITY's prior written consent. If this Agreement is amended at any time, additional compensation of CONTRACTOR contained in any subsequent amendments shall not exceed a cumulative total of 25% of the maximum payment provided for in this Section 2, unless approved by resolution of the City Council.

3. Performance. CONTRACTOR shall faithfully perform the Services in a proficient manner, to the satisfaction of the CITY, and in accord with the terms of this Agreement. CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other information furnished by CONTRACTOR pursuant to this Agreement, except that CONTRACTOR shall not be responsible for the accuracy of information supplied by the CITY.
4. Termination. The Parties may mutually terminate this Agreement through a writing signed by both Parties. The CITY may terminate this Agreement for any reason upon providing CONTRACTOR with 10 days' advance written notice. CONTRACTOR agrees to cease all work under this Agreement on or before the effective date of any notice of termination. If the CITY terminates this Agreement due to no fault or failure of performance by CONTRACTOR, then CONTRACTOR shall be compensated based on the work satisfactorily performed at the time of such termination. In no event shall CONTRACTOR be entitled to receive more than the amount that would be paid to CONTRACTOR for the full performance of the Services.
5. City Property. All original documents, drawings, electronic media, and other materials prepared by CONTRACTOR pursuant to this Agreement immediately become the exclusive property of the CITY, and shall not be used by CONTRACTOR for any other purpose without the CITY's prior written consent.
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 Services, 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 00 01 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 general aggregate.
 - (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), with limits no less than \$1,000,000 per accident for bodily injury and property damage, unless waived by the CITY and approved in writing by the CITY's Risk and Safety Division.
 - (3) *Workers' Compensation.* Worker's 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) 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) *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-: FSC VII, or as approved by the CITY.
 - (2) *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 endorsement shall be at least as broad as ISO Form CA 20 01.

- (3) *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.
 - (4) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.
 - (5) *Subcontractors.* If applicable, CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated in 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.
 - (6) *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.
 - (7) *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.
 - (8) *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 in 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 in this Agreement concerning indemnification.
 - f. 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. In the event that CONTRACTOR fails to comply with any such insurance requirements 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 performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except where caused by the sole negligence or willful misconduct of the CITY.
- b. CONTRACTOR (including CONTRACTOR's agents, employees, and subcontractors, if any) shall defend, indemnify, 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. Anti-Assignment Clause. Because the CITY has relied on the particular skills of CONTRACTOR in entering into this Agreement, CONTRACTOR shall not assign, delegate, subcontract, or otherwise transfer any duty or right under this Agreement, including as to any portion of the Services, without the CITY's prior written consent. Any purported assignment, delegation, subcontract, or other transfer made without the CITY's consent shall be void and ineffective. Unless CONTRACTOR assigns this entire Agreement, including all rights and duties herein, to a third party with the CITY's prior written consent, CONTRACTOR shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.

9. 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.

10. Independent Contractor. CONTRACTOR is an independent contractor, and no agency or employment relationship is created by the execution of this Agreement.

11. Amendment. This Agreement shall not be amended except in a writing signed by the CITY and CONTRACTOR.

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. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. Notice. Any statements, communications, or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated herein, and the CITY and CONTRACTOR shall promptly provide the other Party with notice of any changes to such contact information.
19. 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.
20. 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. CONTRACTOR shall obtain any and all permits, licenses, and other authorizations necessary to perform the Services. 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.
21. Prevailing Wages. If applicable, 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. The prevailing rate and scale to be paid shall be the same as the applicable "General Prevailing Wage Determination" approved by the Department of Industrial Relations as of the Effective Date of this Agreement, which are available online at <http://www.dir.ca.gov/oprl/dprevwagedetermination.htm> and incorporated into this Agreement by this reference. 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.
22. 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 of the Services under this Agreement, are and will be

authorized to perform the Services 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 Services. CONTRACTOR agrees to comply with the IRCA before commencing any Services, and continuously throughout the performance of the Services and the term of this Agreement.

23. 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.

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

CITY OF ESCONDIDO

Date: _____

Dane White, Major

IMPERIAL CATFISH, LLC

Date: _____

Signature

Name & Title (please print)

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.

ATTACHMENT "A"

Scope of Work

A. General

Imperial Catfish, LLC, a California limited liability company ("Contractor") will provide the City of Escondido, a California municipal corporation ("City") with live channel catfish services.

B. Location

Contractor will provide services at the City's Dixon Lake facility located at 1700 La Honda Drive, Escondido, CA 92027, and Lake Wohlford facility located at 25453 Lake Wohlford Drive, Escondido, CA 92027.

C. Services

Services shall include per advertised RFB:

1. Freight and delivery of 14,000 pounds of live channel catfish to above listed City facilities

D. Scheduling

Contractor to schedule specific dates of work in advance by contacting either of the following;

1. Brian Thill at 760-839-4240, brian.thill@escondido.gov;
2. Greg Gould at 760-839-4019, greg.gould@escondido.gov; or
3. Jim Dayberry at 760-839-6398, jim.dayberry@escondido.gov.

Work shall be performed in-between the hours of 7 a.m. and 4 p.m., Monday through Friday. Further instructions will be provided upon scheduling.

E. Contract Price and Payment Terms

The contract price shall not exceed **\$375,900**. The contract price includes all labor, materials, equipment, and transportation required to perform the work. Services will be billed as services are performed. Payment will be made after services have been performed and within 30 days of receipt of an invoice for those services.

The following service rates shall remain firm throughout the term of this Agreement:

Year	Pounds	% Increase	Price	Total
1 (guaranteed)	14,000	0	\$4.85	\$67,900
2 (optional)	14,000	5%	\$5.10	\$71,400
3 (optional)	14,000	5%	\$5.36	\$75,040
4 (optional)	14,000	5%	\$5.63	\$78,820
5 (optional)	14,000	5%	\$5.91	\$82,740
TOTAL 5-YEAR CONTRACT PRICE				\$375,900

F. Term

The term of this Agreement shall be from the Effective Date of the Agreement through **June 30, 2029**.



STAFF REPORT

June 26, 2024

File Number 0697-20-10302

SUBJECT

SHORT-FORM RENT INCREASE APPLICATION FOR WESTWINDS MOBILEHOME PARK (FILE NO. 0697-20-10302)

DEPARTMENT

Community Development; Housing & Neighborhood Services Division

RECOMMENDATION

Request the City Council hold a public hearing to review and consider Westwinds Mobilehome Park Short-Form Application and adopt Resolution No. RRB 2024-61.

Staff Recommendation: Approval (Development Services: Chris Mckinney, Deputy City Manager/Interim Director of Development Services)

Presenter: Danielle Lopez, Housing and Neighborhood Services Manager

ESSENTIAL SERVICE – NO

COUNCIL PRIORITY –

FISCAL ANALYSIS

Staff time and resources were expended to process the short-form application. Staff reviewed the application, evaluated the mobilehome park for code enforcement violations, and conducted public outreach with the affected park residents, park manager and owners. No additional fiscal impact was incurred by the City.

PREVIOUS ACTION

On June 14, 2023, a short-form application was considered and approved. An increase of 6.56 percent was approved, resulting in an average space increase of \$36.09 per space, per month.

BACKGROUND

On June 8, 1988, the Escondido residents voted to approve Proposition K to enact Mobilehome Rent Control in the City of Escondido (“City”). Under Proposition K, if a park owner wants to increase the rent on a mobilehome rent control space, they must file an application with the City and obtain approval from the Mobilehome Park Rent Review Board (“Board”). This Board is an independent body comprised of the City of Escondido Councilmembers.



CITY of ESCONDIDO

STAFF REPORT

In 1997, the Board adopted changes to the Mobilehome Rent Review Board Guidelines to allow for the acceptance of a “short-form” application. The short-form is an abbreviated and less administrative burdensome application process for park owners and City staff. A park owner can request a rent increase based solely on the change in the San Diego Metropolitan Area’s Consumer Price Index (“CPI”), All Items/All Urban Consumers component since the last increase was granted by the Board. The requested increase may not exceed ninety percent (90%) of the increase in CPI since the last application was granted by the Board, or 8 percent, whichever is less, subject to a two-year limit. Park owners are allowed to apply one-year from the date the last application was deemed complete.

Westwinds Mobilehome Park (“Westwinds”) is an all-age park, located at 1415 South Pine Street. The Park has a total of 66 spaces, of which eight spaces are subject to rent control. The Park is requesting an increase for the eight rent-controlled spaces. The amenities available for the residents include a furnished clubhouse, a pool, restrooms and laundry facilities.

Westwinds submitted a short-form application on April 26, 2024. (Attachment “1”). City staff reviewed the application and deemed it to be complete on May 15, 2024. City staff mailed a letter, written in both English and Spanish, on May 20, 2024, notifying the affected park residents of the application and proposed rent increase, upcoming residential meeting, and public hearing date (Attachment “2”).

Westwinds short-form application was available for public review at the Park office, and the Housing & Neighborhood Services Division counter at City Hall.

Housing & Neighborhood Services and Code Compliance staff facilitated an in-person meeting for the affected residents on June 3, 2024, at 6:00 p.m. Code Compliance conducted a lighting inspection that same evening, and completed an inspection of the common areas on June 4, 2024.

City staff mailed a 10-day notice written in both English and Spanish to residents on June 14, 2024, reminding them of the June 26, 2024 City Council Meeting (Attachment “4”).

THE RENT INCREASE APPLICATION:

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

PARK OWNER’S REQUEST:

Westwinds is requesting an increase of 90 percent of the change in CPI for the period of December 2022, to December 2023. A park is allowed to request up to 90 percent of the current CPI. Under Section 12(E) of the Guidelines, it states, “The Board must presume that up to ninety percent (90%) of the Consumer Price Index is a fair, just, and reasonable rent increase. However, the Board may consider any of the other Ordinance factors at the request of either the park owner or the affected residents in determining that a lesser increase is fair, just, and reasonable.” These factors are referenced in Chapter 29, Article 5, Section



CITY of ESCONDIDO

STAFF REPORT

29-104(g) of the Escondido Municipal Code. Ninety percent of the change in the CPI is 4.275 percent for the period of consideration. Currently, the average monthly rent for the residents that are affected by this application is \$586.26. The average monthly increase requested for the eight spaces is \$25.06 per space, per month. This increase ranges from to \$16.27 - \$34.45 per space, per month.

RESIDENT MEETING AND COMMENTS:

All residents affected by this request were invited to attend a meeting at their clubhouse on June 3, 2024, at 6:00 p.m. No residents attended the meeting and no resident representative was identified.

CODE COMPLIANCE INSPECTION:

On June 3, 2024, a lighting inspection was performed by the Code Compliance Division where two lighting violations were identified. On June 4, an inspection of the common areas was conducted by the Code Compliance Division, Housing and Neighborhood Services Staff, and Park Management. One general park violation was identified. There was a broken water valve in the men's restroom.

A notice was mailed to the park manager and owner informing them of the violations. (Attachment "3"). A reinspection was conducted and as of March 12, 2024, all violations were corrected (Attachment "5"). According to the Mobilehome Rent Review Board Guidelines, no increase granted for any park shall go into effect until any existing code violations are corrected.

ADDITIONAL FACTORS AFFECTING THE APPLICATION:

In conformance with the Rent Review Board Guidelines, the decision of the Board will be finalized by adoption of the Resolution confirming the findings of the Public Hearing. The Notice of Determination will be mailed to the applicant and residents immediately upon adoption of the Resolution. Park owners and management must give a 90-day notice of any rent increase to affected residents upon the adoption of the Resolution.

RESOLUTIONS

- a. Resolution No. RRB 2024-61

ATTACHMENTS

- a. Attachment "1"-Westwinds Mobilehome Park Application
- b. Attachment "2"-Resident Short-Form Letter Notification
- c. Attachment "3"-Code Inspection
- d. Attachment "4"-10-Day Public Hearing Notice
- e. Attachment "5"-Code Letter Clearing Violations

CITY OF ESCONDIDO
201 North Broadway
Escondido, CA 92025-2798
(760) 839-4562

SHORT-FORM APPLICATION FOR MOBILE HOME SPACE RENT INCREASE

Park Name Westwinds MHP Telephone 760-740-0743

Address 1415 S. Pine St Escondido, CA 92025

Owner Westwinds MHP, LLC Telephone 949-722-1698

Address 301 E. 17th St., Suite 208 Costa Mesa, CA 92627

Representative Bart Thomsen Telephone 949-722-1698

(If other than owner; all City correspondence will be addressed to this person)

Address 301 E. 17th St, Ste 208 Costa Mesa, CA 92627

Site Manager Katie Morris Telephone 949-722-1698

Today's Date: 4/23/24

Date of last RRB increase 9/1/23

Period covered by CPI request 12/31/22 - 12/31/23

Number of Spaces in Park 66

Spaces affected by proposed increase 8

Change in CPI during period 4.75 %

90% of change in CPI 4.275 %

Increase requested by Park 4.275 %

of In-Place Transfers as of 7/1/20 1

or since last Rent Increase Application (whichever is more recent)

Briefly describe the park. Include amenities and services provided without additional charge. Attach additional pages if more space is needed.

Clubhouse

Laundry

Pool

SPACE RENTALS

Complete for all spaces affected by Proposed Increase at: Westwinds MHP

Date of last application was deemed complete: 5/3/2023

Date of last increase: 9/1/2023

DIRECTIONS: 1. List the monthly rent for rent-controlled spaces ("RC") collected for all affected spaces at the date the application was deemed complete. 2. List all long-term lease spaces ("LT") that sold or signed a new agreement after February 13, 2020. 3. **If spaces have been added due to termination of long-term leases or space rents have been raised during a calendar year since the last increase was granted, list the highest rent paid for each space during that calendar year.** If the last increase was granted more than three years ago, use additional pages as needed. *This sheet may be duplicated as necessary.*

Resident Name and Space #	RC or LT	Rent in	Rent in	Current Rent (/ /)	Requested Increase (\$)	Percentage Increase	Requested New Rent
		<u>20</u>	<u>20</u>				
#1 - Please see attached							
#2 - None							

IN-PLACE TRANSFER/ SALE(S)

Westwinds Mobilehome Park Rent Increase Application 2024

Site	Resident	Rent In April 2022	Rent In April 2023	Current Rent April 2024	Percentage Increase	Requested Increase	Requested New Rent
Baha2	Jaime Cerda	\$702.47	742.61	\$791.33	4.275%	\$33.83	\$825.16
Baha7	Teresa Kidare	\$375.87	397.35	\$423.42	4.275%	\$18.10	\$441.52
Baha14	Ma. Hernandez	\$660.34	698.07	\$743.86	4.275%	\$31.80	\$775.66
Baha24	Hugh Mac Donald	\$337.81	357.11	\$380.54	4.275%	\$16.27	\$396.81
Bali1	Manuela Barkhorn	\$696.05	735.82	\$784.09	4.275%	\$33.52	\$817.61
Bali5	Neftali Calderon	\$337.81	357.11	\$380.54	4.275%	\$16.27	\$396.81
Jama5	Daniel Parker	\$337.81	357.11	\$380.54	4.275%	\$16.27	\$396.81
Tahi21	Alfred Rocha	\$662.29	756.14	\$805.74	4.275%	\$34.45	\$840.19

Attachment "1" In Place Transfer / Sales

Item 10.

DIRECTIONS:

Enter the information on all in-place transfer of a resident-owned mobilehomes in the park after July 1, 2020, or since the date of when the last rent increase application was deemed complete (whichever date is more recent). Please note the term "deemed complete" means when the Housing & Neighborhood Services staff deemed your previous application complete not when the Rent Review Board granted the increase. ,. "In-place transfer" means the transfer of the ownership of a mobilehome with the mobilehome remaining on the mobilehome lot following the transfer.

Final Space Rent - rent charged to the departing tenant for the final month of rent before the sale

Space Rent after Sale – rent paid by the new tenant for the first month after the sale

Park Average Space Rent - total amount of rent charged for all spaces in a mobilehome park occupied by a resident owned mobilehome, divided by the number of spaces in the park occupied by a resident owned mobilehome (calculated on the most recent annual rent control survey)

Use additional Sheets if necessary

Space #	Sale Date	Final Space Rent Before Sale (\$)	Space Rent After Sale (\$)	Park Average Space Rent	Current Lease Type (LT/RC)
5 Tahiti	6/6/23	775.00	835.00	652.48	LT
				Average Space Rent 7/1/22	

4
145

OWNER'S AFFIDAVIT

I (We,) _____

Katie Morris

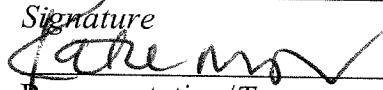
being duly sworn, depose and say that I (We) am (are) the owner(s) of said park involved in this request and that the foregoing statements or answers contained herein and the information submitted herewith are in all respects true and correct to the best of my (our) knowledge and belief. I (We) make the foregoing statement, the statements and answers contained herein and declare under penalty of perjury that the same are true and correct.

Signed: _____

Signature

Park Owner/*Type or print name*

Signature



Representative/*Type or print name* Katie Morris

Mailing address: 301 E. 17th St., Ste 208

Costa Mesa, CA 92627

5



Housing & Neighborhood Services Division
 201 North Broadway, Escondido, CA 92025
 Phone: 760-839-4841
www.escondido.org/housing-and-neighborhood-services

May 20, 2024

Re: Short-form Rent Increase Application Submitted by Westwinds Mobilehome Park

Dear Resident:

A **short-form application** for a rent increase for your Park has been received and determined to be complete.

This letter is to inform you about:

1) RESIDENT MEETING

- Date: Monday, June 3rd, at 6:00 p.m.
- Location: Park Clubhouse
- Purpose: To discuss the short-form hearing process, answer any questions, and select a resident representative.
- Spanish translation will be provided

2) RENT REVIEW BOARD HEARING

- Date: June 26th, at 5 p.m.
- Location: City Council Chambers, 201 North Broadway, Escondido, CA 92025

3) HOW THIS MAY IMPACT YOU

- The Park is requesting a **4.275%** increase
- Average Increase per space per month: \$25.06
- Average Rent for rent controlled spaces after the increase: \$611.32

4) WHERE TO RECEIVE MORE INFORMATION

- Attend the resident meeting on June 3, at 6:00 p.m.
- The application is available on the city's website, at your park's office and at the Housing and Neighborhood Services Division counter at City Hall during normal business hours. Monday – Friday 8 a.m. – 5 p.m.
- Please provide any written comments within 30-days
- Contact Danielle Lopez at (760) 839-4518 or dmlopez@escondido.org

Sincerely,

A handwritten signature in cursive script that reads "Danielle Lopez".

Danielle Lopez
 Housing and Neighborhood Services Manager



Housing & Neighborhood Services Division
 201 North Broadway, Escondido, CA 92025
 Phone: 760-839-4841
www.escondido.org/housing-and-neighborhood-services

20 de Mayo del 2024

Re: Solicitud Abreviada para un Aumento de Renta presentada por Westwinds Mobilehome Park

Estimado Residente:

Una **solicitud abreviada** para un aumento de rentas para su Parque ha sido revisada y determinada ser completa.

Esta carta es para infórmale de:

1) JUNTA DE RESIDENTES

- Fecha = 3 de Junio, a las 6:30pm
- Locación = Clubhouse de su parque
- Propósito = Para discutir el proceso de la audiencia de la solicitud abreviada, contestar cualquier pregunta y seleccionar un residente representante.

2) AUDIENCIA DE COMISIÓN DE EVALUADORES DE RENTA

- Fecha = 26 de Junio, a las 5pm
- Locación = En la Sala Consistorial del Municipio (City Council Chambers), 201 North Broadway, Escondido, CA 92025

3) COMO ESTO LE PUEDE AFECTAR A USTED

- El parque está solicitando un aumento de **4.275%**
- Aumento promedio por espacio por mes = \$25.06
- Renta promedia para espacios de renta controlado = \$611.32

4) DONDE PUEDE RECIBIR MÁS INFORMATION

- Asistir la junta de residentes el 3 de Junio a las 6pm
- Solicitud disponible en línea, en la oficina del parque y en el mostrador de la División de Vivienda y Servicios al Vecindario del Ayuntamiento, de lunes a viernes, de 8 am a 5 pm.
- Por favor, proporciona cualquier comentario por escrito dentro de los próximos 30 días.
- Contacte a Danielle Lopez at (760) 839-4518 or dmlopez@escondido.org

Sinceramente,

Danielle Lopez
 Housing and Neighborhood Services Manager



Code Compliance Division
201 N. Broadway, Escondido, CA 92025
(760) 839-4650, FAX (760) 839-4313

Date: JUNE 4, 2024

TO: HONORABLE CHAIRMAN AND MEMBERS OF THE RENT CONTROL BOARD

FROM: MONICA PINAGLIA, CODE COMPLIANCE SUPERVISOR *MP*

SUBJECT: WESTWINDS MOBILEHOME PARK RENT CONTROL

The Westwinds Mobile Home Park was inspected on June 4, 2024, with the lighting inspection conducted the prior evening. This inspection was a result of an application for a rent increase having been filed. One general park violation and two lighting violations were found and noted in the attached inspection report.

The resident meeting for the park was held on June 3, 2024 with one park manager and four city staff members. No Park residents attended the meeting. There were no code compliance case issues to discuss.

Cc: Christopher W. McKinney, Deputy City Manager
Danielle Lopez, Manager Housing & Neighborhood Services Division



June 4, 2024

MOBILEHOME PARK RENT CONTROL
CODE ENFORCEMENT INSPECTION REPORT

Park Name: Westwinds Mobile Home Park
1415 S. Pine St
Escondido, CA 92025

Park Owner: Westwinds Mobile Home Park LLC
c/o Thomsen Properties
301 E. 17th Street #208
Costa Mesa, CA. 92627

Park Managers: Liliana Silva **Phone:** (760) 740-0743
Jim Younce

Inspection Date: 6/4/2024 **Inspector:** Stephen Jacobson

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

General Violations:

1. There is a broken water valve in the urinal in the men's restroom. **25 CCR 1102(a);**

Westwinds Mobile Home Park
June 2024 Rent Control Inspection Report
Page 2

Areas of the park requiring illumination per §25 CCR 1108

(Lighting Inspection conducted on; 6/3/2023)

1. There were two park lighting violations.
 - A. The light by the woman's rest room is in disrepair.
 - B. The light by space- Bahama 2 is in disrepair.



Housing & Neighborhood Services
201 North Broadway, Escondido, CA 92025
Phone: 760-839-4841

June 14, 2024

Park Resident,

RESIDENT NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City Council of the City of Escondido, sitting as the Mobilehome Rent Review Board, will hold a public hearing to consider the following item:

A short-form rental increase application for Westwinds Mobilehome Park

A copy of the application is available for review at Greencrest Mobilehome Park Office or the Housing & Neighborhood Services Division at City Hall, 201 N. Broadway. A copy of the staff report will be available at the Housing counter five days prior to the hearing date.

A public hearing is scheduled for **June 26, 2024, at 5 p.m.** in the City Council Chambers, 201 N. Broadway, Escondido, CA 92025 to determine whether or not a rent increase will be granted for your park.

If you are protesting the short-form application, you should register in the foyer prior to the opening of the public hearing. The purpose of the hearing is for the Rent Review Board to obtain input from the owner and tenants about why an increase should or should not be granted. If you challenge the decision of the Board in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Rent Review Board at or prior to the public hearing.

You may also submit your feedback to Danielle Lopez at dmlopez@escondido.org or call 760-839-4518 and this information will be included in the City Council presentation.

At the hearing, the Rent Review Board may make a determination about the rent increase or they may request additional information from the owner or tenants. If additional information is requested, a new hearing will be scheduled. If an increase is granted, the owner must notify you in writing of the amount of the increase at least (90) days before the increase goes into effect.

Sincerely,

A handwritten signature in cursive script that reads "Danielle Lopez".

Danielle Lopez
Housing & Neighborhood Services Manager



División de Vivienda y Servicios a Vecindarios
201 North Broadway, Escondido, CA 92025
Teléfono 760-839-4841

14 de junio de 2024

Residente del parque,

AVISO PARA RESIDENTES DE AUDIENCIA PÚBLICA

POR LA PRESENTE SE NOTIFICA que el Concejo Municipal de la Ciudad de Escondido, siendo la Comisión Evaluadora que Revisan las Rentas de Casas Móviles, tendrá una audiencia pública para considerar el siguiente punto:

La solicitud abreviada de aumento de renta para Westwinds Mobilehome Park

Una copia de la aplicación está disponible para revisión en la oficina de Westwinds Mobilehome Park o División de Vivienda y Servicios al Vecindario en el Ayuntamiento, 201 N. Broadway. Una copia del reporte del personal estará disponible en el mostrador de la División de Vivienda cinco días antes de la fecha de la audiencia.

Una audiencia pública está programada para el **26 de junio de 2024 a las 5 p.m.** en la Sala Consistorial del Concejo Municipal, 201 N. Broadway, Escondido, CA 92025 para determinar si se otorgará o no un aumento de renta para su parque.

Si usted está protestando esta solicitud abreviada, debe registrarse en el vestíbulo antes de que comience la audiencia pública. El propósito de la audiencia es que el Comité de Revisión de Rentas obtenga información del propietario y los inquilinos sobre por qué se debe o no se debe otorgar un aumento. Si impugna la decisión de la Comisión Evaluadora ante la corte, puede quedar limitado a proponer solo aquellos asuntos que usted u otra persona haya propuesto en la audiencia pública descrita en este aviso, o en la correspondencia escrita entregada al Comité de Revisión de Rentas durante o antes de la audiencia pública.

También puede enviar sus comentarios a Danielle Lopez a dmlopez@escondido.org o llamar al 760-839-4518 y esta información se incluirá en la presentación al Concejo Municipal.

En la audiencia, el Comité de Revisión de Rentas puede tomar una determinación sobre el aumento de renta o pueden solicitar información adicional del propietario y / o inquilinos antes de tomar una decisión. Si se solicita información adicional, se programará una nueva audiencia. Si se concede un aumento, el propietario debe notificarle por escrito de la cantidad del aumento al menos (90) días antes de que el aumento entre en vigencia.

Sinceramente,

Danielle Lopez

Danielle Lopez,
Gerente de Vivienda y Servicios al Vecindario



Code Compliance Division
201 North Broadway, Escondido, CA 92025
Phone: 760-839-4650 Fax: 760-432-6819

June 18, 2024

Westwinds Mobile Home Park LLC
C/O Thomsen Properties
301 E. 17th Street #208
Costa Mesa CA 92627

Westwinds Mobile Home Park
C/O Liliana Silva & Jim Younce – Park Managers
1415 S. Pine Street
Escondido CA 92025

Dear Liliana & Jim

This notice is to formally advise you that the violations that were noted during the rent control inspection on June 4, 2024 have been corrected.

We appreciate having the parks cooperation during this process. Our mutual efforts are important in maintaining safe and healthy parks in our city. Please feel free to contact me if you have any questions.

Sincerely,

Monica Pinaglia
Code Compliance Supervisor *MP*

CC: Christopher W. McKinney, Deputy City Manager
Danielle Lopez, Housing & Neighborhood Services Manager

RESOLUTION NO. RRB-2024-61

A RESOLUTION OF THE CITY COUNCIL/ MOBILEHOME
RENT REVIEW BOARD OF THE CITY OF ESCONDIDO,
CALIFORNIA AUTHORIZING A RENT INCREASE FOR
WESTWINDS MOBILEHOME PARK

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

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

WHEREAS, a short-form rent increase application pursuant to Section 12 of the Rent Review Board Guidelines was filed on April 26, 2024 ("Application") by Westwinds Mobilehome Park LLC, the owner of the rental spaces in Westwinds Mobilehome Park ("Park"), an all-age park located at 1415 S Pine Street, Escondido; and

WHEREAS, the Application was deemed complete by City staff on May 15, 2024; and

WHEREAS, the last rent increase was granted by the Rent Review Board on June 14, 2023, for an increase of 6.56 percent which amounted to an average increase of \$36.09 per space, per month; and

WHEREAS, the average monthly rent per affected space was \$586.26 for the eight spaces requested for a rent increase. The Park requested an increase of 4.27 percent, resulting in an average increase of \$25.06 per space, per month; and

WHEREAS, a notice of the Park's application was mailed to all affected homeowners on May 20, 2024 and a 10-day notice of the time, date, and place of the rent hearing before the Board was mailed to the Park and to all affected tenants on June 14, 2024; and

WHEREAS, on June 3 and June 4, 2024, a Mobilehome Park Rent Review Code Compliance Inspection was completed. Two lighting violation and one general park violation were identified; and

WHEREAS, on June 18, 2024, Code Compliance completed a reinspection and all violations were cleared; and

WHEREAS, on June 26, 2024, the Board held its public hearing. After an initial staff presentation, the Board invited testimony from Park ownership and other residents of the community at large; and

WHEREAS, after all present had been given an opportunity to speak, the hearing was closed. Following an opportunity for discussion among the Board members, and clarifying questions to the parties and staff, the Board voted to grant a 4.275 percent increase, resulting in an average rent increase of \$25.06 per space, per month, for the eight spaces.

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 finds that the Westwinds Mobilehome Park short-form application

increase is consistent with the Guidelines, and approves the rent increase Application submitted by Westwinds Mobilehome Park, LLC.



STAFF REPORT

June 26, 2024
File Number 0680-50

SUBJECT

CONSIDERATION AND INTRODUCTION OF ORDINANCE REGULATING ENCAMPMENTS ON PUBLIC PROPERTY

DEPARTMENT

Development Services, City Attorney and Police Departments

RECOMMENDATION

Request the City Council introduce and adopt Ordinance No. 2024-06 repealing Escondido Municipal Code § 17-8 and enacting Escondido Municipal Code §§ 17-8.1 through 17-8.7 relating to regulations of encampments on public property.

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

Presenter: Michael McGuinness, City Attorney

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

COUNCIL PRIORITY – Improve Public Safety; Increase Retention and Attraction of People and Businesses to Escondido; Encourage Housing Development

FISCAL ANALYSIS

The net fiscal impact of the adoption of the Ordinance is currently unknown and dependent on factors such as the costs associated with increased citation and prosecution of violations of the new Ordinance; the costs of implementing the abatement notice, documentation and storage provisions; and the results from changes to homeless behavior creating a more inviting environment for existing and future businesses in Escondido and increased property values, if any.

PREVIOUS ACTION

The Ad-Hoc Subcommittee on Homelessness ("Subcommittee") recommended the adoption by the full City Council of a Policy Statement on Homelessness ("Policy"). The City Council by majority vote adopted the Policy on February 28, 2024. Further, the Subcommittee unanimously recommends the adoption of proposed Ordinance No. 2024-06.



CITY of ESCONDIDO

STAFF REPORT

BACKGROUND

Recent Case Law.

The increased presence of homeless encampments on public property has been difficult to effectively address over the past several years. The reasons for this proliferation over this time period are numerous and complex. At least one aggravating factor discouraging local agencies from directly and firmly responding to the problem is recent court decisions handed down by the United States Court of Appeals for the Ninth Circuit, hamstringing local agencies including *Martin v. City of Boise*, 920 F. 3d 584 (9th Cir. 2019) (“*Martin*”) and *Johnson v. City of Grant’s Pass*, 72 F.4th 868 (9th Cir. 2023) (amended opinion and order denying rehearing) (“*Grant’s Pass*”). The *Martin* and *Grant’s Pass* decisions of the Ninth Circuit, the largest U.S federal court of appeal circuit in the United States having jurisdiction over nine western states and two territories, like all of its cases, govern the City of Escondido and all other cities in California.

The premise of these decisions is that enforcement of local ordinances prohibiting public camping by persons claiming to be, or who are in fact, homeless is that it is punishing the person for the *status* of being homeless in violation of the Eighth Amendment to the United States Constitution and past Supreme Court precedent. The Eighth Amendment, as applied to states and their political subdivisions by the Fourteenth Amendment, provides in relevant part that “cruel and unusual punishments” shall not be “inflicted.” The Court has relied on at least two United States Supreme Court cases to find that enforcement of commonplace restrictions on public camping constitutes cruel and unusual punishment because it punishes the status of the individual for being homeless. (*Robinson v. California*, 370 U.S. 660 (1962) (drug addiction is a status) and *Powell v. Texas*, 392 U.S. 514 (1968) (alcoholic punished for being drunk in public).

The *Martin* and *Grant’s Pass* decisions created confusion and a level of enforcement paralysis to cities trying to understand what may be permissible in enforcing straightforward laws prohibiting *conduct*, like camping, and not arresting someone based solely on their claimed status which was the reasoning of *Robinson* and *Powell*. The confusion was further exaggerated as *Martin* and *Grant’s Pass* required, as a predicate to enforcement of public camping laws, the availability of shelter beds for the individual such that he/she had a place to satisfy the human function of sleeping. While the decisions suggested that municipalities could still enforce reasonable time, place and manner restrictions (e.g. blocking access to a sidewalk), the lack of clarity in the decisions and aggressive and expensive lawsuits that have plagued municipalities has made that enforcement option less attractive and financially risky.

Unfortunately, the United States Supreme Court failed to take the *Martin* case for review when presented the opportunity and the confusion and resulting proliferation of homeless encampments became more pronounced. However, early this year, the Supreme Court accepted the *Grant’s Pass* case for review and oral argument on the case was heard in April 2024. As of the date of this Staff Report, a decision has not been delivered but it is expected before the close of the Court’s term at the end of June 2024.



CITY of ESCONDIDO

STAFF REPORT

Ad Hoc Subcommittee Review.

Not knowing the outcome of the case, the Subcommittee sought recommendations to provide additional lawful enforcement tools for the Escondido Police Department in enforcing local laws to abate these clear and dangerous public nuisances and combatting the consequences of these encampments including the trash, pollutant discharges into sensitive habitats, and damaged property. The Subcommittee held meetings seeking to understand the current legal guidelines and requirements for encampment abatements as well as learn how and whether other local agencies have enacted enforcement ordinances to be compliant with *Martin* and *Grant's Pass*. The Subcommittee recommends the adoption of the proposed Ordinance to help take control of these encampments using lawful means.

Proposed Ordinance No. 2024-06.

From the Subcommittee process the City Attorney's Office has drafted the proposed encampment abatement ordinance that conforms to the current law in California and under existing Ninth Circuit precedent. It emphasizes the protection of city assets such as waterways, parks and other public spaces using reasonable time, place and manner restrictions. Additionally, the proposed ordinance establishes specific protocols for the encampment abatement process to ensure proper notice; it identifies the types of items that must be secured for later retrieval and those which may be destroyed; it provides for the level of documentation of items removed or destroyed; and it allows for reasonable retrieval of those items removed from an encampment. Finally, it allows for an expedited abatement process upon certain findings by the City Manager.

Should the law, after the decision in *Grant's Pass*, become more restrictive of local control or allow for greater flexibility, the Ordinance can be revisited to modify and conform to the outcome of that decision.

The Ordinance accomplishes the above-described changes in four principle ways. First, the Ordinance, through its recitals and stated purpose in § 17-8.1, acknowledges both the need for protecting the life, health and safety of all people in the City, including those in encampments on public property, with the critical need to preserve and protect environmentally sensitive lands subject to pollutants, trash, damage and even arson. These factors inform and support the legality and reasonableness under existing law of enacting provisions for encampment clean-ups and abatements even when shelter beds may not be available.

Second, it provides additional and updated definitions for the nature of the encampments and protected city property. See § 17-8.2. For example, it references the nature of the abatement process; the role of the City Manager and his designees in taking an active role in targeting certain encampments based on specific factors; and it defines the habitats such as open space, waterways and park space to clarify which areas the City desires to be better protected.



CITY of ESCONDIDO

STAFF REPORT

Third, it makes clear that regardless of shelter availability, which was a critical condition precedent to public encampment enforcement under the *Martin* and *Grant's Pass* cases, encampments in or on particular public lands are categorically illegal and may be abated without consideration of shelter availability. See § 17-8.3 (protection of waterways), § 17-8.4 (on any city property where there is created an immediate threat or unreasonable risk of harm to persons, public health and safety and a disruption to vital government services; or within 500 feet of schools, in signed prohibited areas, near transit hubs and park and open spaces where there is a substantial public health and safety risk).

Fourth, in § § 17-8.6 through 17-8.7, the Ordinance establishes a reasonable and lawful process for the 24-hour written notice of clean-up and abatement; documentation of the encampment, including personal property and belongings; and collection, storage, disposal, and retrieval of personal property found in encampments on public property. Further, with specific findings made by the City Manager, including regional public health risk advisements from the County of San Diego or other government authority, or where there is presented a "significant risk of property damage, bodily injury or death," an expedited 3- hour abatement process may be employed to remove the encampment off public property.

A violation of the Ordinance by maintaining an illegal encampment can be prosecuted as a misdemeanor with potential for fines and custody pursuant to the general provisions of the Escondido Municipal Code as well as specifically pursuant to § 17-8.5.

Conclusion.

There is no clear remedy for the complicated problem of homelessness generally and managing the evidence of such in homeless encampments on public property. The proposed Ordinance is a step towards providing the City Manager, through the police and public works departments primarily, an additional tool to more quickly and formally respond to encampments as they are becoming established on City property and to document, for the City's legal protection, the means employed to abate these areas.

ORDINANCES

- a. Ordinance No. 2024-06

ORDINANCE NO. 2024-06

AN ORDINANCE REPEALING SECTION 17-8 OF CHAPTER 17, ARTICLE 1, OF THE ESCONDIDO MUNICIPAL CODE AND ADDING NEW SECTIONS 17-8.1 THROUGH 17-8.7 TO CHAPTER 17, ARTICLE 1, RELATING TO REGULATING ENCAMPMENTS ON PUBLIC PROPERTY

WHEREAS, the City of Escondido is committed to protecting the life, health, and safety of its residents and all people within the geographical boundaries of the City; and

WHEREAS, the City Council of the City of Escondido (“City Council”) finds that certain public lands within the City's geographical boundaries pose significant health and safety hazards to people who make shelter or stay overnight in these areas; and

WHEREAS, the City Council finds that some of these public lands are environmentally sensitive and may be significantly damaged by unregulated human activity; and

WHEREAS, the City Council is committed to protecting the rights of individuals who cannot obtain shelter and to treating their personal property with respect and consideration and therefore desires to update the Municipal Code to conform to current federal and state constitutional and statutory law; and

WHEREAS, the City has adopted a Homeless Policy, which outlines the City’s considered approach to dealing compassionately and effectively with the myriad of issues surrounding homelessness; and

WHEREAS, City streets, sidewalks, and parks are intended for safe and sanitary shared use by a diverse community of users including businesses, government, and the general public for gathering, recreating, movement of people, maintenance, and cleaning, and are frequently used by people relying on a variety of mobility devices; and

WHEREAS, the Council finds that certain public lands in the City pose a greater danger to the health and safety of people who may stay in those areas overnight, and to the general public, if used for sheltering, including near parks, schools, shelters, in open space and City waterways; and

WHEREAS, there are significant adverse impacts caused by encampment activity concentrated around shelters provided to individuals and families experiencing homelessness, including predatory behavior and drug dealing, that undermines the community's efforts to provide meaningful assistance and long-term solutions for people seeking reasonable support; and

WHEREAS, people experiencing homelessness on City streets and in City parks have been exposed to illicit drug use, including but not limited to fentanyl, leading to exponential increases in the accidental deaths by overdose among people experiencing homelessness; and

WHEREAS, the sustained presence of people in the City's open space and waterways within the City has created unsafe, unsanitary, unhealthy, and dangerous conditions including water pollution and frequent uncontained fires that threaten people living or using these areas, first responders, and the general public; and

WHEREAS, the Escondido Fire Department has had to respond to several vegetation fires in the City's open space areas which were suspected to have resulted from human activity; and

WHEREAS, the City experiences extended periods of high temperatures with little or no precipitation and strong seasonal dry winds from the east (*i.e.* Santa Ana winds) that can significantly increase the danger and spread of wildfires, adding to the severity of fires when they start; and

WHEREAS, due to the high wildfire risk in the City as well as all of San Diego County, the City deems it to be in the best interests of public safety to address the potential for human- caused fires in areas that

may be remote or unseen for lengthy periods of time allowing for the quick spread of fires imposing significant danger to life and property throughout the City; and

WHEREAS, people sheltering along waterways within the City are at risk of experiencing flooding, vector-related disease and other health issues and these areas often contain sensitive environments at risk of significant damage by unregulated human activity; and

WHEREAS, the City is obligated to protect public health and safety and its natural resources by maintaining clean, safe, and accessible City properties for all residents to enjoy, including parks, open space, and the public right of way; and

WHEREAS, to mitigate risks to the health and safety of its citizens and potential damage to environmentally sensitive lands, the City Council desires to adopt reasonable and objective time, place and manner regulations establishing locations where public camping and the maintenance of an encampment is prohibited, regardless of the availability of shelter, due to the significant health and safety risk to those engaged in that activity, the general public, and the environment; and

WHEREAS, it is the intent of this Ordinance to prohibit camping and maintenance of encampments within the City while encouraging people experiencing homelessness to use available low barrier shelters and access a variety of services available from the City and its partners; and

WHEREAS, when abating any encampment, the City will provide written notice in advance of the clearing that explains when the encampment will be cleaned up and how an individual can reclaim items that are stored during the process; and

WHEREAS, the City will store any personal property that may belong to a person, has apparent utility in its current condition and can be safely retrieved from the site, but will not store property that is

hazardous, practically un-storable, contraband, or listed on the City's current list of common items regularly abandoned during the abatement process.

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

SECTION 1. That Section 17-8 of Chapter 17, Article 1, of the Escondido Municipal Code is hereby repealed in its entirety and replaced by Sections 17-8.1 through 17-8.7 to read as follows:

Section 17-8.1 Encampments on Public Property.

Purpose. The City Council of the City of Escondido finds that the City is committed to protecting the life, health, and safety of all people in the City and finds that certain public lands within the geographical boundaries of the City pose significant health and safety hazards to the people who make shelter or stay overnight in these areas. Additionally, the City Council finds that some of these public lands are environmentally sensitive and may be significantly damaged by unregulated human activity. The City Council is committed to protecting the rights of individuals related to their personal property and to treating such property with respect and consideration. It is the purpose of this Ordinance to set standards for the preservation and protection of human life, health, and safety; to further the preservation and protection of sensitive public lands to prevent destruction of these assets; and to establish a process for the collection, storage, disposal, recycling, or reuse of personal property found in encampments on public property.

Section 17-8.2. Definitions.

For purposes of this Chapter, the following words, terms, and phrases shall be defined as follows:

Abatement means the process of documenting and collecting eligible items for storage, and removing and disposing of, recycling, or reusing of waste at an encampment.

Camp shall have the same meaning as provided for in Section 17-7 and shall not be construed to prohibit camping in public campgrounds under a permit authorized by other provisions of law or ordinance.

Camp paraphernalia means personal property used to facilitate occupancy of an area and includes personal property typically associated with camping such as tarps, cots, beds, sleeping bags, hammocks, bedding, camp stoves, cooking equipment, buckets, and similar equipment, mattresses, couches, dressers, or other furniture.

City Manager as used herein shall mean the appointed City Manager for the City of Escondido and all persons designated and authorized by the City Manager to perform the activities required under this Ordinance including but not limited to all law enforcement and Public Works personnel.

Encampment means one or more temporary, makeshift, or hand-built structures not intended for long-term continuous occupancy, including tents, that are used to shelter one or more persons or their belongings and that are not authorized by the property owner. Encampment includes any camp paraphernalia and personal property associated with or located in or around the structures or tents.

Open space means any undeveloped public property either primarily in its natural state, including canyons and unimproved waterways, or that is held out by the City or used by the public for passive recreational purposes, conservation, habitat preservation, or that maintains or enhances the conservation of natural or scenic resources.

Park means any public property, whether developed or undeveloped, held out by the City or used by the public for active or passive park and recreation uses, including adjacent buffer lands and natural areas and any adjacent parking lots and perimeter sidewalks. The definition of park includes open space.

Shelter means any facility where individuals or families experiencing homelessness can access beds and other services or an area designated by the City Manager for use by individuals or families experiencing homelessness.

Waterway means all or portions of the Escondido Creek, Kit Carson Creek, their tributaries and headwaters, and any other drainage channel or improved or unimproved watercourses, found on public property, within the boundaries of the City of Escondido.

Section 17-8.3. Protection of Waterways.

It is unlawful for any person to do any of the following:

- (1) Build or erect a structure of any type within or along the banks of any waterway, or using or affixing any object to trees or other natural area vegetation for the purpose of building an encampment or any other structure, or to affix an object to any tree or other natural vegetation,
- (2) Move boulders, large rocks, or otherwise reconfigure the natural landscape or destroy vegetation, paved roads or paths created by the City in the waters of or along the banks of a waterway,
- (3) Drive, park, or bring any shopping cart or wheeled vehicle along the banks of a waterway, except in places specifically provided and designated for such use,
- (4) Dig into or on the banks of a waterway, or
- (5) Discharge or store waste, including garbage, refuse, or human or animal waste, along the banks or into the waters of a waterway.
- (6) Nothing in this Section 17-8.3 is intended to prohibit the activities of an owner of private property or other lawful user of private property that are normally associated with and

incidental to the lawful and authorized use of private property; and nothing is intended to prohibit the activities of a lawful user if such activities are expressly authorized by the City Manager or by any law, regulation, permit, order or other directive from a regulatory authority.

Section 17-8.4. Unauthorized Encampments on Public Property.

- (1) It is unlawful for any person to camp or to maintain an encampment in or upon any public property, including in any street, sidewalk, park, open space, waterway, and banks of a waterway, unless specifically authorized by the City Manager.
- (2) It is unlawful for any person to camp or to maintain an encampment where such activity poses:
 - a. An immediate threat or an unreasonable risk of harm to any natural person,
 - b. An immediate threat or an unreasonable risk of harm to public health or safety,
or
 - c. Disruption to vital government services.
- (3) At all times, regardless of the availability of shelter space or beds, it is unlawful for any person to camp or to maintain an encampment in the following locations:
 - a. Within 500 feet of a school that offers instruction on those courses of study required by the California Education Code or that is maintained pursuant to standards set by the State Board of Education provided that signs are posted prohibiting camping that are clearly visible to pedestrians. School for purposes of this provision does not include a vocational or professional institution of higher education, including a community or junior college, college, or university,

- b. Within 500 feet of any shelter provided that signs are posted prohibiting camping that are clearly visible to pedestrians,
- c. In any open space, waterway, or banks of a waterway,
- d. Within any transit hub, on any trolley platform, or along any trolley tracks provided that signs are posted prohibiting camping that are clearly visible to pedestrians, and
- e. In any park or open space where the City Manager determines there is a substantial public health and safety risk and provided that signs are posted prohibiting camping that are clearly visible to pedestrians.

Section 17-8.5. Enforcement.

- 1) Violations of this Article may be prosecuted as misdemeanors subject to the fines and custody provisions in Escondido Municipal Code.
- 2) Violations of Section 17-8.4(2) are enforceable at all times regardless of shelter availability.

17-8.6. Abatement of Encampments, generally.

The City Manager may remove personal property, camp paraphernalia, and all other property, contraband, litter, and waste found at an encampment or at a location where a person is engaged in unlawful camping in compliance with the following procedures:

(1) Written Notice Required Prior to Abatement

- a. A written Notice of Clean-Up will be posted on each tent or structure and in any other distinct areas of the encampment providing notice of the date of clean-up and giving a minimum of 24 hours for persons to remove their personal property.

The written notice shall also include the following statement, which may be updated by the City Manager to provide accurate and relevant information:

You must remove your belongings from the site within 24 hours. You should not leave behind any belongings you want to keep. All belongings left behind will be removed by the City. The City will post an Impound Notice if belongings are stored during the clean-up process.

If you wish to minimize the risk of losing valued belongings, you should keep those belongings on your person at all times, in a storage facility, or in visible, sanitary, and safely accessible bags or bins.

If you think your belongings were stored, you can claim them by following the directions on the Impound Notice after the clean-up is complete. Information about how to claim your belongings is also available on the City's website.

- b. Twenty-four hours after Notice has been posted, the City Manager may conduct the abatement of the site on the date posted on the Notice of Clean-Up. If abatement is delayed or rescheduled, the City Manager may conduct abatement within 48 hours of the posted Notice of Clean-Up without reposting a new Notice of Clean-Up. If abatement is delayed longer, the City Manager shall repost a Notice of Clean-Up with a new date.
- (2) The City Manager shall follow these additional procedures when persons are present at an encampment during abatement:
- a. When shelter is available, the City Manager shall provide any person at an encampment with shelter and service information and direct them to remove their belongings from the site. The City Manager shall evaluate reasonable

requests for additional time or assistance to remove items and may accommodate those requests to the extent practicable and consistent with state and federal law.

- b. Any person who returns to an encampment during abatement shall be allowed to remove their personal property from the site in a reasonable time period. Personal property left behind will be deemed abandoned.
 - c. Any person arrested for a criminal offense or an outstanding warrant shall not be required to abandon personal property they identify as their own. Unless the person requests the personal property be discarded or entrusted to another, all personal property of apparent value will be taken to the Escondido Police Department for impoundment in accordance with existing policy and procedure. Where the owner of the items cannot be readily identified or discovered, the City Manager shall follow the abatement process in this Division.
- (3) Abatement Documentation. The City Manager shall document the abatement process by:
- a. Photographing the site or encampment area before any abatement begins,
 - b. If reasonably possible, and subject to health and safety considerations, open backpacks, purses, suitcases, and other small storage containers to determine whether they contain items eligible for storage,
 - c. If reasonably possible, document the items contained in bags or suitcases,
 - d. Document all items to be stored, and
 - e. Document the site after abatement has concluded.
- (4) Unclaimed items found in abatement shall be eligible for storage if:
- a. Circumstances indicate that the item belongs to a person,
 - b. The item has apparent utility in its current condition and circumstances, and

- c. The item can be safely retrieved from the site.
- (5) An eligible item found during an abatement shall be put into storage, unless it meets one of the following disqualifying conditions:
- a. Hazardous, including items contaminated with human waste, animal waste, or bugs, explosives, weapons, liquids, drug paraphernalia, or mold,
 - b. Likely to become hazardous in storage, including perishables, wet materials that might become moldy, and items covered in mud,
 - c. Practically un-storable, due to large size, weight, or other similar characteristic,
 - d. Contraband or stolen, or
 - e. Is on the City Manager's current list, published on the City's website, of common types of items that, in the experience of City staff, individuals regularly abandon during abatement, and there is no contrary indication as to the specific item.
- (6) The City Manager shall record each eligible item to be stored, including the location it was found and the date of storage. Any stored items shall be kept in storage at least 60 calendar days and then may be disposed of, recycled, or reused.
- (7) After abatement has concluded and when eligible items are collected and will be placed in storage, the City Manager shall post notices at the location of the abatement that includes information how a person can claim stored items. Information about retrieval of stored items shall also be available on the City's website. A person may retrieve stored items based on a description with sufficient specificity to demonstrate ownership.

Section 17-8.7. Expedited Abatement.

- (1) In an expedited abatement, the City Manager shall follow the same abatement and storage procedures in Section 17-8.6, but shall post a Notice of Clean-Up giving a

minimum of three hours for all persons to remove their personal property and may initiate such expedited abatement immediately after the expiration of the three-hour Notice.

- (2) The City Manager shall prioritize and expedite the removal of an encampment if:
- a. The City receives direction from County of San Diego or other governmental authority that abatement of the encampment is necessary to preserve public health or safety, including to address known or suspected outbreaks of diseases;
or
 - b. The City Manager observes or reasonably suspects the encampment creates a condition that presents a significant risk of property damage, bodily injury or death.

SECTION 2. That the City Council did hold a public hearing at a regularly scheduled and agendized meeting of the City Council of the City of Escondido noticed consistent with state law.

SECTION 3. That upon consideration of the Staff report, draft ordinance, and public comments, the City Council of the City of Escondido did find good cause to adopt the Ordinance.

SECTION 4. SEPARABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 5. That as of the effective date of this Ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 6. The City Council authorizes all subsequent action to be taken by City Officials consistent with this Ordinance.

SECTION 7. That the City Clerk is hereby directed to certify to the passage of this Ordinance and to cause the same or a summary to be prepared in accordance with Government Code section 36933, and to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the County and circulated in the City of Escondido.

SECTION 8. That this Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.



STAFF REPORT

June 26, 2024

File Number 0600-10; A-3519

SUBJECT

RATIFICATION OF LOCAL EMERGENCY PROCLAMATION AND APPROVE EMERGENCY REPAIRS OF THE TRUNK SEWER MAIN PIPELINE

DEPARTMENT

Utilities Department

RECOMMENDATION

Request the City Council take the following action:

Adopt Resolution No. 2024-86, ratifying Proclamation No. 2024-02 by the Director of Emergency Services and declaring that pursuant to the California Public Contract Code and Escondido Municipal Code, the City Council affirms that a local emergency exists, it was appropriate for City staff to forego competitive bidding procedures, and to award a contract for emergency repairs of sections of the trunk sewer pipeline.

Staff Recommendation: Approval (Utilities: Angela Morrow, Director of Utilities)

Presenter: Stephanie Roman, Principal Engineer

ESSENTIAL SERVICE – Yes, Keep City Clean for Public Health and Safety; Sewer

COUNCIL PRIORITY – Improve Public Safety

FISCAL ANALYSIS

Funding for the emergency trunk sewer main pipeline work is available in the Wastewater Enterprise Fund.

PREVIOUS ACTION

None

BACKGROUND

The existing sewer pipeline in North Hale Avenue is a 21-inch diameter reinforced concrete pipe which was installed in 1960. This pipeline conveys raw sewage from approximately 30 percent of the City of Escondido to the Hale Avenue Resource Recovery Facility (“HARRF”).



CITY of ESCONDIDO

STAFF REPORT

On Monday, June 17, 2024, as wastewater collection staff was performing routine closed-circuit television (“CCTV”) surveillance of the City’s trunk sewer main, it was discovered that the sewer pipeline has failed in multiple locations and has been identified to be severely deteriorated in other sections between Escondido Creek & North Date Street to East Pennsylvania Avenue & North Broadway; totaling approximately 4,100 linear feet of affected pipeline. The Public Works Department has closed the bike path from North Fig Street to North Date Street, and has detoured the public to the north side of the Escondido Creek.

On June 20, 2024, the City Manager, acting in his capacity as the Director of Emergency Services under Chapter 7 of the Escondido Municipal Code, proclaimed a local emergency via Proclamation No. 2024-02 thereby triggering the allowance for dispensing with competitive bidding procedures under state and local law to secure an immediate contract to expedite the containment and repair of the subject pipeline (see Attachment “1”).

Currently, wastewater continues to flow through the failed trunk sewer pipeline sections; however, Utilities staff believes there is an imminent danger of the following: additional collapse of surrounding soil resulting in a sinkhole; further degradation of surrounding soil falling into the trunk sewer pipeline sections, creating a full obstruction of the trunk sewer pipeline and resulting in a sewer overflow; and that the existing voids could effect a parallel large diameter high pressure water distribution transmission main.

CCL Contracting, Inc. has the staff expertise and equipment to immediately mobilize to repair the trunk sewer pipeline on a time and materials basis. A Public Improvement Agreement is being executed with CCL Contracting, Inc., by the City Manager under the emergency proclamation pursuant to Chapter 7 of the Escondido Municipal Code.

Resolution No. 2024-86, which must be passed by a four-fifths vote pursuant to state law, also ratifies the Director’s Proclamation as required by the Municipal Code and supports the declaration that public interest and necessity demand the immediate expenditure of funds to safeguard life, health, and property.

RESOLUTIONS

- a. Resolution No. 2024-86

ATTACHMENTS

- a. Attachment “1” – Proclamation No. 2024-02

RESOLUTION NO. 2024-86

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AFFIRMING THE PROCLAMATION OF A LOCAL EMERGENCY BY THE DIRECTOR OF EMERGENCY SERVICES AND AUTHORIZING THE CITY MANAGER TO EXECUTE, ON BEHALF OF THE CITY, AN EMERGENCY REPAIR CONTRACT OF THE SEWER PIPELINE.

WHEREAS, the City Council recognizes that multiple sections of the City's trunk sewer pipeline between the Escondido Creek & North Date Street to East Pennsylvania Avenue & North Broadway, are at risk of imminent, catastrophic failure; and

WHEREAS, pursuant to Chapter 7 of the Escondido Municipal Code, the City Manager serves as the Director of Emergency Services Director and in that role is authorized to proclaim a local emergency and take such actions as are necessary to preserve life and property in the case of an emergency including but not limited to the execution of such contracts and the procurement of services necessary to respond to the emergency; and

WHEREAS, pursuant to Escondido Municipal Code §10-80, in the case of public exigency or an emergency as defined in Government Code §8558, the City may dispense with competitive procurement for the purchase of goods and services for the duration of the exigency or emergency and such purchases may be made under the direction of the City Council or Director acting pursuant to a declared emergency or public exigency pursuant to Chapter 7 of the Escondido Municipal Code; and

WHEREAS, the Director of Utilities, in consultation with the Director, has determined that the failure of the sewer pipeline constitutes an immediate risk to the health of the public and the continued

services of the sewer system, requiring immediate action that will not permit delay that would result from a competitive bidding process; and

WHEREAS, pursuant to Chapter 7, the City Council must ratify the Director's emergency proclamation within 7 days when not in session at the time of the emergency; and

WHEREAS, the City Council finds that the Director on June 20, 2024, was authorized to and did in fact issue a Proclamation of Local Emergency, Proclamation No. 2024-02, of the existence or threatened existence of an emergency when the City Council was not in session; and

WHEREAS, pursuant to the Public Contract Code, the City Council must further review such emergency actions at its next regularly scheduled meeting and determine by a four-fifths vote there is a need to continue the action; and

WHEREAS, the City Council desires at this time and deems it to be in the best public interest to accept the recommendations of the Director of Utilities and affirm the Director's emergency declaration.

WHEREAS, the City Council desires at this time and deems it to be in the best public interest to ratify the Director's Proclamation of Local Emergency and further accept the recommendations of the Director of Emergency Services and Director of Utilities to engage in immediate contracting to secure the repair of the trunk sewer pipeline by dispensing with state and local law procurement requirements.

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

1. That the above recitations are true.

2. That the Director of Emergency Services had authority to, and did in fact properly issue Proclamation No. 2024-02 on June 20, 2024, declaring a local emergency of the City of Escondido relating to its trunk sewer main pipeline pursuant to Chapter 7 of the Escondido Municipal Code and state law.

3. That the Mayor and City Council further accept the determination by the Director of Utilities that the failure of the sections of trunk sewer pipeline is a public health and safety emergency occurring while the City Council was not in session; that this emergency required immediate action in the procurement of a contractor to perform the necessary emergency work to abate the public health and safety conditions; that a delay caused by procurement through a competitive bidding process would not be in the best interests of the public; and, that the proposed action and expenditure is necessary to respond to the emergency requiring immediate repair of the trunk sewer pipeline.

PROCLAMATION NO. 2024-02

A PROCLAMATION OF THE DIRECTOR OF EMERGENCY
SERVICES DECLARING A LOCAL EMERGENCY PURSUANT
TO CHAPTER 7 OF THE ESCONDIDO MUNICIPAL CODE

WHEREAS, City of Escondido Municipal Code Chapter 7, and specifically Section 7-6(a)(1), empowers the City Manager, in his role as the Director of Emergency Services ("Director"), to proclaim the existence or threatened existence of an emergency when conditions of disaster or imminent risk to the safety of persons and property exist within the City of Escondido and the City Council is not in session; and

WHEREAS, at the time of this Proclamation, the City Council has adjourned to their regularly scheduled session noticed for Wednesday, June 26, 2024; and

WHEREAS, conditions of a disaster and imminent risk to the safety of persons and property have arisen within the City of Escondido as a result of Wastewater Collection staff performing routine closed-circuit television ("CCTV") surveillance of the City's sewer main on Monday, June 17, 2024, and discovering that the 21-inch trunk sewer pipeline that carries approximately 30% of the City's wastewater flows has failed in multiple locations and has been identified to be severely deteriorated in other sections between Escondido Creek & North Date Street to East Pennsylvania Avenue & North Broadway, directly affecting the safety of persons and property within this City; and

WHEREAS, these emergency conditions have resulted in closure of a portion of the bike path and has detoured the public to the north side of the Escondido Creek in this section; and

WHEREAS, though wastewater continues to currently flow through the failed and deteriorated sections of the trunk sewer pipeline, Utilities staff believes there is imminent danger of: 1) additional collapse of surrounding soil resulting in a sinkhole; 2) further degradation of surrounding soil falling into the collapsed trunk sewer pipeline sections, creating a full obstruction of the trunk sewer pipeline sections and resulting in a sewer overflow; and 3) existing voids effecting a parallel large diameter high pressure water distribution transmission main; and

WHEREAS, these emergency conditions and their impacts are beyond the control of City resources, services, personnel, equipment, and facilities; and

WHEREAS, the circumstances are still being evaluated but, at this time, based upon a review of all facts made known to the Director, these conditions warrant and necessitate the Proclamation of a Local Emergency effective as of the date of this Proclamation.

NOW, THEREFORE, IT IS HEREBY PROCLAIMED by the Director of Emergency Services of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. That a local emergency currently exists within the City of Escondido, and may have existed as early as Monday, June 17, 2024, but made certain as of the date of the issuance of this Proclamation, due to failure and extreme deterioration of the City's trunk sewer main pipeline.
3. That these emergency conditions require immediate repair of the failed and severely deteriorated trunk sewer pipeline sections, and compliance with competitive procurement laws to secure a competent and available contractor will delay the necessary repairs, placing safety of persons and property at imminent risk.

4. That said emergency proclamation shall expire seven (7) days after issuance unless confirmed and ratified by the City Council of the City of Escondido.

Dated: 06 / 20 / 2024

By: *Sean McGlynn*

Sean McGlynn
City Manager and
Director of Emergency Services

KEY-

CONSENT CALENDAR CURRENT BUSINESS

PUBLIC HEARING WORKSHOP

Item 13.



CITY of ESCONDIDO

FUTURE AGENDA

7/3/2024 - NO MEETING (INDEPENDENCE DAY)