



# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

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**WEDNESDAY, JUNE 22, 2022**

4:00 PM - Closed Session

**5:00 PM - Regular Session**

**Escondido City Council Chambers, 201 North Broadway, Escondido, CA 92025**

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### **WELCOME TO YOUR CITY COUNCIL MEETING**

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

#### **MAYOR**

Paul McNamara

#### **DEPUTY MAYOR**

Tina Inscoe (District 2)

#### **COUNCILMEMBERS**

Consuelo Martinez (District 1)

Joe Garcia (District 3)

Michael Morasco (District 4)

#### **CITY MANAGER**

Sean McGlynn

#### **CITY ATTORNEY**

Michael McGuinness

#### **CITY CLERK**

Zack Beck

#### **HOW TO WATCH**

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

##### **In Person**



201 N. Broadway

##### **On TV**



Cox Cable Channel 19 and U-verse Channel 99

##### **Online**



[www.escondido.org](http://www.escondido.org)



# CITY of ESCONDIDO

COUNCIL MEETING AGENDA

WEDNESDAY, JUNE 22, 2022

## HOW TO PARTICIPATE

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

### In Person



Fill out Speaker Slip and Submit to City Clerk

### In Writing



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

## ASSISTANCE PROVIDED

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





# CITY of ESCONDIDO

COUNCIL MEETING AGENDA

WEDNESDAY, JUNE 22, 2022

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## CLOSED SESSION

4:00 PM

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### CALL TO ORDER

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

### ORAL COMMUNICATIONS

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

### CLOSED SESSION

- I. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR (GOVERNMENT CODE section 54956.8)**
  - a. Property: 272 E. Via Rancho Pkwy, Escondido  
City Negotiator: Sean McGlynn, City Manager, or designee  
Negotiating Parties: (i) Larry Green, L. Green Investment & Development, LLC  
(ii) Kimberly Brewer, Unibail-Rodamco-Westfield  
Under Negotiation: Price and terms of leases



# CITY *of* ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, JUNE 22, 2022

### II. **CONFERENCE WITH LABOR NEGOTIATORS (Government Code section 54957.6)**

- a. Agency Representative: Sean McGlynn, City Manager, or designee Employee Organization: Police Officers' Association Sworn Personnel Bargaining Unit
- b. Agency Representative: Sean McGlynn, City Manager, or designee Employee Organization: Police Officers' Association Non-Sworn Personnel Bargaining Unit
- c. Agency Representative: Sean McGlynn, City Manager, or designee Employee Organization: Firefighters Association Safety and Non-safety Bargaining Unit
- d. Agency Representative: Sean McGlynn, City Manager, or designee Employee Organization: ECEA Unit (ACE and SUP)
- e. Agency Representative: Sean McGlynn, City Manager, or designee Employee Organization: Maintenance and Operations Bargaining Unit (Teamsters)

### **ADJOURNMENT**





# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, JUNE 22, 2022

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### REGULAR SESSION

5:00 PM Regular Session

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#### MOMENT OF REFLECTION

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

#### FLAG SALUTE

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

#### CALL TO ORDER

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

#### CLOSED SESSION REPORT

#### ORAL COMMUNICATIONS

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

#### CONSENT CALENDAR

Items on the Consent Calendar are not discussed individually and are approved in a single motion. However, Council members always have the option to have an item considered separately, either on their own request or at the request of staff or a member of the public.

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

**2. APPROVAL OF WARRANT REGISTER (COUNCIL) -**

Request approval for City Council and Housing Successor Agency warrant numbers 363958 – 364184 dated June 8, 2022.

Staff Recommendation: Approval (Finance Department: Christina Holmes)



# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, JUNE 22, 2022

**3. APPROVAL OF MINUTES: Regular meeting of June 08, 2022**

**4. AMENDMENT TO PUBLIC SERVICES WITH REDWOOD SENIOR HOMES FOR SENIOR NUTRITION PROGRAM -**

Request the City Council adopt Resolution No. 2022-80 authorizing a First Amendment to the Public Services Agreement with HumanGood SoCal, dba Redwood Senior Homes and Services in the amount of \$230,000 for preparation and delivery of Senior Nutrition Program meals to the Park Avenue Community Center.

Staff Recommendation: Approval (Community Services Department: Joanna Axelrod, Deputy City Manager/Director of Community Services)

Presenter: Robert Rhoades

a. Resolution No. 2022-80

**5. SAN DIEGO COUNTY CAL-ID GRANT -**

Request the City Council adopt Resolution No. 2022-93 authorizing the Police Department to accept a five-year San Diego County Cal-ID Grant from the County of San Diego Remote Access Network (RAN); approve a budget adjustment to spend the funds; and authorize the Mayor to execute grant documents on behalf of the City.

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

Presenter: Edward Varso

a. Resolution No. 2022-93

**6. AUTHORIZATION TO PROCESS AN AMENDMENT TO THE GENERAL PLAN LAND USE AND COMMUNITY FORM CHAPTER RELATED TO SINGLE-ROOM OCCUPANCY (SRO) USES -**

Request the City Council authorize the processing of an amendment to the General Plan Land Use and Community Form Chapter to address Single-Room Occupancy (SRO) uses in commercial land use designations for consistency with the Hotel Conversion Ordinance adopted in July 2021.

Staff Recommendation: Approval (Development Services Department: Julie Procopio, Interim Director of Community Development)

Presenter: Veronica Morones



# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, JUNE 22, 2022

**7. ADOPTION OF THE FISCAL YEAR 2022/2023 ROAD MAINTENANCE AND REHABILITATION ACCOUNT PROJECT LIST AND ANNUAL STREET REHABILITATION AND MAINTENANCE PROGRAM UPDATE -**

Request the City Council adopt Resolution No. 2022-73, containing the initial Project Location proposed to be completed with Fiscal Year (FY) 22-23 Road Maintenance and Rehabilitation Account (RMRA) funds, and receive a report on the Street Rehabilitation and Maintenance Program.

Staff Recommendation: Approval (Development Services Department, Julie Procopio, Interim Director of Community Development)

Presenter: Matt Souttere

a. Resolution No. 2022-73

**8. CONTRACT AMENDMENTS FOR THE CITRACADO PARKWAY EXTENSION PROJECT -**

Request the City Council adopt Resolution No. 2022-82, authorizing a First Amendment to the Consultant Agreement with TY Lin International in the amount of \$982,162.51, and adopt Resolution No. 2022-81 authorizing a Tenth Amendment to the Consultant Agreement with AECOM in the amount of \$467,249, for the Citracado Parkway Extension Project ("Project").

Staff Recommendation: Approval (Development Services Department: Julie Procopio, Interim Director of Community Development)

Presenter: Matt Souttere

a. Resolution No. 2022-81

b. Resolution No. 2022-82

**9. \$157,660 PUBLIC SERVICES AGREEMENT FOR SENIOR TRANSPORTATION -**

Request the City Council adopt Resolution 2022-79 authorizing a Public Services Agreement with Full Access & Coordinated Transportation, Inc., dba Facilitating Access to Coordinated Transportation ("FACT") in the amount of \$157,660 for transportation services for seniors to and from the Park Avenue Community Center to participate in the Senior Nutrition Program.

Staff Recommendation: Approval (Community Services Department: Joanna Axelrod, Deputy City Manager / Director of Communications and Community Services)

Presenter: Robert Rhoades

a. Resolution 2022-79



# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, JUNE 22, 2022

### CONSENT RESOLUTIONS AND ORDINANCES (COUNCIL/RRB)

The following Resolutions and Ordinances were heard and acted upon by the City Council/RRB at a previous City Council/Mobilehome Rent Review meeting. (The title of Ordinances listed on the Consent Calendar are deemed to have been read and further reading waived.)

### PUBLIC HEARINGS

#### **10. FISCAL YEAR 2022/23 OPERATING BUDGET ADOPTION -**

Request the City Council adopt Resolution No. 2022-69 approving the Fiscal Year 2022/23 Annual Operating Budget; and adopt Resolution No. 2022-70 approving the Appropriations Limit (Gann Limit) for Fiscal Year 2022/23.

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

Presenter: Christina Holmes

- a. Resolution No. 2022-69
- b. Resolution No. 2022-70

### CURRENT BUSINESS

#### **11. APPROVAL TO COMMENCE JUDICIAL VALIDATION PROCEEDINGS FOR PENSION OBLIGATION BONDS -**

Request the City Council adopt Resolution No. 2022-89, authorizing judicial validation proceedings relating to the issuance of bonds to refund certain pension obligations of the City, approving the form and authorizing the execution of a trust agreement and bond purchase agreement, and approving additional actions related thereto.

Staff Recommendation: Approval (Finance Department: Christina Holmes)

Presenters: Christina Holmes, Sara Oberlies Brown, and Scott Smith

- a. Resolution No. 2022-89

### FUTURE AGENDA

#### **12. FUTURE AGENDA**

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

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



# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, JUNE 22, 2022

### **COUNCILMEMBERS SUBCOMMITTEE REPORTS AND OTHER REPORTS**

#### **CITY MANAGER'S WEEKLY ACTIVITY REPORT**

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

#### **ORAL COMMUNICATIONS**

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#### **ADJOURNMENT**

#### **UPCOMING MEETING SCHEDULE**

Wednesday, July 13, 2022 4:00 & 5:00 PM Regular Meeting, *Council Chambers*  
Wednesday, July 20, 2022 4:00 & 5:00 PM 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**

**ESCONDIDO TIMES-ADVOCATE**

P.O. Box 461900, Escondido CA 92046  
720 N Broadway, Escondido, CA 92025  
760-546-4200

**PROOF OF PUBLICATION**

See Proof on Next Page

City Clerk Escondido  
City of Escondido

**State of California**  
**County of San Diego**

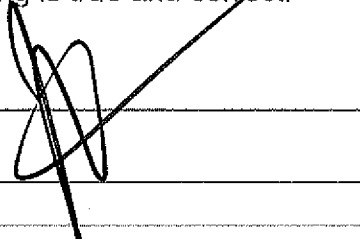
I, Joshua Sibelius, am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled manner. I am the principal clerk of the publisher of the Escondido Times-Advocate, a newspaper of general circulation, published weekly in Escondido, County of San Diego, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of CALIFORNIA, under the date of May 25, 2018, Case number 2018-18480; that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

Published in: ESCONDIDO TIMES-ADVOCATE  
Run Dates:  
12 May 2022

Executed on: 5.12.2022  
At Escondido, CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Signature



Newspaper page size: Width: 10.01 in., Height: 16.09 in.



CITY OF ESCONDIDO  
OFFICE OF THE CITY CLERK  
201 NORTH BROADWAY  
ESCONDIDO, CA 92025-2798  
(760) 839-4617

**NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN on June 8, 2022 at 4:00 p.m. the Escondido City Council of the City of Escondido will hold a Public Hearing to consider the following item:

**REVIEW AND ADOPTION OF FISCAL YEAR 2022/23 OPERATING BUDGET FOR THE CITY OF ESCONDIDO; AND ADOPTION OF THE APPROPRIATIONS LIMIT (GANN LIMIT)**

IF YOU CHALLENGE this item 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 City Council, at or prior to the Public Hearing.

The City of Escondido recognizes its obligation to provide equal access to public services for those individuals with disabilities. Please contact the American Disabilities Act (A.D.A.) Coordinator (760) 839-4641 with any requests for reasonable accommodations, to include sign language interpreters, at least 24 hours prior to the meeting. The City of Escondido does not discriminate against any person with a handicapped status.

ALL INTERESTED PERSONS are invited to attend said Public Hearing to express their opinion in this matter. Said Public Hearing will be held in the Council Chambers, 201 N. Broadway, Escondido, California, 92025. Viewing of the budget document will be available on the City's website at <http://www.escondido.org/annual-operating-budget.aspx> or at the City Clerk's office prior to the Public Hearing.

For additional information, please contact the Finance Department at (760) 839-4063, and refer to the Operating Budget for Fiscal Year 2022/23.

ZACHARY BECK, City Clerk  
City of Escondido  
May 12, 2022

Published in THE ESCONDIDO TIMES-ADVOCATE:  
05/12/22





# STAFF REPORT

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June 22, 2022  
File Number 0400-40

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## **SUBJECT**

APPROVAL OF WARRANT REGISTER (COUNCIL)

## **DEPARTMENT**

Finance

## **RECOMMENDATION**

Request approval for City Council and Housing Successor Agency warrant numbers 363958 – 364184 dated June 8, 2022.

Staff Recommendation: Approval (Finance Department: Christina Holmes)

## **FISCAL ANALYSIS**

The total amount of the warrants for the period of June 2 – June 8, 2022, is \$1,960,450.11

## **BACKGROUND**

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



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

### CLOSED SESSION

4:00 PM

### CALL TO ORDER

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

### ORAL COMMUNICATION

None.

### CLOSED SESSION

#### I. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (GOVERNMENT CODE section 54956.8)

- a. Property: Available density in Northeast Gateway Specific Plan (APNs 240-110-52-00, 225-141-27-00, 225-141-40-00)  
 City Negotiator: Vince McCaw, Real Property Manager  
 Negotiating Party: Troy Friedeck, Meridian Development  
 Under Negotiation: Price and terms of sale
  
- b. Property: 272 E. Via Rancho Pkwy, Escondido  
 City Negotiator: Sean McGlynn, City Manager, or designee  
 Negotiating Parties: (i) Larry Green, L. Green Investment & Development, LLC  
 (ii) Kimberly Brewer, Unibail-Rodamco-Westfield  
 Under Negotiation: Price and terms of leases

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

- a. Case Name: The Affordable Housing Coalition of San Diego County v. Drager, et. al.  
 Case No: Sacramento Superior Court Case No. 34-2012-80001158-CU-WM-GDS
  
- b. Case Name: Building Industry Association of San Diego County v. City of Escondido  
 Case No: San Diego Superior Court Case No. 37-2021-00008423-CU-MC-NC



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

### ADJOURNMENT

Mayor McNamara adjourned the meeting at 4:52 p.m.

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MAYOR

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CITY CLERK



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

### REGULAR SESSION

5:00 PM Regular Session

### MOMENT OF REFLECTION

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### FLAG SALUTE

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

### CALL TO ORDER

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

### PROCLAMATIONS

LGBTQ Pride Month, June, 2022

### CLOSED SESSION REPORT

### ORAL COMMUNICATIONS

Gloria Conejo – Requested the City Council do more to help the LGBTQ Community.

Robroy Fawcett – Expressed concern regarding the sequencing of elections for new Council Districts.

Lorene Hatley – Expressed concern regarding the landscaping on Grand Ave.

### CONSENT CALENDAR

Motion: Morasco; Second: Martinez; Approved: 5-0

1. AFFIDAVITS OF PUBLICATION, MAILING, AND POSTING (COUNCIL/RRB) -
2. APPROVAL OF WARRANT REGISTER (COUNCIL) -  
Request approval for City Council and Housing Successor Agency warrant numbers:



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

363490 – 363646 dated May 18, 2022

363647 – 363790 dated May 25, 2022

Staff Recommendation: Approval (Finance Department: Christina Holmes)

**3. APPROVAL OF MINUTES: Regular meeting of May 25, 2022**

**4. AMENDMENT TO CONSULTING AGREEMENT FOR EAGLE SCOUT LAKE BRIDGE PROJECT -**

Request the City Council adopt Resolution No. 2022-60, authorizing an amendment in an amount of \$120,000 to the Consulting Agreement with Kleinfelder, Inc. (“Consultant”) for the Eagle Scout Lake Bridge Project (“Project”) in Kit Carson Park. The amendment will provide funding for additional permitting services in support of construction of the Project.

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

Presenter: Juan Magdaraog

a. Resolution No. 2022-60

**5. ACTIVE TRANSPORTATION PROGRAM GRANT APPLICATION FOR SAFE ROUTES TO SCHOOL (SRTS) PROJECT ON CITRUS AVENUE -**

Request the City Council adopt Resolution No. 2022-76 authorizing the Director of Development Services or her designee to apply for up to \$3,000,000 in Active Transportation Program (“ATP”) funds from the California Transportation Commission (“CTC”) for a Safe Routes to Schools (“SRTS”) grant to improve student access to Hidden Valley Middle School; and if awarded, to accept the grant funds and complete necessary grant and budget documents.

Staff Recommendation: Approval (Development Services Department: Julie Procopio, Interim Director of Community Development)

Presenter: Julie Procopio

a. Resolution No. 2022-76

### **CONSENT RESOLUTIONS AND ORDINANCES (COUNCIL/RRB)**

The following Resolutions and Ordinances were heard and acted upon by the City Council/RRB at a previous City Council/Mobilehome Rent Review meeting. (The title of Ordinances listed on the Consent Calendar are deemed to have been read and further reading waived.)

### **PUBLIC HEARINGS**



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

### 6. **FISCAL YEAR 2022/23 OPERATING BUDGET ADOPTION -**

Request the City Council adopt Resolution No. 2022-69 approving the Fiscal Year 2022/23 Annual Operating Budget; and adopt Resolution No. 2022-70 approving the Appropriations Limit (Gann Limit) for Fiscal Year 2022/23.

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

Presenter: Christina Holmes

a. Resolution No. 2022-69

b. Resolution No. 2022-70

Marty Tiedeman – Expressed support for the Queen Califia Magic Circle.

Patricia Spann - Expressed support for the Queen Califia Magic Circle.

Melora Dietz – Expressed support for the Queen Califia Magic Circle.

Lori Pfeiler – Expressed support for more affordable housing.

Ed Wicker – Expressed support for using cannabis as a source of revenue for Escondido.

Gloria Conejo – Expressed support for using cannabis as a source of revenue for Escondido.

Sara Matta – Expressed support for the CCAE

Inki Welch – Requested the Council take a measured approach while addressing the budget deficit.

Douglas Shultz – Expressed concern that the economy may be heading towards a recession.

Esmeralda Cardenas - Expressed support for using cannabis as a source of revenue for Escondido.

Kevin Stevenson - Expressed support for using cannabis as a source of revenue for Escondido.

Linda Wilkinson - Expressed support for the Queen Califia Magic Circle.

Ron Guiles – Expressed support for the Escondido Library.

Barbara Michalec - Expressed support for the Queen Califia Magic Circle.

Greg Tucker – Expressed concern regarding homelessness in Escondido.



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

Leslie Ellsworth - Expressed support for using cannabis as a source of revenue for Escondido.

Polett Schafer - Expressed support for using cannabis as a source of revenue for Escondido.

Danielle Polson - Expressed support for using cannabis as a source of revenue for Escondido.

Mary Ann Smith – Requested the City Council not add new staff positions until the Revenue Measure is resolved.

Joanne Tenney – Expressed support for a one cent Revenue Measure in Escondido.

Chris Nava – Expressed concern regarding the proposed budget cuts.

Motion to allocate \$4,170,000 from ARPA funding and \$830,000 from the Section 115 Trust to address the budget deficit and have staff bring the budget back on June 22 for final approval: McNamara; Second: Martinez; Approved: 5-0

**7. FIVE-YEAR CAPITAL IMPROVEMENT PROGRAM AND FISCAL YEAR 2022/23 CAPITAL IMPROVEMENT PROGRAM BUDGET STATUS AND ADOPTION OF THE 2023 REGIONAL TRANSPORTATION IMPROVEMENT PROGRAM -**

Request the City Council adopt Resolution No. 2022-78, approving Fiscal Years 2022/23 – 2026/2027 Five-Year Capital Improvement Program and the Fiscal Year 2022/23 Capital Improvement Program Budget; and adopt Resolution No. 2022-77, approving the Regional Transportation Improvement Program for Fiscal Years 2023 through 2027.

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

Presenter: Edrilyn D. Cruz

a. Resolution No. 2022-77

b. Resolution No. 2022-78

Motion: Inscoe; Second: Morasco; Approved: 5-0

### **FUTURE AGENDA**

**8. FUTURE AGENDA**

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# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

Morasco - SDG&E Presentation on Net Zero Carbon Emissions

Martinez - Explore a Budget Subcommittee

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

### **COUNCILMEMBERS SUBCOMMITTEE REPORTS AND OTHER REPORTS**

Martinez – Attended a San Diego County Water Authority Meeting.

Morasco – Held meetings with representatives from BIA and Supervisor Jim Desmond.

Inscoe – Attended Clean Energy Alliance Meeting. Attended Escondido Chamber of Commerce Rising Star awards ceremony.

McNamara – Attended Escondido Chamber of Commerce Rising Star awards ceremony. Attended Felicita Elementary Career Day.

### **CITY MANAGER’S WEEKLY ACTIVITY REPORT**

The most current information from the City Manager regarding Economic Development, Capital Improvement Projects, Public Safety, and Community Development. This report is also available on the City’s website, [www.escondido.org](http://www.escondido.org).

### **ORAL COMMUNICATIONS**

None.

### **ADJOURNMENT**

Mayor McNamara adjourned the meeting at 8:15 p.m.

\_\_\_\_\_  
MAYOR

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





# STAFF REPORT

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June 15, 2022  
File Number XXXX-XX

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## SUBJECT

### **AMENDMENT TO PUBLIC SERVICES WITH REDWOOD SENIOR HOMES FOR SENIOR NUTRITION PROGRAM**

## DEPARTMENT

Community Services Department

## RECOMMENDATION

Request the City Council adopt Resolution No. 2022-80 authorizing a First Amendment to the Public Services Agreement with HumanGood SoCal, dba Redwood Senior Homes and Services in the amount of \$230,000 for preparation and delivery of Senior Nutrition Program meals to the Park Avenue Community Center.

Staff Recommendation: Approval (Community Services: Joanna Axelrod, Deputy City Manager/Director of Community Services)

Presenter: Robert Rhoades, Deputy Director of Community Services

## FISCAL ANALYSIS

CDBG funding of \$56,110 and a County of San Diego Aging and Independent Services grant in the amount of \$156,326 have been awarded for FY 2022-23 which offset contract costs to the General Fund.

## PREVIOUS ACTION

On January 26, 2022, the City Council provided direction to City Staff that reaffirmed the priorities of fiscal year 2020-2024 Community Development Block Grant and Emergency Solutions Grant which includes funding for the Senior Nutrition Program.

On May 12, 2021, the City Council approved Resolution 2021-63, authorizing the City Manager to execute a Public Services Agreement in the amount of \$197,737 for the preparation and delivery of the Senior Nutrition Program meals with HumanGood SoCal dba Redwood Senior Homes and Services.

On February 5, 2020, the City Council approved Resolution No. 2020-15, authorizing the Mayor and City Clerk to accept a grant from the County of San Diego for nutrition and transportation services designated for Escondido seniors, and execute contract documents on behalf of the City.



# CITY of ESCONDIDO

## STAFF REPORT

### BACKGROUND

The City has offered the Senior Nutrition Program for over 40 years. Escondido seniors, who are faced with food scarcity, economic challenges, and now uncertainty due to the global health crisis, find it difficult to make ends meet on a fixed income. The meal services offered through the Senior Nutrition Program present a solution to Escondido seniors to access good nutrition and combat isolation in a positive environment. As a result of this service, the senior community can continue to be an active participant in the City’s economic and civic growth as the health restrictions ease providing more social opportunities.

On May 12, 2021, the City Council approved Resolution 2021-63, authorizing a Public Services Agreement in the amount of \$197,737 for the preparation and delivery of the Senior Nutrition Program meals with HumanGood SoCal dba Redwood Senior Homes and Services – the City’s long-time partner and only responsive bidder to the March 2021 RFP. The Senior Nutrition Program Public Services Agreement, which became effective on July 22, 2021, provided for four one-year renewal options should the City wish to extend the contract through June 2026.

In preparing to exercise the first of its four options to extend the agreement, the City was made aware that rising inflation as well as food and fuel costs have resulted in HumanGood SoCal losing money in performing the agreement. Therefore, a reasonable increase in the amount paid per meal and the delivery fee per meal was negotiated and have resulted in increased costs to the City. Pursuant to said negotiations, the service fees as listed in the First Amendment to the Senior Nutrition Program Public Services Agreement, as well as those fees applicable to the remaining three options to extend the contract, shall now be tied to the Consumer Price Index rather than limited by the prior 5% cap.

### RESOLUTIONS

- A. Resolution No. 2022-80
- B. Resolution No. 2022-80 Exhibit “A”

## RESOLUTION NO. 2022-80

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, A FIRST AMENDMENT TO THE PUBLIC SERVICES AGREEMENT WITH HUMANGOOD SOCIAL DBA REDWOOD SENIOR HOMES AND SERVICES

WHEREAS the City of Escondido (“City”) recognizes the need for nutrition services for elderly persons in our community; and

WHEREAS, the City Council approved a Public Services Agreement (“Agreement”) with HumanGood SoCal, a California non-profit corporation, dba Redwood Senior Homes and Services (“Redwood”), to provide meal services for elderly persons on May 12, 2021; and

WHEREAS, Redwood is initiating the first renewal amendment of the original agreement; and

WHEREAS, the terms of this contract renewal have been updated to reflect rising inflation, cost of food and fuel, and the necessity to tie future Agreement renewals to the Consumer Price Index rather than a flat 5% annual increase; and

WHEREAS, the Deputy City Manager/Director of Communications and Community Services recommends approval of this Amendment, in an amount not to exceed \$230,000. Actual numbers may be lower depending on weekly participation levels.

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

1. That the above recitations are true.

2. That the City Council authorizes the Mayor to execute, on behalf of the City, a First Amendment to the Public Services Agreement with Redwood, 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  
FIRST AMENDMENT TO PUBLIC SERVICES AGREEMENT

This First Amendment to Public Services Agreement ("First Amendment") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2022 ("Effective Date"),

Between: CITY OF ESCONDIDO  
a California municipal corporation  
201 N. Broadway  
Escondido, CA 92025  
Attn: Robert Rhoades  
760-839-5482  
("CITY")

And: HumanGood SoCal  
a California nonprofit corporation  
dba Redwood Terrace  
710 W. 13<sup>th</sup> Avenue  
Escondido, CA 92025  
Attn: Leif Cameron  
760-747-4306  
("CONTRACTOR").

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

WHEREAS, the Parties entered into that certain Public Services Agreement dated July 22, 2021 ("Agreement"), wherein CITY retained CONTRACTOR to provide services for nutritionally balanced meals as part of the City's Senior Nutrition Program, as more specifically described in the Agreement; and

WHEREAS, the Parties desire to amend the Agreement to include additional services as described in "Attachment A" to this First Amendment, which is attached hereto and incorporated herein by this reference.

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. The CONTRACTOR will furnish all of the Services described in "Attachment A" to this First Amendment.
2. The CITY will compensate the CONTRACTOR in an additional amount not to exceed the sum of

**\$230,000** pursuant to the conditions contained in "Attachment A" to this First Amendment.

3. The Parties acknowledge that Special Programs for the Aging, Nutrition Services from the Administration on Aging, Department of Health and Human Services ("Federal Awarding Agency") will be used to fund all or a portion of this First Amendment. The CONTRACTOR shall comply with all applicable federal laws, regulations, executive orders, policies, procedures, and directives relating to such federal funds.
4. 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.
5. 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.
6. Debarment and Suspension.
  - a. This First Amendment 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.
7. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).
  - a. Prior to entering into this First Amendment, 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 First Amendment, 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 First Amendment as Attachment "B" and incorporated herein by this reference.
8. **Procurement of Recovered Materials.** In the performance of this First Amendment, 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 First Amendment's performance schedule, (2) meeting First Amendment 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.
9. **Access to Records.** The following access to records requirements apply to this First Amendment: (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 First Amendment 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 First Amendment. In compliance with the Disaster Recovery Act of 2018, the CITY and CONTRACTOR acknowledge and agree that no language in this First Amendment is intended to prohibit audits or internal reviews by the Federal Awarding Agency Administrator or the Comptroller General of the United States.
10. **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.
11. **No Obligation by Federal Government.** The United States Federal Government is not a party to this First Amendment and is not subject to any obligations or First Amendment to the CITY, CONTRACTOR, or any other party pertaining to any matter resulting from this First Amendment.
12. **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 First Amendment.
13. All other terms of the Agreement not referenced in this First Amendment shall remain unchanged and in full force and effect. In the event of a conflict between a provision of the Agreement and this First Amendment, this First Amendment shall prevail.
14. This First Amendment and the Agreement, together with any attachments or other documents described or incorporated therein, if any, constitute the entire agreement and understanding of the Parties, and there are no other terms or conditions, written or oral, controlling this matter.
15. This First Amendment may be executed on separate counterparts that, upon completion, may be assembled into and shall be construed as one document. Delivery of an executed signature page

of this First Amendment by electronic means, including an attachment to an email, shall be effective as delivery of an executed original.

16. Unless a different date is provided in this First Amendment, the effective date of this First Amendment shall be the latest date of execution set forth by the names of the signatories below.

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

CITY OF ESCONDIDO

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

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

HumanGood SoCal

Date: 05/26/2022

Uia  
\_\_\_\_\_  
Signature

Uia Alvarado, Assistant Administrator  
\_\_\_\_\_  
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 Work

### A. General

HumanGood SoCal., a California nonprofit corporation ("Contractor") will provide the City of Escondido, a California municipal corporation ("City") with nutritionally balanced meals as part of the City's Senior Nutrition Program.

### B. Location

Contractor will deliver prepared meals to the Park Avenue Community Center, 210 E. Park Avenue, Escondido, CA 92025 (Park Avenue Community Center).

### C. Services

Contractor shall provide services as more particularly described in the Public Services Agreement between the Parties dated July 22, 2021.

### D. Scheduling

Contractor will provide meal services Monday through Friday except for the following City-recognized holidays:

- Monday, July 4, 2022 – Independence Day
- Monday, September 5, 2022 – Labor Day
- Friday, November 11, 2022 – Veterans' Day
- Thursday, November 24, 2022 – Thanksgiving Day
- Friday, November 25, 2022 – Day after Thanksgiving
- Monday, December 26, 2022 – Christmas Day (observed)
- Monday, January 2, 2023 – New Year's Day (observed)
- Monday, January 16, 2023 – Martin Luther King Day
- Monday, February 20, 2023 – President's Day
- Monday, May 29, 2023 – Memorial Day

Inquires related to this Agreement, including scheduling or coordination matters, may be directed to Mary Rodelo at 760-839-4678 or mrodelo@escondido.org.

### E. Contract Price and Payment Terms

The contract price of this First Amendment shall not exceed **\$230,000**. The contract price of this First Amendment (\$230,000) plus the contract price of the Agreement (\$197,737) shall bring the total contract price to \$427,737.

The contract price of this First Amendment includes all labor, materials, equipment, and transportation required to perform the work. Services will be billed as services are performed based on the following rates.

Service	Rate
Congregate Meals	\$8.00 per meal
Meal Delivery Charge	\$22 per day

Payment will be made after services have been performed and within 30 days of receipt of an invoice for those services.

## ATTACHMENT "A" Scope of Work

### F. Term

The term of this First Amendment shall be from the Effective Date of this First Amendment through **June 30, 2023**. Services under this First Amendment shall commence on **July 1, 2022**.

This First Amendment includes successive one-year options to extend the contract term. If the City elects to exercise an option, the City will notify the Contractor in writing at least 60 days prior to the termination of the preceding term.

Options will be subject to the following price increase limitations:

1. Renewal Period 1 (July 2023 – June 2024) Increase: Contractor stipulates that the cumulative total of Renewal Period 1 increases will not exceed the Consumer Price Index for all Urban Consumers (CPI-U), San Diego-Carlsbad, CA Region, Food Away From Home, index base period (1982-84=100), annual average.
2. Renewal Period 2 (July 2024 – June 2025) Increase: Contractor stipulates that the cumulative total of Renewal Period 1 increases will not exceed the Consumer Price Index for all Urban Consumers (CPI-U), San Diego-Carlsbad, CA Region, Food Away From Home, index base period (1982-84=100), annual average.
3. Renewal Period 3 (July 2025 – June 2026) Increase: Contractor stipulates that the cumulative total of Renewal Period 1 increases will not exceed the Consumer Price Index for all Urban Consumers (CPI-U), San Diego-Carlsbad, CA Region, Food Away From Home, index base period (1982-84=100), annual average.

## ATTACHMENT B

### 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.

HumanGood SoCal, a California nonprofit 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.

LAO

Signature of Contractor's Authorized Official

Lisa Alvarado, Assistant Administrator

Name and Title of Contractor's Authorized Official

05/26/2022

Date



# STAFF REPORT

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June 22, 2022  
File Number 0480-70

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## SUBJECT

### SAN DIEGO COUNTY CAL-ID GRANT

## DEPARTMENT

Police Department

## RECOMMENDATION

Request that City Council adopt Resolution No. 2022-93 authorizing the Police Department to accept a five-year San Diego County Cal-ID Grant from the County of San Diego Remote Access Network (RAN); approve a budget adjustment to spend the funds; and authorize the Mayor to execute grant documents on behalf of the City.

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

Presenter: Edward Varso, Chief of Police

## FISCAL ANALYSIS

Funds will be used to pay salary expenses for a Latent Print Specialist and procurement of goods and services as authorized by the RAN board. Funding for the Latent Print Specialist for each fiscal year is estimated at \$110,117. The five-year total grant award is estimated at \$550,585. This will have no impact on the General Fund Budget.

## PREVIOUS ACTION

On March 1, 2017, City Council approved a five-year County of San Diego Cal-ID Grant. Grant funds covered salary and benefit expenses for one full-time Latent Print Specialist. This is the third renewal of this project.

## BACKGROUND

The San Diego County Cal-ID Remote Access Network (RAN) Board currently provides grant funding to cover salary and benefit expenses for a full-time Latent Print Specialist position for the Escondido Police Department. The current grant will be exhausted on June 30, 2022. Funding will be renewed by the Memorandum of Agreement between the County of San Diego and the City.



# CITY of ESCONDIDO

## STAFF REPORT

The San Diego County Cal-ID Remote Access Network (RAN) Board has authorized the use of Cal-ID revenue to fund a full-time Latent Print Specialist position and authorized goods and services for latent print work in the City of Escondido Police Department's Crime Laboratory. Funding will cover the cost of salary and benefits for a Latent Print Specialist, plus County of San Diego authorized procurement of goods and services, and will renew annually through June 30, 2027. Grant funds are based on actual salary and benefit expenses. Funding for the Latent Print Specialist for each fiscal year is estimated at \$110,117. The five-year total grant award is estimated at \$550,585.

### RESOLUTIONS

- a. Resolution No. 2022-93
- b. Resolution No. 2022-93 Exhibit "A" MOA between San Diego County and City of Escondido

### ATTACHMENTS

- a. Attachment "1" – Budget Adjustment

## RESOLUTION NO. 2022-93

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE CHIEF OF POLICE OF THE CITY OF ESCONDIDO TO RECEIVE A \$550,585 GRANT FROM THE COUNTY OF SAN DIEGO CAL-ID PROGRAM AND THE MAYOR OF THE CITY OF ESCONDIDO TO EXECUTE CONTRACT DOCUMENTS RELATED TO THE GRANT

WHEREAS, the City of Escondido desires to enter into a contract with the County of San Diego;  
and

WHEREAS, the Escondido Police Department has agreed that the FY 2022-2023 is the initial year of contract and will have automatic yearly renewals through June 30, 2027; and

WHEREAS, the CAL-ID Grant will be funded by the revenue generated from the California Vehicle Code Section 9250.19 administered by the County of San Diego Cal-ID/Remote Access Network (RAN) Board.

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 the Memorandum of Agreement (MOA) with the County of San Diego, which is attached hereto as Exhibit "A" and incorporated by this reference, including any extensions or amendments thereof and any subsequent contract with the San Diego County in relation thereto.

MEMORANDUM OF AGREEMENT  
BETWEEN THE COUNTY OF SAN DIEGO AND THE CITY OF ESCONDIDO  
REGARDING LATENT PRINT SPECIALIST PERSONNEL

I. PURPOSE

This Memorandum of Agreement (Agreement) is entered into by the County of San Diego, a charter county and political subdivision of the State of California (County) and by the City of Escondido, a California charter city and municipal corporation (City) to establish terms and conditions for the reimbursement of costs from the Sheriff Fingerprint ID Trust Fund to the City of Escondido for the purpose of funding: 1) one full-time Latent Print Specialist, and, 2) any goods and services associated with one full-time Latent Print Specialist position. The originating funding source for the Latent Print Specialist and goods and services will be revenue generated from California Vehicle Code 9250.19.

II. BACKGROUND

On May 3, 2021, the San Diego County Cal-ID/Remote Access Network (RAN) Board authorized the use of Cal-ID revenue to fund one full-time Latent Print Specialist from July 1, 2022, to June 30, 2023, with automatic annual renewals for an additional four years through June 30, 2027, in the City of Escondido, and for the Sheriff to enter into a Memorandum of Agreement setting forth the terms and conditions of the funding.

On March 15, 2022, the Board of Supervisors approved the San Diego County Cal-ID/RAN Board's recommendation of May 3, 2021, to fund one full-time Latent Print Specialist in the City of Escondido, and for the Sheriff to enter into a Memorandum of Agreement setting forth the terms and conditions of the funding.

III. OBLIGATIONS

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

1. Provide funding from the Sheriff Fingerprint ID Trust Fund to reimburse the actual cost of Salary and Benefits of one full-time Latent Print Specialist, from July 1, 2022, to June 30, 2023, estimated at \$110,117 for Fiscal Year 2022-23. The City will provide to the RAN Board known compensation increases annually during the term of the Agreement.
2. Provide funding from the Sheriff Fingerprint ID Trust Fund to reimburse the actual costs of procurement of any goods or services that were authorized by the Sheriff and the RAN Board.

The City of Escondido agrees to the following:

1. The City shall hire one full-time Latent Print Specialist from July 1, 2022, through June 30, 2023. The City shall provide, at its own expense, all necessary training of its personnel.
2. Work performed by the one full-time Latent Print Specialist shall be devoted to enhancing the capacity of the Escondido Police Department to provide automated mobile and fixed location fingerprint identification of individuals who may be involved in driving under the influence of alcohol or drugs in violation of Section 23152 or 23153, or vehicular manslaughter in violation of Section 191.5 of the Penal Code or subdivision (c) of Section 192 of the Penal Code, or any

combination of those and other vehicle-related crimes, and other crimes committed while operating a motor vehicle, in cases where there is a nexus to the City of Escondido.

A Working Committee, consisting of the Escondido Police Department's Crime Laboratory Director and the San Diego Sheriff's Department Cal-ID Program Manager, will be created to monitor the workflow and prescribe the obligations of the personnel under this Agreement.

3. The City shall be responsible for procurement of goods and services in support of the Latent Print Specialist position.
  - a. The City shall obtain authorization from the Sheriff and the San Diego County Cal-ID/RAN Board prior to the procurement of any goods or services.
  - b. The City shall follow its own procurement process for the procurement of all goods and services.
  - c. The City shall procure goods or services only for the amount previously authorized by the Sheriff and the San Diego County Cal-ID/RAN Board. Any increase in procurement costs equal to or over \$10,000 shall require re-authorization by the Sheriff and the San Diego County Cal-ID/RAN Board.
  - d. When procuring goods or services authorized pursuant to this Agreement, the City agrees to follow the County of San Diego's fiscal year term, which runs from July 1<sup>st</sup> to June 30<sup>th</sup>.
  - e. The City shall procure goods or services authorized pursuant to this Agreement, within the County of San Diego's fiscal year in which the costs of such goods or services were budgeted by the County of San Diego.
  - f. In the event City is unable to procure goods or services authorized pursuant to this Agreement, within the County of San Diego's fiscal year in which the costs of such goods or services were budgeted by the County of San Diego, City shall notify the San Diego County Sheriff's Department Cal-ID Administration, in writing, that such procurement of goods or services cannot be accomplished by the conclusion of that fiscal year.
  - g. The City shall provide, at its own expense, all necessary training of its personnel needed to operate or utilize the procured goods, and infrastructure needed to install or implement such goods.
  - h. The City shall be responsible for all future maintenance and support costs associated with the procured goods or services.
  - i. The City shall abide by the requirements of California Vehicle Code Section 9250.19 in procurement of any goods or services.
4. The City will submit a reimbursement request to the San Diego County Sheriff's Department on a quarterly basis for the actual cost of Salary and Benefits for one full-time Latent Print Specialist. The City will provide to the RAN Board known compensation increases annually during the term of the Agreement.



5. The City will submit a reimbursement request to the San Diego County Sheriff's Department for the actual costs of procurement of any goods or services. The reimbursement request must contain a paid itemized invoice with the city name and a Purchase Order associated with the procurement.

#### IV. EFFECTIVE DATE/TERM

The Effective Date of this Agreement shall be July 1, 2022, to June 30, 2023, with automatic annual renewals for an additional four years through June 30, 2027.

#### V. TERMINATION

Any party may terminate this Agreement by giving thirty (30) days written notice of termination delivered by certified mail.

#### VI. NOTICES

All notices, demands, requests, approvals, reports, and statements to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

To County of San Diego, Sheriff's Department, at:

Vladimir Atabekyan, Cal-ID Program Manager  
San Diego County Sheriff's Department  
5590 Overland Avenue  
San Diego, CA 92123  
(858) 285-6139

To City of Escondido at:

Edward Varso, Chief of Police  
Escondido Police Department  
1163 N. Centre City Pkwy.  
Escondido, CA 92026  
(760) 839-4721

Should the above address and/or contact person for the party change, that party shall give prompt written notice to the other party of such change.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the signatory parties hereby approve and agree to the terms of this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

COUNTY OF SAN DIEGO

By \_\_\_\_\_  
ANTHONY C. RAY, Sheriff  
Sheriff's Department  
County of San Diego

CITY OF ESCONDIDO

By \_\_\_\_\_  
PAUL MCNAMARA, Mayor  
City of Escondido

By \_\_\_\_\_  
MICHAEL R. MCGUINNESS, City Attorney  
City of Escondido



CITY OF ESCONDIDO
BUDGET ADJUSTMENT REQUEST

Date of Request: May 25, 2022
Department: Police
Division: Administration
Project/Budget Manager: Lisa Rodelo 4905
Name Extension
Council Date (if applicable): June 22, 2022
(attach copy of staff report)

For Finance Use Only
Log #
Fiscal Year
Budget Balances
General Fund Accts
Revenue
Interfund Transfers
Fund Balance

Table with 4 columns: Project/Account Description, Account Number, Amount of Increase, Amount of Decrease. Rows include Revenue (4127-451-New Project, 550,585) and Police Grants (451-New Project, 550,585).

Explanation of Request:

A budget adjustment is requested to spend Cal-ID Remote Access Network grant funds.

APPROVALS

DocuSigned by: Edward Varso 6/14/2022
Department Head
DocuSigned by: Jodi Coco 6/14/2022
Finance
City Manager
City Clerk

Distribution (after approval): Original: Finance



# STAFF REPORT

June 22, 2022

File Number 0600-95; A-3378

## SUBJECT

**AUTHORIZATION TO PROCESS AN AMENDMENT TO THE GENERAL PLAN LAND USE AND COMMUNITY FORM CHAPTER RELATED TO SINGLE-ROOM OCCUPANCY (SRO) USES**

## DEPARTMENT

Development Services – Planning Division

## RECOMMENDATION

Request the City Council authorize the processing of an amendment to the General Plan Land Use and Community Form Chapter to address Single-Room Occupancy (SRO) uses in commercial land use designations for consistency with the Hotel Conversion Ordinance adopted in July 2021.

Staff Recommendation: Approval (Development Services Department: Julie Procopio, Interim Director of Community Development)

Presenter: Veronica Morones, Senior Planner

## FISCAL ANALYSIS

For the purposes of this agenda item, the City Council will only be providing direction to staff on the processing of a General Plan Amendment. Authorization to process the amendment application would have no direct fiscal impacts. The privately-initiated amendment application would be processed using existing staff resources with costs to be paid by the project proponent, applicant(s), and/or the future developer of the project site.

## PREVIOUS ACTION

On July 14, 2021, the City Council adopted Resolution No. 2021-07, approving a hotel conversion ordinance so that existing hotels and motels in all zoning districts, as well as those located in specific plans, may be converted to supportive housing, transitional housing, single-room occupancy, multi-family housing, or combination thereof. The July 14, 2021 staff report specifically noted that a proposed conversion of hotels and motels may require a General Plan Amendment and/or rezone to be processed by an applicant to ensure the land use development request complies with applicable, objective General Plan and zoning standards.



# CITY of ESCONDIDO

## STAFF REPORT

### BACKGROUND

#### REQUESTED ACTION

The Planning Division received a request from Vista International, Inc. to initiate a General Plan Amendment to the City's General Plan Land Use and Community Form Chapter in order to accommodate the conversion of an existing hotel located at 528 West Washington Avenue to a single-room occupancy use. A letter from Vista International, Inc. summarizing their potential project is attached to this staff report (Attachment "1"). Specifically, the General Plan Amendment would modify text of the General Commercial land use designation to allow for SROs (in conjunction with the proper permitting requirements). The current General Plan language for the General Commercial land use designation does not permit for any residential uses, whereas an SRO is considered a residential use type pursuant to Article 1, Section 33-8 of the City's Zoning Ordinance.

In addition to the General Plan Amendment, Vista International, Inc. would also submit applications for:

- Zoning Text Amendment requesting modification of text in Article 16 – Commercial Zones to allow SRO uses in the C-G zone when associated with a Hotel Conversion Permit;
- Hotel Conversion Permit for the conversion of the existing hotel to a market-rate single-room occupancy use.

It is anticipated that no changes to the building footprint or building envelope would occur for the conversion. It is possible that the project description may change as the entitlement application is processed, however any changes would be reviewed to ensure that they are consistent with the intent of the General Plan.

**Authorization by the City Council to initiate the requested General Plan Amendment would not result in project approval at a future date of decision. City Council authorization of this request would only allow for City staff to accept the application submittal for review and processing, with an ultimate decision by City Council occurring at a future date.**

#### SITE BACKGROUND

The subject site is approximately one acre in size, and has a General Plan land use designation of General Commercial (GC), and a zoning designation of General Commercial (C-G). Existing uses adjacent to the subject site include multifamily residences to the north, Interfaith Community Services to the west, commercial and industrial uses to the south (across Washington Avenue), and a commercial use to the east. While the subject site is directly east of Interfaith Community Services, the property owner is not affiliated or partnered with Interfaith Community Services.

In July 1985, City staff approved a plot plan review for a 75-unit motel at the subject site (PL87-1542). The existing building was constructed in 1987 under building permit no. 38487. The subject site originally



# CITY of ESCONDIDO

## STAFF REPORT

operated as a Best Budget Motel, subsequently as a Super 8 Hotel, and now is under the name of the Hotel Hidden Valley. In April 2022, Vista International, Inc., the current property owner, acquired the site and operations. The current operation of the site functions as 29-day rentals with an onsite manager during the day and patrolled security at night.

Prior to the Vista International, Inc.'s acquisition of the subject site, the City of Escondido Police Department (EPD) received a high volume of service calls to the site. According to the EPD, the subject site has consistently appeared in the Top 100 calls for service locations since tracking began in January 2022. The subject site's rankings within the Top 100 calls for service locations are detailed below:

- January – 33<sup>rd</sup> out of 100
- February – 38<sup>th</sup> out of 100
- March – 8<sup>th</sup> out of 100
- April – 25<sup>th</sup> out of 100

However, since the change of ownership/operation in mid-April 2022 the site has experienced a large reduction in service calls. In the month of May, the subject site was no longer within the Top 100 calls for service locations. As of the writing of this staff report, the subject site has not received a service call in the last 30 days. Additionally, as noted in Attachment 1, the existing SRO developments within the City of El Cajon that are owned and operated by Vista International Inc., have experienced similar reductions in service calls since converting to SRO units from prior hotel uses.

The hotel conversion would include market rate SRO units only, and would not include any deed restricted affordable units. However, SRO unit types are typically small units which result in de facto affordability by design. Based on the preliminary project description, the anticipated project would not result in units that count toward the City's deed restricted affordable units for the purposes of RHNA. However, it is possible they may count toward non-deed restricted affordable unit, depending on the proposed rental costs. City staff would conduct further analysis during formal project review to determine affordability (i.e., above moderate, moderate, low, very low) of all units for the purposes of counting toward RHNA.

Hotel uses generate transit occupancy tax (TOT) which the City receives as a revenue source. Table 1 below shows the existing hotel use's generated TOT over the last 5 years, plus the amount to date for the current calendar year. While the conversion of the existing hotel use to SRO units would no longer generate TOT, the improved operations of the site and change in use are anticipated to continue the reduced number of service calls, reducing EPD related resources to the site.



# CITY of ESCONDIDO

## STAFF REPORT

**Table 1: Transit Occupancy Tax for 528 W. Washington (2017-2022)**

Year	TOT generated Jan-April	Total Annual TOT
2022	\$44,455.30	<i>TBD</i>
2021	\$39,198.97	\$133,873.81
2020	\$43,816.93	\$144,614.60
2019	\$28,413.69	\$109,956.64
2018	\$28,404.78	\$106,698.70
2017	\$30,858.92	\$112,169.23

### ENVIRONMENTAL REVIEW

The action before the City Council is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15262, Feasibility and Planning Studies. This agenda item involves the consideration of processing a General Plan Amendment and land use development application. This general direction does not have a legally binding effect on any possible future discretionary action.

### ATTACHMENTS

1. Applicant's Initiation Request Letter



June 7, 2022

Ms. Veronica Morones  
City of Escondido  
201 North Broadway  
Escondido, California 92025

**Re: Vista Cove – A Single Room Occupancy Hotel Project**

Dear. Ms. Morones,

Vista International, Inc. (applicant) is requesting the City of Escondido (City) process a General Plan Amendment (GPA), Zone Amendment (AZ), and Hotel Conversion Permit (HCP) to allow the existing hotel located at 528 W. Washington Avenue in Escondido (APN: 229-171-34-00) to operate as a market-rate Single Room Occupancy (SRO) residential development in accordance with Section 33-1348 of the Escondido Municipal Code (EMC). The Vista Cove Project (Project) would include interior and exterior site improvements, including, but not limited to, installation of efficiency kitchens in each unit, the expansion of shared laundry facilities, the renovation of an outdoor pool and jacuzzi, and upgrades to common areas such as the building lobby, parking lot, and outdoor landscaping.

The project site is approximately 1.1 acre in size and contains one, three-story structure. The existing hotel contains a total of approximately 33,100 square feet (sf) of gross building area. There are a total of 84 rooms, which are each approximately 305 sf, a community pool/jacuzzi, on-site laundry facilities, and a total of 74 parking spaces. The northern, eastern, and southern perimeter of the site is landscaped and contains grass, three palm trees, and a few decorative shrubs.

Historically, the Project property has been operated as a standard, affordable-option hotel, with 2021 rates starting at \$89 a night, plus tax. Over the years the building has degraded and not been maintained at very high level resulting in low-rating and low occupancy. In 2022, the property was purchased by the applicant. The new owners are bringing their many years of experiences to the Project and are committed to operating the SRO hotel at high standards with a focus on safe, clean, and long-term living.

The purpose of an SRO hotel is to be an effective method to meet the housing needs of low-income individuals and small households. Rates for SRO units are typically lower than standard housing simply because they are the most basic form of housing available. **Approving the Vista Cove SRO units would permit the hotel to operate as a property offering market rate, lower cost, and stable long-term living situations (six months or longer).** This would allow for a greater variety of housing availability for lower economic segments of the community.





By creating a long-term living situation, tenants would invest more into making the community a safer and more appealing place to live when compared to the transient visitors of a hotel. The proposed physical improvements and changes to the management operations will result in an enhancement for guests and have a positive influence on the surrounding community when compared to the existing transient operations. **No social, transitional or support services will be offered at the facility.** The shift from temporary to permanent living has the potential to reduce calls to public services such as police, fire, and medical services, as well as providing tenants with local public transit opportunities; thereby reducing costs to the city and environment.

#### a. Owner Background

Vista International Inc. is a privately held real estate investment company which has proven their dedication to high standards and willingness to work with public agencies through the approval of three SRO hotels in the city of El Cajon. As the first applications ever submitted in El Cajon for SRO hotels, Vista International invested ample time and finances to ensure that the project exceeded the expectations of city staff and decision-makers. Similar upgrades and renovations that were proposed as a part of those SRO hotels are also being proposed for the Vista Cove Project. Vista International is also currently pursuing similar projects in the cities of Chula Vista, Oceanside, and Vista, as well as the community of Rancho Bernardo.

All three of the El Cajon SRO hotels have been successfully operating with no violations of their conditions of approval. Further, **the conversion of the hotels to SRO hotels resulted in a substantial decrease in calls for police services reducing calls from an average of 9 to 16 per month to approximately 2 per month.** Vista International has a proven track record as a residential property company that will oversee the transition of the existing hotel to an SRO hotel with professionalism and effectiveness.

#### b. Property Management Background

Borba Property Group is a highly regarded and deeply experienced residential property management firm located in Artesia, California. The company was founded in 1986 by real estate professionals Valquirio (Val) and Maria Borba. Over three decades, the company grew from a small start-up to a large apartment property management firm, managing over 2000 residential units throughout southern California. The company remains family-owned and local, run today by the second generation, the brother and sister team Michael Borba and Sonya Borba. The Borba Property Group currently manages Vista International SRO hotels in the City of El Cajon and is contracted to manage the SRO hotel in Oceanside, as well as the future project in Vista.

#### c. Operations and Maintenance Plan

The proposed Project will implement operational procedures to be consistent with long-term living. A draft Operations and Management Plan will be submitted as part of the project



application materials for staff and city decisionmakers to review. The information below offers select details as to the management practices of Vista International Inc. SRO hotel properties.

**Tenant Screening.** The tenant screening process is to be implemented in accordance with the Federal Fair Housing Act and State and local fair housing and civil rights laws. All applications will be submitted to CoreLogic Safe Rent, a third-party rental applicant screening company where all applications are evaluated based on a rental scoring system. The scoring system is based on real data and statistical data such as payment history, quantity and type of accounts, outstanding debt, and age of accounts. Every applicant is treated objectively because each application is scored statistically in the same manner.

**Rates and Housing Assistance.** Units at Vista Cove will be offered to the public at market rate determined based on comparable rates in the general region. Additionally, the Project owner intends to participate in housing programs such as the Section 8 (Housing Choice Voucher) Program and the Veterans Affairs Supportive Housing (VASH) program, which provides rental assistance to veterans and offer ongoing VA case management and supportive services.

**On-Site Management.** It is the intent of the Project owner to provide on-site management at this SRO Hotel. The primary responsibility of the manager is to utilize training, motivation, and example to ensure that the highest level of service is afforded to each guest. The manager manages the day-to-day operations of the property by overseeing the safety programs, marketing plans, property maintenance and security. The manager is responsible for representing the property's service commitment to guests. They handle all move in/ move out procedures, guest processing, telephone calls, and maintains ongoing communication with the maintenance staff.

**Security Patrol:** Regular Patrol Service will be provided by a contracted vendor that will provide 4 patrol visits conducted by 1 guard between the hours of 8 pm and 6 am the next day. Patrol is defined as walking the property, ensuring that all doors and pool areas are secured and responding to occupant telephone calls and other emergencies during patrol hours. An activity report is delivered immediately after each service.

**Security Cameras:** There are cameras installed throughout the property in common areas and on the exterior of the building. The monitor is installed in the leasing office area to enable staff members to always view the recording. Video footage is saved for 2 weeks, at which point it is then recorded over.

**Locks:** All units will be equipped with both deadbolt and security latch to provide a safe and secure environment for guests; however, none of the doors have the capability to automatically close itself. In the case a tenant becomes locked out, the tenant will need to notify the manager and pay a lock fee \$10.00 to replace lost key.

**Visitors:** Tenants are responsible for informing visitors of the property's rules and policies. They may have overnight guests for no more than 7 nights in any month, and no more than two overnight guests at a time, unless they receive approval from the management beforehand.



Management does not require guests to sign a visitor log and asks tenants to abide by the honor system of reporting. All tenants must obtain approval from the management prior to adding or removing an occupant to/from the contract.

**Smoking:** Smoking in units is prohibited. Tenants are responsible to inform visitors of property policies. Due to damages and cleanup caused by smoking in the unit, the guest will be required to forfeit the security deposit.

#### d. Substantiation of Request

In August 2021, the Escondido City Council found that the rising housing costs and lack of affordable housing options have led to a rise in homelessness in the region, including within the City of Escondido. People experiencing homelessness are more likely to successfully transition to permanent housing when provided with easily accessible support services such as health, substance abuse, education, job training, and case management, in addition to affordable housing. City Council found that the conversion of existing hotels and motels to affordable housing requires substantially less time and cost than new development of affordable housing.

The conversion of existing hotels and motels to affordable housing allows for the creation of new housing through adaptive reuse of existing buildings, thereby substantially maintaining the existing scale and character of established neighborhoods. It was determined that hotels and motels present a unique opportunity to utilize existing structures to respond to immediate housing needs. These buildings are structurally similar to residential buildings and have the potential to be quickly adapted to provide housing through publicly funded programs. Today, individual rooms in hotels and motels are often already used as a form of transient guest housing accommodation, and there is increasing interest in converting entire properties to transitional housing and/or supportive housing.

In response, **City Council adopted Ordinance 2021-07, providing a track for applicants to convert existing hotels and motels to housing or other underlying zone-permissible land uses.**

The Escondido Municipal Code (EMC) was subsequently revised to include the following definition: "Single Room Occupancy (SRO) Unit means a living or efficiency unit, as defined by California Health and Safety Code section 17958.1, intended, or designed to be used as a primary residence for a period of more than 30 consecutive days. Each SRO unit consists of one combined living and sleeping room with a closet and may contain either a kitchen or separate private bathroom. The kitchen or bathroom, if not contained within the individual unit, shall be provided as a common facility within the same structure and shall be shared with the tenants of other SRO units within the same structure. An SRO may include an office for the purpose of managing the SRO units and common facilities. An SRO may include one self-contained dwelling unit with kitchen and bathroom facilities for a caretaker." (EMC Section 33-8: Definitions)

Further, the City of Escondido's Housing Element identifies SRO's as "...small studio-type units intended for one or two persons." SROs can provide an affordable housing option for small



households with very low or extremely low incomes. In the City of Escondido SROs are referred to as Single Room Occupancy Residential Hotels.

The intent of the City of Escondido is clearly to allow for the conversion of existing hotels and motels to housing, including SRO hotels. Pursuant to EMC 33-1348, to qualify for a hotel or motel conversion to housing, which may include SRO units, the proposed development would have to comply with applicable, objective General Plan, Zoning, and subdivision standards. It is the responsibility of the applicant to ensure that any construction, alteration, or conversion of property for hotel or motel use conforms to the General Plan and other planning and zoning laws. The proposed project site is classified as General Commercial on the land use and zoning maps. **The General Commercial land use and zoning designation does not currently allow for residential uses, including SRO hotels. Therefore, General Plan and Zoning amendments are required of the project to move forward.**

Furthermore, an assessment of 12 Escondido hotels and motels concluded that the land use designation and underlying zoning of nine facilities is General Commercial, with two in specific plan areas, and one in a planned commercial development area. Again, General Commercial zones do not currently allow for residential uses, including SRO hotels. The South Centre City Specific Plan allows for hotel conversions to multi-family residential only in the EB Mixed-Use Overlay and the Downtown Specific Plan only allows for apartments/flats, condominiums, row homes, townhomes, duplexes (two units attached) with residential portion on the ground floor (i.e., not SRO hotel units). It appears that no hotel conversions pursued under EMC 33-1348 would be permitted to convert to housing without a General Plan Amendment and Zoning Amendment, and possibly a Specific Plan Amendment. This is counterintuitive to the rationale behind the intent of Ordinance 2021-07.

Therefore, the project applicant would like to pursue **text changes** to the General Plan Land Use Definition and Municipal Code to **include SRO Hotels as a compatible and allowable use within General Commercial land use and zoning designations, when associated with a Hotel Conversion Permit.**

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We appreciate the opportunity to present this request for authorization proceed with the application process.

Sincerely,

A handwritten signature in blue ink that reads 'Sally Schifman'.

Sally Schifman  
Project Manager



# STAFF REPORT

June 22, 2022

File Number: 0600-95; A-3378

## SUBJECT

**ADOPTION OF THE FISCAL YEAR 2022/2023 ROAD MAINTENANCE AND REHABILITATION ACCOUNT PROJECT LIST AND ANNUAL STREET REHABILITATION AND MAINTENANCE PROGRAM UPDATE**

## DEPARTMENT

Development Services, Engineering Division

## RECOMMENDATION

Request the City Council adopt Resolution No. 2022-73, containing the initial Project Location proposed to be completed with Fiscal Year (FY) 22-23 Road Maintenance and Rehabilitation Account (RMRA) funds, and receive a report on the Street Rehabilitation and Maintenance Program.

Staff Recommendation: Approval (Development Services, Julie Procopio, Interim Director of Community Development)

Presenter: Matt Souttere, Associate Engineer

## FISCAL ANALYSIS

The 5-year CIP programs a variety of funding sources toward an annual Street Rehabilitation and Maintenance Project, including Gas Tax, TransNet, RMRA, and CalRecycle Grant funds.

There is no fiscal impact associated with approval of the RMRA initial project list. The City of Escondido ("City") is required to submit a City Council-approved initial project list before moving forward with project design in order to receive RMRA funding for use on approved projects.

## PREVIOUS ACTION

On September 15, 2021, the City Council adopted Resolution No. 2021-131, awarding the 2021 Street Maintenance and Rehabilitation project to Eagle Paving Company, Inc., the lowest responsive and responsible bidder, in the amount of \$5,582,894.

On February 2, 2022, the City Council adopted Resolution 2022-22 to authorize a change order to the 2021 Street Rehabilitation and Maintenance Project – Phase 2 ("Project") in the amount of \$320,141 to complete additional roadway repairs on Country Club Drive, and urgent pavement repairs requested by the Utilities Department on Sunset Drive.



# CITY of ESCONDIDO

## STAFF REPORT

On April 6, 2022, the City Council adopted Resolution No. 2022-45 to authorize a change order to the 2021 Street Rehabilitation and Maintenance Project – Phase 2 (“Project”) in the amount of \$246,333 to complete additional roadway maintenance on Rincon Avenue east of its intersection with Broadway, and striping updates on North Broadway, north of Rincon Avenue.

### BACKGROUND

On April 28, 2017, the Governor signed Senate Bill (SB) 1, known as the Road Repair and Accountability Act of 2017. Prior to July 1st of each year, the City is required to provide the California Transportation Commission (“CTC”) a project, or list of projects, project locations, and the type of work proposed for the future year RMRA funding. FY 22/23 RMRA funding is proposed to be used for the 2023 Street Rehabilitation and Maintenance project that will focus in the East-South Maintenance Zone bounded by Ash Street on the west, Valley Parkway on the north, and City limits to the east and south.

The initial projects list is intended to promote transparency on use of RMRA funds. The initial list is published on the State’s website as a means to share with the public the type of projects that RMRA funding is being used to support. As a part of the design process for the project, each street within the zone of focus will be evaluated and the streets in highest need for rehabilitation and maintenance will be identified based on funding available. The final list of streets to be resurfaced will be included in the 2023 Street Maintenance and Rehabilitation project anticipated to be awarded by the City Council during the third (3) quarter of FY 22/23 for completion over the Summer of 2023.

### STREET MAINTENANCE PROGRAM UPDATE

Completed Project: The 2021 Street Rehabilitation and Maintenance Project is complete. The project resurfaced 50 lane-miles of roadway, replaced or installed 3.5 miles of bike lanes, updated striping and signage on five streets, and replaced 0.86 miles of sidewalks. The zone of focus for residential streets was Maintenance Zone NW, and includes the area west of North Broadway and north of State Route 78. Substantial work was also completed on several higher volume streets, including; Borden Road, Centre City Parkway, Conway Drive, Country Club Lane, El Norte Parkway, Lincoln Avenue, Nutmeg Street, Rincon Avenue, Rock Springs Road, and West Valley Parkway.

Current Project: The first phase of the 2022 Street Rehabilitation and Maintenance Project is scheduled to be advertised for bid in July 2022, with the second phase to follow in the Fall of 2022. The zone of focus for the 2022 Project will be Maintenance Zone EN, which includes the area bound by Lincoln Avenue on the north, Valley Parkway on the south, Ash street on the west, and City Limits on the east.

Program Accomplishments: Since inception of the program, a substantial increase in the overall pavement condition of the City has been achieved. At the March 13, 2013 Pavement Management Workshop, the City Council directed staff to set a pavement management budget at a level predicted by pavement modelling software that would maintain the average citywide Pavement Condition Index of 55. Through



# CITY of ESCONDIDO

## STAFF REPORT

use of cost-effective and innovative resurfacing technologies, including rubberized pavement strategies that were supported with grant funds in excess of \$1-million, the network performance has exceeded the model projections. Rather than maintaining the same pavement condition, the citywide average Pavement Condition Index has increased from 55 to 66 since the first project under the new program was completed in 2014.

Program accomplishments include the following:

- 498 -lanes miles of street rehabilitation
- 4.25 -miles of sidewalk repair
- 43.63 -miles of added or improved bike lanes

### RESOLUTIONS

- A. Resolution No. 2022-73
- B. Resolution No. 2022-73 Exhibit "A" FY 22/23 Road Maintenance Rehabilitation Account ("RMRA") Initial Project List.

## RESOLUTION NO. 2022-73

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
ESCONDIDO, CALIFORNIA, ADOPTING THE FISCAL YEAR  
2022-23 ROAD MAINTENANCE AND REHABILITATION  
ACCOUNT INITIAL PROJECT LIST

WHEREAS, Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017), was passed by the Legislature and signed into law by the Governor in April 2017 in order to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB 1 includes accountability and transparency provisions that will ensure the residents of the City of Escondido (City) are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

WHEREAS, the City must adopt by resolution a list of projects proposed to receive fiscal year funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

WHEREAS, the City will receive an estimated \$3,779,782 in RMRA funding in Fiscal Year 2022-23 from SB 1; and

WHEREAS, this is the sixth year in which the City is receiving SB 1 funding and will enable the City to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging street improvements, providing bike lane facilities, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB 1; and

WHEREAS, the City has undergone a robust process to review and prioritize the streets in the Maintenance Zone, and to use submitted input from the community to ensure the community's transportation priorities are being addressed; and



WHEREAS, the City used a Pavement Management System to develop the SB 1 project list to ensure revenues are being used to treat the highest-priority streets using a cost-effective Maintenance Zone approach for residential street rehabilitation and maintenance projects that meet the City's priorities for transportation investment; and

WHEREAS, the funding from SB 1 will help the City complete annual street rehabilitation and maintenance of multiple streets throughout the Maintenance Zone this year and complete similar projects into the future; and

WHEREAS, the 2021 California Statewide Local Streets and Roads Needs Assessment found that the City's streets are estimated to be in "higher risk" condition and this revenue will help it increase the overall Pavement Condition Index (PCI) of the City road system, and over the next decade will bring City streets and roads into a "good" condition; and

WHEREAS, the Road Maintenance and Rehabilitation Account Project List, and overall investment in local streets and roads infrastructure with a focus on safety, accessibility, bike facilities, maintenance, and upgraded signal facilities, and by investing in City street infrastructure, and using available technology, materials and practices, will have significant and positive co-benefits citywide.

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 Fiscal Year 2022-23 RMRA proposed list of projects to be completed with Road Maintenance and Rehabilitation Account revenues. The list of proposed projects is shown in Exhibit "A", which is attached to this Resolution and incorporated by this reference.

## **Road Maintenance and Rehabilitation Account**

### **FY 22/23 Initial Project List**

#### FY 2022/23 Street Rehabilitation and Maintenance Project:

The City has elected to use Road Maintenance and Rehabilitation Account (RMRA) funding on this project. This annual project rehabilitates street and sidewalk areas in a maintenance zone within the City. A majority of this project will take place in the East-South (ES) Maintenance Zone of the City. As part of this project, RMRA funds will be used to resurface, or remove and replace, pavement in poor condition within the ES Maintenance Zone bounded by Ash Street on the west, Valley Parkway on the north, and City limits to the east and south.

Street segments within this maintenance zone are prioritized based on pavement condition, volume of daily traffic, or isolated elements in need of repair.

The City anticipates completing this project during the second half of Fiscal Year 22/23.

Work completed as part of this project has an Estimated Useful Life between 7 and 15 years for the various treatments, with the potential to exceed that timeline with proper maintenance.



# STAFF REPORT

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June 22, 2022  
File Number: 0600-10

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## SUBJECT

### CONTRACT AMENDMENTS FOR THE CITRACADO PARKWAY EXTENSION PROJECT

## DEPARTMENT

Engineering Services

## RECOMMENDATION

Request the City Council adopt Resolution No. 2022-82, authorizing a First Amendment to the Consultant Agreement with TY Lin International in the amount of \$982,162.51, and adopt Resolution No. 2022-81 authorizing a Tenth Amendment to the Consultant Agreement with AECOM in the amount of \$467,249, for the Citracado Parkway Extension Project ("Project").

Staff Recommendation: Approval (Development Services, Julie Procopio)

Presenter: Matt Souttere

## FISCAL ANALYSIS

Funds in the amount of \$29.7 million remain in the Project budget, including a \$12.5 million Local Partnership Program grant, a competitive grant selected by Caltrans. The Capital Improvement Program ("CIP") budget includes programming toward the project of \$2.3 million in Traffic Impact Fees in Fiscal Year 22/23. There are adequate funds in the Project budget to cover the proposed consultant contract amendments.

## PREVIOUS ACTION

On August 1, 2012, the City Council approved a Consulting Agreement with AECOM in the amount of \$2,135,356 for design of the Project. On February 12, 2014, the City Council approved an amendment to the Consultant Agreement in the amount of \$634,448 for additional design services necessary to implement value engineering, including a narrower roadway and shorter bridge, reducing the estimated construction cost by \$4 million. On May 6, 2015, the City Council approved an amendment in the amount of \$42,702.25 for updated biological the surveys required for resource agency permitting.

Project progress was delayed for five years while seeking grant funding for construction. Grant funding was secured and on June 19, 2019, and at that time the City Council approved an amendment to the Consultant Agreement with AECOM in the amount of \$357,325 to update project plans to current standards.



# CITY of ESCONDIDO

## STAFF REPORT

On February 10, 2021, the City Council approved Amendment Nine to AECOM’s agreement in the amount of \$118,371.25 to update the plans to address constructability review comments, and to address utility and permitting agency requirements.

Since origination of AECOM’s contract, five (5) contract amendments totaling \$203,195 have been approved by staff to add land surveying services, update wetland delineation, prepare Environmental Impact Report addenda for value engineering and SDG&E relocation, and for additional utility coordination activities.

On February 5, 2020, the City Council approved a consulting agreement in the amount of \$1,596,544 with TY Lin International to provide construction management and material testing services for the Citracado Extension Project.

### BACKGROUND

An Amendment to the professional services agreement with AECOM is requested to provide services during the construction period, including responding to design related questions, preparing any necessary design revisions, providing environmental support for responses to permitting agencies, and applying for environmental permit extensions.

An Amendment to the consultant services contract with TY Lin is requested to add environmental monitoring and reporting, and to increase hours of service and adjust for inflation over the extended construction period. The construction period was extended during bidding to respond to bidder’s requests which led to bid prices 14% below the Engineer’s Estimated and a savings of over \$6-million.

### Project Status:

SDG&E’s relocation of distribution and transmission electrical facilities to accommodate the Citracado Parkway Extension Project is in process. At the May 11, 2022 meeting, the City Council awarded a contract to the lowest responsible bidder, Flatiron West, Inc., in the amount of \$23,787,000 and construction is expected to begin in August 2022 and be completed by Summer 2024

### RESOLUTIONS

- A. Resolution No. 2022-81
- B. Resolution No. 2022-81 –Exhibit “A” 10<sup>th</sup> Amendment to Consulting Agreement with AECOM
- C. Resolution No. 2022-82
- D. Resolution No. 2022-82 –Exhibit “A” 1<sup>st</sup> Amendment to Consulting Agreement with TY Lin International

## RESOLUTION NO. 2022-82

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, THE FIRST AMENDMENT TO THE CONSULTING AGREEMENT WITH TY LIN INTERNATIONAL FOR THE CITRACADO EXTENSION PROJECT

WHEREAS, the City Council has allocated funding in the adopted Capital Improvement Program Budget for the Citracado Extension Project ("Project"); and

WHEREAS, additional construction management services are requested of TY Lin International to support the construction of the Project in the amount of \$982,162.51.

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

1. That the above recitations are true.
2. That the Mayor is authorized to execute a First Amendment to the Consulting Agreement with TY Lin International, 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 is authorized to approve additional amendments to this contract up to \$200,000.



CITY OF ESCONDIDO  
FIRST AMENDMENT TO CONSULTING AGREEMENT

This First Amendment to Consulting Agreement (“First Amendment”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2022 (“Effective Date”),

Between: CITY OF ESCONDIDO  
a California municipal corporation  
201 N. Broadway  
Escondido, CA 92025  
Attn: Julie Procopio  
760-839-4001  
("CITY")

And: T.Y. Lin International  
a California corporation  
404 Camino del Rio South, Suite 700  
San Diego, CA 92108  
Attn: Joseph Smith  
619-692-1920  
("CONSULTANT").

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

WHEREAS, the Parties entered into that certain Consulting Agreement dated February 9, 2020 (“Agreement”), wherein CITY retained CONSULTANT to provide services for construction management for the Citracado Parkway Extension Project, as more specifically described in the Agreement; and

WHEREAS, the Parties desire to amend the Agreement to include additional services as described in “Attachment A” to this First Amendment, which is attached hereto and incorporated herein by this reference.

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. The CONSULTANT shall furnish all of the Services described in “Attachment A” to this First Amendment.
2. **Section 2 (Compensation)** of the Agreement shall be deleted in its entirety and replaced with the following:

- 2 a. Compensation. The CITY will pay the CONSULTANT in accordance with the conditions specified in "Attachment A," not to exceed \$1,596,544. Any breach of this Agreement will relieve the CITY from the obligation to pay CONSULTANT, if CONSULTANT has not corrected the breach after the CITY provides notice and a reasonable time to correct it.
- 3. The CITY will compensate CONSULTANT in an additional amount not to exceed the sum of **\$982,162.51**, pursuant to the conditions contained in "Attachment A" to this First Amendment.
- 4. All other terms of the Agreement not referenced in this First Amendment shall remain unchanged and in full force and effect. In the event of a conflict between a provision of the Agreement and this First Amendment, this First Amendment shall prevail.
- 5. This First Amendment and the Agreement, together with any attachments or other documents described or incorporated therein, if any, constitute the entire agreement and understanding of the Parties, and there are no other terms or conditions, written or oral, controlling this matter.
- 6. This First Amendment may be executed on separate counterparts that, upon completion, may be assembled into and shall be construed as one document. Delivery of an executed signature page of this First Amendment by electronic means, including an attachment to an email, shall be effective as delivery of an executed original.
- 7. Unless a different date is provided in this First Amendment, the effective date of this First Amendment shall be the latest date of execution set forth by the names of the signatories below.

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

CITY OF ESCONDIDO

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

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

T.Y. Lin International

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 Work

**A. General**

T. Y. LIN INTERNATIONAL, a California corporation (“Consultant”) will provide the City of Escondido, a California municipal corporation (“City”) with consulting services related to the City’s Citracado Parkway Extension project (“Project”).

**B. Location**

Consultant shall provide services at various locations in relation to the Project, including certain services located at the Project site as identified in Exhibit 1 to this Scope of Work, which is attached hereto and incorporated by this reference.

**C. Services**

Consultant shall provide services as described in Exhibit 2 to this Scope of Work, which is attached hereto and incorporated by this reference. In the event of a conflict between Exhibit 2 and this First Amendment (including this Scope of Work), the terms of this First Amendment shall prevail.

**D. Scheduling**

Inquires relating to this First Amendment, including scheduling and coordination with City staff, shall be directed to Matt Souttere at 760-214-4718 or msouttere@escondido.org. Further instructions will be provided upon scheduling.

**E. Contract Price and Payment Terms**

The contract price of this First Amendment shall not exceed **\$982,162.51**. The contract price of this First Amendment shall bring the cumulative contract price of the Agreement to \$2,578,706.51. 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. Consultant shall not bill the City for any transportation costs associated with travel to and from the project site.

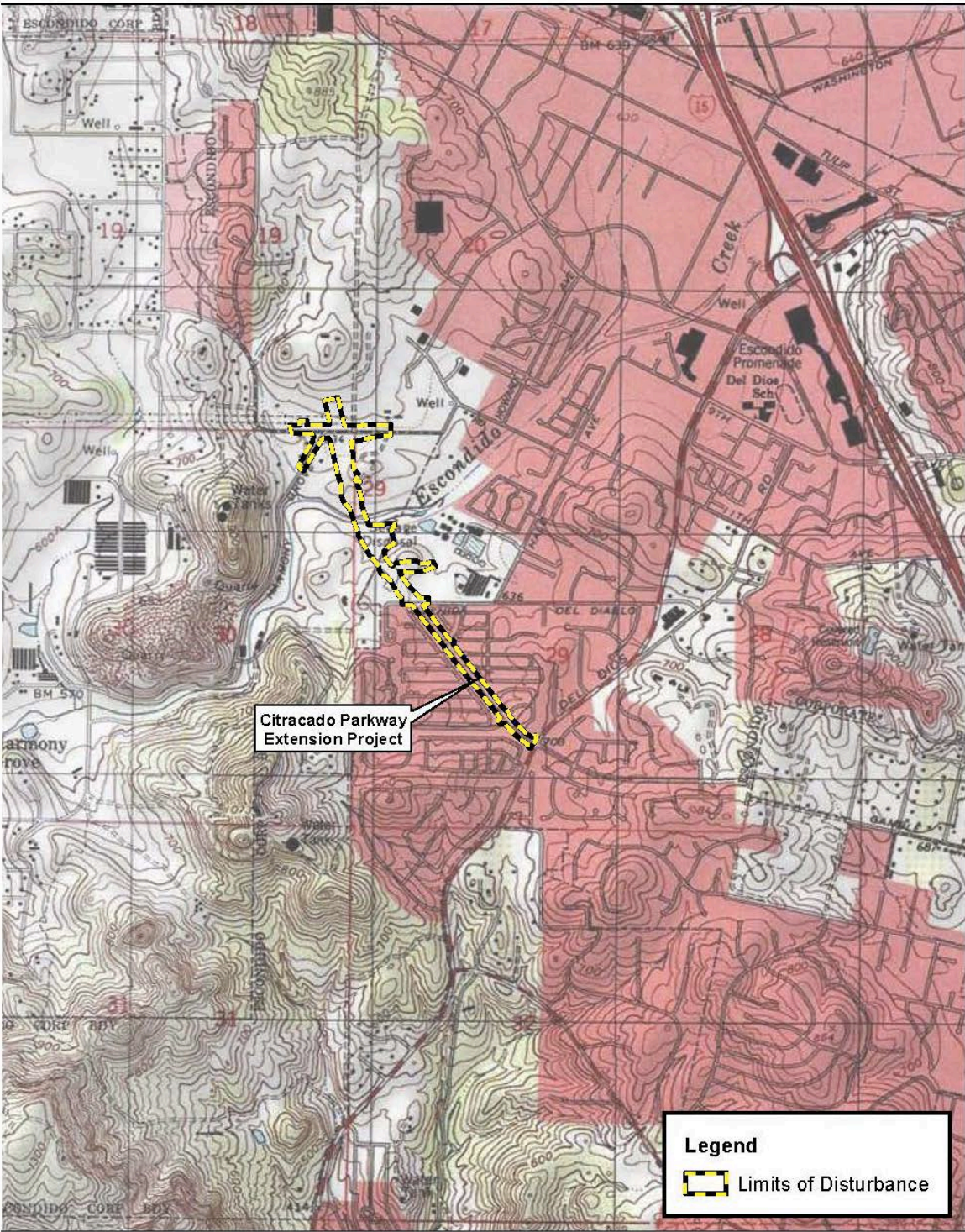
The service rates described in Exhibit 3 to this Scope of Work, which is attached hereto and incorporated by this reference, shall remain in effect throughout the term of this First Amendment.

**F. Term**

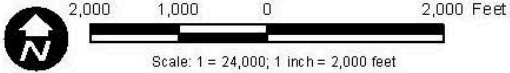
The term of this Tenth Amendment shall be from the Effective Date of this Tenth Amendment through the date of Notice of Completion for the Project which shall be filed by the City with the County of SD.



# EXHIBIT 1



Source: USGS 7.5' Quadrangles, Escondido 1975, Valley Center 1975, Rancho Santa Fe 1983, San Marcos 1983; AECOM 2011



## EXHIBIT 2

### T.Y. Lin International

#### Construction Management, Inspection, and Material Testing of Project Work

##### A. General.

Consultant shall provide additional Construction Management (CM) services to provide pre-construction coordination, environmental services, early property owner coordination and public outreach, utility company coordination and management of all aspects of construction for the Citracado Parkway Extension project. In addition, the CM will manage sub-consultants who will provide quality assurance, special inspection and testing services in accordance with the City's Quality Assurance Plan.

##### B. Additional Services.

Consultant shall provide property owner and homeowner's association coordination, including coordination with effected property owners in advance of construction of the sound wall, and continued coordination during construction per the original Agreement, and for an extended period of time pursuant to the First Amendment and the modified wage rates reflected in Exhibit 3 to the First Amendment the Scope of Work.

1. Consultant shall provide coordination and inspection for Rincon Water District facilities shown to be relocated or installed on the plans, including receiving Rincon's concurrence on invoicing by the contractor and coordinating water shut downs and other necessary project management functions per the original Agreement, and for an extended period of time pursuant to the First Amendment and the modified wage rates reflected in Exhibit 3 to the First Amendment Scope of Work.
2. Consultant shall provide management of all aspects of construction, including inspection services for compliance with the contract, responding to requests for information, reviewing submittals, reviewing compliance and feasibility of schedules, reviewing invoices, change order requests for additional time and/or compensation and making recommendations for change orders per the original Agreement, and for an extended period of time pursuant to the First Amendment to cover project set up, longer construction duration, and project closeout at the wage rates reflected in Exhibit 3 to the First Amendment the Scope of Work.
3. Consultant shall provide quality assurance, special inspection and testing services in accordance with the City's Quality Assurance Plan, contract documents and including management of subconsultants and coordination with contractor per the original Agreement, and for an extended period of time pursuant to the First Amendment and the modified wage rates reflected in Exhibit 3 to the First Amendment Scope of Work.
4. Consultant shall perform required environmental surveys, monitoring and reporting through the SMARTS system, including GIS documentation, and coordination of work with previous biologist to ensure full compliance with project environmental permits.
5. Consultant shall perform public outreach prior to and during construction with affected mobile-home parks. Work shall include notifications to residents about the project, and monthly updates.

**C. Rates.**

The City will pay Consultant for their additional Services on a time and material basis, in an amount not to exceed **\$982,162.51**, in accordance with the attached proposal.

**D. Payment.**

Consultant will invoice City on a monthly basis for work completed. Invoices will be paid within 30 days of receipt. Included with each payment request shall be an itemized list of staff that worked on the project, the task or tasks performed, their rate, and the amount of time spent working on the project. Payment requests shall be submitted in a city approved format, and shall include receipts for incidentals being invoiced for. Payment requests shall be submitted within fifteen days of the monthly billing period being invoiced for.

**Citracado Parkway - CM Services (Proj# 701405.20 / 3010.0012799.xxx)**

5/24/2022

	2019 Initial Fee	fee increase for updated rates and schedule duration	2022 Total Fee update	Supplemental work: All parties Thru 4/22/22	Additional Helix services (estimate) for SDG&E	Helix 2022 Survey 6 LBV surveys	TYLI Anticipated work 40 hrs	Total additional fee
TY Lin - Anticipated work							\$ 7,664.40	
Helix - Anticipated work					\$ 20,000.00	\$ 5,000.00		
Supplemental Svcs.: TYLI				\$ 51,233.15				
Supplemental Svcs.: Helix				\$ 47,731.90				
Supplemental Svcs.: Kleinfelder				\$ 1,716.60				
Subtotal				\$ 100,681.65	\$ 20,000.00	\$ 5,000.00	\$ 7,664.40	
Markup (3% for Subs)				\$ 1,483.46	\$ 600.00	\$ 150.00		
<b>Total:</b>	<b>\$ 1,596,544.00</b>	<b>\$ 846,583.00</b>	<b>\$ 2,443,127.00</b>	<b>\$ 102,165.11</b>	<b>\$ 20,600.00</b>	<b>\$ 5,150.00</b>	<b>\$ 7,664.40</b>	<b>\$ 982,162.51</b>

## RESOLUTION NO. 2022-81

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, A TENTH AMENDMENT TO THE CONSULTING AGREEMENT WITH AECOM FOR THE CITRACADO EXTENSION PROJECT

WHEREAS, the City Council has allocated funding in the adopted Capital Improvement Program Budget for the Citracado Extension Project ("Project"); and

WHEREAS, additional design services are requested of AECOM to support the construction of the Project in the amount of \$467,249.

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 a Tenth Amendment to the Consulting Agreement with AECOM, which is attached hereto as Exhibit "A" and incorporated by this reference, and subject to final approval as to form by the City Attorney.
3. That the City Manager is authorized to approve additional amendments to this contract up to \$200,000.





CITY OF ESCONDIDO  
TENTH AMENDMENT TO CONSULTING AGREEMENT

This Tenth Amendment to Consulting Agreement ("Tenth Amendment") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022 ("Effective Date"),

Between: CITY OF ESCONDIDO  
a California municipal corporation  
201 N. Broadway  
Escondido, CA 92025  
Attn: Julie Procopio  
760-839-4001  
("CITY")

And: AECOM Technical Services, Inc.  
a California corporation  
401 West A Street, Suite 1200  
San Diego, CA 92101  
Attn: Carolyn Crull  
(619) 610-7600  
("CONSULTANT").

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

WHEREAS, the Parties entered into that certain Consulting Agreement dated August 20, 2012, which was subsequently amended by a First Amendment dated March 17, 2014, a Second Amendment dated March 10, 2014, a Third Amendment dated July 10, 2014, a Fourth Amendment dated November 3, 2014, a Fifth Amendment dated June 11, 2015, a Sixth Amendment dated May 25, 2017, a Seventh Amendment dated September 30, 2019, an Eighth Amendment dated May 12, 2020, and a Ninth Amendment dated March 9, 2021 (collectively, the "Agreement"), wherein CITY retained CONSULTANT to provide services for final plans and specifications for the Citracado Parkway Extension project, as more specifically described in the Agreement; and

WHEREAS, the Parties desire to amend the Agreement to include additional services as described in "Attachment A" to this Tenth Amendment, which is attached hereto and incorporated herein by this reference.

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. The CONSULTANT shall furnish all of the Services described in "Attachment A" to this Tenth Amendment.
2. The CITY will compensate CONSULTANT in an additional amount not to exceed the sum of **\$467,249**, pursuant to the conditions contained in "Attachment A" to this Tenth Amendment.
3. All other terms of the Agreement not referenced in this Tenth Amendment shall remain unchanged and in full force and effect. In the event of a conflict between a provision of the Agreement and this Tenth Amendment, this Tenth Amendment shall prevail.
4. This Tenth Amendment and the Agreement, together with any attachments or other documents described or incorporated therein, if any, constitute the entire agreement and understanding of the Parties, and there are no other terms or conditions, written or oral, controlling this matter.
5. This Tenth Amendment may be executed on separate counterparts that, upon completion, may be assembled into and shall be construed as one document. Delivery of an executed signature page of this Tenth Amendment by electronic means, including an attachment to an email, shall be effective as delivery of an executed original.
6. Unless a different date is provided in this Tenth Amendment, the effective date of this Tenth Amendment shall be the latest date of execution set forth by the names of the signatories below.

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

CITY OF ESCONDIDO

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

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

AECOM Technical Services, Inc.

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 Work

**A. General**

AECOM Technical Services, Inc., a California corporation ("Consultant") will provide the City of Escondido, a California municipal corporation ("City") with consulting services related to the City's Citracado Parkway Extension project ("Project").

**B. Location**

Consultant to provide services in relation to the Project, including certain services located at the Project site as depicted in Exhibit 1 to this Scope of Work, which is attached hereto and incorporated by this reference.

**C. Services**

Consultant shall provide services as described in Exhibit 2 to this Scope of Work, which is attached hereto and incorporated by this reference. In the event of a conflict between Exhibit 2 and this Tenth Amendment (including this Scope of Work), the terms of this Tenth Amendment shall prevail.

**D. Scheduling**

Inquires relating to this Tenth Amendment, including scheduling and coordination with City staff, shall be directed to Matt Souttere at 760-214-4718 or msouttere@escondido.org.

**E. Contract Price and Payment Terms**

The contract price of this Tenth Amendment shall not exceed **\$467,249**. The contract price of this Tenth Amendment shall bring the cumulative Agreement price to \$3,958,646.50.

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. Consultant shall not bill the City for any transportation costs associated with travel to and from the project site.

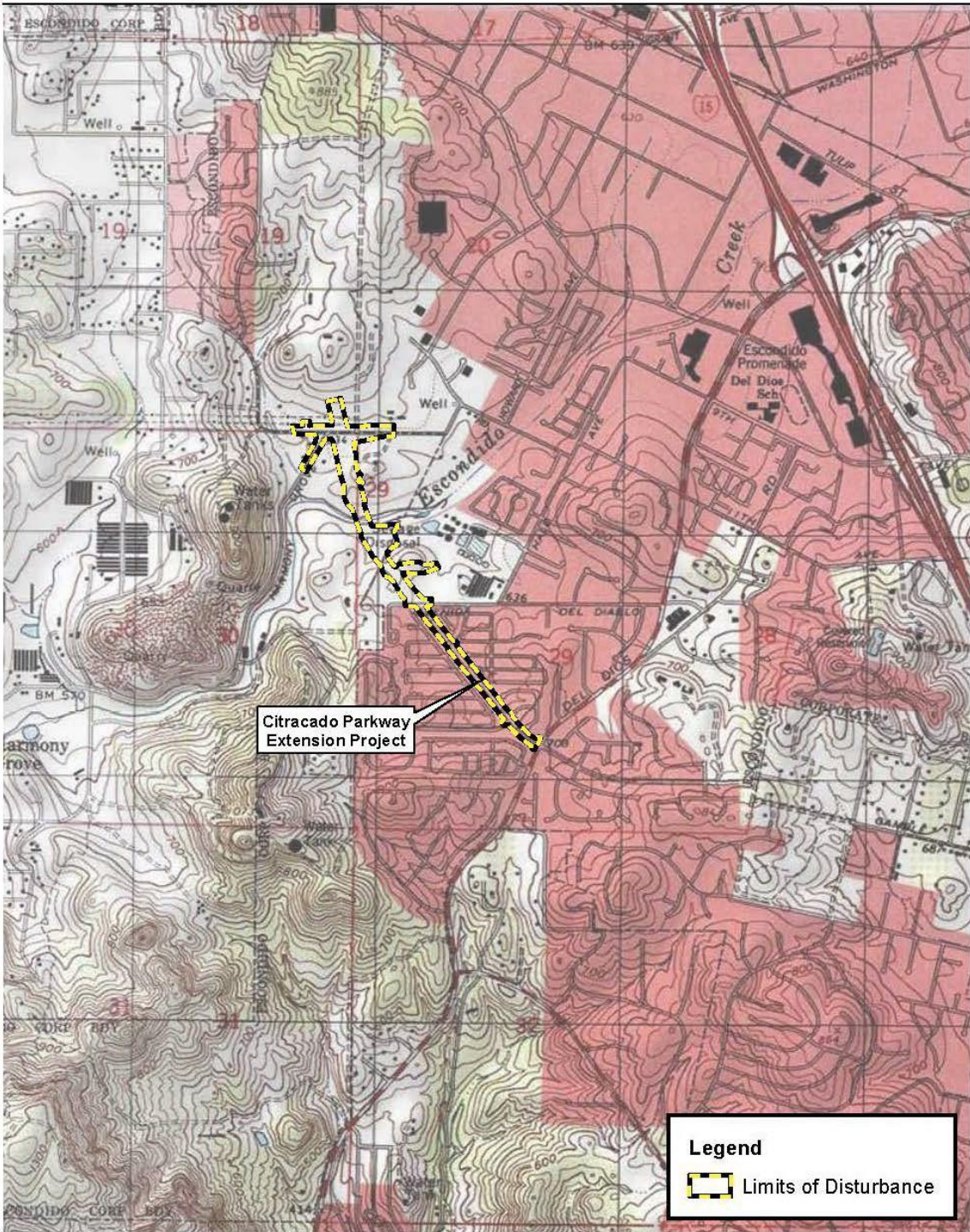
See the Exhibit 3 to this Scope of Work, which is attached hereto and incorporated by this reference, for Consultant's hour and cost estimates per task.

**F. Term**

The term of this Tenth Amendment shall be from the Effective Date of this Tenth Amendment through the date of Notice of Completion for the Project which shall be filed by the City with the County of SD.



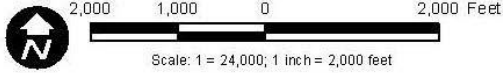
# EXHIBIT 1



Citracado Parkway  
Extension Project

**Legend**  
[Dashed Line Symbol] Limits of Disturbance

Source: USGS 7.5' Quadrangles, Escondido 1975, Valley Center 1975, Rancho Santa Fe 1983, San Marcos 1983; AECOM 2011



## **EXHIBIT 2**

### **Task 200 – Environmental Protocol Surveys and Permitting**

#### **240 – CTC Submittal Support**

Support the City's submittal to the California Transportation Commission (CTC). Support activities included responding to questions, providing supporting documentation, and revising the first addendum to the Environmental Impact Report (EIR).

The following is supporting documentation for this task.

- Final Environmental Impact Report
- ADA compliant Statements of Overriding Considerations
- Notice of Determination
- ADA compliant vicinity map (8.5 x 11" black and white)
- Brief statement explaining why the decision was made to prepare an Environmental Impact Report, rather than a Negative Declaration or Mitigated Negative Declaration
- Memo summarizing in a bullet point list the significant environmental impacts and the required mitigation measures for the project

#### **250 – NEPA Documentation**

Preparation of NEPA documents and information in support of the City's effort to obtain federal grant funding for the construction of Citracado Parkway. Work includes preparation of the environmental narrative and certification forms.

### **Task 500 – Civil Plans, Specifications, and Estimate**

#### **560 – Update Civil Unit Costs for Final Engineer's Estimate of Cost**

AECOM submitted an engineer's estimate of cost to the City for the constructability review in December 2019. In addition to updating the engineer's estimate of cost based on plan revisions, provide new unit costs for 94 civil bid items. New unit costs necessary to account for major changes in the cost of construction materials and labor costs since December 2019 need to be identified. Standard cost escalation processes to account for typical annual inflation would not be accurate due to the impact of recent international tariffs, labor shortages, procurement delays, and inflation in construction costs over the past two years.

#### **580 – Storm Water Pollution Prevention Plan (SWPPP)**

Preparation of a draft Storm Water Pollution Prevention Plan required for construction and issuance of a Construction Permit/WDID number. A WDID number is required before work can commence.

## **Task 600 – Structures Plans, Specifications, and Estimate**

### **621 – Revise Bridge Plans to Accommodate Future Utilities**

Revise the bridge typical sections based on comments received from the utility owners, including AT&T, Cox, and SDG&E. This task includes secondary plan revisions to remaining bridge sheets based on revisions to the typical sections. Revisions are to address changes in the SDG&E gas main from a tangent alignment to a curved alignment, as well as the eventual removal of the large multi-agency future conduits.

### **680 – Update Structural Unit Costs for Final Engineer's Estimate of Cost**

AECOM submitted an engineer's estimate of cost to the City for the constructability review in December 2019. In addition to updating the engineer's estimate of cost based on plan revisions, provide new unit costs for 53 structural bid items. New unit costs necessary to account for major changes in the cost of construction materials and labor costs since December 2019 need to be identified. Standard cost escalation processes to account for typical annual inflation would not be accurate in this case due to the impact of recent international tariffs, labor shortages, procurement delays, and inflation in construction costs over the past two years.

## **Task 800 – Utility Design and Coordination**

### **820 – Utility Coordination Meetings**

Additional utility design coordination meetings with SDG&E, Rincon del Diablo Municipal Water District (RDDMWD), AT&T, or Cox, are necessary to ensure coordination of utilities.

### **830 – Revised Temporary Bypass Highline Plans, Specifications, and Bid Schedule**

Revision of the temporary bypass highline plans and specifications based additional comments received from RDDMWD, beyond revisions and comments scoped in other amendments and in the original contract.

### **840 – Incorporation of Utility Plans**

Insertion of up to eight (8) sheets from SDG&E for a new gas line and one (1) sheet from Cox communications for the conduit for incorporation into the project plan set. This task includes inserting the additional sheets, updating sheet numbers, adding bid items per utility owner, completing related quantity take-offs, preparing special provisions detailing the work to be done by the contractor and utility owners, and an estimated cost for the contractor's portion of this work, which will be included in the engineer's estimate of cost.

## **Task 2000 – Constructability Review**

### **2010 – Additional Constructability Comments on Civil Plans and Specifications**

### **2020 – Additional Constructability Comments on Structural Plans and Specifications**

### **2030 – Additional Constructability Comments on Landscape and Irrigation Plans and Specifications**

The additional level of effort required for reviewing, responding to and addressing the review comments is significant. The number of comments received was much higher and over an extended period of time than outlined in Amendment 9.

### **2040 – Additional Constructability Comments on Water and Recycled Water Plans and Specifications**

Because of the addition of a second the high-lining system and other requested revisions to the water plans and specifications by the City, the level of effort required for reviewing and addressing these changes is significantly higher than accounted for in the original contract and previously approved amendments. This work includes addressing all of the review comments, revisions to existing design previously approved, and adding new elements to each of the water systems (potable and reclaimed).

### **Task 5000 - Accelerated Final Delivery of the PS&E**

#### **5010 – Additional City Coordination for Accelerated Schedule Workplan**

This task is to accelerate work in order to meet the funding deadline associated with project funding. This work effort is to finalize delivery of the final PS&E from a six-week period to two weeks.

In order to meet the City's targeted advertisement date, additional coordination with the City to develop a plan to accelerate the delivery of the final PS&E. This work requires extensive City coordination an increased level of coordination within the project team internally.

This task includes additional coordination with the City to implement the accelerated work plan.

#### **5020 – Staff Changes for Accelerated Schedule**

The primary method of accelerating the schedule was to shift work that would normally be completed by lower-level staff to higher-level staff. This allows all levels of staff to work simultaneously and therefore complete the work in less time. Prior to the City's request to accelerate the schedule, the staffing plan was for lower-level staff to complete as much of the work as possible, with higher-level staff overseeing and checking their work. With higher- and lower-level staff completing the work, principal-level staff is needed to oversee and check the work completed by the higher-level staff.

The cost to the City of accelerating the schedule arises from the use of staff with higher hourly rates completing the same number of hours of work. The cost impact is estimated by multiplying the number of hours of work completed over the two-week period by the difference in the weighted average hourly rate.

### **Task 6000 - Bid Phase Services**

#### **6010 – Electronic Signature Process**

In lieu of printing mylars for final plans, a secure electronic signature process using Adobe Sign is preferred. This allows staff to sign all plan sheets from their desk, and reduces time at the end

of the project to complete "As-Builts" for City record of project changes.

### **6020 - Bidding Support**

Support during the bidding of Citracado Parkway construction project is imperative to giving contractor's confidence in the City. Bidding support includes responding to bidders' inquiries and submitting documentation to the City to be included in any issued bid addenda.

### **6030 - Conformed Plans**

Preparation of a conformed set of plans reflecting all revisions made during the bidding process shall be prepared by AECOM and provided to the City prior to starting construction.

## **Design Services During Construction**

### **DSDC 1 Project Management**

Project management includes the tasks necessary to facilitate project delivery in a manner that meets contractual requirements and adheres to the project schedule and budget. To complete these tasks, AECOM will use proprietary tools for project delivery, developed based on the principles of earned value, risk management, and quality assurance and quality control (QA/QC), among others.

AECOM will monitor its budget and progress on a weekly basis using AECOM's internal project management tools and systems. AECOM will report progress on a monthly basis with each invoice to the City of Escondido. The progress report will outline the progress completed for the subject billing period, the tasks anticipated during the next billing period, and a brief discussion of any issues encountered with the schedule, budget, or scope. Up to fourteen (14) monthly progress reports and invoices are included. Deliverables • Progress Reports and Invoices

### **DSDC 2 Coordination w/CM Team and Field Visits**

AECOM will coordinate with and provide consultation to the City of Escondido Project Manager and the City's Construction Management (CM) team to provide project design support, either in person or via telephone or email during the construction phase of the project. AECOM will attend meetings with the City of Escondido and its oversight staff, and meetings with utility owners or others to resolve issues. AECOM staff may conduct site visits to respond to RFIs, develop change orders, or perform other specific tasks.

The total level of effort for this task will not exceed 168 hours, as shown in the cost proposal in Appendix B, unless additional budget is authorized by the City in a future amendment.

### **DSDC 3 Biweekly Construction Meetings**

AECOM will attend biweekly jobsite meetings with up to one (1) consultant staff member present. A total number of 28 meetings are anticipated during the 14-month construction period and each meeting is anticipated to be two (2) hours long, including travel.



#### **DSDC 4 Respond to Requests for Information (RFI)**

AECOM will review and respond to Contractor-generated RFIs forwarded from the City of Escondido CM and issue necessary clarifications and interpretations of the contract documents as appropriate to the orderly completion of the Contractor's work. Any orders authorizing variations from the contract documents will be made by the City of Escondido CM.

AECOM will review up to 45 RFIs and provide written clarifications and responses to the CM within five (5) working days or as required by the construction contract. All responses will be transmitted electronically to the City of Escondido and the CM via email. For cost proposal purposes, six (6) hours are assumed per RFI.

#### **DSDC 5 Prepare Design Revisions**

AECOM will prepare revisions to design plans and technical specifications as directed by the City of Escondido. Modifications to the project plans and specifications may be required prior to and during the construction phase of the project. AECOM will work with the City of Escondido CM team to assess the purpose for implementing a potential change, to develop an appropriate solution, and to then develop corresponding revisions to the plans and specifications. Design revisions may be in response to an action required by an RFI, change order, unforeseen site condition, informal value engineering, etc., and will be annotated in a manner directed by the City of Escondido CM. If requested by the City of Escondido, AECOM will develop cost estimates to coincide with the proposed changes. Design revisions and additional designs will be transmitted in PDF file format.

The total level of effort for this task will not exceed 360 hours, as shown in the cost proposal in Appendix B, unless additional budget is authorized by the City in a future amendment.

#### **DSDC 6 Review Submittals**

As the engineer of record, AECOM will review the following submittals from the contractor per City request: bridge prestressing system, temporary support of casings, bearing pads, soil nail wall construction system, and structural and shotcrete mix designs, as requested.

AECOM will review up to ten (10) submittals or resubmittals. For cost proposal purposes, five (5) hours are assumed for each submittal round, one (1) hour for AECOM's construction manager and four (4) hours for AECOM's structural engineer.

#### **DSDC 7 Punchlist and As-Built Preparation**

As the project nears substantial completion, AECOM will attend the final site walk and assist the City of Escondido CM team in preparing a punchlist of items to be addressed. If directed by the City, AECOM will prepare CADD-drafted asbuilt drawings to incorporate changes to the design from CM-approved field construction changes. AECOM will incorporate the plan redlines prepared by the Contractor during construction to develop the as-built drawings.

The total level of effort for this task will not exceed 312 hours, as shown in the cost proposal in Appendix B, unless additional budget is authorized by the City in a future amendment.

## **APDX E&F Continued Environmental Support**

### **Apdx E&F1 Environmental Permit Extension**

Based on discussions and correspondence with City staff, AECOM's environmental compliance and permitting specialists propose the following as-needed services to support environmental compliance and monitoring for the Citracado Parkway Improvements Project.

#### **Environmental Permit Extensions**

AECOM will prepare and submit applications to extend environmental permits that will expire before construction is anticipated to be completed. The permits to be extended include the following:

a. Agency / Permit / Expiration / Notes

USACE Nationwide Permit (NWB) 14 - Linear Transportation Projects, SPL-2015-00121-WSZ 3/18/2023 Construction will not be completed by this date.

CDFW Amendment to Streambed Alteration Agreement, 1600-2013-0026-R5 6/15/2023 Construction is estimated to be completed around this date, so we recommend extending the permit to be conservative.

This task assumes that AECOM is only extending the date of the permits, and is not conducting any additional impact analysis. It is assumed that no new mitigations will be required by the permitting agency. All application fees are assumed to be paid by the City.

### **Apdx E&F2 Environmental Compliance Support**

AECOM will use its history with the project and institutional knowledge to support the City and the City's environmental compliance consultant, HELIX, as-needed, for biological resources compliance. Anticipated tasks include locating previously completed documents, participating in phone calls, attending meetings, and answering questions from the City/HELIX team over email. This task also includes project setup, invoicing and project closure activities.

These services will be provided on a time-and-materials basis. When the budget shown in the cost proposal is expended, if the City requests a continuation of services, AECOM will prepare a proposal to increase the budget.

#### **Assumptions**

- This scope is assumed to be a pure services contract, with no contractual deliverables and no fixed schedule.
- The preparation of deliverables is not included in this scope of services, but may be added by amendment if requested by the City.

#### **Deliverables**

- None

### EXHIBIT 3

Task		Estimated Hours	Estimated Labor Cost
240	CTC Submittal Support	11	\$2,035
250	NEPA Documentation	150	\$14,556
560	Update Civil Unit Costs for Final Engineer's Estimate of Cost	45	\$6,500
580	Storm Water Pollution Prevention Plan (SWPPP)	81	\$13,035
621	Revise Bridge Plans to Accommodate Future Utilities	90	\$17,400
680	Update Structural Unit Costs for Final Engineer's Estimate of Cost	30	\$4,000
820	Utility Coordination Meetings	33	\$5,325
830	Revised Temporary Bypass Highline Plans, Specs, and Bid Schedule	284	\$38,270
840	Incorporation of Utility Plans	31	\$5,025
2010	Additional Constructability Comments on Civil Plans and Specifications	114	\$9,625
2020	Additional Constructability Comments on Structural Plans and Specs	85	\$8,425
2030	Additional Constructability Comments on Landscape and Irrigation Plans and Specifications	5	\$300
2040	Additional Constructability Comments on Water and Recycled Water Plans and Specifications	60	\$4,650
5010	Additional City Coordination for Accelerated Schedule Workplan	26	\$4,680
5020	Staff Changes for Accelerated Schedule	707.25	\$18,035
6010	Electronic Signature Process	23	\$2,300
6020	Bidding Support	206	\$42,330
6030	Conformed Plans	86	\$13,370
DSDC 1	Project Management	66	\$10,816
DSDC 2	Coordination w/Construction Management Team and Field Visits (\$300 – ODCs)	168	\$40,384
DSDC 3	Biweekly Construction Meetings	56	\$16,052
DSDC 4	Respond to Requests for Information (RFI)	270	\$55,410
DSDC 5	Prepare Design Revisions	360	\$60,750
DSDC 6	Review Submittals	50	\$12,836
DSDC 7	Punchlist and As-Built Preparation	312	\$40,000
Apdx F1	Environmental Permit Extension		\$8,140
Apdx F2	Environmental Compliance Support		\$13,000
	<b>Total</b>	<b>3349.25</b>	<b>\$467,249</b>





# STAFF REPORT

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June 22, 2022

File Number 0600-10; A-3416

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## SUBJECT

### **\$157,660 PUBLIC SERVICES AGREEMENT FOR SENIOR TRANSPORTATION**

## DEPARTMENT

Community Services Department

## RECOMMENDATION

Request the City Council adopt Resolution 2022-79 authorizing a Public Services Agreement with Full Access & Coordinated Transportation, Inc., dba Facilitating Access to Coordinated Transportation ("FACT") in the amount of \$157,660 for transportation services for seniors to and from the Park Avenue Community Center to participate in the Senior Nutrition Program.

Staff Recommendation: Approval (Community Services Department: Joanna Axelrod, Deputy City Manager / Director of Communications and Community Services)

Presenter: Robert Rhoades, Deputy Director of Community Services

## FISCAL ANALYSIS

CDBG funding of \$34,610 and a County of San Diego Aging and Independent Services grant in the amount of \$84,895 have been awarded for FY 2022-23 which offset contract costs to the General Fund.

## PREVIOUS ACTION

On June 22, 2022, the City Council will be asked to approve Resolution 2022-80, authorizing a Public Services Agreement Amendment with HumanGood SoCal, dba Redwood Senior Homes and Services in the amount of \$230,000 for preparation and delivery of Senior Nutrition Program meals to the Park Avenue Community Center.

On June 15, 2022, the City Council approved Resolution 2022-84, adopting the fiscal year 2022-2023 Community Development Block Grant (CDBG) and HOME Investment Partnership Program funds and approving submittal to the United States Department Housing and Urban Development which includes funding of \$34,610 for the Senior Transportation Program.

On February 5, 2020, the City Council approved Resolution No. 2020-15, authorizing the Mayor and City Clerk to accept a grant from the County of San Diego designated for Escondido seniors, and execute contract documents on behalf of the City. The transportation portion of that grant is \$84,895.



# CITY of ESCONDIDO

## STAFF REPORT

### BACKGROUND

The City has offered the Senior Nutrition and Transportation Program for over 40 years. Escondido seniors, who are faced with food scarcity, economic challenges, and now uncertainty due to the global health crisis, find it difficult to make ends meet on a fixed income. The transportation and meal services offered through the Senior Nutrition and transportation Program present a solution to Escondido seniors to access good nutrition and combat isolation in a positive environment. As a result of this service, the senior community can continue to be an active participant in the City's economic and civic growth.

In 2019, a Public Services Agreement was executed with Full Access & Coordinated Transportation, Inc., dba Facilitating Access to Coordinated Transportation ("FACT") to transport seniors to and from the Park Avenue Community Center for nutritional senior meal service. The term of the Agreement was for seven months, with two additional one-year option periods.

The term of the agreement is ending. A Request for Proposals (RFP) was issued by City staff in May 2022 and emailed to multiple businesses that provide transportation services. One proposal was received. After reviewing the proposal, FACT was determined to be a responsive bidder. Therefore, staff is recommending the contract be awarded to FACT.

The cost of the first year of the agreement will be \$157,660. Included in the agreement are three optional one-year renewal periods at a rate not to exceed 5% of the preceding agreement period.

### RESOLUTIONS

- a. Resolution 2022-79
- b. Resolution No. 2022-79 Exhibit "A" – Public Services Agreement with Full Access & Coordinated Transportation

RESOLUTION NO. 2022-79

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 FOR \$157,660 WITH FULL ACCESS & COORDINATED TRANSPORTATION, INC.

WHEREAS, the City of Escondido recognizes that transportation is often a barrier for older adults (60 years and older) in our community to accessing critical programs and services including the City's nutritional meal program; and

WHEREAS, Full Access & Coordinated Transportation, Inc. ("FACT") has submitted a responsive and responsible proposal for providing senior transportation services; and

WHEREAS, The City Council desires at this time, and deems it to be in the best public interest, to approve a Public Service Agreement ("Agreement") with FACT to provide transportation services to the Park Avenue Community Center for older adults to participate in the nutritional meal program; and

WHEREAS, the Deputy City Manager/Director of Communications and Community Services recommends approval of entering into an Agreement with FACT for one (1) year; with (3) three one-year renewal options, in an amount not to exceed \$157,660 for transportation services.

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

1. That the above recitations are true.
  
2. That the City Council authorizes the Mayor to execute, on behalf of the City, the Agreement for senior transportation services attached as Exhibit "A" in substantially similar form as approved by the City Attorney.



CITY OF ESCONDIDO  
PUBLIC SERVICES AGREEMENT

This Public Services Agreement ("Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 2022 ("Effective Date"),

Between: CITY OF ESCONDIDO  
a California municipal corporation  
201 N. Broadway  
Escondido, CA 92025  
Attn: Robert Rhoades  
760-839-5482  
("CITY")

And: FULL ACCESS & COORDINATED TRANSPORTATION, INC.  
a California nonprofit corporation  
dba Facilitating Access to Coordinated Transportation  
516 Civic Center Drive  
Oceanside, CA 92054  
Attn: Arun Prem  
760-754-1252  
("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 **\$157,660**. 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.
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 \$1,000,000 per occurrence and \$2,000,000 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.

(SIGNATURE PAGE FOLLOWS)

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

CITY OF ESCONDIDO

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

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

FULL ACCESS & COORDINATED  
TRANSPORTATION, INC

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 Work**

#### **A. General**

Full Access & Coordinated Transportation, Inc., a California nonprofit corporation ("Contractor") will provide the City of Escondido ("City") transportation for individuals over sixty-years of age ("Seniors") to and from the Park Avenue Community Center, home of the Escondido Senior Center, Monday through Friday, excluding recognized holidays.

The services under this Agreement shall be provided in connection with the Senior Transportation Program ("Program") which is partially funded by the County of San Diego ("County").

#### **B. Location**

Contractor will provide services to and from the Park Avenue Community Center located at 210 E. Park Ave, Escondido, CA 92025.

#### **C. Services**

Contractor shall provide transportation services as follows:

1. Contractor shall provide curb-to-curb service to and from the Senior's home and the Park Avenue Community Center. Contractor will transport Seniors who live within the City of Escondido and neighboring unincorporated areas of San Diego County that have an Escondido address;
2. The City shall provide Contractor with a list of Seniors that have qualified to utilize the transportation services provided under this Agreement. The City shall provide Contractor with an updated list on a monthly basis or sooner as may be necessary. Contractor shall contact Mary Rodelo at 760-839-4678, or designated representative for verification of any individual not listed to validate transportation service as needed;
3. Contractor shall use any combination of sedans and vans that are capable of transporting Seniors. Contractor shall pursue vendors with paratransit/ADA vehicles that will accommodate Seniors' mobility and accessibility needs (e.g. wheelchairs, walkers, scooters, etc.) and notify the City once acquired for use as a part of the service.
4. Contractor must obtain the City's prior written approval to utilize a third-party transportation services provider to perform services under this Agreement. The City's prior written approval shall not be required for Contractor's utilization of LYFT.
5. Contractor shall provide transportation services Monday through Friday, except on designated City holidays as described in Section D of this Scope of Work, as follows:
  - a. Contractor shall pick-up Seniors and drop them off at the Park Avenue Community Center between the hours of 8 a.m. and 10:45 a.m. ("Morning Drop-Offs"); and
  - b. Contractor shall pick up Seniors from the Park Avenue Community Center and return them to their respective homes beginning at 12 p.m. ("Return Service").
6. Contractor shall make appropriate accommodations for Seniors with mobility issues that may include but not limited to wheelchairs, walkers, and canes;
7. If Contractor sends a vehicle to provide Senior transportation services that is not able to accommodate the Senior's mobility assistive device (e.g. wheelchair, cane, scooter, or

## ATTACHMENT "A"

### Scope of Work

walker), after being given at least 24-hours' notice of the Senior's mobility assistive device, then City will not be charged a late or cancellation fee.

8. Contractor may allow rideshare opportunities amongst designated Senior participants of the City's transportation program. Ridesharing amongst individuals who are not Senior participants of the City's transportation program is strictly prohibited.
9. Contractor will provide the City with daily rider logs that include serviced Seniors' names and how many one-way trips each Senior was provided per day. These logs are due to the City no later 2 p.m. the following business day.
10. The City shall provide reservation requests via email for the week by 2:00 p.m. on Thursday of the preceding week. Updates may be provided throughout the remainder of the week up to 4:00 p.m. the day prior to the trip.
11. Contractor shall direct Seniors wishing to provide donations for transportation services to City staff for acceptance.
12. Contractor shall instruct drivers to provide Seniors with appropriate assistance in entering and exiting the driver's vehicle and as-needed assistance from the driver's vehicle to the Senior's residence.

#### **D. Scheduling**

Contractor to schedule work in advance by contacting Mary Rodelo, 760-839-4678, [mrodelo@escondido.org](mailto:mrodelo@escondido.org) or their designee. Work shall be performed in-between the hours of 8 a.m. and 3:30 p.m., Monday through Friday, except on the following City recognized holidays:

1. Monday, July 4, 2022 – Independence Day;
2. Monday, September 5, 2022 – Labor Day;
3. Friday, November 11, 2022 – Veteran's Day;
4. Thursday, November 24, 2022 – Thanksgiving Day;
5. Friday, November 25, 2022 – Day After Thanksgiving;
6. Monday, December 26, 2022 – Christmas Day (observed);
7. Monday, January 2, 2023 – New Year's Day (observed);
8. Monday, January 16, 2023 – Martin Luther King Jr. Day;
9. Monday, February 20, 2023 – President's Day; and
10. Monday, May 29, 2023 – Memorial Day.

#### **E. Contract Price and Payment Terms**

The contract price shall not exceed **\$157,660**. The contract price includes all labor, materials, equipment, and transportation required to perform the work. Services will be billed on a monthly basis. Invoices must be received by the fifth of the following month. Payment will be made after services have been performed and within 30 days of receipt of an invoice for those services.

Contractor's transportation services shall be based on the following rates:

Service	Rate
Transportation Services (ambulatory)	\$19 per trip
Late Cancellation or No Show for Transportation Services	\$15 per trip

## ATTACHMENT "A" Scope of Work

\*ADA vehicles are not available at this time. Contractor will seek out additional vendors and propose an ADA accessible rate to the City when offered.

### F. Term

The term of this Agreement shall be from the Effective Date of the Agreement through **June 30, 2023**.

City and Contractor may agree to extend the initial term of this Agreement for three additional one year periods ("Renewal Periods"). Renewal Periods will require City and Contractor to enter into amendments of this Agreement pursuant to Section 11 (Amendments) at least 60 days prior to the termination of the preceding term. Either party may, at that time, decline to extend this Agreement, and such declination would render the renewal option null and void.

The optional Renewal Periods will be subject to the following price increase terms:

- A. Renewal Period 1 (July 2023 – June 2024) Increase: Contractor stipulates that the cumulative total of Renewal Period 1 increases would not exceed 5% of the prices in effect at the end of the initial period.
- B. Renewal Period 2 (July 2024 – June 2025) Increase: Contractor stipulates that the cumulative total of Renewal Period 2 increases would not exceed 5% of the prices in effect at the end of the first renewal period.
- C. Renewal Period 3 (July 2025 – June 2026) Increase: Contractor stipulates that the cumulative total of Renewal Period 3 increases would not exceed 5% of the prices in effect at the end of the second renewal period.

### G. Other

Contractor, including all subcontractors, shall comply with all applicable terms, conditions, and requirements of the City's contract with the County, which is attached to this Scope of Work as Exhibit 1 and incorporated herein by this reference.

Contractor, including all subcontractors, shall comply with all applicable federal, state, county, and local laws, regulations, guidelines, and requirements, including but not limited to those arising out of or related to the COVID-19 pandemic.

Contractor and all subcontractors hereby waive any claims against the City related to or arising from a COVID infection in any way connected to these services.

COUNTY CONTRACT NUMBER 561764  
AGREEMENT WITH CITY OF ESCONDIDO FOR SENIOR NUTRITION PROGRAM

This agreement ("Agreement") is made and entered into effective as of the date of the last signature on the signature page by and between the County of San Diego, a political subdivision of the State of California ("County") and The City of Escondido, 201 N Broadway, Escondido, CA 92025 ("Contractor"), with reference to the following facts:

**RECITALS**

- A. The County, by action of the Board of Supervisors on October 10<sup>th</sup>, 2017 Minute Order No. 05 authorized the Director of Purchasing and Contracting, to award a contract for Senior Nutrition Services.
- B. Contractor is specially trained and possesses certain skills, experience, education and competency to perform these services.
- C. The Chief Administrative Officer made a determination that Contractor can perform the services more economically and efficiently than the County, pursuant to Section 703.10 of the County Charter.
- D. The Agreement shall consist of this document, Exhibit A Statement of Work, Exhibit B Insurance Requirements and Exhibit C, Pricing Schedule. In the event that any provision of the Agreement or its Exhibits, A, B or C, conflicts with any other term or condition, precedence shall be: First (1st) the Agreement; Second (2nd) Exhibit B; Third (3rd) Exhibit A; and Fourth (4th) Exhibit C.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE 1**  
**PERFORMANCE OF WORK**

- 1.1 Standard of Performance. Contractor shall, in good and workmanlike manner and in accordance with the highest professional standards, at its own cost and expense, furnish all of the labor, technical, administrative, professional and all other personnel, all supplies and materials, equipment, printing, transportation, training, facilities, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by County, necessary or proper to perform and complete the work and provide the services required of Contractor by this Agreement.
- 1.2 Contractor's Representative. The person identified on the signature page ("Contractor's Representative") shall ensure that Contractor's duties under this Agreement shall be performed on behalf of the Contractor by qualified personnel; Contractor represents and warrants that (1) Contractor has fulfilled all applicable requirements of the laws of the State of California to perform the services under this Agreement and (2) Contractor's Representative has full authority to act for Contractor hereunder. Contractor and County recognize that the services to be provided by Contractor's Representative pursuant to this Agreement are unique: accordingly, Contractor's Representative shall not be changed during the Term of the Agreement without County's written consent. County reserves the right to terminate this Agreement pursuant to Clause 7.1 "Termination for Default", if Contractor's Representative should leave Contractor's employ, or if, in County's judgment, the work hereunder is not being performed by Contractor's Representative.
- 1.3 Contractor as Independent Contractor. Contractor is, for all purposes of this Agreement, an independent contractor, and neither Contractor nor Contractor's employees or subcontractors shall be deemed to be employees of the County. Contractor shall perform its obligations under this Agreement according to the Contractor's own means and methods of work, which shall be in the exclusive charge and under the control of the Contractor, and which shall not be subject to control or supervision by County except as to the results of the work. County hereby delegates to Contractor any and all responsibility for the safety of Contractor's employees, which shall include inspection of property to identify potential hazards. Neither Contractor nor Contractor's employees or subcontractors shall be entitled to any benefits to which County employees are entitled, including without limitation, overtime, retirement benefits, workers' compensation benefits and injury leave.
- 1.4 Contractor's Agents and Employees or Subcontractors. Contractor shall obtain, at Contractor's expense, all agents, employees and subcontractors required for Contractor to perform its duties under this Agreement, and all such services shall be performed by Contractor's Representative, or under Contractor's Representatives' supervision, by persons authorized by law to perform such services. Retention by Contractor of any agent, employee or subcontractor shall be at Contractor's sole cost and expense, and County shall have no obligation to pay Contractor's agents, employees or subcontractors; to support any such person's or entity's claim against the Contractor; or to defend Contractor against any such claim.

Any subcontract or consultant agreement that is in excess of fifty thousand dollars (\$50,000) or twenty five percent (25%) of the value of the contract, whichever is less, or a combination of subcontracts or consultant agreements to the same individual or firm for the agreement period, or any subcontract or consultant agreement for professional medical or mental health services, regardless of value, must have prior concurrence of the Contracting Officer's Representative ("COR"). Contractor shall provide Contracting Officer Representative with copies of all other subcontracts relating to this Agreement entered into by Contractor within 30 days after the effective date of the subcontract. Such subcontractors of Contractor shall be notified

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of Contractor's relationship to County. "Subcontractor" means any entity, other than County, that furnishes to Contractor services or supplies relevant to this Agreement other than standard commercial supplies, office space, and printing services.

- 1.4.1 Contractor Responsibility. In the event any subcontractor is utilized by Contractor for any portion of the project, Contractor retains the prime responsibility for carrying out all the terms of this Agreement, including the responsibility for performance and insuring the availability and retention of records of subcontractors in accordance with this Agreement.
  - 1.4.2 Mandated Clause. All subcontracts shall include the Standard Terms and Conditions required of Contractor Articles 3, 7, 8, 9, 10, 11, 12, 13, 14 and 16 herein.
  - 1.4.3 County Approval. As identified above, all subcontracts under this Agreement shall have prior written approval of the Contracting Officer Representative.
- 1.5 Off Shore Prohibition. Except where Contractor obtains the County's prior written approval, Contractor shall perform the work of this Agreement only from or at locations within the United States. Any County approval for the performance of work outside of the United States shall be limited to the specific instance and scope of such written approval, including the types of work and locations involved. Notwithstanding the foregoing, this Section shall not restrict the country or countries of origin of any assets purchased to provide the work hereunder; provided that when such assets are used to provide the work, such assets shall be used only from or at locations within the geographic boundaries of the United States.

**ARTICLE 2**  
**SCOPE OF WORK**

- 2.1 Statement of Work. Contractor shall perform the work described in the "Statement of Work" attached as Exhibit "A" to this Agreement, and by this reference incorporated herein, except for any work therein designated to be performed by County.
- 2.2 Right to Acquire Equipment and Services. Nothing in this Agreement shall prohibit the County from acquiring the same type or equivalent equipment and/or service from other sources, when deemed by the County to be in its best interest.
- 2.3 Responsibility for Equipment. For cost reimbursement agreements, County shall not be responsible nor be held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by Contractor or any of Contractor's employees, even though such equipment may be furnished, rented, or loaned to Contractor by County. The acceptance or use of any such equipment by Contractor or Contractor's employees shall be construed to mean that Contractor accepts full responsibility for and agrees to exonerate, indemnify and hold harmless County from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment, whether such damage be to the employee or property of Contractor, other Contractors, County, or other persons. Equipment includes, but is not limited to material, computer hardware and software, tools, or other things.
  - 2.3.1 Contractor shall repair or replace, at Contractor's expense, all County equipment or fixed assets that are damaged or lost as a result of Contractor negligence.
- 2.4 Non-Expendable Property Acquisition. County retains title to all non-expendable property provided to Contractor by County, or which Contractor may acquire with funds from this Agreement if payment is on a cost reimbursement basis, including property acquired by lease purchase Agreement. Contractor may not expend funds under this Agreement for the acquisition of non-expendable property having a unit cost of \$5,000 or more and a normal life expectancy of more than one year without the prior written approval of Contracting Officer Representative. Contractor shall maintain an inventory of non-expendable equipment, including dates of purchase and disposition of the property. Inventory records on non-expendable equipment shall be retained, and shall be made available to the County upon request, for at least three years following date of disposition. Non-expendable property that has value at the end of the Agreement (e.g. has not been depreciated so that its value is zero), and to which the County may retain title under this paragraph, shall be disposed of at the end of the Agreement as follows: At County's option, it may: 1) have Contractor deliver to another County contractor or have another County contractor pick up the non-expendable property; 2) allow the contractor to retain the non-expendable property provided that the contractor submits to the County a written statement in the format directed by the County of how the non-expendable property will be used for the public good; or 3) direct the Contractor to return to the County the non-expendable property.

**ARTICLE 3**  
**DISENTANGLEMENT**

- 3.1 General Obligations.

At County's discretion, Contractor shall accomplish a complete transition of the services as set forth in Exhibit A to this Agreement (for purposes of this Article 3.1, these shall be referred to as the "Disentangled Services") being terminated from Contractor and the Subcontractors to County, or to any replacement provider designated by County, without any interruption

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of or adverse impact on the Disentangled Services or any other services provided by third parties. This process shall be referred to as the Disentanglement. Contractor shall fully cooperate with County and any new service provider and otherwise promptly take all steps, including, but not limited to providing to County or any new service provider all requested information or documentation, required to assist County in effecting a complete Disentanglement. Contractor shall provide all information or documentation regarding the Disentangled Services or as otherwise needed for Disentanglement, including, but not limited to, data conversion, client files, interface specifications, training staff assuming responsibility, and related professional services. Contractor shall provide for the prompt and orderly conclusion of all work required under the Agreement, as County may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to County or the County's designee of the Disentangled Services. All Contractor work done as part of the Disentanglement shall be performed by Contractor and will be reimbursed by the County at no more than Contractor's costs, up to the total amount of this Agreement. Contractor shall not receive any additional or different compensation for the work otherwise required by the Agreement. Contractor's obligation to provide the Services shall not cease until the earlier of the following: 1) The Disentanglement is satisfactory to County, including the performance by Contractor of all asset-transfers and other obligations of Contractor provided in this Paragraph, has been completed to the County's reasonable satisfaction or 2) twelve (12) months after the Expiration Date of the Agreement.

3.2 Disentanglement Process.

The Disentanglement process shall begin on any of the following dates: (i) the date County notifies Contractor that no funds or insufficient funds have been appropriated so that the Term shall be terminated pursuant to the Agreement, Article 7; (ii) the date designated by County not earlier than sixty (60) days prior to the end of any initial or extended term that County has not elected to extend pursuant to the Agreement's, Signature Page, Agreement Term; or (iii) the date any Termination Notice is delivered, if County elects to terminate any or all of the Services pursuant to the Agreement, Article 7. Subject to Exhibit A Contractor's obligation to perform Disentangled Services, and County's obligation to pay for Disentangled Services, shall expire: (A) when funds appropriated for payment under this Agreement are exhausted, as provided in this Agreement, Article 7; (B) at the end of the initial or extended term set forth in this Agreement's, Signature Page, Agreement Term; or (C) on the Termination Date, pursuant to this Agreement, Article 7 (with the applicable date on which Contractor's obligation to perform the Services expires being referred to herein as the "Expiration Date"). Contractor and County shall discuss in good faith a plan for determining the nature and extent of Contractor's Disentanglement obligations and for the transfer of the Disentangled Services in process provided, however, that Contractor's obligation under this Agreement to provide all Disentangled Services shall not be lessened in any respect.

3.3 Specific Obligations.

The Disentanglement shall include the performance of the following specific obligations:

3.3.1 No Interruption or Adverse Impact

Contractor shall cooperate with County and all of the County's other service providers to ensure a smooth transition at the time of Disentanglement, with no interruption of Disentangled Services or other work required under the Agreement, no adverse impact on the provision of Disentangled Services or other work required under the Agreement or County's activities, no interruption of any services provided by third parties, and no adverse impact on the provision of services provided by third parties.

3.3.2 Third-Party Authorizations.

Without limiting the obligations of Contractor pursuant to any other clause in Exhibit A herein, Contractor shall, subject to the terms of any third-party agreements, procure at no charge to County any third-party authorizations necessary to grant County the use and benefit of any third-party agreements between Contractor and third-party contractors used to provide the Disentangled Services, pending their assignment to County. Similarly, at County's direction, Contractor shall obtain all legally necessary client consents or authorizations legally necessary to transfer client data to County or any new service provider.

3.3.3 Reserved

3.3.4 Return, Transfer and Removal of Assets.

3.3.4.1 Contractor shall return to County all County assets in Contractor's possession, pursuant to Paragraph 2.4 of the Agreement.

3.3.4.2 County shall be entitled to purchase at net book value those Contractor assets used for the provision of Disentangled Services to or for County, other than those assets expressly identified by the Parties as not being subject to this provision. Contractor shall promptly remove from County's premises, or the site of



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the work being performed by Contractor for County, any Contractor assets that County, or its designee, chooses not to purchase under this provision.

3.3.5 Transfer of Leases, Licenses, and Agreements.

Contractor, at its expense, shall convey or assign to County or its designee such fully-paid leases, licenses, and other agreements used by Contractor, County, or any other Person in connection with the Disentangled Services, as County may select, when such leases, licenses, and other agreements have no other use by Contractor. Contractor's obligation described herein, shall include Contractor's performance of all obligations under such leases, licenses, and other agreements to be performed by it with respect to periods prior to the date of conveyance or assignment and Contractor shall reimburse County for any losses resulting from any claim that Contractor did not perform any such obligations.

3.3.6 Delivery of Documentation.

Contractor shall deliver to County or its designee, at County's request, all documentation and data related to County, including, but not limited to, the County Data and client files, held by Contractor, and Contractor shall destroy all copies thereof not turned over to County, all at no charge to County. Notwithstanding the foregoing, Contractor may retain one (1) copy of the documentation and data, excluding County Data, for archival purposes or warranty support.

3.4 Findings Confidential. Any reports, information, data, etc., given to or prepared or assembled by Contractor under this Agreement that the County requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

3.5 Publication, Reproduction or Use of Materials. No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The County shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement. All reports, data and other materials prepared under this Agreement shall be the property of the County upon completion of this Agreement.

**ARTICLE 4**  
**COMPENSATION**

The Pricing Schedule, and/or budget are in Exhibit C and the compensation is on the Signature page. County will pay Contractor the agreed upon price(s), pursuant to Exhibit C for the work specified in Exhibit A, Statement of Work. The County is precluded from making payments prior to receipt of services (advance payments). Contractor shall provide and maintain an accounting and financial support system to monitor and control costs to assure the Agreements completion. Invoices are subject to the requirements below.

4.1 Fiscal for Provisional Rate, or Fixed Price Contracts with Cost Reimbursement Elements (Rev. 7/1/17)

4.1.1 General Principles. Contractor shall, comply with generally accepted accounting principles and good business practices, including all applicable cost principles published by the Federal Office of Management and Budget (OMB), including 2 CFR 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS "The Uniform Guidance", which can be viewed at [https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl). Contractor shall comply with all federal, State and other funding source requirements. Contractor shall, at its own expense, furnish all cost items associated with this Agreement except as herein otherwise specified in the budget or elsewhere to be furnished by County. Contractor shall submit annually to the County a cost allocation plan in accordance with The Uniform Guidance.

If the pricing schedule and budget are segregated, the Pricing Schedule is in Exhibit C-1 and the budget for cost reimbursement elements is in Exhibit C-2. Invoices are subject to the requirements of Paragraph 4.2 below.

4.1.2 Agreement Budget for Cost Reimbursement Elements. In no event shall the Agreement budget total be increased or decreased prior to County approved Agreement amendment. Some budget line item adjustments require County review and approval. Adjustments requiring County review and approval are listed in Exhibit C-2 "Contractor's Budget."

4.1.3 Administrative Adjustment. The COR may make administrative Agreement adjustments to change or modify the budget as long as the total Agreement amount or Agreement term is not modified.

4.1.4 Agreement Amendment. An Agreement amendment signed by the Contracting Officer is required to modify the total Agreement amount or Agreement term.

4.1.5 Maximum Price. During the performance period of this Agreement, the maximum price for the same or similar items and/or services shall not exceed the lowest price at which Contractor then offers the items and/or services to its most favored customer.

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4.2 Invoices and Payment

4.2.1 Invoices. County agrees to pay Contractor in arrears only after receipt and approval of properly completed monthly invoices by the Contracting Officer's Representative ("COR") for the work performed in the prior month. Invoices shall be detailed and itemized referencing the Agreement number and a detailed listing of each pay point target, accomplishment, unit price and/or percentages, and showing the appropriate calculation for each, or cost of each line item in the budget, and a progress report documenting the status and accomplishments of Contractor during the billing period pursuant to Exhibit C, documenting the total invoiced amount by Contractor. Contractor's monthly invoices shall include a statement certifying whether it is in compliance with Paragraph 8.16 of this Agreement

4.2.2 Provisional Rates / Cost Reimbursement Elements. For provisional rates, or cost reimbursement elements, Contractor shall maintain records of its actual costs, as required herein, for those services paid under a provisional rate or as cost reimbursement. Contractor's last payment each fiscal year shall be withheld until after County and Contractor reconcile Contractor's actual costs with the amount paid from the provisional rates, if any. If County has paid Contractor more than their actual costs, Contractor shall refund County the excess amount paid in accordance with Paragraph 4.2.3. If Contractor's actual costs are more than the amount paid by County, County will pay Contractor the difference, up to, but not to exceed the annual contract amount identified in the Signature Page, in accordance with Paragraph 4.2.3 County's obligation to pay is also subject to the other requirements of this Agreement.

4.2.3 Payments. Payment for the services performed under this Agreement shall be in accordance with Exhibit C, unless other payment methodologies are negotiated and agreed to by both Contractor and County. Contractor shall maintain supporting documentation of expenses as specified in Articles 11 and 13 for provisional rates or cost reimbursement elements. Payments will be made in arrears after receipt of properly completed invoice approved by the COR. Payment shall be NET 30 days from receipt and approval of invoice unless otherwise stated.

For Provisional Rates, County will reimburse the good faith estimate of the actual allowable, allocable and reasonable costs incurred associated with the work performed during the month of service. Contractor shall maintain supporting documentation of expenses as specified in Articles 11 and 13.

4.2.3.1 This monthly invoice shall reflect a good faith estimate of the actual allowable, allocable and reasonable costs incurred associated with the work performed during the month of service. This good faith estimate shall be based on the budgeted net unit cost for each service category, hereafter known as provisional rates, multiplied by the units provided.

4.2.3.2 Reconciliation of Good Faith Estimates to Actual Allowable Expenses. Contractor shall submit a cost report to complete a reconciliation of the actual allowable, allocable and reasonable expenses incurred associated with the work performed under this agreement twice annually at a minimum; the COR may require them more frequently. Cost reports submitted by Contractor shall include the actual allowable cumulative year to date expenses by service category for the period. Upon receipt of each cost report, County will reconcile year to date payments with year to date actual allowable, allocable and reasonable expenses and adjust the next monthly invoice for under payments or overpayments in excess of \$100. Cost reports shall also include total amounts over paid by the County to Contractor or under paid by the County to the Contractor for each month of service. At the end of each fiscal year, Contractor shall complete an annual reconciliation of the actual allowable expenses incurred associated with the work performed under this agreement for that fiscal year. Overpayments and underpayments will be adjusted during the fiscal year and at the end of the fiscal year as instructed by the COR.

4.2.3.3 Final Fiscal Year End Settlements. Contractor shall submit the final cost report reflecting the actual costs for reimbursement for services performed during the County fiscal year by the final fiscal year settlement date, which will be established by each program. This settlement date shall be no more than 60 calendar days from the end of the County fiscal year. Upon receipt of the fiscal year end cost report, County will reconcile year to date payments with fiscal year end actual allowable, allocable and reasonable expenses. County will reimburse Contractor for underpayments and will recoup overpayments from Contractor. County may, in its sole discretion, choose to not process invoices for reimbursement for services performed during that fiscal year after this date. The County fiscal year shall be defined as July 1, through June 30, unless otherwise defined in this Agreement. ||

4.2.3.4 Final Agreement Settlement Date. Contractor shall submit the final invoice for reimbursement for services performed during the final fiscal year of the contract by the final contract settlement date, which shall be no more than 60 calendar days from the final date of the contract services. County may, in its sole discretion, choose to not process invoices for reimbursement for services performed during the final fiscal year of the contract after the final Agreement settlement date.

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4.2.4 Full Compensation. Pending any adjustments by the COR and except as otherwise provided for in the cost reports submitted by Contractor to County if Provisional Rates are utilized, each invoice approved and paid shall constitute full and complete compensation to Contractor for all work completed during the billing period pursuant to Exhibit A and Exhibit C. This Agreement constitutes the entire Agreement between Contractor and County. Contractor shall be entitled only to payment and, if Provisional Rates or Reimbursable elements are included in this Agreement, reimbursement for allowable, allocable and reasonable costs, associated with services pursuant to Exhibit A.

4.2.5 Prompt Payment for Vendors and Subcontractors

4.2.5.1 Prompt payment for vendors and subcontractors.

4.1.5.1.1. Unless otherwise set forth in this paragraph, Contractor shall promptly pay its vendors and subcontractor(s) for satisfactory performance under its subcontract(s) to this Agreement. Such prompt payment shall be no later than thirty (30) days after Contractor receives payment for such services from County and shall be paid out of such amounts as are paid to Contractor under this Agreement.

4.1.5.1.1. Contractor shall include a payment clause conforming to the standards set forth in Paragraph 4.1.5.1.1 of this Agreement in each of its subcontracts, and shall require each of its subcontractors to include such a clause in their subcontracts with each lower-tier subcontractor or supplier.

4.2.5.2 If Contractor, after submitting a claim for payment to County but before making a payment to a vendor or subcontractor for the goods or performance covered by the claim, discovers that all or a portion of the payment otherwise due such vendor or subcontractor is subject to withholding from the vendor or subcontractor in accordance with the vendor or subcontract agreement, then the Contractor shall:

4.1.5.1.1. Furnish to the vendor or subcontractor and the COR within three (3) business days of withholding funds from its vendor or subcontractor a notice stating the amount to be withheld, the specific causes for the withholding under the terms of the subcontract or vendor agreement; and the remedial actions to be taken by the vendor or subcontractor in order to receive payment of the amounts withheld.

4.1.5.1.1. Contractor shall reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph 4.1.5.1.1 of this Agreement and Contractor may not claim from the County this amount until its subcontractor has cured the cause of Contractor withholding funds;

4.1.5.1.1. Upon the vendor's or subcontractor's cure of the cause of withholding funds, Contractor shall pay the vendor or subcontractor as soon as practicable, and in no circumstances later than ten (10) days after the Contractor claims and receives such funds from County.

4.2.5.3 Contractor shall not claim from County all of or that portion of a payment otherwise due to a vendor or subcontractor that Contractor is withholding from the vendor or subcontractor in accordance with the subcontract agreement where Contractor withholds the money before submitting a claim to County. Contractor shall provide its vendor or subcontractor and the COR with the notice set forth in Paragraph 4.2.5.2.1 of this Agreement and shall follow Paragraph 4.2.5.2.3 of this Agreement when vendor or subcontractor cures the cause of Contractor withholding its vendors or subcontractor's funds.

4.2.5.4 Overpayments. If Contractor becomes aware of a duplicate contract financing or invoice payment or that County has otherwise overpaid on a contract financing or invoice payment, Contractor shall immediately notify the COR and request instructions for disposition of the overpayment.

4.2.6 Availability of Funding. The County's obligation for payment of any Agreement beyond the current fiscal year is contingent upon the availability of funding from which payment can be made. No legal liability on the part of the County shall arise for payment beyond June 30 of the calendar year unless funds are designated by the County and are made available for such performance.

County shall, in its sole discretion, have the right to terminate or suspend this Agreement or reduce compensation and service levels proportionately upon thirty (30) days' written notice to Contractor in the event that Federal, State or County funding for this Agreement ceases or is reduced prior to the ordinary expiration of the term of this Agreement. In the event of reduction of funding for the Agreement, County and Contractor shall meet within ten (10) days of written notice to renegotiate this Agreement based upon the modified level of funding. In this case if no Agreement is reached between County and Contractor within 10 days of the first meeting, either party shall have the right to terminate this Agreement within ten (10) days written notice of termination.

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In the event of termination of this Agreement in accordance with the terms of this Section, Contractor shall be entitled to retain all sums paid as of the effective date of such termination, subject to any payment offset to which County may be entitled, for damages or otherwise, under the terms of this Agreement. In the event of termination of this Agreement pursuant to this Section, in no event shall Contractor be entitled to any loss of profits on the portion of this Agreement so terminated, or to other compensation, benefits, reimbursements or ancillary services other than as herein expressly provided.

- 4.2.7 Conditions Prerequisite To Payments. County may elect not to make a particular payment if any of the following exists:
  - 4.2.7.1 Misrepresentation. Contractor, with or without knowledge, made any misrepresentation of substantial and material nature with respect to any information furnished to County.
  - 4.2.7.2 Unauthorized Actions by Contractor. Contractor took any action pertaining to this Agreement, which required County approval, without having first received said County approval.
  - 4.2.7.3 Default. Contractor was in default under any terms and conditions of this Agreement.
  - 4.2.7.4 Fees for Service. Contractor implemented a schedule of fees to be charged to clients or third party client representatives without prior County approval, unless authorized elsewhere in this Agreement.
- 4.2.8 Withholding Of Payment. County may withhold reimbursement until reports, data, audits, or other information required for Agreement administration or to meet County, State, Federal or other funding source reporting or auditing requirements are received and approved by COR or designee. County may also withhold payment if, in County's opinion, Contractor is in noncompliance with this Agreement.
- 4.2.9 Interpretation of Claim Provisions. As used in this Article 4, the term "claim" refers to a claim filed pursuant to San Diego County Code of Administrative Ordinances Article V-A, "Processing and Certification of Routine Claims." The term "claim" as used in this Article 4 does not refer to a claim filed pursuant to San Diego County Code of Administrative Ordinances, Article X, "Claims against the County."
- 4.2.10 Severability Limits. Severability pertains only to those Agreements that originate in one fiscal year and end in another fiscal year. This Agreement is severable for and limited to the amounts in the attached budget. In no event shall Contractor exceed the Severability Limits.
- 4.2.11 Disallowance. In the event Contractor receives payment from County for a service, reimbursement for which is later disallowed by County or the State, the Federal government, or any other funding source, Contractor shall promptly refund the disallowed amount to County on request, or County may offset the amount disallowed from any payment due to or to become due to Contractor under this Agreement or any other Agreement. Similarly, a disallowance under a prior Agreement may be offset against this Agreement.
- 4.2.12 Partial Payment. If Contractor fails to perform specified services, provide specified products or perform services or provide products timely and in accordance with specified requirements, Contractor shall be paid only the reasonable cost for the services performed or products provided for the payment period as determined by the COR.
- 4.2.13 Project Generated Revenue. Project Generated Revenue realized by Contractor in excess of the Agreement budget shall be utilized in support of the Project.
  - 4.2.13.1 Project Generated Revenue and Expenditures shall be reported at the end of the Agreement period.
  - 4.2.13.2 With COR approval, Contractor may expend a remaining balance of project generated revenue in the term of a subsequent County Agreement in support of this Project.
- 4.2.14 Rate of Expense. Contractor shall control its rate of expense in relation to units of service and anticipated revenues.
- 4.2.15 Contractor shall inform the COR when it is anticipated that the need for services will exceed the approved service units and budget; however, Contractor's claim/invoice shall not exceed the approved budget.
- 4.2.16 Any records of revenues, expenditures and/or clinical records under this Agreement shall be subject to compliance with Federal, State or local laws or regulations and may be audited and/or reviewed by the County and/or the appropriate Federal, State or County agency. In the event of an audit disallowance of any claimed cost which is subject to compliance with Federal, State or local law or regulations, Contractor shall be liable for any costs or lost revenue resulting therefrom.

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**ARTICLE 5**  
**AGREEMENT ADMINISTRATION**

- 5.1 County's Agreement Administrator. The Director of Purchasing and Contracting is designated as the Contracting officer ("Contracting Officer") and is the only County official authorized to make any Changes to this Agreement. The County has designated the individual identified on the signature page as the Contracting Officer's Representative ("COR")
- 5.1.1 County's COR will chair Contractor progress meetings and will coordinate County's Agreement administrative functions. The COR is designated to receive and approve Contractor invoices for payment, audit and inspect records, inspect Contractor services, and provide other technical guidance as required. The COR is not authorized to change any terms and conditions of this Agreement. Only the Contracting Officer, by issuing a properly executed amendment to this Agreement, may make changes to the scope of work or total price.
- 5.1.2 Notwithstanding any provision of this Agreement to the contrary, County's COR may make Administrative Adjustments ("AA") to the Agreement, such as line item budget changes or adjustments to the service requirements that do not change the purpose or intent of the Statement of Work, the Terms and Conditions, the Agreement Term or the total Agreement price. Each AA shall be in writing and signed by COR and Contractor. All inquiries about such AA will be referred directly to the COR.
- 5.2 Agreement Progress Meeting. The COR and other County personnel, as appropriate, will meet periodically with the Contractor to review the Agreement performance. At these meetings the COR will apprise the Contractor of how the County views the Contractor's performance and the Contractor will apprise the County of problems, if any, being experienced. The Contractor shall also notify the Contracting Officer (in writing) of any work being performed, if any, that the Contractor considers being over and above the requirements of the Agreement. Appropriate action shall be taken to resolve outstanding issues. The minutes of these meetings will be reduced to writing and signed by the COR and the Contractor. Should the Contractor not concur with the minutes, the Contractor shall set out in writing any area of disagreement. Appropriate action will be taken to resolve any areas of disagreement.

**ARTICLE 6**  
**CHANGES**

- 6.1 Contracting Officer. The Contracting Officer may at any time, by a written order, make changes ("Changes"), within the general scope of this Agreement, in the definition of services to be performed, and the time (i.e.) hours of the day, days of the week, etc. and place of performance thereof. If any such Change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Agreement, whether changed or not changed by such an order, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified in writing accordingly. Such changes may require Board of Supervisors approval.
- 6.2 Claims. Contractor must assert any claim for adjustment under this clause within thirty (30) days from the date of receipt by the Contractor of the notification of Change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Agreement. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Agreement entitled "Disputes" (Article 15). However, nothing in this clause shall excuse the Contractor from proceeding with this Agreement as changed.

**ARTICLE 7**  
**SUSPENSION, DELAY AND TERMINATION**

- 7.1 Termination for Default. Upon Contractor's breach of this Agreement, County shall have the right to terminate this Agreement, in whole or part. Prior to termination for default, County will send Contractor written notice specifying the cause. The notice will give Contractor ten (10) days from the date the notice is issued to cure the default or make progress satisfactory to County in curing the default, unless a different time is given in the notice. If County determines that the default contributes to the curtailment of an essential service or poses an immediate threat to life, health or property, County may terminate this Agreement immediately upon issuing oral or written notice to the Contractor without any prior notice or opportunity to cure. In the event of termination under this Article, all finished or unfinished documents, and other materials, prepared by Contractor under this Agreement shall become the sole and exclusive property of County.

In the event of such termination, the County may purchase or obtain the supplies or services elsewhere, and Contractor shall be liable for the difference between the prices set forth in the terminated order and the actual cost thereof to the County. The prevailing market price shall be considered the fair repurchase price. Notwithstanding the above, Contractor shall not be relieved of liability to County for damages sustained by County by virtue of any breach of this Agreement by Contractor, and

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County may withhold any reimbursement to Contractor for the purpose of off-setting until such time as the exact amount of damages due County from Contractor is determined.

If, after notice of termination of this Agreement under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, the rights and obligations of the parties shall, if this Agreement contains a clause providing for termination for convenience of the County, be the same as if the notice of termination had been issued pursuant to such clause.

- 7.2 Damages for Delay. If Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as shall ensure its completion within the time specified in this Agreement, or any extension thereof, or fails to complete said work within such time, County will be entitled to the resulting damages caused by the delay. Damages will be the cost to County incurred as a result of continuing the current level and type of service over that cost that would be incurred had the Agreement segments been completed by the time frame stipulated and any other damages suffered by County.
- 7.3 County Exemption from Liability. In the event there is a reduction of funds made available by County to Contractor under this or subsequent agreements, the County of San Diego and its Departments, officers and employees shall incur no liability to Contractor and shall be held harmless from any and all claims, demands, losses, damages, injuries, or liabilities arising directly or from such action.
- 7.4 Full Cost Recovery Of Investigation And Audit Costs. Contractor shall reimburse County of San Diego for all direct and indirect expenditures incurred in conducting an audit/investigation when Contractor is found in violation (material breach) of the terms of the Agreement.

At the sole discretion of the County, and subject to funding source restrictions and federal and State law, County may (1) withhold reimbursement for such costs from any amounts due to Contractor pursuant to the payment terms of the Agreement, (2) withhold reimbursement for such costs from any other amounts due to Contractor from County, and/or (3) require Contractor to remit a check for the total amount due (or a lesser amount specified by the County) to County within thirty (30) days of request by County. Alternatively, at the County's sole discretion, County and Contractor may enter into a written repayment plan for the reimbursement of the audit/investigation costs.

- 7.5 Termination for Convenience. The County may, by written notice stating the extent and effective date terminate this Agreement for convenience in whole or in part, at any time. The County shall pay the Contractor as full compensation for work performed in accordance with the terms of this Agreement until such termination:
- 7.5.1 The unit or pro rata price for any delivered and accepted portion of the work.
- 7.5.2 A reasonable amount, as costs of termination, not otherwise recoverable from other sources by the Contractor as approved by the County, with respect to the undelivered or unaccepted portion of the order, provided compensation hereunder shall in no event exceed the total price.
- 7.5.3 In no event shall the County be liable for any loss of profits on the resulting order or portion thereof so terminated.
- 7.5.4 County's termination of this Agreement for convenience shall not preclude County from taking any action in law or equity against Contractor for:
- 7.5.4.1 Fraud, waste or abuse of Agreement funds, or
- 7.5.4.2 Improperly submitted claims, or
- 7.5.4.3 Any failure to perform the work in accordance with the Statement of Work, or
- 7.5.4.4 Any breach of any term or condition of the Agreement, or
- 7.5.4.5 Any actions under any warranty, express or implied, or
- 7.5.4.6 Any claim of professional negligence, or
- 7.5.4.7 Any other matter arising from or related to this Agreement, whether known, knowable or unknown before, during or after the date of termination.
- 7.6 Suspension of Work. The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Agreement for the period of time that the Contracting Officer determines appropriate for the convenience of the Government. County reserves the right to prohibit, without prior notice, contractor or contractor's employees, directors, officers, agents, subcontractors, vendors, consultants or volunteers from 1) accessing County data systems and County owned software applications, including websites, domain names, platforms, physical files, 2) treating County's patients, clients, or facility residents, or 3) providing any other services under this Agreement.

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- 7.7 Remedies Not Exclusive. The rights and remedies of County provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law, equity, or under resulting order.

**ARTICLE 8**  
**COMPLIANCE WITH LAWS AND REGULATIONS**

- 8.1 Compliance with Laws and Regulations. Contractor shall at all times perform its obligations hereunder in compliance with all applicable federal, State, County, and local laws, rules, and regulations, current and hereinafter enacted, including facility and professional licensing and/or certification laws and keep in effect any and all licenses, permits, notices and certificates as are required. Contractor shall further comply with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health and sanitation.
- 8.2 Contractor Permits and License. Contractor certifies that it possesses and shall continue to maintain or shall cause to be obtained and maintained, at no cost to the County, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its employees to comply with all existing foreign or domestic statutes, ordinances, and regulations, or other laws, that may be applicable to performance of services hereunder. The County reserves the right to reasonably request and review all such applications, permits, and licenses prior to the commencement of any services hereunder.
- 8.3 Equal Opportunity. Contractor shall comply with the provisions of Title VII of the Civil Rights Act of 1964 in that it will not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment nor shall Contractor discriminate in any way that would deprive or intend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, handicap, medical condition, sexual orientation or marital status.
- 8.4 Affirmative Action. Each Contractor of services and supplies employing fifteen (15) or more full-time permanent employees, shall comply with the Affirmative Action Program for Vendors as set forth in Article IIIk (commencing at Section 84) of the San Diego County Administrative Code, which program is incorporated herein by reference. A copy of this Affirmative Action Program will be furnished upon request by COR or from the County of San Diego Internet web-site (www.co.san-diego.ca.us).
- 8.5 Non Discrimination. Contractor shall ensure that services and facilities are provided without regard to ethnic group identification, race, color, nation origin, creed, religion, age, sex, physical or mental disability, political affiliation or marital status in accordance with applicable laws, including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C 200-d), Section 162 (a) of the Federal-Aid Highway Act of 1973 (23 U.S.C 324), Section 504 of the Rehabilitation Act of 1973, The Civil Rights Restoration Act of 1987 (P.L. 100-209), Executive Order 12898 (February 11, 1994), Executive Order 13166 (August 16, 2000), Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000-d), the Age Discrimination of 1975 (42 U.S.C. 6101), Article 9.5, Chapter 1, Part 1, Division 2, Title 2 (Section 11135, et seq) of the California Government Code, Title 9, Chapter 4, Subchapter 6 (Section 10800, et seq) of the CCR and California Dept of Social Services Manual of Policies and Procedures (CDSS MPP) Division 21.
- 8.6 AIDS Discrimination. Contractor shall not deny any person the full and equal enjoyment of, or impose less advantageous terms, or restrict the availability of, the use of any County facility or participation in any County funded or supported service or program on the grounds that such person has Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS) as those terms are defined in Title 3, Division 2, Chapter 8, Section 32.803, of the San Diego County Code of Regulatory Ordinances.
- 8.7 American with Disabilities Act (ADA) 1990. Contractor shall not discriminate against qualified people with disabilities in employment, public services, transportation, public accommodations and telecommunications services in compliance with the Americans with Disabilities Act (ADA) and California Administrative Code Title 24.
- 8.8 Political Activities Prohibited. None of the funds, provided directly or indirectly, under this Agreement shall be used for any political activities or to further the election or defeat of any candidate for public office. Contractor shall not utilize or allow its name to be utilized in any endorsement of any candidate for elected office. Neither this Agreement nor any funds provided hereunder shall be utilized in support of any partisan political activities, or activities for or against the election of a candidate for an elected office.
- 8.9 Lobbying. Contractor agrees to comply with the lobbying ordinances of the County and to assure that its officers and employees comply before any appearance before the County Board of Supervisors. Except as required by this Agreement, none of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before State and federal Legislatures, the Board of Supervisors of the County, or before any other local governmental entity. This provision shall not preclude Contractor from seeking necessary permits, licenses and the like necessary for it to comply with the terms of this Agreement.

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- 8.9.1 Byrd Anti-Lobbying Amendment. Contractor shall file Standard Form-LLL, "Disclosure Form to Report Lobbying," to certify 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. Contractor shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award by Contractor or Contractor's Subcontractors. In accordance with 31 U.S.C. 1352, Contractor shall also file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Contractor shall include this provision in all subcontracts and require each of its subcontractors to comply with the certification and disclosure requirements of this provision.
- 8.10 Religious Activity Prohibited. There shall be no religious worship, instructions or proselytization as part of or in connection with the performance of this Agreement.
- 8.11 Drug and Alcohol-Free Workplace. The County of San Diego, in recognition of individual rights to work in a safe, healthful and productive work place, has adopted a requirement for a drug and alcohol free work place, County of San Diego Drug and Alcohol Use Policy C-25, available on the County of San Diego website. This policy provides that all County-employed Contractors and Contractor employees shall assist in meeting this requirement.
  - 8.11.1 As a material condition of this Agreement, the Contractor agrees that the Contractor and the Contractor employees, while performing service for the County, on County property, or while using County equipment:
    - 8.11.1.1 Shall not be in any way impaired because of being under the influence of alcohol or a drug.
    - 8.11.1.2 Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.
    - 8.11.1.3 Shall not sell, offer, or provide alcohol or an illegal drug to another person; provided, however, that the foregoing restriction shall not be applicable to a Contractor or Contractor employee who as part of the performance of normal job duties and responsibilities prescribes or administers medically prescribed drugs.
  - 8.11.2 Contractor shall inform all employees who are performing service for the County on County property or using County equipment of the County objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.
  - 8.11.3 The County may terminate for default or breach this Agreement, and any other agreement the Contractor has with the County, if the Contractor, or Contractor employees are determined by the Contracting Officer not to be in compliance with the conditions listed herein.
- 8.12 Board of Supervisors' Policies. Contractor represents that it is familiar, and shall use its best efforts to comply, with the following policies of the Board of Supervisors, available on the County of San Diego website:
  - 8.12.1 Board Policy B-67, which encourages the County's Contractors to offer products made with recycled materials, reusable products, and products designed to be recycled to the County in response to the County's requirements; and
  - 8.12.2 Board Policies B-53 and B-39a, which encourage the participation of small and disabled veterans' business enterprises in County procurements; and
  - 8.12.3 Zero Tolerance for Fraudulent Conduct in County Services. Contractor shall comply with County of San Diego Board of Supervisors Policy A-120 "Zero Tolerance for Fraudulent Conduct in County Services." There shall be "Zero Tolerance" for fraud committed by contractors in the administration of County programs and the provision of County services. Upon proven instances of fraud committed by independent contractors in connection with their performance under the Agreement, said contractor shall be subject to corrective action up to and including termination of the Agreement; and
  - 8.12.4 Interlocking Directorate. In recognition of Board Policy A-79, available on the County of San Diego Website, not-for-profit Contractors shall not subcontract with related for-profit subcontractors for which an interlocking relationship exist unless specifically authorized in writing by the Board of Supervisors; and
  - 8.12.5 Zero Tolerance in Coaching Medi-Cal or Welfare Clients (Including Undocumented Immigrants). The County of San Diego in recognition of its unique geographical location and the utilization of the Welfare and Medi-Cal systems by foreign nationals who are not legal residents of this county or country, has adopted a Zero Tolerance policy and shall aggressively prosecute employees and Contractors who coach Medi-Cal or Welfare clients (including undocumented immigrants), to obtain services for which they are not otherwise entitled.



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As a material condition of this Agreement, Contractor agrees that the Contractor and Contractor's employees, while performing service for the County, on County property or while using County equipment shall not:

- (a) in any way coach, instruct, advise, or guide any Medi-Cal or Welfare clients or prospective clients who are undocumented immigrants on ways to obtain or qualify for Medi-Cal assistance, for which they are not otherwise entitled.
- (b) support or provide funds to any organization engaged directly or indirectly in advising undocumented immigrants on ways to obtain or qualify for Medi-Cal assistance, for which they are not otherwise entitled.

Contractor shall inform all employees that are performing service for the County on County property or using County equipment of County's Zero Tolerance Policy as referenced herein.

County may terminate for default or breach this Agreement and any other agreement Contractor has with County, if Contractor or Contractor employees are determined not to be in compliance with the conditions stated herein.

- 8.13 Cartwright Act. Following receipt of final payment under the Agreement, Contractor assigns to the County all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright act (Chapter 2) (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County under this Agreement.
- 8.14 Hazardous Materials. Contractor shall comply with all Environmental Laws and all other laws, rules, regulations, and requirements regarding Hazardous Materials, health and safety, notices, and training. Contractor agrees that it will not store any Hazardous Materials at any County facility for periods in excess of ninety (90) days or in violation of the applicable site storage limitations imposed by Environmental Law. Contractor agrees to take, at its expense, all actions necessary to protect third parties, including, without limitation, employees and agents of the County, from any exposure to Hazardous Materials generated or utilized in its performance under this Agreement. Contractor agrees to report to the appropriate governmental agencies all discharges, releases, and spills of Hazardous Materials that are required to be reported by any Environmental Law and to immediately notify the County of it. Contractor shall not be liable to the County for the County's failure to comply with, or violation of, any Environmental Law. As used in this section, the term "Environmental Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including, but not limited to, the Resource Conservation and Recovery Act, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions or other similar substances or conditions. As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (b) is controlled, referred to, designated in or governed by any Environmental Laws; (c) gives rise to any reporting, notice or publication requirements under any Environmental Laws, or (d) is any other material or substance giving rise to any liability, responsibility or duty upon the County or Lessee with respect to any third person under any Environmental Laws.
- 8.15 Clean Air Act and Federal Water Pollution Control Act.
  - 8.15.1 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 USDA and the appropriate EPA Regional Office.
  - 8.15.2 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 USDA and the appropriate EPA Regional Office.
- 8.16 Debarment, Exclusion, Suspension, and Ineligibility.
  - 8.16.1 Contractor certifies that, except as disclosed to County and acknowledged in writing by County prior to the execution of this Agreement, Contractor, its employees, directors, officers, agents, subcontractors, vendors, consultants, and volunteers:
    - 8.16.1.1 Are not presently debarred, excluded, suspended, declared ineligible, voluntarily excluded, or proposed for debarment, exclusion, suspension or ineligibility by any federal, state, or local department or agency; and
    - 8.16.1.2 Have not within a 3-year period preceding this Agreement been convicted of, or had a civil or administrative judgment rendered against them for, the commission of fraud or a criminal offense or civil action in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction; violation of federal or State anti-trust statutes or commission of embezzlement, theft, forgery,

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bribery, falsification or destruction of records, making false statements, receiving stolen property; physical, financial or sexual abuse or misconduct with a patient or client, or medical negligence or malpractice;

- 8.16.1.3 Are not presently indicted or otherwise criminally, civilly or administratively charged by a government entity (federal, State, or local) with commission of any of the offenses enumerated in the paragraph above; and
- 8.16.1.4 Have not within a 3-year period preceding this Agreement had one or more public transaction (federal, State, or local) terminated for cause or default.

8.16.2 Contractor shall have an ongoing duty during the term of this Agreement to disclose to the County any occurrence that would prevent Contractor from making the certifications contained in this Section 8.16 on an ongoing basis. Such disclosure shall be made in writing to the COR and the County Office of Ethics and Compliance within five (5) business days of when Contractor discovers or reasonably believes there is a likelihood of such occurrence.

8.16.3 Contractor invoices shall include the following language:

I certify that the above deliverables and/or services were delivered and/or performed specifically for this Agreement in accordance with the terms and conditions set forth herein.

I further certify, under penalty of perjury under the laws of the State of California, that no employee or entity providing services under the terms and conditions of this Agreement is currently listed as debarred, excluded, suspended, or ineligible on the Federal System for Award Management (SAM: <http://SAM.gov>), the Federal Health and Human Services Office of Inspector General List of Excluded Individuals/Entities (LEIE: <http://exclusions.oig.hhs.gov>), or the State of California Medi-Cal Suspended and Ineligible list ([www.medical.ca.gov](http://www.medical.ca.gov)).

8.17 Display of Fraud Hotline Poster(s). As a material term and condition of this Agreement, Contractor shall:

8.17.1 Prominently display in common work areas within all business segments performing work under this Agreement County of San Diego Office of Ethics and Compliance Ethics Hotline posters;

8.17.2 Posters may be downloaded from the County Office of Ethics and Compliance website at: <http://www.sandiegocounty.gov/content/sdc/cao/oec.html>. Additionally, if Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website;

8.17.3 If Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, the Contractor need not display the County poster;

8.17.4 In the event Contractor subcontracts any of the work performed under this Agreement, Contractor include this clause in the subcontract(s) and shall take appropriate steps to ensure compliance by the subcontractor(s).

8.18 False Claims Act Training. Contractor shall, not less than annually, provide training on the Federal False Claims Act (31 USC 3729-3730) and State False Claims Act (California Government Code 12650-12653) to all employees, directors, officers, agents, subcontractors, consultants or volunteers providing services under this Agreement. Contractor shall maintain verification of this training. Contractor shall retain these forms, or an electronic version, in accordance with the Agreement requirement for retention of records. For the purposes of this section, "Subcontractor" shall include any entity, other than County, that furnishes to Contractor services or supplies relevant to this Agreement other than standard commercial supplies, office space, and printing services.

8.19 Code of Ethics. As a material term and condition of this Agreement, Contractor shall develop and implement a Code of Ethics or similar document and maintain it during the term of this Agreement. Additionally, Contractor shall train all employees and volunteers on the Code of Ethics, and all employees, volunteers, directors, officers, and agents shall certify that they have received training and have been provided an opportunity to ask questions of their employer regarding the Code of Ethics. Contractor shall retain these certifications in accordance with the Agreement's provision regarding retention of records. Contractor shall pass this requirement down to its subcontractors in its entirety. For purposes of this section, "Subcontractor" shall mean any entity, other than County, that furnishes to Contractor services or supplies relevant to this Agreement other than standard commercial supplies, office space, and printing services.

8.20 Compliance Program. Contractors with an agreement that exceeds more than \$250,000 in value annually shall establish, and maintain for the duration of this Agreement, a compliance program that meets the standards of Federal Sentencing Guidelines section 8B2.1 and 42 CFR 438.608 (b)(1) – (b) (7) regardless of funding source or services.

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- 8.21 Investigations. Unless prohibited by an investigating government authority, Contractor shall cooperate and participate fully in any investigation initiated by County relative to this Agreement. Upon County's request, Contractor shall promptly provide to County any and all documents, including any and all communications or information stored digitally, and make available for interviews any employee(s) of Contractor identified by County. Contractor further agrees to immediately notify County if any employee, director, officer, agent, subcontractor, vendor, consultant or volunteer of Contractor comes under investigation by any federal, State or local government entity with law enforcement or oversight authority over the Agreement or its funding for conduct arising out of, or related to, performance under this Agreement.
- Contractor shall promptly make available to County all internal investigative results, findings, conclusions, recommendations and corrective action plans pertaining to the investigation in its possession as requested by the County, unless otherwise protected by applicable law or privilege.
- 8.22 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms. Contractor shall, in accordance with 2 CFR 200.321 - Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms, take affirmative steps to include minority business, women's business enterprises, and labor surplus area firm by:
- 8.22.1 Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - 8.22.2 Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - 8.22.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - 8.22.4 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
  - 8.22.5 Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- 8.23 Procurement of Recovered Materials. Contractor shall comply with 2 CFR part 200.322. Contractor shall procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000. Contractor certifies that the percentage of recovered materials to be used in the performance of this Agreement will be at least the amount required by applicable specifications or other contractual requirements. For contracts over \$100,000 in total value, Contractor shall estimate the percentage of total material utilized for the performance of the Agreement that is recovered materials and shall provide such estimate to County upon request.
- 8.24 Contract Work Hours and Safety Standards. If mechanics or laborers are to be employed under this Agreement, Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Contractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Contractor shall not require any laborer or mechanic to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous.

ARTICLE 9  
CONFLICTS OF INTEREST; CONTRACTOR'S CONDUCT

- 9.1 Conflicts of Interest. Contractor presently has no interest, including but not limited to other projects or independent agreements, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor shall not employ any person having any such interest in the performance of this Agreement. Contractor shall not hire County's employees to perform any portion of the work or services provided for herein including secretarial, clerical and similar incidental services except upon the written approval of County. Without such written approval, performance of services under this Agreement by associates or employees of County shall not relieve Contractor from any responsibility under this Agreement.
- 9.1.1 California Political Reform Act and Government Code Section 1090 Et Seq. Contractor acknowledges that the California Political Reform Act ("Act"), Government Code section 81000 et seq., provides that Contractors hired by a public agency, such as County, may be deemed to be a "public official" subject to the Act if the Contractor advises the agency on decisions or actions to be taken by the agency. The Act requires such public officials to disqualify themselves from participating in any way in such decisions if they have any one of several specified "conflicts of interest" relating to the decision. To the extent the Act applies to Contractor, Contractor shall abide by the Act. In

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addition, Contractor acknowledges and shall abide by the conflict of interest restrictions imposed on public officials by Government Code section 1090 et seq.

9.2 Conduct of Contractor.

- 9.2.1 Contractor shall inform the County of all Contractor's interests, if any, that are, or that Contractor believes to be, incompatible with any interests of the County.
- 9.2.2 Contractor shall not, under circumstances that might reasonably be interpreted as an attempt to influence the recipient in the conduct of his duties, accept any gratuity or special favor from individuals or organizations with whom the Contractor is doing business or proposing to do business, in accomplishing the work under this Agreement.
- 9.2.3 Contractor shall not use for personal gain or make other improper use of confidential information, which is acquired in connection with his employment. In this connection, the term "confidential information" includes, but is not limited to, unpublished information relating to technological and scientific development; medical, personnel, or security records of the individuals; anticipated materials requirements or pricing actions; and knowledge of selections of Contractors or subcontractors in advance of official announcement.
- 9.2.4 Contractor, its employees, directors, officers, agents, subcontractors, vendors, consultants, and volunteers shall not offer, directly or indirectly, any unlawful gift, gratuity, favor, entertainment, or other item(s) of monetary value to an employee or official of the County.
- 9.2.5 Referrals. Contractor further covenants that no referrals of clients through Contractor's intake or referral process shall be made to the private practice of any person(s) employed by the Contractor.

9.3 Prohibited Agreements. As required by Section 67 of the San Diego County Administrative Code, Contractor certifies that it is not in violation of the provisions of Section 67, and that Contractor is not, and will not subcontract with, any of the following:

- 9.3.1. Persons employed by County or of public agencies for which the Board of Supervisors is the governing body;
- 9.3.2. Profit-making firms or businesses in which employees described in sub-section 9.3.1, above, serve as officers, principals, partners, or major shareholders;
- 9.3.3. Persons who, within the immediately preceding twelve (12) months came within the provisions of the above sub-sections and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the Agreement, or (2) participated in any way in developing the Agreement or its service specifications; and
- 9.3.4. Profit-making firms or businesses, in which the former employees described in sub-section 9.3.3 above, serve as officers, principals, partners, or major shareholders.

9.4 Limitation of Future Agreements or Grants. It is agreed by the parties to the Agreement that Contractor shall be restricted in its future contracting with the County to the manner described below. Except as specifically provided in this clause, Contractor shall be free to compete for business on an equal basis with other companies.

- 9.4.1 If Contractor, under the terms of the Agreement, or through the performance of tasks pursuant to this Agreement, is required to develop specifications or statements of work and such specifications or statements of work are to be incorporated into a solicitation, Contractor shall be ineligible to perform the work described within that solicitation as a prime or subcontractor under an ensuing County agreement. It is further agreed, however, that County will not, as additional work, unilaterally require Contractor to prepare such specifications or statements of work under this Agreement.
- 9.4.2 Contractor may not apply for nor accept additional payments for the same services contained in the Statement of Work.

**ARTICLE 10**  
**INDEMNITY AND INSURANCE**

- 10.1 Indemnity. County shall not be liable for, and Contractor shall defend and indemnify County and the employees and agents of County (collectively "County Parties"), against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to this Agreement or the work covered by this Agreement and arising either directly or indirectly from any act, error, omission or negligence of Contractor or its Contractors, licensees, agents, servants or employees, including, without limitation, Claims caused by the sole passive negligent act or the concurrent negligent act, error or omission, whether active or passive, of County Parties. Contractor shall have no obligation,

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however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of County Parties.

- 10.2 Insurance. Prior to execution of this Agreement, Contractor must obtain at its own cost and expense, and keep in force and effect during the term of this Agreement, including all extensions, the insurance specified in Exhibit "B," "Insurance Requirements," attached hereto.

**ARTICLE 11**  
**AUDIT AND INSPECTION OF RECORDS**

The County shall have the audit and inspection rights described in this section.

- 11.1 Audit and Inspection. Contractor agrees to maintain and/or make available within San Diego County accurate books and accounting records relative to all its activities under this Agreement. Authorized federal, State or County representatives shall have the right to monitor, assess, or evaluate Contractor's performance pursuant to this Agreement, said monitoring, assessments, or evaluations to include but not limited to audits, inspection of premises, reports, and interviews of project staff and participants. Contractor assertions of confidentiality shall not be a bar to full access to the records.

At any time during normal business hours and as often as County may deem necessary, Contractor shall make available to County, State or federal officials for examination all of its records with respect to all matters covered by this Agreement and will permit County, State or federal officials to audit, examine and make excerpts or transcripts from such records, and to make audits of all invoices, materials, payrolls, records of personnel, information regarding clients receiving services, and other data relating to all matters covered by this Agreement. If an audit is conducted, it will be done in accordance with generally accepted government auditing standards as described in "Government Auditing Standards," published for the United States General Accountability Office or the institute of Internal Auditors International Standards for the Professional Practice of Internal Auditing.

If any services performed hereunder are not in conformity with the specifications and requirements of this Agreement, County shall have the right to require the Contractor to perform the services in conformity with said specifications and requirements at no additional increase in total Agreement amount. When the services to be performed are of such nature that the difference cannot be corrected, County shall have the right to (1) require Contractor immediately to take all necessary steps to ensure future performance of the services in conformity with requirements of the Agreement, and (2) reduce the Agreement price to reflect the reduced value of the services performed. In the event Contractor fails to perform the services promptly or to take necessary steps to ensure future performance of the service in conformity with the specifications and requirements of the Agreement, County shall have the right to either (1) by agreement or to otherwise have the services performed in conformity with the Agreement specifications and charge to Contractor any cost occasioned to County that is directly related to the performance of such services, or (2) terminate this Agreement for default as provided in the Termination clause.

- 11.2 External Audits. Contractors will provide the following to the COR:
- 11.2.1 Contractor shall provide COR a copy of all notifications of audits or pending audits by federal or State representatives regarding contracted services identified in this Agreement no later than three (3) business days of Contractor receiving notice of the audit.
  - 11.2.2 Contractor shall provide COR with a copy of the draft and final State or federal audit reports within twenty four (24) hours of receiving them (Health and Human Services Agency (HHS) Contractors shall also provide electronic copies to Agency Contract Support (ACS) at ACS.HHSA@sdcounty.ca.gov).
  - 11.2.3 Contractor shall provide COR a copy of the contractor's response to the draft and final State or federal audit reports at the same time as response provided to the State or federal representatives.
  - 11.2.4 Unless prohibited by the government agency conducting the audit, Contractor shall provide COR a copy of all responses made by the federal or State audit representative to the contractors' audit response no later than three (3) business days of receiving it. This will continue until the federal or State auditors have accepted and closed the audit.
- 11.3 Cost or Pricing Data. If the Contractor submitted cost or pricing data in connection with the pricing of this Agreement or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities of the general public, or prices set by law or regulation, the Contracting Officer or his representatives who are employees of the County or its agent shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation pricing or performance of such Agreement, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted.

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- 11.4 Availability. The materials described above shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit or reproduction, until the expiration of three (3) years from the date of final payment under this Agreement, or by section 11.4.1 and 11.4.2, below:
- 11.4.1 If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any resulting final settlement.
- 11.4.2 Record that relate to appeals under the "Disputes" clause of this Agreement, or litigation or the settlement of claims arising out of the performance of this Agreement, shall be made available until such appeals, litigation, or claims have been disposed of, or three years after Agreement completion, whichever is longer. County shall keep the materials described above confidential unless otherwise required by law.
- 11.5 Subcontract. The Contractor shall insert a clause containing all the provisions of this Article 11 in all subcontracts hereunder except altered as necessary for proper identification of the contracting parties and the contracting officer.

ARTICLE 12  
INSPECTION OF SERVICE

- 12.1 Subject to Inspection. All performance (including services, materials, supplies and equipment furnished or utilized in the performance of this Agreement, and workmanship in the performance of services) shall be subject to inspection and test by the County at all times during the term of this Agreement. Contractor shall cooperate with any inspector assigned by the County to permit the inspector to determine whether Contractor's performance conforms to the requirements of this Agreement. County shall perform such inspection in a manner as not to unduly interfere with Contractor's performance.
- 12.2 Specification and Requirements. If any services performed by Contractor do not conform to the specifications and requirements of this Agreement, County may require Contractor to re-perform the services until they conform to said specifications and requirements, at no additional cost, and County may withhold payment for such services until Contractor correctly performs them. When the services to be performed are of such a nature that Contractor's cannot correct its performance, the County shall have the right to (1) require the Contractor to immediately take all necessary steps to ensure future performance of services conforms to the requirements of this Agreement, and (2) reduce the Agreement price to reflect the reduced value of the services received by County. In the event Contractor fails to promptly re-perform the services or to take necessary steps to ensure that future performance of the service conforms to the specifications and requirements of this Agreement, the County shall have the right to either (1) without terminating this Agreement, have the services performed, by agreement or otherwise, in conformance with the specifications of this Agreement, and charge Contractor, and/or withhold from payments due to Contractor, any costs incurred by County that are directly related to the performance of such services, or (2) terminate this Agreement for default.

ARTICLE 13  
USE OF DOCUMENTS AND REPORTS

- 13.1 Findings Confidential. Any reports, information, data, etc., given to or prepared or assembled by Contractor under this Agreement that the County requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.
- 13.2 Ownership, Publication, Reproduction and Use of Material. All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other material or properties produced under this Agreement shall be the sole and exclusive property of County. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. County shall have unrestricted authority to publish, disclose, distribute and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement.
- 13.3 Confidentiality. Contractor agrees to maintain the confidentiality of and take industry appropriate and legally required measures to prevent the unlawful disclosure of any information that is legally required to be kept confidential. Except as otherwise allowed by local, State or federal law or regulation and pursuant to this Section 13.3, Contractor agrees to only disclose confidential records where the holder of the privilege, whether the County, or a third party, provides written permission authorizing the disclosure.
- 13.4 Public Records Act. The California Public Records Act ("CPRA") requires County to disclose "public records" in its actual or constructive possession unless a statutory exemption applies. This generally includes contracts and related documents. If County receives a CPRA request for records relating to the Agreement, County may, at its sole discretion, either determine its response to the request without notifying Contractor or notify Contractor of the request. If County determines its response to the request without notifying Contractor, Contractor shall hold County harmless for such determination. If County notifies

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Contractor of the request, Contractor may request that County withhold or redact records responsive to the request by submitting to County a written request within five (5) business days after receipt of the County's notice. Contractor's request must identify specific records to be withheld or redacted and applicable exemptions. Upon timely receipt of Contractor's request, County will review the request and at its sole discretion withhold and/or redact the records identified by Contractor. Contractor shall hold County harmless for County's decision whether to withhold and/or redact pursuant to Contractor's written request. Contractor further agrees that its defense and indemnification obligations set forth in Section 10.1 of this Agreement extend to any Claim (as defined in Section 10.1) against the County Parties (as defined in Section 10.1) arising out of County's withholding and/or redacting of records pursuant to Contractor's request. Nothing in this section shall preclude Contractor from bringing a "reverse CPRA action" to prevent disclosure of records. Nothing in this section shall prevent the County or its agents or any other governmental entity from accessing any records for the purpose of audits or program reviews if that access is legally permissible under the applicable local, State or federal laws or regulations. Similarly, County or its agent or designee may take possession of the record(s) where legally authorized to do so.

- 13.5 Maintenance of Records. Contractor shall maintain all records relating to its performance under this Agreement, including all records of costs charged to this Agreement, and shall make them available within San Diego County for a minimum of five (5) years from the ending date of this Agreement, or longer where required by funding source or while under dispute under the terms of this Agreement, unless County agrees in writing to an earlier disposition. Contractor shall provide any requested records to County within two (2) business days of request.
- 13.6 Custody of Records. County, at its option, may take custody of Contractor's client records upon Agreement, termination, expiration, or at such other time as County may deem necessary. County agrees that such custody will conform to applicable confidentiality provisions of State and federal law. Said records shall be kept by County in an accessible location within San Diego County and shall be available to Contractor for examination and inspection.
- 13.7 Audit Requirement.
- (a) Contractor shall annually engage a Licensed Certified Public Accountant licensed to perform audits and attests in the State of California to conduct an annual audit of its operations. Contractors that expend \$750,000 or more of federal grant funds per year shall also have an audit conducted in compliance with Government Auditing Standards, which includes Single Audit Act Amendments and the Compliance Supplement (2 CFR part 200 App. XI). Contractors that are commercial organizations (for-profit) are required to have a non-federal audit if, during its fiscal year, it expended a total of \$750,000 or more under one or more HHS awards. 45 CFR part 74.26(d) incorporates the threshold and deadlines of the Compliance Supplement but provides for-profit organizations two options regarding the type of audit that will satisfy the audit requirements. Contractor shall include a clause in any agreement entered into with an audit firm, or notify the audit firm in writing prior to the audit firm commencing its work for Contractor, that the audit firm shall, pursuant to 31 U.S.C. 7503, and to the extent otherwise required by law, provide access by the federal government or other legally required entity to the independent auditor's working papers that were part of the independent auditor's audit of Contractor. Contractor shall submit two (2) copies of the annual audit report, the audit performed in accordance with the Compliance Supplement, and the management letter to the County fifteen (15) days after receipt from the independent Certified Public Accountant but no later than nine (9) months after the Contractor's fiscal year end.
- (b) Contractor shall immediately notify County upon learning that Contractor's independent Certified Public Accountant may or will issue a disclaimer of opinion due to substantial doubt of Contractor's ability to continue as a going concern.
- 13.8 Reports. Contractor shall submit reports required in Exhibit A and additional reports as may be requested by the COR and agreed to by the Contractor. Format for the content of such reports may be developed by County. The timely submission of these reports is a necessary and material term and condition of this Agreement and Contractor agrees that failure to meet specified deadlines will be sufficient cause to withhold payment. Contractor shall submit to County within thirty (30) days of the termination of this Agreement a report detailing all work done pursuant to this Agreement by Contractor.
- 13.9 Evaluation Studies. Contractor shall participate as requested by the County in research and/or evaluative studies designed to show the effectiveness and/or efficiency of Contractor services or to provide information about Contractor's project.

ARTICLE 14  
INFORMATION PRIVACY AND SECURITY PROVISIONS

- 14.1 Recitals. This Article is intended to protect the privacy and security of County information that Contractor may create, receive, access, store, transmit, and/or destroy under this Agreement. In addition to the below Responsibilities, contractor shall be in compliance with the following rules, regulations, and agreements, *as applicable*:

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- 14.1.1 Health Insurance Portability and Accountability Act, specifically, Public Law 104-191, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005, 42USC section 17921 et seq., and 45CFR Parts 160 and 164, collectively referred to as "HIPAA;,"
- 14.1.2 County agreements with the State of California, collectively referred to as "State Agreements" and posted on the County's website at: [www.cosdcompliance.org](http://www.cosdcompliance.org), including:
  - 14.1.2.1 The Medi-Cal Privacy and Security Agreement Between the California Department of Health Care Services (DHCS) and the County;
  - 14.1.2.2 The Medi-Cal Behavioral Health Services Performance Agreement between DHCS and the County;
  - 14.1.2.3 The San Diego County Alcohol and Drug Program Administrator Agreement between DHCS and the County
  - 14.1.2.4 The Refugee Health Agreement between the California Department of Public Health (CDPH) and the County;
  - 14.1.2.5 The HIV/AIDS Case Reporting System Data Use Agreement between CDPH and the County;
  - 14.1.2.6 The Childhood Lead Poisoning Prevention Program between CDPH and the County;
  - 14.1.2.7 The Standard Agreement between the County and the California Department of Aging; and
  - 14.1.2.8 The Agreement for Whole Person Care Pilot Program for San Diego County with DHCS.
- 14.1.3 Title 42 Code of Federal Regulations, Chapter 1, Subchapter A, Part 2.
  
- 14.2 Definitions. Terms used, but not otherwise defined, in this Article shall have the same meaning as defined by HIPAA.
  - 14.2.1 "Breach" of Protected Health Information (PHI) shall have the same meaning given to the term "breach" under HIPAA and "breach" of Personal Information (PI)/Personally Identifiable Information (PII) shall have the same meaning as given to it under the State Agreements.
  - 14.2.2 "Business Associate," when applicable, shall mean the Contractor.
  - 14.2.3 "County PHI" shall have the same meaning as PHI under HIPAA, specific to PHI under this Agreement.
  - 14.2.4 "County PI/PII" shall have the same meaning as PI/PII under the State Agreements, specific to PI/PII under this Agreement.
  - 14.2.5 "Covered Entity," when applicable, shall mean the County.
  - 14.2.6 "Security incident" shall have the same meaning as defined by the State Agreements.
  
- 14.3 Responsibilities of Contractor.
  - 14.3.1 Use and Disclosure of County PHI/PI/PII. Contractor shall use the minimum County PHI/PI/PII required to accomplish the requirements of this Agreement or as required by Law. Contractor may not use or disclose County PHI/PI/PII in a manner that would violate HIPAA or the State Agreements if done by the County.
  - 14.3.2 Safeguards. Contractor shall develop and maintain a HIPAA-compliant information privacy and security program to prevent use or disclosure of County PHI/PI/PII, other than as required by this Agreement.
  - 14.3.3 Mitigation. Contractor shall mitigate, to the extent practicable, any harmful effects caused by violation of the requirements of this Article, as directed by the County.
  - 14.3.4 Subcontractors. Contractor shall ensure that any agent, including a subcontractor, to whom it provides County PHI/PI/PII, imposes the same conditions on such agents that apply to Contractor under this Article.
  - 14.3.5 Cooperation with County.
    - 14.3.5.1 Contractor shall provide access to County PHI/PI/PII, as well as internal practices and records related to County PHI/PI/PII, at the written request of County within ten (10) calendar days.
    - 14.3.5.2 Contractor will assist County regarding individual's access, copy, amendment, accounting of disclosure, and other such requests for County PHI/PI/PII in the time and manner designated by County.
  - 14.3.6 Breach Reporting. Contractor shall report breaches and suspected security incidents to County, to include:
    - 14.3.6.1 Initial Report.
      - 14.3.6.1.1 Contractor shall email County Contracting Officer's Representative (COR) and HHSA Privacy Officer immediately upon the discovery of a suspected security incident that involves data provided to County by the Social Security Administration, as per the State Agreements.



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- 14.3.6.1.2 Contractor shall email COR and HHS Privacy Officer immediately of breaches and suspected privacy incidents involving 500 or more individuals.
- 14.3.6.1.3 Contractor shall additionally submit an online County "Privacy Incident Report" through the online portal at [www.cosdcompliance.org](http://www.cosdcompliance.org) within one (1) business day.
- 14.3.6.2 Investigation Report. Contractor shall immediately investigate such suspected security incident or breach and provide the County a complete report of the investigation within seven (7) working days using County's "Privacy Incident Report" online form.
- 14.3.6.3 Notification. Contractor will comply with County's request to notify individuals and/or media and shall pay any costs of such notifications, as well as any costs associated with the breach. County shall approve the time, manner and content of any such notifications before notifications are made.
- 14.3.7 Designation of Individuals. Contractor shall designate a Privacy Official and a Security Official to oversee its privacy and security requirements herein.
- 14.3.8 Data Security. Contractor shall comply with, as applicable, data privacy and security requirements specified by HIPAA and the State Agreements, which may include, but are not limited to:
  - 14.3.8.1 Workforce members, including employees, interns, volunteers, subcontractors, etc., with access to applicable County PHI/PI/PII shall:
    - 14.3.8.1.1 Complete privacy and security training to include a signed certification within thirty (30) days of hire, and at least annually thereafter; and
    - 14.3.8.1.2 Sign a confidentiality statement, prior to access to such PHI/PI/PII; and
  - 14.3.8.2 Computer warning banners for all systems containing applicable County PHI/PI/PII
  - 14.3.8.3 Comprehensive, annual security risk assessments
  - 14.3.8.4 Policies and internal controls to ensure secure transport and storage of County PHI/PI/PII in cars, airplanes, trains, and buses.
  - 14.3.8.5 Sufficient administrative, physical, and technical controls in place to protect County PHI/PI/PII
- 14.3.9 Termination. Upon termination of the Agreement for any reason, Contractor shall return or destroy all County PHI/PI/PI, except County PHI/PI/PI necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities, as mutually agreed upon by the Parties. If the Parties mutually agree that return or destruction of County PHI/PI/PI is infeasible, Contractor shall extend the protections of this Article to such County PHI/PI/PI for so long as Contractor maintains such County PHI/PI/PI.

**ARTICLE 15**  
**DISPUTES**

Notwithstanding any provision of this Agreement to the contrary, the Contracting Officer shall decide any dispute concerning a question of fact arising out of this Agreement that is not otherwise disposed of by the parties within a reasonable period of time. The decision of the Contracting Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith. Contractor shall proceed diligently with its performance hereunder pending resolution by the Contracting Officer of any such dispute. Nothing herein shall be construed as granting the Contracting Officer or any other administrative official, representative or board authority to decide questions of law, or issues regarding the medical necessity of treatment or to pre-empt any medical practitioners' judgment regarding the medical necessity of treatment of patients in their care. The foregoing does not change the County's ability to refuse to pay for services rendered if County disputes the medical necessity of care.

**ARTICLE 16**  
**GENERAL PROVISIONS**

- 16.1 Assignment and Subcontracting. Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the County; County's consent shall not be unreasonably withheld. The Contractor shall make no agreement with any party for furnishing any of the work or services herein contained without the prior written consent of the COR, pursuant to Paragraph 1.4.
- 16.2 Contingency. This Agreement shall bind the County only following its approval by the Board of Supervisors or when signed by the Purchasing and Contracting Director.

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- 16.3 Entire Agreement. This Agreement, together with all Exhibits attached hereto and other agreements expressly referred to herein, constitute the entire agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, including any proposals from Contractor and requests for proposals from County, are superseded.
- 16.4 Sections and Exhibits. All sections and exhibits referred to herein are attached hereto and incorporated by reference.
- 16.5 Further Assurances. Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.
- 16.6 Governing Law. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.
- 16.7 Headings. The Article captions, Clause and Section headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.
- 16.8 Modification Waiver. Except as otherwise provided in Article 6, "Changes," above, no modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by both parties.
- 16.9 Neither Party Considered Drafter. Despite the possibility that one party may have prepared the initial draft of this Agreement or played the greater role in the physical preparation of subsequent drafts, neither party shall be deemed the drafter of this Agreement and that, in construing this Agreement in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one party on the ground that such provision was drafted by the other.
- 16.10 No Other Inducement. The making, execution and delivery of this Agreement by the parties hereto has been induced by no representations, statements, warranties or agreements other than those expressed herein.
- 16.11 Notices. Notice to either party shall be in writing and personally delivered; sent by certified mail, postage prepaid, return receipt requested; or emailed to the County's or Contractor's designated representative (or such party's authorized representative). Any such notice shall be deemed received by the party (or such party's authorized representative) on the earliest of the date of personal delivery, three (3) business days after deposit in the U.S. Mail, or upon sending of an email from which an acknowledgement of receipt has been received other than an out of office, unavailable, or undeliverable reply.
- 16.12 Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 16.13 Successors. Subject to the limitations on assignment set forth in Clause 16.1 above, all terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.
- 16.14 Time. Time is of the essence for each provision of this Agreement.
- 16.15 Time Period Computation. All periods of time referred to in this Agreement shall be calendar days, unless the period of time specifies business days. Calendar days shall include all days of the week, including holidays. Business days shall be Monday through Friday, excluding County observed holidays.
- 16.16 Waiver. The waiver by one party of the performance of any term, provision, covenant or condition shall not invalidate this Agreement, nor shall it be considered as a waiver by such party of any other term, provision, covenant or condition. Delay by any party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant or condition shall not prevent such party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.
- 16.17 Third Party Beneficiaries Excluded. This Agreement is intended solely for the benefit of the County and its Contractor. Any benefit to any third party is incidental and does not confer on any third party to this Agreement any rights whatsoever regarding the performance of this Agreement. Any attempt to enforce provisions of this Agreement by third parties is specifically prohibited.
- 16.18 Publicity Announcements and Materials. All public announcements, including those issued on Contractor letterhead, and materials distributed to the community shall identify the County of San Diego as the funding source for contracted programs identified in this Agreement. Copies of publicity materials related to contracted programs identified in this Agreement shall be filed with the COR. County shall be advised at least twenty four (24) hours in advance of all locally generated press releases and media events regarding contracted services identified in this Agreement. Alcohol and Drug Prevention Services

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Contractors shall notify COR or designee at least five (5) business days in advance of all Contractor generated media releases and media events regarding contracted services identified in this Agreement.

- 16.19 Critical Incidents. Contractor shall have written plans or protocols and provide employee training for handling critical incidents involving: external or internal instances of violence or threat of violence directed toward staff or clients; loss, theft or unlawful accessing of confidential client, patient or facility resident Personal Information (PI), Personally Identifiable Information (PII) and/or Personal Health Information (PHI); fraud, waste and/or abuse of Agreement funds; unethical conduct; or violation of any portion of San Diego County Board of Supervisors Policy C-25 "Drug & Alcohol Use" while performing under this Agreement. Contractor shall report all such incidents to the COR within one business day of their occurrence. However, if this Agreement includes Article 14, Contractor must adhere to the timelines and processes contained in Article 14.
- 16.20 Responsiveness to Community Concerns. Unless prohibited by applicable State or federal law, Contractor shall notify County within one business day of receipt of any material complaints including but not limited to complaints referring to issues of abuse or quality of care, submitted to Contractor orally or in writing, regarding the operation of Contractor's program or facility under this Agreement. Contractor shall take appropriate steps to acknowledge receipt of said complaint(s) from individuals or organizations. Contractor shall take appropriate steps to utilize appropriate forums to address or resolve any such complaints received. Nothing in this provision shall be interpreted to preclude Contractor from engaging in any legally authorized use of its facility, property or business as approved, permitted or licensed by the applicable authority.
- 16.21 Criminal Background Check Requirements. Contractor shall ensure that criminal background checks are required and completed prior to employment or placement of any employee, director, officer, agent, subcontractor, consultant or volunteer in compliance with any licensing, certification, funding, or Agreement requirements, including the Statement of Work, which may be higher than the minimum standards described herein. At a minimum, background checks shall be in compliance with Board of Supervisors Policy C-28, available on the County of San Diego website, and are required for any individuals identified above who will be providing services under this Agreement or who will be assigned to sensitive positions funded by this Agreement. Sensitive positions are those that: (1) physically supervise minors or vulnerable adults; (2) have unsupervised physical contact with minors or vulnerable adults; and/or (3) have a fiduciary responsibility to any County client, or direct access to, or control over, bank accounts or accounts with financial institutions of any client. If this Agreement includes Article 14, Contractor must also adhere to requirements contained in Article 14.

Contractor shall have a documented process for reviewing the information and determine if criminal history demonstrates behavior that could create an increased risk of harm to clients. Contractor shall document review of criminal background findings and consideration of criminal history in the selection of such persons listed above in this section

- 16.21.1 Contractor shall utilize a subsequent arrest notification service during employee or volunteer's tenure or perform criminal history annually.
- 16.21.2 Contractor shall keep the documentation of their review and consideration of the individual's criminal history on file in accordance with paragraph 13.4 "Maintenance of Records."

16.21.3 Definitions

- A. Activities of Daily Living: The basic tasks of everyday life, such as eating, bathing, dressing, toileting, and transferring.
- B. Minor: Individuals under the age of eighteen (18) years old.
- C. Sensitive Position: A job with responsibilities that can be criminally abused at great harm to the Agreement or the clients served. All positions that (1) physically supervise minors or vulnerable adults, (2) have unsupervised physical contact with minors or vulnerable adults, or (3) have fiduciary responsibility to a County client or direct access to, or control over client bank accounts, or serve in a financial capacity to the County client.
- D. Vulnerable Adult: (1) Individuals age eighteen (18) years or older, who require assistance with activities of daily living and who may be put at risk of abuse during service provision; (2) Individuals age eighteen (18) years or older who have a permanent or temporary limited physical and/or mental capacity that may put them at risk of abuse during service provision because it renders them: unable to make decisions for themselves, unable to physically defend themselves, or unaware of physical abuse or other harm that could be perpetrated against them.
- E. Volunteer: A person who performs a service willingly and without pay.

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16.22 Health Insurance. Contractors providing direct services to the public shall ask if the client and any minor(s) for whom they are responsible have health insurance coverage. If the response is “no” for client or minor(s) the Contractor shall refer the client to Covered California at <https://www.coveredca.com/> or to 1-800-300-1506.

16.23 Survival. The following sections or articles of this Agreement shall survive the expiration or earlier termination of this Agreement: Sections 8.1, 8.13, 8.14, 8.15, 8.21, 10.1, 11.1, 11.2, and 11.4, and Articles 7 and 13.

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SIGNATURE PAGE

**AGREEMENT TERM.** The initial term of this Agreement shall begin the 1st day of February 2020 and end on June 30, 2020. ("Initial Term").

**OPTION TO EXTEND.** The County shall have the option to extend the term of this Agreement for 3 increments of 1 year(s) each for a total of 3 years beyond the expiration of the Initial Term, not to exceed June 30, 2023, pursuant to Exhibit C Pricing Schedule or other applicable pricing provisions of this Agreement. Unless County notifies Contractor in writing not less than thirty (30) days prior to the expiration date that the County does not intend to extend the Agreement, the Agreement will be automatically extended for the next option period.

Options to Extend For One To Six Additional Months at End of Agreement. County shall also have the option to extend the term of this Agreement, in one or more increments, for a total of no less than one (1) and no more than six (6) calendar months ("Incremental Options"). The County may exercise each Incremental Option by providing written notice to Contractor no fewer than fifteen (15) calendar days prior to expiration of this Agreement. The rates in effect at the time an Incremental Option is exercised shall apply during the term of the Incremental Option.

**COMPENSATION:** Pursuant to Exhibit C or other applicable pricing provisions of this Agreement, County agrees to pay Contractor a sum not to exceed one hundred thirty two thousand six hundred ninety three dollars and sixty eight cents (\$132,693.68) for the initial term of this Agreement and a sum not to exceed two hundred thirty three thousand eight hundred sixty three dollars and eight cents (\$233,863.08) for each of the 3 one-year option periods, for a maximum Agreement amount of eight hundred thirty four thousand two hundred eighty two dollars and ninety two cents (\$834,282.92), in accordance with the method of payment stipulated in Article 4.

**COR.** The County has designated the following individual as the Contracting Officer's Representative ("COR")

Patricia Rollin, Administrative Analyst III  
5560 Overland Avenue, Ste. 310  
San Diego, CA 92123  
Phone 858-505-6533 and email Patricia.Rollin@sdcounty.ca.gov


**CONTRACTOR'S REPRESENTATIVE.** The Contractor has designated the following individual as the Contractor's Representative.

Jilaine Hernandez, Community Services Supervisor III  
201 N Broadway Avenue  
Escondido, CA 92025  
Phone 760-839-4934, FAX 760-839-6269 and email jahernandez@escondido.org

IN WITNESS WHEREOF, County and Contractor have executed this Agreement effective as of the date of the last signature below.

COUNTY OF SAN DIEGO

CITY OF ESCONDIDO

By:  for  
JOHN M. PELLEGRINO, Director  
Department of Purchasing and Contracting

By:   
PAUL MCNAMARA, Escondido Mayor

Date: 2/10/2020

Date: 2-7-2020

S. Figueroa

By:   
ZACHARY BECK, Escondido City Clerk

Date: 2-10-2020

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**COUNTY CONTRACT NUMBER 561764**  
**AGREEMENT WITH CITY OF ESCONDIDO FOR SENIOR NUTRITION PROGRAM**  
**EXHIBIT A – STATEMENT OF WORK**  
**CONGREGATE MEALS WITH TRANSPORTATION IN THE NORTH INLAND REGION**

**1. Scope of Work/Purpose**

Contractor shall provide nutritionally sound meals to individuals sixty (60) years of age and older living throughout San Diego County and may provide transportation to and from the congregate dining site. The meals shall be provided in a congregate (group setting) at Senior Dining Centers. There is no charge to the senior for these services, but Contractor shall provide the opportunity for the senior to make a contribution at a suggested donation amount. The eligible population for Title III C-1. As defined as individuals sixty (60) years of age or older, with emphasis on those in greatest economic and social need with particular attention to low-income minority older individuals, older individuals with Limited English Proficiency (LEP), and older individuals residing in rural areas.

**2. Background Information**

The Senior Nutrition Program, which began in the County of San Diego in 1975, is funded through Title III of the Older Americans Act, a federal program administered by State and County governments and operated under rules, policies, and regulations of the California Department of Aging (CDA). County of San Diego Health and Human Services Agency (HHSA), Aging & Independence Services (AIS), as the designated Area Agency on Aging, oversees this program. Nutrition services assist older individuals to live independently by promoting better health and reduced isolation through a program of coordinated congregate meals, home-delivered meals, transportation and supportive services. In fiscal year 2017/2018 various contractors served approximately 7,500 clients with lunches at several sites throughout the county, and many contractors also served approximately 2,300 clients with home-delivered meals. Breakfast is also provided at some sites and to some home-delivered meal recipients.

*Live Well San Diego* Vision: The County of San Diego, Health and Human Service Agency (HHSA), supports the *Live Well San Diego* vision of Building Better Health, Living Safely, and Thriving. *Live Well San Diego*, developed by the County of San Diego, is a comprehensive, innovative regional vision that combines the efforts of partners inside and outside County government to help all residents be healthy, safe, and thriving. All HHSA partners and contractors, to the extent feasible, are expected to advance this vision. Building Better Health focuses on improving the health of residents and supporting healthy choices. Living safely seeks to ensure residents are protected from crime and abuse, neighborhoods are safe, and communities are resilient to disasters and emergencies. Thriving focuses on promoting a region in which residents can enjoy the highest quality of life.

On December 13, 2016, the San Diego County Board of Supervisors at the recommendation of Chairman Ron Roberts and Supervisor Greg Cox unanimously voted to establish the *Live Well San Diego* Food System Initiative (Initiative), which positions the County of San Diego to take on a greater role in the advancement of a safe, healthy, and robust food system. As part of the Initiative, the County Board of Supervisors also received the Eat Well Practices, a guide for expanding healthy, local and sustainable food and beverage options for the County. The County updated this policy to reflect the San Diego County Board of Supervisors' direction as well as United States Department of Agriculture (USDA) regulations, General Services Administration's Wellness and Sustainability requirements and Center for Disease Control's Smart Food Choices: How to Implement Food Service Guidelines in Public Facilities.

Information about *Live Well San Diego* can be found on the County's website and a website dedicated to the vision:

2.1 [http://www.sdcounty.ca.gov/hhsa/programs/sd/live\\_well\\_san\\_diego/index.html](http://www.sdcounty.ca.gov/hhsa/programs/sd/live_well_san_diego/index.html)

2.2 <http://www.LiveWellSD.org>

**3. Goals**

3.1 Contractor shall provide the services described herein to accomplish the following goals:

3.1.1 Assist individuals sixty (60) years of age and older to live independently by promoting better health and reduced isolation as a result of the Senior Nutrition Program, a program of coordinated congregate meals and transportation to and from congregate meal sites.

3.2 Contractor shall comply with the Regulations/Standards that apply to the Title IIIC Elderly Nutrition

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Program (ENP).

3.2.1 Regulation websites are as follows:

California Code of Regulations - Title 22, Division 1.8

California Retail Food Code (CRFC)

California Welfare and Institutions Code

<https://www.acl.gov/about-acl/authorizing-statutes/older-americans-act>

<https://www.aging.ca.gov/PM/> (For Year 2012 – PM12-17(P) and attachment)

Occupational Safety and Health Administration (OSHA)

Dietary Guidelines for Americans 2015 (DGA) CDA Standard Agreement

#### 4. Deliverables

##### 4.1 Meals.

4.1.1 Meals shall be planned in accordance with:

4.1.1.1 Title 22, Social Security, Division 1.8 California Department of Aging, Chapter 4 (1) Title III Programs – Program and Service Provider Requirements, Article 5. Title III C- Elderly Nutrition Program (herein referred to as Title 22) Section 7638.5 Nutrition Requirements of Meals:

[https://www.aging.ca.gov/ProgramsProviders/AAA/Nutrition/Code\\_of\\_Regulations/](https://www.aging.ca.gov/ProgramsProviders/AAA/Nutrition/Code_of_Regulations/)

4.1.1.2 CDA Program Memo 12-17 (P) Nutrition Older Americans Act Nutrition Services Menu Guidance for Compliance with Dietary Guidelines for Americans, 2010:

<https://www.aging.ca.gov/PM/> (For Year 2012 – PM12-17(P) and attachment).

4.1.2 Each meal shall contain at least one-third (1/3) of the current Dietary Reference Intakes (DRIs) as established by the Food and Nutrition Board, Institute of Medicine, National Academy of Sciences (2007), which are incorporated by reference.

[http://www.nationalacademies.org/hmd/~media/Files/Activity%20Files/Nutrition/DRI-Tables/2\\_%20RDA%20and%20AI%20Values\\_Vitamin%20and%20Elements.pdf?la=en](http://www.nationalacademies.org/hmd/~media/Files/Activity%20Files/Nutrition/DRI-Tables/2_%20RDA%20and%20AI%20Values_Vitamin%20and%20Elements.pdf?la=en)

4.1.2.1 If the program provides two (2) meals per day, second meal shall be different from the first meal and a minimum of two-thirds (2/3) of the DRI shall be provided.

4.1.3 Meals shall comply with the Dietary Guidelines for Americans (2015, 8th edition) established by the U.S. Department of Agriculture and the U.S. Department of Health and Human Services.  
<http://fnic.nal.usda.gov/dietary-guidance/dietary-guidelines>

4.1.4 Contractor shall submit menus to the County's Registered Dietitian for review and approval four (4) weeks prior to the start of the month. Menus shall reflect cultural and ethnic dietary needs of participants, when feasible and appropriate.

4.1.5 Contractor shall meet, when feasible, the Guidelines for Congregate/Custodial Meal Programs in the Eat Well Standards and shall not supersede Section 4.1.1 above.

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[http://www.livewellsd.org/content/dam/livewell/topics/Eat-Well-Practices/PDFs\\_EatWell/Eat%20Well%20Practices.pdf](http://www.livewellsd.org/content/dam/livewell/topics/Eat-Well-Practices/PDFs_EatWell/Eat%20Well%20Practices.pdf)

- 4.1.6 Contractor shall include, when feasible, the use of locally grown foods and identify potential partnerships with local producers and providers of locally grown foods.
- 4.1.7 Contractor shall ensure that each food facility has equipment necessary for preparing and serving meals that are safe and of good quality.
- 4.1.8 The County's Registered Dietitian shall provide input, review, and approval of the menus to ensure compliance with Title 22 CCR 7634.3 (d)(1) and Title 22 CCR 7638.
- 4.2 Congregate Meals. Contractor shall provide the maximum number of meals annually, pursuant to Exhibit C, to eligible seniors in a congregate setting a minimum of five (5) days per week. A lesser frequency must be approved in advance by the County.
  - 4.2.1 Contractor shall complete an initial client assessment to determine the eligibility of participants. Factors include age and nutrition screening assessments. All assessments shall be made available to the Contracting Officer's Representative (COR) and County's Registered Dietitian upon request.
  - 4.2.2 Contractor shall complete a reassessment on an annual basis prior to or on the date of the original assessment.
  - 4.2.3 Participants shall not be means tested [OAA 315(b)(3)].
  - 4.2.4 Contractor shall have a paid staff member or a trained volunteer responsible for the day-to-day activities at each site, and be physically present on site during the time nutrition program activities are taking place.
  - 4.2.5 Contractor shall ensure that each congregate meal site has equipment, including tables and chairs that is sturdy and appropriate for older individuals. Tables shall be arranged to assure ease of access and encourage socialization. (Title 22 s7638.1(b)(3)).
  - 4.2.6 All congregate nutrition sites shall be open and accessible to the public.
  - 4.2.7 Contractor shall ensure that eligible individuals with ADA accessibility requirements are not excluded from, or restricted in, participating in the program.
    - 4.2.7.1 All sites shall be ADA accessible. CDA Standard Agreement Exhibit D. Article II, C.3
      - 4.2.7.1.1 Americans with Disabilities Act (ADA) regulations and design:  
<https://www.ada.gov/>
    - 4.2.7.2 Contractor shall make accommodations for individuals with ADA accessibility requirements.
  - 4.2.8 Contractor shall post monthly menus at the congregate site in a location easily seen by participants, be legible and in the language of the majority of the participants. Daily meal(s) shall match the County's Registered Dietitian approved menu.
- 4.3 Transportation. Contractor shall provide units of transportation annually, pursuant to Exhibit C, to eligible program participants. Contractor shall count each trip to or from a senior dining center for participation in the meal program as a one-way trip.
  - 4.3.1 Contractor's staff and/or volunteers providing transportation services shall possess a current and valid driver's



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license issued by the State of California, and Contractor shall maintain a copy(ies) of said licenses on site for review by COR. Drivers shall maintain the appropriate type of California license for the type and size of the vehicle being driven to transport passengers

- 4.4 Nutrition Education. Contractor shall provide a minimum of four (4) nutrition education programs per contract year to participants in each of Contractor’s congregate sites.
  - 4.4.1 Nutrition Education services shall be provided in accordance with Title 22, Section 7638.11 Nutrition Education Services for Participants.
  - 4.4.2 Nutrition Education shall include teaching participants about healthful food choices, balancing food and physical activity, and promoting behaviors recommended in the Dietary Guidelines for Americans.
  - 4.4.3 An annual needs assessment shall be performed by the Contractor to determine the nutrition education services needed by congregate meal and transportation participants.
  - 4.4.4 The County’s Registered Dietitian shall provide input, review and approve the content of nutrition education prior to presentation.
  - 4.4.5 Contractor shall develop an annual nutrition education plan which shall be implemented, monitored by the County’s Registered Dietitian and kept on file for review by the County. The plan shall meet the requirements of Title 22, Section 7638.11 Nutrition Education Services for Participants.

**5. Target Population and Geographic Service Area**

5.1 Contractor shall provide services to eligible population for Title III C-1 and Title III B. As defined as individuals sixty (60) years of age or older, with emphasis on those in greatest economic and social need with particular attention to low-income minority older individuals, older individuals with Limited English Proficiency (LEP), and older individuals residing in rural areas. The areas identified as greatest economic and social need are in red on the AIS Senior Nutrition Map:  
<http://sdcounty.maps.arcgis.com/apps/webappviewer/index.html?id=c1da92cfb82d4294a7356e2965310f0f>

5.2 Client address must be in the following zip codes to qualify as a Rural Area:

- 5.2.1 91905 – Boulevard
- 5.2.2 91906 – Campo
- 5.2.3 91916 – Descanso
- 5.2.4 91917 - Dulzura
- 5.2.5 91934 – Jacumba
- 5.2.6 91935 – Jamul
- 5.2.7 91962 – Pine Valley
- 5.2.8 91963 – Potrero
- 5.2.9 91980 – Tecate
- 5.2.10 92003 – Bonsall
- 5.2.11 92004 – Borrego Springs/Ocotillo Wells

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- 5.2.12 92036 – Julian
- 5.2.13 92059 – Pala
- 5.2.14 92061 – Pauma Valley, Pala
- 5.2.15 92066 – Ranchita, Warner Springs
- 5.2.16 92070 – San Ysabel
- 5.2.17 92082 – Valley Center
- 5.2.18 92068 – Warner Springs

5.3 Contractor shall post congregate dining site location(s), days of service, hours of service and type(s) of meal served (breakfast and/or lunch) on Contractor’s website.

5.3.1 Congregate Meal Site: North Inland Region: Escondido Senior Center, 210 Park Avenue, Escondido, CA 92025, Monday thru Friday, 11:30 am to 12:20 pm (Lunch)

**6. Payment for Services**

6.1 Contractor shall submit a monthly claim for the actual service deliverables for the prior month to the COR by the fifteenth (15<sup>th</sup>) of the following month.

6.1.1 Invoices/Claims will not be processed for payment until COR-approved, which will occur once all required information is included and submitted to COR.

6.2 Funding Components: Fiscal Terms and Conditions. The Senior Nutrition Program is funded by the following components and follow the fiscal terms and conditions listed below:

6.2.1 Older Americans Act (OAA)/California Department of Aging (CDA) Title III Allocation. This funding is allocated as follows:

6.2.1.1 State of California Title III C-1 Funding Stream. This is the fixed supplemental rate dollar amount for a portion of Contractor’s congregate meals costs. Payments are monthly compensation payments to Contractor for the provision of congregate meals according to Exhibit A, Statement of Work

6.2.1.2 State of California Title III B Funding Stream. This is the fixed supplemental rate dollar amount for a portion of Contractor’s transportation costs. Payments are monthly compensation payments to Contractor for the provision of transportation (one-way trips) services according to Exhibit A, Statement of Work.

6.2.2 Nutrition Services Incentive Program (NSIP). This is the fixed supplemental rate dollar amount for incentive payments from the NSIP. NSIP payments are monthly incentives based on the number of meals served per Exhibit C – Pricing Schedule. This amount will be determined annually by the County, based on funds received from the State and Contractor’s prior year’s performance (i.e., meals served). NSIP funds shall only be used to purchase food to be used in the Senior Nutrition Program and not to meet cost sharing or to match funds for any other federal program.

6.2.3 One-Time-Only (OTO) Allocation. OTO allocations are one-time annual monetary awards for the purchase of equipment/vehicle that enhances the delivery of services to the eligible population which are directly related to the Senior Nutrition Program. OTO awards are based on funds received from the State of California, and must be approved in advance by the County. Contractor shall procure the goods or services

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by utilizing competitive measures, and provide documentation of receiving three (3) or more quotes to substantiate fair and reasonable pricing. County will reimburse costs upon submission of receipts with the invoice in the month following the month in which the expenditure(s) occurred.

- 6.2.4 Contractor's program income. Program income means revenue generated by the Contractor from contract supported activities and may include:
- 6.2.4.1 Voluntary contributions received from a participant or other party for services received.
  - 6.2.4.2 Income from usage or rental fees of real or personal property acquired with grant funds or funds provided under this Agreement.
  - 6.2.4.3 Royalties received on patents and copyrights from contract supported activities.
  - 6.2.4.4 Proceeds from the sale of items purchased under a CDA contract agreement. No equipment purchased with CDA funds will be sold without preapproval from the County and the CDA.
  - 6.2.4.5 Contractor shall not receive funds from another source for the cost of the same meal, equipment, or services [2 CFR 200.403(f)][45 CFR 75.403(f)] and OAA Title VI. In order to avoid duplicate reimbursement, Contractor shall not claim the cost of the same meal, equipment or services from another funding source.
- 6.2.5 Contractor's other revenue, such as fundraising and other donations. The fixed supplement rates are determined to offset the cost of providing services based on and subject to availability of funds from the State of California, California Department of Aging (CDA). Said compensation is not designed to fully fund the Senior Nutrition Program. Funding provided by County is only intended to supplement meal cost.
- 6.2.6 The County shall have the authority to increase or reduce the contract compensation, via the issuance of an amendment, signed by the County's Director of Purchasing and Contracting.
- 6.2.7 Contractor shall create a waiting list only when Contractor projects to serve over the contracted amount allocated in Exhibit C. If Contractor projections determines a need to establish a waiting list Contractor shall provide written notification to COR within twenty-four hours (24) prior to establishing a waiting list and provide the following:
- 6.2.7.1 Justification as to why eligible individuals are being placed on waiting list.
  - 6.2.7.2 Justification of the ranking of the eligible individual placement on the waiting list shall be based on greatest need and/or in accordance with Contractor's established policy and approved by COR. Copy of policy shall be provided to COR annually.

**7. General Requirements for Service Delivery**

- 7.1 Contractor's food services shall comply with the California Code of Regulations, Title 22, The California Retail Food Code (CRFC) (<https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/FDB/FoodSafetyProgram/CaliforniaRetailFoodCode.pdf>)
- 7.2 Contractor shall comply with the Division of Occupational Safety and Health (Cal/OSHA), Department of Industrial Relations requirements (<https://www.dir.ca.gov/dosh/>) regarding staff and participant safety.
- 7.3 Contractor shall possess and maintain a valid health permit from the County of San Diego Department of Environment

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Health (<http://www.sdcountry.ca.gov/deh/>) for food preparation sites and shall post the permit as required. A copy of a valid health permit for a subcontracted Caterer or Vendor must be kept on file by the Contractor,

- 7.4 Food preparation is defined as packaging, processing, assembling, portioning, or any operation that changes the form, flavor or consistency of food.
- 7.5 A Limited Service Charitable Feeding Site Registration from the County of San Diego Department of Environmental Health (<http://www.sdcountry.ca.gov/deh/>) is required for satellite sites and catered meal sites where no food preparation is taking place.
- 7.6 The County’s Registered Dietitian shall conduct announced and unannounced site visits to food preparation and congregate meal sites quarterly for compliance with the above stated regulations.
- 7.7 Contractor shall provide County-supplied SNAP/CalFresh program information to all senior nutrition clients as the information is available.
- 7.8 Contractor shall ensure policies that support tobacco-free environments are in place, which includes:
  - 7.8.1 Smoke-free entrances.
  - 7.8.2 Smoke-free facilities (no designated smoking areas).
  - 7.8.3 No smoking signs are posted at all entrances/exits.
- 7.9 Staff and Volunteer Orientation and Training.
  - 7.9.1 All of Contractor staff, paid and volunteer, shall be oriented and trained to perform their assigned responsibilities and tasks per Title 22 CCR 7636.5 (a)-(f).
    - 7.9.1.1 At a minimum, training shall include:
      - 7.9.1.1.1 Food safety, prevention of foodborne illness, and HACCP principles.
      - 7.9.1.1.2 Accident prevention, instruction on fire safety, first aid, choking, earthquake preparedness, and other emergency procedures.
    - 7.9.1.2 Contractor shall provide a minimum of four (4) hours of in-service staff training annually to paid and volunteer congregate and home delivered meal staff.
    - 7.9.1.3 Contractor shall provide a yearly written plan that shall be developed, implemented and maintained by the Contractor that identify who is to be trained, who will conduct training, content and date scheduled.
    - 7.9.1.4 The County’s Registered Dietitian shall review and approve the content of the staff/volunteer training prior to presentation.
    - 7.9.1.5. Contractor training sessions shall be evaluated by those receiving the training and attendance records shall be maintained and on file.
  - 7.9.1 Contractor shall ensure all staff and volunteers are trained in elder abuse awareness and know how and when to report if they suspect an elder may have symptoms of abuse or neglect. Contractor shall contact local law enforcement or call 1-800-510- 2020 to report suspected elder abuse.
  - 7.9.2 Contractor shall comply with the Division of Occupational Safety and Health (Cal/OSHA), California Department of Industrial Relations requirements regarding staff and participant safety. All Contractor

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facilities are subject to inspection and approval.

- 7.10 Performance Expectations. Contractor shall maintain ninety-five percent (95%) compliance with service levels stated in this Agreement. A Performance Improvement Plan may be required to be submitted by Contractor if Contractor consistently (i.e., three (3) consecutive months or more) falls below ninety percent (90%) of the service levels. Service levels shall be reviewed monthly, quarterly, and annually by Contractor and County staff. Failure to bring service levels up to the contracted levels may result in re-negotiation of the contracted service levels or termination of the contract. The Exhibit C – Pricing Schedule may be revised to be commensurate with the lower level of service(s).
- 7.11 Reference to AIS. All printed materials, publicity, and media outreach prepared or conducted by Contractor shall include a reference to County of San Diego Health and Human Services Agency (HHSA), Aging & Independence Services (AIS) as the funding source. County of San Diego logos shall be included as appropriate. Copies of publicity materials related to programs identified in this contract shall be provided to the COR in advance for pre-approval as referenced in Section 16.18 of the contract.
- 7.12 Match. Contractor shall provide a minimum of an eleven point eleven percent (11.11%) match for program costs in cash or in-kind contributions. In-kind contributions are defined as the value of non-cash contributions donated to support the project or program (e.g., property, service, etc.).
- 7.13 Cultural Competence and Diversity. Contractor shall support the County of San Diego, Health and Human Services Agency, Aging & Independence Services (AIS) through organizational and systematic practices demonstrating cultural competence and diversity. Contractor shall have an employee training plan that addresses these competencies and shall provide a copy to the COR annually. All services provided shall be oriented to meet the linguistic and cultural needs of the diverse clients to be served.
- 7.14 Vehicles. Contractor shall provide their own vehicles to deliver meals to nutrition sites and/or to transport clients to congregate sites unless vehicles are provided by the County. Vehicles may be provided by County, through this Agreement based on need and the availability of funding but are not guaranteed. Contractor shall comply with all rules and regulations of the State of California Department of Motor Vehicles, the California Code of Regulations, the California Retail Food Code, Exhibit B –Insurance Requirements, Exhibit B-1 – Vehicle Usage Agreement and a separate usage, maintenance, and operations agreement which shall be incorporated herein.
- 7.15 AIS Contractor Meetings. AIS may schedule Contractor meetings on an as-needed basis pertaining to the needs of the contract requirements. Contractor shall have at least one representative present at all meetings. These meetings are at the discretion of AIS and will be held at the AIS office at 5560 Overland Ave, San Diego, CA 92123 and location is subject to change if needed.
- 7.16 Detailed Budget. Contractor shall use the Nutrition Contract Budget Template to submit a detailed budget with line items to the COR on an annual basis no later than July 1<sup>st</sup> of each fiscal year

**8 Specific Requirements for Service Delivery**

- 8.9 Meal Service. Contractor shall:
  - 8.9.1 Provide a hot or other appropriate meal approved by the County Registered Dietitian that meets minimum nutrition requirements, served a minimum of five (5) or more days a week in a congregate setting that is open to the public [45 CFR 1321.53(b)(3)].
  - 8.9.2 Each meal shall comply with the most recent DGA and provide each participating older individual:
    - 8.9.2.1 A minimum of 33 1/3 percent DRIs per meal if the program provides one meal per day.
    - 8.9.2.2 A minimum of 66 2/3 percent DRIs per meal if the program provides 2 meals per day.
    - 8.9.2.3 If providing multiple meals per day, program shall ensure that each participant is receiving both

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meals, or that each of the meals provides 33 1/3 percent DRIs

- 8.10 Staffing/Administration. Contractor shall maintain an adequate number of qualified persons to assure the satisfactory implementation of: program leadership; program planning; provision of nutrition services; transportation; outreach and other services; volunteer activities; financial and contract management; data collection for required federal, State and County reports and records. **Notification of program changes must be made to the County within twenty-four (24) hours when said changes will affect the delivery of services to the participants.**
- 8.10.1 Contractor shall comply with Title 22 Section 7636.3 Staff Qualifications. [https://www.aging.ca.gov/ProgramsProviders/AAA/Nutrition/Code\\_of\\_Regulations/](https://www.aging.ca.gov/ProgramsProviders/AAA/Nutrition/Code_of_Regulations/)
- 8.11 Meal Contributions by Eligible Participants. Eligible persons receiving nutrition services shall be given the opportunity to contribute to the cost of the service provided and shall determine for themselves what they are able to contribute. Contractor shall post a suggested donation amount. Contractor shall not deny services to any person because of failure to contribute [OAA 315(b)(4)]22CCR 7638.9]. Methods to receive contributions shall ensure anonymity and protect the privacy and confidentiality of each recipient with respect to the recipient's contribution or lack of contribution. Contractor shall provide a 30-day notification to participants of increases in recommended donations.
- 8.11.1 Contractor shall establish written procedures to protect contributions and fees from loss, mishandling, and theft. Such procedures shall be kept on file at Contractor's site, and provided to the COR annually for pre-approval.
- 8.11.2 Contributions are considered program income and shall be used in support of the nutrition program.
- 8.11.3 Meal participants shall be informed that there is no obligation to contribute and contributions are purely voluntary.
- 8.12 Meal Charges for Staff and Guests under Sixty (60) Years of Age. Contractor may serve meals to staff and guests under sixty (60) years of age if doing so shall not deprive an eligible participant of a meal. These individuals shall pay at least the full cost of the meal. Contractor shall post the price for guests under sixty (60) years of age.
- 8.12.1 Charges for meals are considered program income and shall be used in support of the nutrition program.
- 8.13 Records, Reports and Distribution Information. Contractor shall maintain a system for the collection of data that will accurately reflect the Contractor's program and financial operations, will meet requirements with respect to confidentiality, and fulfill the information required by this contract.
- 8.13.1 Contractor shall have a clear sign-in process utilized at each meal. Guests under sixty (60) years of age shall be recorded separately or in a way that clearly indicates they are under sixty (60) years of age.
- 8.13.2 Contractor shall report all program income and match to the County on a monthly basis.
- 8.14 Holidays. A maximum of twelve (12) recognized holiday closings will be allowed per year. A holiday schedule must be submitted to the COR at the beginning of each fiscal year for pre-approval, no later than thirty (30) days after the start of the new fiscal year. Additional closures will be handled on a case-by-case basis and require a minimum of thirty (30) days advance notice to the County.
- 8.6.1 If more than twelve (12) holiday closings are taken, Contractor must make up the days lost.
- 8.15 Data Collection and Reporting.

**COUNTY CONTRACT NUMBER 561764**  
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**EXHIBIT A – STATEMENT OF WORK**  
**CONGREGATE MEALS WITH TRANSPORTATION IN THE NORTH INLAND REGION**

- 8.15.1 Contractor shall utilize the AIS-identified automated data collection system to:
  - 8.7.1.1 Register and maintain all CDA required client demographic and assessment data for all active clients. AIS Client Intake & Assessment Form shall be used to collect required information.
  - 8.7.1.2 Track and report all service unit delivery data (via bar-coding and manual data entry) on an on- going basis.
- 8.15.2 Contractor shall maintain and report accurate daily meal counts, nutrition education, and transportation units in the County-identified automated data collection system.
- 8.15.3 Contractor shall submit monthly summary reports of the information listed in 8.7 and claims to the designated COR by the fifteenth (15<sup>th</sup>) of the month following the month in which the services were provided. Claims will be paid upon successful determination of reconciled data as mentioned in paragraphs 8.7.1.1 and 8.7.1.2.
- 8.15.4 Contractor shall submit a completed report of actual costs expended for each service category at the end of each contract fiscal year for the term of the contract, as requested by the County, in the form and format as provided by COR.
- 8.16 Customer Satisfaction Survey. Contractor shall annually obtain the views of participants regarding the services received through the development and utilization of a customer satisfaction survey.
  - 8.16.1 Contractor shall provide a summary report of the results of the satisfaction survey to the COR by the fifteenth (15<sup>th</sup>) of the month following the completion of the survey cycle.
  - 8.16.2 Contractor shall make all survey results available to COR upon request.
- 8.17 Grievance Procedure. Contractor shall develop a written grievance process per Title 22 CCR 7400(a)(2)-(3) for clients to report grievances pertaining to the nutrition program, inclusive of the complainant’s rights to privacy. The process shall be posted in a visible and accessible area of each congregate site. Homebound individuals shall be notified of the grievance process in writing. Contractor shall provide copy to COR annually for pre-approval.

**9 Disaster Preparedness**

- 9.1 As a provider of critical services to seniors and individuals with ADA accessibility requirements during a disaster, each multipurpose senior center and each senior center, as defined in subdivisions (j) and (n) of Section 9591 (n) “Senior center” means a community focal point on aging, where older individuals as individuals or in groups come together for services and activities which enhance their dignity, support their independence, and encourage their involvement in and with the community. Senior center programs consist of a variety of services and activities in areas, such as education, creative arts, recreation, advocacy, leadership development, employment, health, nutrition, social work, and other supportive services.

WELFARE AND INSTITUTIONS CODE - WIC

DIVISION 8.5. MELLO-GRANLUND OLDER CALIFORNIANS ACT [9000 - 9750] (*Division 8.5 repealed and added by Stats. 1996, Ch. 1097, Sec. 13.*)

CHAPTER 9.5. Multipurpose Senior Centers And Senior Centers Emergency Operations Plans [9625- 9625.] (*Chapter 9.5 added by Stats. 2006, Ch. 620, Sec. 2.*)

- 9.2 Contractor shall:

- 9.2.1 Develop and maintain a written emergency operations plan to ensure preparedness and the ability to continue

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to deliver services during and post-disaster. Contractor shall submit the plan for review and pre-approval by COR annually and shall keep the plan on site.

- 9.2.1.1 This emergency operation plan shall include, but not be limited to, all of the following:
- 9.2.1.2 Facility preparation procedures to identify the location of first aid supplies, secure all furniture, appliances, and other free-standing objects, and provide instructions for operating gas and water shutoff valves.
- 9.2.1.3 An inventory of neighborhood resources that shall include, but not be limited to, the identification and location of all the following nearby resources:
  - 9.2.1.3.1 Generators
  - 9.2.1.3.2 Telephones
  - 9.2.1.3.3 Hospitals and public health clinics
  - 9.2.1.3.4 Fire stations and police stations
- 9.2.1.4 Evacuation procedures, including procedures to accommodate those who will need assistance in evacuating the center. This evacuation plan shall be located in an area that is accessible to the public.
- 9.2.1.5 Procedures to accommodate seniors, individuals with ADA accessibility requirements, and other community members in need of shelter at the senior center, in the event that other community facilities are inoperable.
- 9.2.1.6 Personnel resources necessary for post disaster response.
- 9.2.1.7 Procedures for conducting periodic evacuation drills, fire drills, and earthquake drills.
- 9.2.1.8 Procedures to ensure service continuation after a disaster.
- 9.2.1.9 Consideration of cultural and linguistic barriers in emergency and evacuation plans, and ways to appropriately address those barriers.
  - 9.2.1.9.1 In the development of the emergency operations plans required by this chapter, multipurpose senior centers and senior centers shall coordinate with the local Area Agency on Aging, as defined in Section 9006, and other relevant agencies and stakeholders.  
*(Amended by Stats. 2013, Ch. 352, Sec. 537. (AB 1317) Effective September 26, 2013. Operative July 1, 2013, by Sec. 543 of Ch. 352.)*
- 9.2.1.10 Where feasible and appropriate, make arrangements for the availability of meals to participants during a major disaster, as defined in 42 U.S.C. 5122(2).

9.3 Provide the County with the following:

- 9.3.1 Primary and secondary emergency contact phone numbers.
- 9.3.2 Status updates, upon request, during and post-disaster, including the following at a minimum:
  - 9.3.2.1.1 Operability of sites and/or services.
  - 9.3.2.1.2 Services provided to the target population.
  - 9.3.2.1.3 Service capacity.



**COUNTY CONTRACT NUMBER 561764**  
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**EXHIBIT B – INSURANCE REQUIREMENTS**

Without limiting Contractor’s indemnification obligations to County, Contractor shall provide at its sole expense and maintain for the duration of this contract, or as may be further required herein, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of the work by the Contractor, his agents, representatives, employees or subcontractors.

**1. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

- A. Commercial General Liability, Occurrence form, Insurance Services Office form CG0001.
- B. Automobile Liability covering all owned, non-owned, hired auto Insurance Services Office form CA0001.
- C. Automobile Physical Damage providing ACV Comprehensive and Collision on Program vehicles.
- D. Workers’ Compensation, as required by State of California and Employer’s Liability Insurance.

**2. Minimum Limits of Insurance**

Contractor shall maintain limits no less than:

- A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability, and Independent Contractors Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$4,000,000.
- B. Automobile Liability: \$1,000,000 each accident for bodily injury and property damage.
- C. Automobile Physical Damage: Coverage shall include a Loss Payable clause to the County of San Diego. Maximum deductible of \$2,500 per occurrence
- C. Employer’s Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of County of San Diego.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. As a requirement of this contract, any available insurance proceeds in excess of the specified minimum limits and coverage stated above, shall also be available to the County of San Diego.

**3. Deductibles and Self-Insured Retentions**

Any self-insured retention must be declared to and approved by County Risk Management.

**4. Other Insurance Provisions**

The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

A. Additional Insured Endorsement

The County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively are to be covered as additional insureds on the General Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed by or on behalf of the Contractor. General Liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO from CG 2010 11 85 or **both** CG 2010, CG 2026, CG 2033, or CG 2038; **and** CG 2037 forms if later revisions used).

B. Primary Insurance Endorsement

For any claims related to this contract, the Contractor’s insurance coverage, including any excess liability policies, shall be primary insurance at least as broad as ISO CG 2001 04 13 as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by the County, its officers, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.

**COUNTY CONTRACT NUMBER 561764**  
**AGREEMENT WITH CITY OF ESCONDIDO FOR SENIOR NUTRITION PROGRAM**  
**EXHIBIT B – INSURANCE REQUIREMENTS**

C. Notice of Cancellation

Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

D. Severability of Interest Clause

Coverage applies separately to each insured, except with respect to the limits of liability, and that an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds.

**General Provisions**

**5. Qualifying Insurers**

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A, VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by County Risk Management.

**6. Evidence of Insurance**

Prior to commencement of this Contract, but in no event later than the effective date of the Contract, Contractor shall furnish the County with a copy of the policy declaration and endorsement pages along with the certificates of insurance and amendatory endorsements effecting coverage required by this clause. Policy declaration and endorsement pages shall be included with renewal certificates and amendatory endorsements submissions and shall be furnished to County within thirty days of the expiration of the term of any required policy. Contractor shall permit County at all reasonable times to inspect any required policies of insurance.

**7. Failure to Obtain or Maintain Insurance; County's Remedies**

Contractor's failure to provide insurance specified or failure to furnish certificates of insurance and amendatory endorsements or failure to make premium payments required by such insurance, shall constitute a material breach of the Contract, and County may, at its option, terminate the Contract for any such default by Contractor.

**8. No Limitation of Obligations**

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to the Contract, including, but not limited to, the provisions concerning indemnification.

**9. Review of Coverage** County retains the right at any time to review the coverage, form and amount of insurance required herein and may require Contractor to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

**10. Self-Insurance**

Contractor may, with the prior written consent of County Risk Management, fulfill some or all of the insurance requirements contained in this Contract under a plan of self-insurance. Contractor shall only be permitted to utilize such self-insurance if in the opinion of County Risk Management, 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 Contract. Contractor's utilization of self-insurance shall not in any way limit liabilities assumed by Contractor under the Contract.

**11. Subcontractors' Insurance**

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors. Such Additional Insured endorsement shall be attached to the certificate of insurance in order to be valid and on a form at least as broad as ISO from CG 2010 11 85 or both CG 2010, CG 2026, CG 2033, or CG 2038; and CG 2037 forms if later revisions used. If any sub contractor's coverage does not comply with the foregoing provisions, Contractor shall defend and indemnify the County from any damage, loss, cost, or expense, including attorneys' fees, incurred by County as a result of subcontractor's failure to maintain required coverage.

**12. Waiver of Subrogation**

Contractor hereby grants to County a waiver of their rights of subrogation which any insurer of Contractor may acquire against County by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the County for all work performed by the Contractor, its employees, agents and subcontractors.

**COUNTY CONTRACT NUMBER 561764  
 AGREEMENT WITH CITY OF ESCONDIDO FOR SENIOR NUTRITION PROGRAM  
 EXHIBIT C – PRICING SCHEDULE**

**COMPENSATION:** The compensation listed below is not designed to fully fund the program. The fixed supplemental rates are developed annually based on funding and determined to offset the cost of providing services. These rates are subject to availability of funding from the State of California, California Department of Aging (CDA) and can change annually. A completed report of actual costs (closeout report) expended shall be submitted at the end of the fiscal year.

**BASE PERIOD February 1, 2020 – June 30, 2020**

<b>Services</b>	<b>Proposed Number of Service Meals</b>	<b>County's Fixed Supplemental Rate</b>	<b>Total</b> (Multiply the # of Service Meals by the County Supplemental Rate or Incentive Payment for the total)	<b>Contractor's Match</b> (Multiply the total by 11.11% for total contractor match)
<b>Congregate Meals</b>	16,907	\$4.96	\$83,858.72	\$9,316.70
<b>Home-Delivered Meals</b>	N/A	N/A	N/A	N/A
<b>Transportation</b> (Number of proposed Congregate Meals)	6,229	\$5.75	\$35,816.75	\$3,979.24
<b>Incentive Payments*</b> (Number of proposed Congregate Meals)	16,907	\$0.77	\$13,018.39	N/A
<b>Incentive Payments*</b> (Number of proposed Home-Delivered Meals)	N/A	N/A	N/A	N/A
<b>GRAND TOTAL:</b>			\$132,693.68	\$13,295.94

\*Nutrition Services Incentive Payment (NSIP) dollar amounts are estimates ONLY and may be adjusted based on actual prior year number of meals served.

**1. Cost Reimbursement**

- 1.1. Contractor may be reimbursed for items purchased under this agreement in accordance with SOW paragraph 6.2.3 for One-Time-Only (OTO) Funds.
- 1.2. OTO Funds are based funds received from the State of California. The County cannot guarantee the receipt of the funds and all expenditures must be approved in advance by the County.
- 1.3. Contractor shall procure County approved goods and services through competitive measures further defined in SOW paragraph 6.2.3.
  - 1.3.1. Contractor shall provide a log of purchases made during the billing period and provide with an invoice for reimbursement. Information provided shall include:
    - 1.3.1.1. Description of item purchased
    - 1.3.1.2. Description of competitive measures taken to make said purchase
      - 1.3.1.2.1. Back up documentation providing competitive measures were taken.
    - 1.3.1.3. Total Price of item(s) purchased
    - 1.3.1.4. Date of items(s) purchased

**COUNTY CONTRACT NUMBER 561764  
 AGREEMENT WITH CITY OF ESCONDIDO FOR SENIOR NUTRITION PROGRAM  
 EXHIBIT C – PRICING SCHEDULE**

**OPTION 1 - July 1, 2020 – June 30, 2021**

<b>Services</b>	<b>Proposed Number of Service Meals</b>	<b>County's Fixed Supplemental Rate</b>	<b>Total</b> (Multiply the # of Service Meals by the County Supplemental Rate or Incentive Payment for the total)	<b>Contractor's Match</b> (Multiply the total by 11.11% for total contractor match)
<b>Congregate Meals</b>	26,496	\$4.96	\$131,420.16	\$14,600.78
<b>Home-Delivered Meals</b>	N/A	N/A	N/A	N/A
<b>Transportation</b> (Number of proposed Congregate Meals)	14,268	\$5.75	\$82,041.00	\$9,114.76
<b>Incentive Payments*</b> (Number of proposed Congregate Meals)	26,496	\$0.77	\$20,401.92	N/A
<b>Incentive Payments*</b> (Number of proposed Home-Delivered Meals)	N/A	N/A	N/A	N/A
<b>GRAND TOTAL:</b>			\$233,863.08	\$23,715.53

\*Nutrition Services Incentive Payment (NSIP) dollar amounts are estimates ONLY and may be adjusted based on actual prior year number of meals served.

**1. Cost Reimbursement**

- 1.1. Contractor may be reimbursed for items purchased under this agreement in accordance with SOW paragraph 6.2.3 for One-Time-Only (OTO) Funds.
- 1.2. OTO Funds are based funds received from the State of California. The County cannot guarantee the receipt of the funds and all expenditures must be approved in advance by the County.
- 1.3. Contractor shall procure County approved goods and services through competitive measures further defined in SOW paragraph 6.2.3.
  - 1.3.1. Contractor shall provide a log of purchases made during the billing period and provide with an invoice for reimbursement. Information provided shall include:
    - 1.3.1.1. Description of item purchased
    - 1.3.1.2. Description of competitive measures taken to make said purchase
      - 1.3.1.2.1. Back up documentation providing competitive measures were taken.
    - 1.3.1.3. Total Price of item(s) purchased.
    - 1.3.1.4. Date of items(s) purchased.

**COUNTY CONTRACT NUMBER 561764  
 AGREEMENT WITH CITY OF ESCONDIDO FOR SENIOR NUTRITION PROGRAM  
 EXHIBIT C – PRICING SCHEDULE**

**OPTION 2 - July 1, 2021 – June 30, 2022**

<b>Services</b>	<b>Proposed Number of Service Meals</b>	<b>County's Fixed Supplemental Rate</b>	<b>Total</b> (Multiply the # of Service Meals by the County Supplemental Rate or Incentive Payment for the total)	<b>Contractor's Match</b> (Multiply the total by 11.11% for total contractor match)
<b>Congregate Meals</b>	26,496	\$4.96	\$131,420.16	\$14,600.78
<b>Home-Delivered Meals</b>	N/A	N/A	N/A	N/A
<b>Transportation</b> (Number of proposed Congregate Meals)	14,268	\$5.75	\$82,041.00	\$9,114.76
<b>Incentive Payments*</b> (Number of proposed Congregate Meals)	26,496	\$0.77	\$20,401.92	N/A
<b>Incentive Payments*</b> (Number of proposed Home-Delivered Meals)	N/A	N/A	N/A	N/A
<b>GRAND TOTAL:</b>			\$233,863.08	\$23,715.53

\*Nutrition Services Incentive Payment (NSIP) dollar amounts are estimates ONLY and may be adjusted based on actual prior year number of meals served.

**1. Cost Reimbursement**

- 1.1. Contractor may be reimbursed for items purchased under this agreement in accordance with SOW paragraph 6.2.3 for One-Time-Only (OTO) Funds.
- 1.2. OTO Funds are based funds received from the State of California. The County cannot guarantee the receipt of the funds and all expenditures must be approved in advance by the County.
- 1.3. Contractor shall procure County approved goods and services through competitive measures further defined in SOW paragraph 6.2.3.
  - 1.3.1. Contractor shall provide a log of purchases made during the billing period and provide with an invoice for reimbursement. Information provided shall include:
    - 1.3.1.1. Description of item purchased
    - 1.3.1.2. Description of competitive measures taken to make said purchase
      - 1.3.1.2.1. Back up documentation providing competitive measures were taken.
    - 1.3.1.3. Total Price of items(s) purchased
    - 1.3.1.4. Date of items(s) purchased

**COUNTY CONTRACT NUMBER 561764  
 AGREEMENT WITH CITY OF ESCONDIDO FOR SENIOR NUTRITION PROGRAM  
 EXHIBIT C – PRICING SCHEDULE**

**OPTION 3 - July 1, 2022 – June 30, 2023**

<b>Services</b>	<b>Proposed Number of Service Meals</b>	<b>County's Fixed Supplemental Rate</b>	<b>Total</b> (Multiply the # of Service Meals by the County Supplemental Rate or Incentive Payment for the total)	<b>Contractor's Match</b> (Multiply the total by 11.11% for total contractor match)
<b>Congregate Meals</b>	26,496	\$4.96	\$131,420.16	\$14,600.78
<b>Home-Delivered Meals</b>	N/A	N/A	N/A	N/A
<b>Transportation</b> (Number of proposed Congregate Meals)	14,268	\$5.75	\$82,041.00	\$9,114.76
<b>Incentive Payments*</b> (Number of proposed Congregate Meals)	26,496	\$0.77	\$20,401.92	N/A
<b>Incentive Payments*</b> (Number of proposed Home-Delivered Meals)	N/A	N/A	N/A	N/A
<b>GRAND TOTAL:</b>			\$233,863.08	\$23,715.53

\*Nutrition Services Incentive Payment (NSIP) dollar amounts are estimates ONLY and may be adjusted based on actual prior year number of meals served.

**1. Cost Reimbursement**

- 1.1. Contractor may be reimbursed for items purchased under this agreement in accordance with SOW paragraph 6.2.3 for One-Time-Only (OTO) Funds.
- 1.2. OTO Funds are based funds received from the State of California. The County cannot guarantee the receipt of the funds and all expenditures must be approved in advance by the County.
- 1.3. Contractor shall procure County approved goods and services through competitive measures further defined in SOW paragraph 6.2.3.
  - 1.3.1. Contractor shall provide a log of purchases made during the billing period and provide with an invoice for reimbursement. Information provided shall include:
    - 1.3.1.1. Description of item purchased
    - 1.3.1.2. Description of competitive measures taken to make said purchase
      - 1.3.1.2.1. Back up documentation providing competitive measures were taken.
    - 1.3.1.3. Total Price of items(s) purchased
    - 1.3.1.4. Date of items(s) purchased



# STAFF REPORT

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June 22, 2022  
File Number 0430-30

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## SUBJECT

### FISCAL YEAR 2022/23 OPERATING BUDGET ADOPTION

## DEPARTMENT

Finance

## RECOMMENDATION

Request the City Council adopt Resolution No. 2022-69 approving the Fiscal Year 2022/23 Annual Operating Budget; and adopt Resolution No. 2022-70 approving the Appropriations Limit (Gann Limit) for Fiscal Year 2022/23.

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

Presenter: Christina Holmes, Director of Finance

## ANALYSIS

The proposed FY2022/23 Annual Operating Budget document can be viewed on the City's website at: <https://www.escondido.org/annual-operating-budget>.

On May 11, 2022, City Council was presented with an update on the annual budget process, General Fund Multi-Year Financial Forecast, and the Preliminary Operating Budget for FY2022/23. Operating revenue has not kept pace with the growing costs of providing City services, and as a result the General Fund long-term financial plan has projected annual deficits creating a structural budget deficit. To address this projected shortfall, the City has maintained a hardline on expenditures and staff are continuously seeking measures that ensure efficiency, while enhancing basic operations. Despite all of these measures, and the City's efforts to fund projects with grants and other sources of one-time funds, it has not been enough to meet growing costs and demand for services, the General Fund operating budget projected a net operating deficit of \$8.5 million. The City Council direction to Staff during the Preliminary Budget Workshop was to prepare a General Fund Operating Budget that closed the \$8.5 million deficit, without impacting the Public Safety departments and services, including Police, Fire, and Public Works.

In order to address the \$8.5 million General Fund deficit, Staff evaluated both projected operating revenue and the proposed operating expenses for FY2022/23. A detailed report of the proposed amendments and reductions is included at the conclusion of this staff report. Due to updated information received subsequent to the May 11, 2022 budget workshop, Sales Tax revenue was increased by



# CITY of ESCONDIDO

## STAFF REPORT

\$1,000,000 and property tax revenue was increased by \$430,000. General Fund operating expense reductions of \$7,068,910 were recommended, summarized below.

	<b><u>Total Budget Reduction</u></b>
Fleet Services Vehicle Replacement Funds	(2,278,970)
Roof Repair of City Buildings	(550,000)
Cost Savings Budget Reduction	(1,000,000)
California Center for the Arts	(1,935,949)
Public Works Reduced Maintenance Positions	(427,500)
Items Removed & Reclassified	(1,317,491)
<b>Total Budget Reductions</b>	<b>(\$7,068,910)</b>

The proposed reductions and modifications to City services were sufficient to close the FY2022/23 budget gap. The following is a summary of the proposed sources and uses in the preliminary Operating Budget presented on May 11, 2022, the amendments to the preliminary budget, and the updated sources and uses presented on June 8, 2022:

	<b>May 11, 2022 Preliminary Budget</b>	<b>Amendments</b>	<b>June 8, 2022 Proposed Budget</b>
<b><u>Sources of Funds:</u></b>			
Operating Revenue	\$118,257,230	\$1,430,000	\$119,687,230
Deposit – PEG Fees	11,700		11,700
Transfer from Gas Tax Fund	2,055,000		2,055,000
Transfer from CFD No. 2020-1 (The Services)	285,000		285,000
<b>TOTAL, Sources</b>	<b>\$120,608,930</b>	<b>\$1,430,000</b>	<b>\$122,038,930</b>
<b><u>Uses of Funds:</u></b>			
Operating Budget	\$128,520,810	(\$7,068,910)	\$121,451,900
Transfer to Building Maintenance	86,880		86,880
Transfer to Reidy Creek Golf Course – Debt Service	362,750		362,750
Transfer to Successor Agency – Housing	25,000		25,000
Transfer to Vehicle Parking District	112,400		112,400
<b>TOTAL, Uses</b>	<b>\$129,107,840</b>	<b>(\$7,068,910)</b>	<b>\$122,038,930</b>
<b>FY2022/23 General Fund Net Operating Deficit</b>	<b>(\$8,498,910)</b>		<b>\$0</b>





# CITY of ESCONDIDO

## STAFF REPORT

### **JUNE 8 BUDGET DIRECTION RECEIVED FROM CITY COUNCIL**

After discussion and consideration of the recommended budget reductions, City Council directed Staff to modify the proposed FY2022/23 operating budget and offset some of the budgetary cuts recommended with the use of no more than \$5,000,000 in one-time funds from the American Rescue Plan Act (ARPA) funds and the Section 115 Pension Trust fund.

With the direction from City Council, Staff have evaluated the list of operating budget cuts and are recommending adding back the following items to the FY2022/23 operating budget, resulting in the use of one-time funds of \$3,735,030.

Fleet Services Fund – FY2022/23 Proposed Budget Reduction = \$2,278,970

*Add Back Funding of \$1,214,500*

To help alleviate budget shortages, available resources in the Fleet Fund have been used to balance prior year budgets. Since the Great Recession that began in FY2009/10, the Fleet Services Fund has minimized budgetary impacts to the General Fund by deferring purchases, reducing allocations, and using reserve balances.

In the preliminary FY2022/23 budget, the allocation from the General Fund to the Fleet Services Fund was increased by \$2.2 million to partially fund upcoming Police, Fire, and Street Maintenance vehicle purchases. One of the steps staff took to close the FY2022/23 General Fund deficit was to reduce this allocation to the Fleet Service Fund by the \$2.2 million and to instead utilize \$1.2 million from the Fleet Fund reserves in order to replace 20 police cars, 4 police motorcycles, 11 trucks, and 5 other pieces of equipment all of which are past their useful life.

Staff are proposing to increase the funding to the Fleet Services Fund to move forward with these purchases without the use of reserves of \$1,214,500.

Roof Repair of City Buildings – FY2022/23 Proposed Budget Reduction = \$550,000

*Add Back Funding of \$550,000*

The roofs of many City buildings are at the end of their useful life resulting in deterioration, leaks, and potential mold. In order to address the deferred maintenance of more than \$1 million in roof repairs, the FY2022/23 preliminary operating budget includes \$550,000 to address urgent repairs needed to prevent further damage.



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Historical Cost Savings Target – FY2022/23 Proposed Budget Reduction = \$1,000,000

*Add Back Funding of \$400,000*

Historically the City's practice has been to budget for the full cost of operating expenses. Items such as employee service savings resulting from vacant positions are not assumed in the operating budget or financial forecast with the goal of developing a conservative budget. The preliminary FY2022/23 Operating Budget presented in May used this same methodology.

To account for the annual expenditures savings, the preliminary operating budget presented on June 8 included a cost savings rate, or budget reduction, in recognition of these annual savings. The proposed FY2022/23 cost savings budget reduction is \$1 million, which excludes the Public Safety departments and services. Based on an analysis of the previous 5 fiscal years of savings, a Cost Savings Reduction line item has been added to individual departments in the General Fund.

Many municipal agencies utilize this budgetary practice of setting a target based on historical spending trends, but this represents a significant change in way the City does business. Therefore, Staff are recommending to include an offsetting Cost Savings Contingency amount of \$400,000 in the non-departmental section of the budget to give some flexibility in managing available resources to be used throughout the fiscal year under the direction of the City Manager.

California Center for the Arts, Escondido (CCAЕ) – FY2022/23 Proposed Budget Reduction up to \$1,900,000

*Add Back Funding of \$1,570,530*

The CCAE facility is owned by the City of Escondido and operated by the California Center for the Arts, Escondido, Foundation, Inc. (the "Foundation") under a Management Agreement. Financial support is provided to the Foundation from the City for various items, including a management fee paid to the Foundation for the operation of the Center, all gas and electric utility bills for the campus, and support from Building Maintenance and Network Administration, either through direct payments of operational costs or employee staff time. The following is a summary of those financial support items that were included in the preliminary FY2022/23 operating budget:

- Management Fee: \$788,370
- Gas & Electric Utilities expenses: \$810,000
- Building Maintenance Services: \$829,800
- Network Support Services: \$102,090

To address the General Fund deficit for FY2022/23, Staff proposed amending the management agreement with the Foundation to eliminate the management fee of \$788,370, transfer the responsibility of all gas & electric utility costs to the Foundation, as well as the direct maintenance expenses of approximately \$337,579 that are currently paid for by the City resulting in General Fund savings of approximately \$1,935,949.



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To allow time to work with the Foundation on a long-term solution to the operating and financial impacts to the City, all financial support items for the CCAE were added back to the General Fund operating budget. In addition, the Foundation has proposed an initial reduction in the annual management fee of \$133,000; from the Preliminary FY2022/23 budget amount of \$788,370 to \$655,370. The management fee will be disbursed to the Foundation in two installments, the first in July 2022 for half of the original proposed management fee (\$394,185) and the balanced of the reduced amount (\$261,185) in January 2023. Before the second disbursement of funds, the City and Foundation will negotiate a new management agreement to reflect these changes and also update the agreement on related matters.

The following is a summary of the financial support items to the Foundation that are now included in the proposed FY2022/23 operating budget:

- Reduced Management Fee: \$655,370
- Gas & Electric Utilities expenses: \$810,000
- Building Maintenance Services: \$713,270 (*modified number reflects updated Citywide allocations in the final proposed budget*)
- Network Support Services: \$102,090

### FY2022/23 OPERATING BUDGET UNDER CONSIDERATION FOR ADOPTION

As detailed above, the following is a summary of the budgetary reductions that Staff have proposed adding back to the General Fund Operating Budget:

	<b>Added Back</b>
Fleet Services Vehicle Replacement Funds	\$1,214,500
Roof Repair of City Buildings	550,000
Cost Savings Budget Reduction	400,000
California Center for the Arts	1,570,530
<b>Total Added Back to Budget</b>	<b>\$3,735,030</b>

The staff recommendation is to utilize funds from the Revenue Loss provision of the American Rescue Plan Act to close the General Fund operating budget deficit in FY2022/23. The American Rescue Plan Act will provide the City one-time funding of \$38,808,509 to cover expenses in response to the COVID-19 pandemic, make up for lost revenue, and ease the overall economic impact from the pandemic. Funds may only be used for project costs initiated on or after March 3, 2021, and must qualify within one of the eligible expenditure categories described below. All funds must be fully spent by December 31, 2026.

The American Rescue Plan Act defines four broad use categories for the State and Local Fiscal Recovery Fund program: response to the public health emergency or its negative economic consequences; provision of premium pay to eligible workers; revenue replacement; and investments in water, sewer and broadband infrastructure. In September 2021, the City Council approved a spending plan of \$22,808,509



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and identified \$6,000,000 of funds to be used under the loss revenue category based on a calculation required by the Treasury Department, summarized in the table below.

Summary of American Rescue Plan Act Funds	
American Rescue Plan Act Allocation	\$38,808,509
Spending Plan Adopted September 2021	(22,808,509)
Earmarked for Loss Revenue	(6,000,000)
<b>Remaining ARPA Funds Not Yet Allocated</b>	<b>\$10,000,000</b>

Based on updated guidance from Treasury released in January 2022, a standard allowance can be elected by all recipients which permits the amount claimed under revenue loss to increase to \$10,000,000. The amount claimed under revenue loss can be used for “general government services,” which provides significant flexibility for municipalities. “General government services” includes any service traditionally provided by a government, other than a few exceptions explicitly identified by the Treasury. The Final Rule lists some common examples of “general government services,” including road building and maintenance and other infrastructure, health services, general government administration, staff and administrative facilities, environmental remediation, and provision of police, fire and other public safety services (including purchase of fire and police vehicles).

An update on the American Rescue Plan Act was presented to City Council on April 20, 2022. In August, Staff will return to City Council to give feedback and additional details on the requested direction to research funding programs or capital projects. In addition, Council will be asked to vote to finalize the calculation on revenue recovery options based on the January 7, 2022 Final Rule guidelines.

With the use of American Rescue Plan Act Funds of \$3,735,030, the updated FY 2022/23 Operating Budget Sources and Uses are as follows:

	June 8, 2022 Proposed Budget	Amendments	FY2022/23 Proposed Budget
<b><u>Sources of Funds:</u></b>			
Operating Revenue	\$119,687,230		\$119,687,230
Deposit – PEG Fees	11,700		11,700
<i>Transfer from American Rescue Plan Act</i>	-	\$3,735,030	\$3,735,030
Transfer from Gas Tax Fund	2,055,000		2,055,000
Transfer from CFD No. 2020-1 (The Services)	285,000		285,000
<b>TOTAL, Sources</b>	<b>\$122,038,930</b>	<b>\$3,735,030</b>	<b>\$125,773,960</b>



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<b>Uses of Funds:</b>			
Operating Budget	\$121,451,900	\$3,735,030	\$125,186,930
Transfer to Building Maintenance	86,880		86,880
Transfer to Reidy Creek Golf Course – Debt Service	362,750		362,750
Transfer to Successor Agency – Housing	25,000		25,000
Transfer to Vehicle Parking District	112,400		112,400
<b>TOTAL, Uses</b>	<b>\$122,038,930</b>	<b>\$3,735,030</b>	<b>\$125,773,960</b>

Until revenue is increased on an ongoing and structural basis, the City must continue to rely on short-term, one-time resources to continue operations and avoid drastic cuts to City services. To maintain a balanced budget and yet continue an appropriate level of service and address City priorities, the Fiscal Year 2022/23 budget utilizes funds from the American Rescue Plan Act, a short-term, one-time source of funds. There are also many much-needed items that are not included in the FY2022/23 proposed budget:

- critical infrastructure, equipment and vehicle, and repair needs
- deferred maintenance of current facilities and parks
- ongoing maintenance of new assets being added to the community
- underfunding reserve accounts
- ability to continue supporting community organizations and events
- addressing organizational capacity issues

In addition to the above, high priorities from the community are not being addressed. The City continues to strive to provide the level of service residents expect and deserve, but given the structural General Fund deficit, it is increasingly becoming more difficult to do so.

In keeping with our commitment to long-term planning, staff will continue to provide financial recommendations based on realistic revenue projections, risk assessments, and prudent spending to ensure a stable financial position. The community engagement and outreach regarding the City's budget and projected operating deficit will continue after this fiscal year's budget is adopted. The City Manager has set aside funds in the budget to enhance the dialogue with the community, evaluate the services the City provides, and determine the right size of the organization to continue to provide those critical City services while addressing the high priorities of the community.

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### ***Summary of Amendments and Budget Reductions Proposed on June 8, 2022***

Sales Tax Revenue Forecast – FY2022/23 Budget Revenue Increase = \$1,000,000

During the FY2022/23 preliminary budget workshop, City staff reviewed the assumptions and analysis used for forecasting sales tax revenue. Sales Tax, which makes up 42% of total FY2022/23 projected General Fund operating revenue, is highly sensitive to economic conditions, making this revenue



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particularly challenging to forecast. To assist with this analysis, the City works closely with its sales tax consultant, Avenulights, in projecting sales tax revenue.

Avenulights prepares three levels in their forecast for projected sales tax revenue – Conservative, Most-Likely, and Optimistic. These assumption and numbers are updated each quarter based on current economic conditions and actual revenue collected for the City. The preliminary FY2022/23 budget proposed using the conservative forecast assumption of \$50 million. This level was proposed after discussion with the consultants, and an analysis of possible economic conditions this upcoming fiscal year.

There are indicators that the economy could slow once more which would impact the forecasted revenue. The fiscal support through Federal programs, which assisted in pushing up demand in 2020 and 2021 through stimulus spending, has expired. Although wages have been increasing nationwide, inflation has been rising faster, leading to a decrease in purchasing power which could hurt consumer demand. On the other hand, the combination of Federal stimulus programs and limitations on household spending for certain items, such as travel, have enabled consumers to save, which could prop up spending leading to continued sales tax growth in the next fiscal year. Despite the unknowns, sales tax revenue continues to grow and is trending above the amount projected in the current fiscal year, 2021/22. Therefore, staff have increased the FY2022/23 projected sales tax revenue by an additional \$1 million, or 10% from the prior fiscal year:

Revenue	FY2021/22 Amended	FY2022/23 Projected	Change	%
Sales Tax	\$46,347,300	\$51,012,200	\$4,664,900	10%

City staff will continue to monitor economic indicators and sales tax revenue closely and return to Council with updates during the fiscal year.

### Property Tax Revenue Forecast – FY2022/23 Budget Revenue Increase = \$430,000

Projected property tax revenue is based on growth in prior fiscal years, while also accounting for the annual inflation adjustment which is capped at 2% under Proposition 13. Changes in the assessed value in property, and subsequent property tax revenue the City receives above the 2% limit, can be largely attributed to property value reassessments that occurred as the result of changes in ownership and new construction in the City. Shortly after the May 11 City Council meeting, the County Assessor provided their preliminary property assessed values for the City for the upcoming fiscal year. The total combined assessed values are estimated to grow by \$1,206,124,087, a 6.7% increase from the prior year, slightly above the amount currently forecasted in the City's budget. Based on the additional information received from the County Assessor and an evaluation of historical results, staff increased the FY2022/23 projected property tax revenue by \$430,000, or 6% from the prior fiscal year.



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	<b>FY2021/22 Budget</b>	<b>AMENDED FY2022/23 Projected</b>	<b>Change</b>	<b>%</b>
<b>Revenue</b>				
Property Tax	\$30,925,000	\$32,780,100	\$1,855,100	6%

Items Reclassified and Removed – FY2022/23 Budget Reduction = \$1,352,540

The following is a summary of the additional budget items that have been eliminated or modified, as described below, from the FY2022/23 proposed operating budget that further closed the budget gap:

	<b>Description</b>	<b>Budget Amount</b>
<b>1</b>	Staff Position – Grant Writer Management Analyst	\$112,800
<b>2</b>	Staff Position – Human Resources Analyst	76,000
<b>3</b>	Staff Position – Digital Media Technician	77,240
<b>4</b>	Fire Department Equipment	109,000
<b>5</b>	Planning Division Budget	550,000
<b>6</b>	Reduction in Public Works Municipal Services	427,500
<b>Total Budget Items Reclassified</b>		<b>\$1,352,540</b>

- 1) Grant Writer Management Analyst – Reclassified a Vacant Position: The City is heavily reliant upon grant funding in many areas of operations. To prioritize the CityWide effort to continue to seek grant opportunities, the Finance Department has reclassified a vacant Customer Service Representative position to the Grant Writer Management Analyst position which will be no financial impact to the General Fund.
- 2) Human Resources Analyst – Allocated to Utility Funds: To address a reduction in staff resources and increased workload, City staff are recommending adding the Human Resource Analyst position to the FY2022/23 budget; however, there will be no financial impact to the General Fund. The position is recommended to assist with recruitment efforts resulting from increased turnover and to properly support all departments with Human Resources needs. The position is allocated to the Water and Wastewater Funds. In addition, due to the additional responsibilities the Human Resources department has assumed to comply with the mandated COVID-19 protocols, staff costs in the department will be reimbursed from the administrative expenses set aside in the American Rescue Plan Act funds.
- 3) Digital Media Technician Removed from FY2022/23 Budget: The Digital Media Technician position was added at the request of the City Council Boards and Commissions subcommittee in order to expand services to broadcast Planning Commission and other Board and Commission meetings. Without this position, those additional services cannot be provided.





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- 4) Fire Department Equipment – An alternative funding source was identified for Fire Department equipment of \$109,000. At the end of FY2020/21, City Council approved the use of yearend net surplus funds of \$475,000 for the purchase of EKG monitors. The total cost of the purchase is estimated to be under the amount budgeted due to negotiating a much more favorable trade in value for the older equipment. City staff are recommending the remaining funds budgeted for the EKG monitors be reallocated to purchase the Fire equipment proposed in the preliminary FY2022/23 operating budget.
- 5) Planning Division Reclassification of Consulting Services: The Planning Division budget provided for \$500,000 in contract consultant services, which are offset by fees paid for by the project applicant. Expenses are incurred as development projects moved forward; however, over the previous five fiscal years the activity has been minimal. To better reflect anticipated General Fund operating expenses, the activity has been reclassified and will be accounted for outside of the Planning Department budget. This resulted in a decrease of \$500,000. The preliminary FY2022/23 Planning Department budget also contained \$50,000 for a clean energy study, which is no longer needed since the City joined the Clean Energy Alliance. The total reduction in expenses for this department is \$550,000.
- 6) Reduction in Public Works Municipal Services – Removed from FY2022/23 Budget. During the Great Recession, Public Works pivoted to outsourcing municipal services as a cost saving measure. Although outsourcing services provided savings, recent case law has determined that for General Law cities like Escondido, outsourcing non-special municipal services is prohibited by state law.

As a result, six new positions were added to the Building Maintenance Fund's preliminary FY2022/23 budget to perform plumbing, electrical, and structural repairs at City facilities. Without these positions, there will be longer lead times on plumbing repairs which will result in shutting down restrooms, long-term continued deferred maintenance, and potential loss of power at City facilities. All city facilities will be impacted without these services.

To reduce the increase to the General Fund budget, Building Maintenance has reduced the number of new positions to two plumber staff positions and eliminated the new equipment of \$330,000. This will result in budgetary savings from the preliminary proposed budget of approximately \$427,500.

### RESOLUTIONS

- A. Resolution No. 2022-69 approving the Fiscal Year 2022/23 Annual Operating Budget
- B. Resolution No. 2022-70 approving the Appropriations Limit (Gann Limit) for Fiscal Year 2022/23





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- C. Resolution No. 2022-70 – Exhibit A - GANN Calculation
- D. Resolution No. 2022-70 – Exhibit B - GANN Limit Calculation

## RESOLUTION NO. 2022-69

## A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, ADOPTING OPERATING BUDGETS FOR CERTAIN CITY DEPARTMENTS FOR FISCAL YEAR 2022/23 SUBJECT TO ANY AMENDMENT MADE PURSUANT TO COMPENSATION PLANS FOR THE CITY OF ESCONDIDO AND ESTABLISHING CONTROLS ON CHANGES IN APPROPRIATIONS TO VARIOUS FUNDS AND DEPARTMENTS

WHEREAS, the budgets for all City of Escondido (“City”) Departments for the period July 1, 2022, through June 30, 2023, inclusive, contained in the Fiscal Year 2022/23 Operating Budget Document (a copy of which is on file in the Office of the City Clerk) as amended by Council, are adopted as the final budgets for the Fiscal Year 2022/23, subject to any further amendments pursuant to approval of Compensation Plans for employees of the City of Escondido; and

WHEREAS, the amount designated as Department Total for each department and each fund in the budgets on file with the City Clerk, is hereby appropriated to the department or fund for which it is designated subject to adjustments for Compensation Plan approvals. Such appropriations as adjusted shall not be increased without approval of the City Council, except that transfers within funds, may be approved by the City Manager. All amounts designated as Employee Services, Maintenance and Operation, and Capital Outlay in each budget on file with the City Clerk, are hereby appropriated for such uses to the department or fund under which they are listed, subject to any amendments made pursuant to approval of Compensation Plans for employees of the City, and shall not be increased without approval of the City Manager; and

WHEREAS, the approval of the Operating Budget Document, including the Department Total expressed for each department, and any subsequent amendments shall include approval for all actions of

the City acting as Successor Agency of the former Escondido Redevelopment Agency as expressed in said Operating Budget Document.

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 adopts operating budgets for certain City Departments for Fiscal Year 2022/23 subject to any amendment made pursuant to compensation plans for the City and establishing controls on changes in appropriations to various funds and departments.

## RESOLUTION NO. 2022-70

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
ESCONDIDO, CALIFORNIA, ADOPTING AN ANNUAL  
APPROPRIATIONS LIMIT FOR THE FISCAL YEAR 2022/23  
AS REQUIRED BY LAW

WHEREAS, Article XIII-B of the California State Constitution requires that the City of Escondido ("City") calculate an appropriations limit for each fiscal year, commonly known as the "Gann Limit;" and

WHEREAS, the Gann Limit is based on a combination of a population factor and an inflation factor as outlined on Exhibit "B," which is attached to this Resolution and incorporated by this reference; and

WHEREAS, the City Council desires at this time and deems it to be in the best public interest to adopt an annual Gann Limit for Fiscal Year 2022/23 as listed on Exhibit "A," which is attached to this Resolution and incorporated by this reference.

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 adopts the calculation of the annual Gann Limit for the Fiscal Year 2022/23. The Gann Limit is adopted on a provisional basis, as the limit may need to be adjusted when current assessment data are available. The 2021/22 Gann Limit Calculation is finalized as shown on Exhibit "B," which is attached to this Resolution and incorporated by this reference.

**EXHIBIT A  
 GANN CALCULATION  
 2022/23**

	<u>PROCEEDS</u>	<u>NON-PROC.</u>
PROPERTY TAXES	32,222,700	
OTHER TAXES:		
Sales and Use Tax	51,012,200	
Franchise	6,895,860	
Transient Occupancy Tax	2,200,000	
RPTTF Residual Payment	2,002,000	
Property Transfer	982,400	
LICENSES AND PERMITS:		
Business Licenses	1,975,000	
Building Permits		1,100,000
Electrical Permits		140,000
Mechanical Permits		90,000
Plumbing Permits		40,000
Other Permits		418,500
FINES, FORFEITURES AND PENALTIES:		
Parking Fines		200,000
Library Fines and Fees		12,000
Other Court Fines		620,500
REVENUE FROM USE OF MONEY:		
Interest Income	469,560	105,440
REVENUE FROM OTHER AGENCIES:		
Rincon Fire Agreement		2,375,000
Reimbursements from Outside Agencies		500,000
Grants		380,000
VLF Revenue in Excess		175,000
Post Reimbursement		10,000
State Highway Maintenance		10,000

	<u>PROCEEDS</u>	<u>NON-PROC.</u>
<b>CHARGES FOR CURRENT SERVICES:</b>		
Paramedic Services		6,305,000
Community Services		2,261,850
Engineering Fees		775,000
Plan Check Fees		586,000
Special Police Services		50,000
Conservation Credit		1,000
Zoning Fees		135,000
Environmental Impact Reports		25,000
Subdivision Fees		40,000
Sale Maps and Publications		500
Other Current Services		1,114,300
<b>OTHER REVENUE:</b>		
Leased Property		3,050,920
Transfer Station Fee		1,120,000
Mobile Home Rent Control		60,000
Small Cell Site Revenue		75,000
Other Revenue		151,500
<b>GAS TAX FUND:</b>		
Revenue from Use of Money		
Interest Income		15,000
Revenue from Other Agencies		
State Gas Tax 2105		978,660
State Gas Tax 2106		611,710
State Gas Tax 2107		1,337,010
State Gas Tax 2107.5		10,000
State Gas Tax 2013		1,493,920
<b>TOTALS</b>	<b>97,759,720</b>	<b>26,373,810</b>
<b>LESS: STATE MANDATES (Estimated)</b>	<b>(20,000)</b>	
<b>APPROPRIATIONS SUBJECT TO LIMIT</b>	<b>97,739,720</b>	
<b>GANN LIMIT FOR 2022/23</b>	<b>1,561,939,571</b>	
<b>MARGIN</b>	<b>1,464,199,851</b>	

**EXHIBIT B  
 GANN LIMIT CALCULATION**

	<u>POPULATION FACTOR USED</u>	<u>INFLATION FACTOR USED</u>	
2006/07 Limitation		Non Residential	370,847,343
2007/08 Factor	County Growth	Assessed Valuation	1.07955
2007/08 Limitation		Per Capita	400,348,249
2008/09 Factor	County Growth	Personal Income	1.05687
2008/09 Limitation		Per Capita	423,116,054
2009/10 Factor	County Growth	Personal Income	1.01888
2009/10 Limitation		Per Capita	431,104,485
2010/11 Factor	City Growth	Personal Income	0.98883
2010/11 Limitation		Per Capita	426,289,048
2011/12 Factor	City Growth	Personal Income	1.03269
2011/12 Limitation		Non Residential	440,224,437
2012/13 Factor	County Growth	Assessed Valuation	1.27787
2012/13 Limitation		Non Residential	562,549,601
2013/14 Factor	County Growth	Assessed Valuation	1.59242
2013/14 Limitation		Non Residential	895,815,236
2014/15 Factor	County Growth	Assessed Valuation	1.06226
2014/15 Limitation		Per Capita	951,588,693
2015/16 Factor	County Growth	Personal Income	1.05045
2015/16 Limitation		Per Capita	999,596,343
2016/17 Factor	County Growth	Personal Income	1.06192
2016/17 Limitation		Per Capita	1,061,491,349
2017/18 Factor	County Growth	Personal Income	1.04644
2017/18 Limitation		Non Residential	1,110,787,007
2018/19 Factor	County Growth	Assessed Valuation	1.05197
2018/19 Limitation		Non Residential	1,168,514,608
2019/20 Factor	County Growth	Assessed Valuation	1.10963
2019/20 Limitation		Non Residential	1,296,618,864
2020/21 Factor	City Growth	Assessed Valuation	1.06106
2020/21 Limitation		Per Capita	1,375,790,412
2021/22 Factor	City Growth	Personal Income	1.05645
2021/22 Limitation		Per Capita	1,453,453,781
2022/23 Factor	County Growth	Personal Income	1.07464
2022/23 Limitation			1,561,939,571

**General Fund Departments**  
**5-Year Historical Cost Savings Target**

Item 10.

	<u>FY2016/17</u>	<u>FY2017/18</u>	<u>FY2018/19</u>	<u>FY2019/20</u>	<u>FY2020/21</u>	<u>5-Year Average</u>	<u>FY2022/23 Budget Reduction</u>	<u>Explanation</u>
City Council	52	2,925	23,880	52,694	11,791	18,268	-	Savings in the department were due to a vacant City Councilmember seat.
City Manager	55	44,400	35	368	16,047	12,181	100,000	Savings from Employee Services, City Manager's office is currently fully staffed
City Attorney	128,181	143,186	12,351	857	72,263	71,368	65,000	Savings from Employee Services, City Attorney's office is currently fully staffed
City Clerk	54,098	733	62,230	43,957	13,294	34,862	15,000	Vacant Department Specialist position that will not be filled immediately.
City Treasurer	27,210	38,953	85,059	61,876	83,748	59,369	25,000	Savings from Employee Services, Treasury department is currently fully staffed
Finance	95,796	179,854	403,742	159,251	305,415	228,811	125,000	Utility Billing implemented a paperless billing and online payment system in FY2018. As positions became vacant, they were left unfilled as staff developed efficiencies due to the new system. Since then 3 positions have been eliminated, all other positions have been filled.
Human Resources	26,161	6,475	8,146	145,357	82	37,244	10,000	Savings from Employee Services, Human Resources Department is currently fully staffed
Risk Management	71,181	62,517	89,474	152,340	70,435	89,189	50,000	Savings predominantly from Employee Services and partially M&O costs for CityWide training. The Risk Management Department is currently fully staffed
Information Systems Administration	58,340	361	21	454	45	11,844	-	Savings in Employee Services in FY2016/17, the average 4-years of budget savings was under \$1,000
Enterprise Software & Web Administration	154,202	31,928	179,459	230,406	54,948	130,189	60,000	Annual savings can be attributed to both Employee Services and M&O costs. M&O savings were due to the Cityworks project, staff took on more of the project activities resulting in consulting services savings.
Digital Media Services	6,307	11,086	8,604	17,543	814	8,871	-	Savings in Employee Services, Video Services department is currently fully staffed
Geographic Information Systems	49	253	67,751	10,964	3	15,804	15,000	Savings from Employee Services, GIS department is currently fully staffed
<b>TOTAL ADMINISTRATIVE SERVICES</b>	<b>621,632</b>	<b>522,669</b>	<b>940,751</b>	<b>876,068</b>	<b>628,884</b>	<b>718,001</b>	<b>465,000</b>	
Recreation	-	49,642	113,383	278,986	569,869	110,503		Savings from employee services, specifically temporary part-time positions for programs. In FY2020/21, Recreation programs were cancelled due to COVID-19 therefore excluded from the calculation
Older Adult Services	34,788	48,333	38,206	26,407	27,045	36,934	200,000	
Senior Nutrition	82,091	81,875	69,924	20,153	99,482	63,511		
Communications	-	-	54	6,400	7	1,613	-	Savings in Employee Services in FY2019/20, the average 4-years of budget savings was under \$1,000
Main Library	187,748	23,954	29,753	37,084	614,316	30,264	-	The library was outsourced in FY2018/19 and closed periodically during FY2020/21 due to COVID, therefore not considered in the calculation. FY2019/20 included an operating supplies budget line item that is no longer in the operating budget
<b>TOTAL COMMUNITY SERVICES</b>	<b>304,627</b>	<b>203,805</b>	<b>251,320</b>	<b>369,030</b>	<b>1,310,720</b>	<b>242,824</b>	<b>200,000</b>	



**General Fund Departments**  
**5-Year Historical Cost Savings Target**

Item 10.

	<u>FY2016/17</u>	<u>FY2017/18</u>	<u>FY2018/19</u>	<u>FY2019/20</u>	<u>FY2020/21</u>	<u>5-Year Average</u>	<u>FY2022/23 Budget Reduction</u>	<u>Explanation</u>
Planning	147,491	520,149	534,302	556,613	689,853	489,682	-	Planning division included consulting costs for specific development projects funded by applicant revenue. The department expenditure budget has been reduced by \$550,000 in FY2022/23.
Code Compliance	69,697	205,430	54,513	34,740	50,329	82,942		
Engineering	132,061	83	40,524	180,683	17	70,673	100,000	Savings from Employee Services, the Development Services Department currently has 3 vacant positions that will not be filled immediately which may impact the service level provided.
Building	102,962	93,801	63,232	221,067	2,216	96,656		
<b>TOTAL DEVELOPMENT SERVICES</b>	<b>452,210</b>	<b>819,463</b>	<b>692,571</b>	<b>993,103</b>	<b>742,416</b>	<b>739,953</b>	<b>100,000</b>	
Street Maintenance	568,346	119,825	360	2,825	53	30,766	30,000	The FY2016/17 budget variance was excluded from the calculation. The 4-year average budget savings is \$30,000.
Park Maintenance	186,507	105,769	88,571	(1,981)	173,718	91,519	90,000	Savings from Employee Services as vacant positions are being filled, and turnover of temporary part-time staff.
Radio Communications	16,284	12,739	7,948	17,562	46,107	20,128	20,000	The budget includes a contingency for the repair of radios that may not be utilized each fiscal year.
<b>TOTAL PUBLIC WORKS</b>	<b>771,137</b>	<b>238,333</b>	<b>96,878</b>	<b>18,405</b>	<b>219,878</b>	<b>142,413</b>	<b>140,000</b>	
<b>POLICE DEPARTMENT</b>	<b>143,330</b>	<b>298</b>	<b>158,610</b>	<b>148,886</b>	<b>305,992</b>	<b>151,423</b>	<b>150,000</b>	Savings from Employee Services
Fire Department	228,278	213,744	269	133,209	285,090	172,118	170,000	
Emergency Management	42,501	8,976	1,823	11,599	6,340	14,248	10,000	Savings from Employee Services
<b>TOTAL FIRE DEPARTMENT</b>	<b>270,779</b>	<b>222,720</b>	<b>2,092</b>	<b>144,808</b>	<b>291,430</b>	<b>186,366</b>	<b>180,000</b>	
Non-Departmental	525,837	166,954	114,367	95,814	361,218	252,838	150,000	Non-Department budget accounts for anticipated retirement and vacation expenses, which is unknown at the time the budget is adopted. The expenses for upcoming ballot measures are also accounted for in this budget.
Community Relations	62,170	77,170	60,170	63,000	87,087	69,919	138,910	Employee Service costs of \$138,910 have been removed from this department budget, departments will absorb overtime costs for special events.
<b>TOTAL OTHER EXPENSES</b>	<b>588,007</b>	<b>244,124</b>	<b>174,537</b>	<b>158,814</b>	<b>448,305</b>	<b>322,757</b>	<b>288,910</b>	
<b>CENTER FOR THE ARTS</b>	<b>96,855</b>	<b>454</b>	<b>45,811</b>	<b>24,134</b>	<b>261,334</b>	<b>85,717</b>	<b>-</b>	Annual savings are due to gas & electric expenses.
<b>TOTAL EXPENDITURE SAVINGS</b>	<b>3,248,578</b>	<b>2,251,867</b>	<b>2,362,570</b>	<b>2,733,249</b>	<b>4,208,958</b>	<b>2,438,032</b>	<b>1,373,910</b>	
								<i>Excluding Public Safety</i>
								<i>(373,910)</i>
								<i>Per direction from City Council on May 11, 2022, Public Safety is excluded from FY2022/23 budget reductions</i>
								<b>1,000,000</b>



# STAFF REPORT

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June 22, 2022  
File Number 0440-35

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## SUBJECT

### **APPROVAL TO COMMENCE JUDICIAL VALIDATION PROCEEDINGS FOR PENSION OBLIGATION BONDS**

## DEPARTMENT

Finance

## RECOMMENDATION

Request the City Council adopt Resolution No. 2022-89, authorizing judicial validation proceedings relating to the issuance of bonds to refund certain pension obligations of the City, approving the form and authorizing the execution of a trust agreement and bond purchase agreement, and approving additional actions related thereto.

Staff Recommendation: Approval (Finance: Christina Holmes)

### Presenters:

Christina Holmes, Director of Finance

Sara Oberlies Brown, Managing Director of Stifel Public Finance

Scott Smith, Principal of CSG Advisors

## FISCAL ANALYSIS

The City of Escondido (“City”) and its financing team have evaluated a range of structuring options (various maturities and repayment shapes) which will be presented during tonight’s meeting. The approval of a resolution, draft Trust Agreement, draft Bond Purchase Agreement and approval to proceed with the judicial validation process is the *initial step in this effort* and will give staff and the financing team direction to continue to analyze a POB issuance for the City.

## PREVIOUS ACTION

On January 26, 2022 City Council received information on the City’s California Employees Retirement System pension obligations. On May 25, 2022, a Pension Obligation Bond Workshop was conducted.



# CITY of ESCONDIDO

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### BACKGROUND

The City provides retirement benefits to its employees who provide the City services residents rely on, by contracting with the California Public Employees Retirement System (CalPERS). Retirement benefits are funded by contributions from both employees and the City (“normal” annual service costs) as well as investment earnings.

CalPERS invests contribution payments with the goal of earning sufficient returns over the long-term to pay defined benefits as promised and cover CalPERS expenses. Historically, more than 60% of all funds paid to CalPERS retirees comes from investment earnings. The estimated long-term average return expected to be earned on investments is referred to as the “discount rate”. When lower investment earnings occur, future contributions must increase to make up the expected difference and an unfunded accrued liability (“UAL”) is created. The UAL represents the shortfall or gap between what is needed to pay retiree benefits versus how much in current assets the City actually has in its accounts with CalPERS. The UAL is calculated annually and changes depending on the demographic trends of the plan participants.

As noted above, the UAL is essentially the City’s debt owed to CalPERS, and CalPERS currently charges the City a 6.8% interest rate on this debt with a mandatory payment schedule. The table below reflects the UAL from the most recent CalPERS actuarial valuation report as of June 30, 2020. *CalPERS will release a new Annual Valuation Report as of June 30, 2021 in July/August 2022.*

City of Escondido UAL Calculation Based on CalPERS 06/30/2020 Valuation					
			Miscellaneous	Safety	Total
<b>A</b>	Entry Age Normal Accrued Liability		\$469,434,960	\$445,123,581	\$914,558,541
<b>B</b>	Market Value of Assets (MVA)		\$317,151,631	\$308,125,828	\$625,277,459
<b>C</b>	<b>Unfunded Accrued Liability (UAL)</b>	<b>A - B</b>	<b>\$152,283,329</b>	<b>\$136,997,753</b>	<b>\$289,281,082</b>
<b>D</b>	<b>Funded Ratio</b>	<b>B / A</b>	<b>67.6%</b>	<b>69.2%</b>	<b>68.3%</b>

Pension cost increases are one of the largest financial challenge facing most cities throughout the state and are primarily due to factors outside of the cities' control, namely actuarial assumption changes made by CalPERS and below average investment returns. CalPERS and the League of California Cities have detailed various options available to help manage pensions. There is no perfect solution to managing a City’s pension obligations and many agencies employ multiple methods to manage their pension obligations. The most typical options include:

1. Identify new sources of revenue to help defray the costs of the City’s pensions,
2. Using cash reserves to make additional payments to CalPERS or to the City's Section 115 Pension Trust Fund to help stabilize yearly fluctuations in pension rates,



# CITY of ESCONDIDO

## STAFF REPORT

3. Pursue a CalPERS Fresh Start which allows an agency to consolidate multiple amortization bases (different components of the UAL) into one base paid off over a shorter period. While annual payments will increase, the UAL can be paid off earlier and it would save the City money over the long-term, or
4. Restructure the UAL at a lower interest rate, such as a Pension Obligation Bond.

### PENSION OBLIGATION BONDS

A public workshop was held on May 25, 2022. Concepts of a Pension Obligation Bond (“POB”) were introduced and the benefits and risk factors associated with a POB were disclosed and discussed. There are several potential benefits the City could realize by issuing POBs. These potential benefits include:

1. A tool for fiscal sustainability,  
POBs provide the ability to alter the City’s UAL payments in a way that could support long-term financial sustainability, help provide budget predictability and minimize the year over year variability in payments, and provide enhanced resiliency to economic shocks.
2. Budgetary savings,  
Using POBs to modify the current CalPERS UAL payment schedule’s peak in projected payments to a more predictable or level structure can create cash flow savings.
3. Interest rate “savings” from arbitrage,  
Issuing POBs at market rates that are lower than what CalPERS charges on the UAL creates interest savings through arbitrage. In this example, arbitrage is created by taking advantage of the difference between the CalPERS rate of 6.8% and current market rates. All else being equal, the City would realize a lower cost of debt.
4. Maturity modification, and  
A POB may have a shorter or longer repayment period based on market conditions and the financial objectives of the issuer. However, if the POBs are structured with deferred principal amortization or repayment longer than the actuarial amortization period the overall cost of debt may increase. Further lengthening the debt repayment period adds risks and is specifically noted in the Government Finance Officers Association advisory against POBs.
5. Preservation of reserve and service levels.  
Potential savings achieved through a POB issuance could reduce the need to use reserves to fund ongoing expenditures or reduce service levels.



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There are also many potential risks to consider with a POB:

1. It turns a “variable” obligation into a “fixed” obligation,  
The City’s UAL obligation to CalPERS will change year over year. It could increase or decrease based on a variety of factors such as investment returns or actuarial assumption changes. This allows the City to benefit from UAL decreases (i.e. lower payments to CalPERS) but does also mean the City is negatively impacted by increases (i.e. higher payments to CalPERS). Issuing a POB transfers and refinances the obligation due to CalPERS into a fixed obligation due to investors. An obligation due to investors will not increase or decrease over time which can be beneficial under the right conditions as it limits downside risk associated with an increasing UAL. However, it also carries risk as a fixed obligation because it cannot take advantage of a consistently decreasing UAL.
2. Low pension fund returns,  
If CalPERS investment earnings are below its current discount rate of 6.8% in a given year, the City’s UAL will increase from the addition of a new amortization base to reflect the investment earnings shortfall. This investment shortfall is applied to the City’s Market Value of Assets (MVA) which will be higher after the issuance of POBs. The new amortization base from the investment shortfall will be larger given the MVA is higher resulting in a larger amortization base than the City would have had before issuing POBs. The City’s funded ratio would still be higher, however.
3. “Too much of a good thing,”  
If CalPERS investment returns consistently exceed 6.8% after the City issues a POB, the City’s pension plan could become super-funded (i.e. has placed more money with CalPERS than is necessary to cover its pension obligations). Because the POBs become a fixed obligation, the City would not benefit from these surpluses (required contributions would not decrease as the Normal Cost must always be paid) which means the City loses the benefits of cash it could have used on other city services.
4. Future UAL can still change,  
The City will always have some UAL or the potential for some UAL. Issuing POBs does not eliminate the City’s UAL obligations; it merely refinances the City’s UAL obligations as of a point in time. This will occur as a result of things such as CalPERS investment returns, future changes in the CalPERS discount rate, changes in actuarial assumptions, etc.
5. Market timing risks,  
Market timing risk is related to the timing of the investment of the bond proceeds. A POB issuance produces a lump sum of proceeds which must be remitted to CalPERS immediately after issuance. This lump sum concentrates market timing risks rather than spreading it. This is especially a consideration in the recent economic environment as equity markets are at all-time highs. If a market crash occurred between the bond sale and CalPERS investment of the bond proceeds,



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which is typically two weeks apart, the initial investment cost would be lower and could potentially provide higher future returns. However, if a market crash occurred after the initial investment of bond proceeds, it would negatively impact future earnings given the decreased potential for compounded earnings. It would also likely result in a new amortization base and increase in UAL all else being equal.

6. Increased bonded debt and credit risk,  
Issuing POBs would reduce the City's UAL but increases its bonded debt potentially using up debt capacity that could be used for other purposes. Having more bonded debt may also impact the City's credit rating. S&P Global Ratings views POBs in environments of fiscal distress or as a mechanism for short-term budget relief as a negative credit factor. That being said, S&P also identifies a large liability to CalPERS as a credit negative and there have been many POB issuers, Chula Vista is a recent example, that did not receive a downgrade in rating associated with the issuance.
7. Judicial validation process, and  
The City must proceed through a judicial validation process to issue POBs. POB issuances are validated on the basis that such bonds are an exception to the constitutional debt limit because of a public agencies' obligations to fund its pension system payments. To date, several public agencies have received a default judgment, but no court has formally ruled on the constitutional debt limit exception.
8. Political process.  
POBs can be controversial because, among other things, some view them as gambling on future market returns and they've received a negative reputation due to well publicized bankruptcies (Detroit, Stockton, and San Bernardino). Stakeholders, constituents, and interest groups may be critical of using POBs as an option for managing the City's pension obligations.

The City and its financing team will present preliminary UAL restructuring options to refund 100% of the UAL for both the Miscellaneous Plan and Safety Plan. Under current market conditions, estimated savings on a present value basis are approximately \$13.8 million or about 4.6% of the refunded UAL. The annual cash flow or budgetary savings to the City over the next 10 years are approximately \$1.2 million. With an approximately 100 basis point (1.0%) improvement in interest rates, the present value savings increase to around \$40 million (13% of the refunded UAL), translating to annual cash flow savings over the next 10 years of about \$3.3 million. A 150 basis point improvement (1.50%) produces annual savings around \$4.3 million. Actual savings achieved will depend on improved market conditions.

The approval of a resolution, draft Trust Agreement, draft Bond Purchase Agreement and approval to proceed with the judicial validation process is the *initial step* in this process and will give staff and the financing team direction to continue to analyze a POB issuance for the City.



# CITY of ESCONDIDO

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### JUDICIAL VALIDATION PROCESS

Authorizing the validation proceeding is the first step in the issuance process; it entails the courts validating the City's legal ability to issue POBs, and to confirm that the sale meets the State of California's constitutional requirements. Under normal circumstances, the validation process takes about 4 months to complete. Key milestones of the validation process are listed below:

- City Council passes a resolution authorizing the sale of POBs;
- File validation action with San Diego County Superior Court;
- Receive Order for Publication of Summons from the Court (This can take >3 weeks to receive);
- Publication of notice in local newspaper;
- Waiting period for any responding party to file a petition;
- Clerk enters hearing for a default judgement if there is no responding party, schedules a hearing;
- Hearing for default judgement, if no responding party;
- 30-day appeal period.

Although the issue has not been litigated extensively in California, dozens of prior default (i.e. uncontested) validation judgments have determined that pension liabilities are obligations imposed by law and therefore exempt from the debt limitation requirements set forth in Article XVI, Section 18 of the California Constitution. Staff does not anticipate a judicial validation process for the City will proceed differently.

Resolution: The resolution being approved tonight authorizes staff and outside counsel to submit the necessary documents to the San Diego County Superior Court to start the judicial validation process as well as approves:

- (1) the issuance of the bonds in an amount not-to-exceed \$350 million,
- (2) a draft form of the Trust Agreement for the bonds (Attachment 1),
- (3) draft form of the Bond Purchase Agreement (Attachment 2), and

The Trust Agreement identifies the duties and responsibilities of the Trustee, establishes the terms and conditions which the bonds are to be issued, and to secure the payment of the principal and interest. The not-to-exceed amount is meant to create enough flexibility for the City to pay off (1) 100% of its UAL (\$289.3 million) if it desires (or anything lower), (2) a portion of its remaining FY 2022/23 UAL amortization payment, and (3) costs of issuance.

The City is not committed to any specific amount as staff and the financing team will be evaluating a full range of options to ensure the most optimal size and structure is executed. The preliminary analysis provided in the presentation and required good faith cost estimates are based on a total bond size of \$304.4 million.



# CITY of ESCONDIDO

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### SCHEDULE

With City Council approval of the resolution, the validation process will be initiated. During the validation period, staff and the financing team will refine the various options for the POBs. These options may include evaluating different sizes of POBs, amortization shapes, maturities (length of term) and targeted funded ratios.

City staff will return to Council with an update at the conclusion of a successful court validation. This exact date will be dictated by the actual duration of the validation period but is anticipated to conclude by the end of the calendar year, December 2022.

**Adopting the Resolution and commencing the validation process does not in any way obligate the City to issue the POBs, it simply provides the City with a basis to issue POBs in the future. Approval to issue a POB, draft Preliminary Official Statement, and proposed financing would be required by the City Council at a future date.**

### RESOLUTIONS

- A. Resolution No. 2022-89 authorizing judicial validation proceedings relating to the issuance of bonds to refund certain pension obligations of the City

### ATTACHMENTS

- a. Attachment 1 – Trust Agreement
- b. Attachment 2 – Bond Purchase Agreement



## RESOLUTION NO. 2022-89

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO AUTHORIZING THE ISSUANCE OF BONDS TO REFUND AND PREPAY CERTAIN PENSION OBLIGATIONS OF THE CITY, APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF A TRUST AGREEMENT AND BOND PURCHASE AGREEMENT, AUTHORIZING JUDICIAL VALIDATION PROCEEDINGS RELATING TO THE ISSUANCE OF SUCH BONDS, AND APPROVING ADDITIONAL ACTIONS RELATED THERETO

WHEREAS, the City of Escondido (the “City”), a municipal corporation that is duly organized and existing under the general laws of the State of California, has previously adopted a retirement plan pursuant to the Public Employees’ Retirement Law, commencing with Section 20000 of the Government Code of the State of California, as amended (the “Retirement Law”), and elected to become a contracting member of the California Public Employees’ Retirement System (“PERS”); and

WHEREAS, the Retirement Law and the contract (as amended, the “PERS Contract”) effective November 1, 1958 between the Board of Administration of PERS and the City Council of the City (the “City Council”) obligate the City: (i) to make contributions to PERS to fund pension benefits for certain City employees; (ii) to make payments towards the unfunded actuarial liability with respect to such pension benefits under the Retirement Law and the PERS Contract (the “Unfunded Liability”); and (iii) to appropriate funds for the foregoing purposes; and

WHEREAS, the City desires to authorize the issuance of its City of Escondido Taxable Pension Obligation Bonds (the “Bonds”) pursuant to the provisions of Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53570 of said Code (the “Bond Law”), in a maximum principal amount not to exceed that which is required to refund the Unfunded Liability, to prepay all or a portion of the City’s annual required retirement contribution that is due and

payable to PERS within 18 months of the issuance of the Bonds (the “Current Obligation”), to pay capitalized interest on the Bonds and to pay the costs of issuance of such Bonds, including the underwriter’s discount and any original issue discount on such Bonds; and

WHEREAS, the City expects that the need may arise in the future to issue additional refunding bonds (the “Additional Bonds”) pursuant to the Bond Law to refinance all or a portion of the then outstanding Unfunded Liability and to fund the Current Obligation; and

WHEREAS, the Bonds will be issued under and secured by a Trust Agreement (such Trust Agreement, in substantially the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the “Trust Agreement”) by and between the City and The Bank of New York Mellon Trust Company, N.A., as trustee; and

WHEREAS, the City has determined the advisability of filing an action to determine the validity of the Bonds, the Additional Bonds and the Trust Agreement, and the actions proposed to be taken in connection therewith; and

WHEREAS, in compliance with Section 5852.1 of the Government Code of the State of California, the City has obtained from its Municipal Advisor the required good faith estimates and such estimates are disclosed and set forth in Exhibit A; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the financing authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such financing for the purpose, in the manner and upon the terms herein provided;

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

1. The City Council hereby specifically finds and declares that each of the statements, findings and determinations of the City Council that are set forth in the above recitals and in the preambles of the documents that are approved herein are true and correct.

2. The City Council hereby authorizes and approves the issuance of the Bonds on the terms and conditions set forth in, and subject to the limitations specified in, the Trust Agreement. The Bonds shall be dated, shall bear interest at the rates, shall mature on the dates, shall be issued in the form and shall have terms as provided in the Trust Agreement, as the same shall be completed in accordance with this Resolution. The title of the Bonds may be changed to reflect the year in which the Bonds are issued, and to reflect the appropriate series designation, as directed by the City Manager of the City.

3. The City Council hereby approves and authorizes the execution of the Trust Agreement, in substantially the form submitted to this meeting and made a part hereof as though set forth in full herein. The Mayor, the City Manager, any Deputy City Manager, or Finance Director and their authorized designees (the "Authorized Officers") are, and each of them is, hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Trust Agreement in substantially the form presented to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Trust Agreement by such Authorized Officer. The City Clerk of the City is hereby authorized and directed to attest the Trust Agreement for and in the name and on behalf of the City.

4. The City Council hereby authorizes and approves the issuance of Additional Bonds pursuant to the Bond Law, as authorized by the Trust Agreement, from time to time, to refund all or a portion of the Unfunded Liability and fund the Current Obligation, provided that the City Manager, or his

or her designee, first certifies to the City Council in writing that such actions will result in anticipated cost savings to the City. The City Council authorizes any one of the Authorized Officers, or their designees, to execute and deliver one or more other trust agreements and/or one or more supplemental agreements supplementing or amending the Trust Agreement and providing for the issuance of Additional Bonds (each, an "Additional Trust Agreement"); provided, however, that: (i) each series of Additional Bonds shall be in a principal amount not to exceed the sum of: (1) the Unfunded Liability of the City to PERS under the PERS Contract and the Retirement Law remaining unpaid on the date of issuance of such Additional Bonds; (2) the Current Obligation; and (3) the costs of issuing the Additional Bonds; (ii) the issuance of each series of Additional Bonds results in net present value savings to the City, as determined by an Authorized Officer at the time that each series of such Additional Bonds are issued; and (iii) the Additional Bonds shall not mature later than the last date through which PERS has determined for the amortization of the Unfunded Liability of the City in accordance with its current procedures.

Each Unfunded Liability refunded and Current Obligation funded by the Bonds and each series of Additional Bonds pursuant to the Trust Agreement and each Additional Trust Agreement constitutes an obligation imposed by law pursuant to the Constitution and laws of the State of California and an obligation of the City not limited as to payment from any special source of funds. The Unfunded Liability refunded and Current Obligation funded by the Bonds pursuant to the Trust Agreement and each series of Additional Bonds pursuant to an Additional Trust Agreement shall not, however, constitute an obligation of the City for which the City is obligated or permitted to levy or pledge any form of taxation or for which the City has levied or pledged or will levy or pledge any form of taxation.

5. The City Council hereby approves the form of the Bond Purchase Agreement (the "Bond Purchase Agreement") presented to this meeting and on file with the Clerk and the sale of the Bonds to Stifel, Nicolaus & Company, Incorporated (the "Underwriter") pursuant thereto upon the terms and

conditions set forth therein, and subject to such approval and the provisions hereof, the Authorized Officers, acting alone, are each hereby authorized and directed to evidence the City's acceptance of the offers made by the Bond Purchase Agreement by executing and delivering the Bond Purchase Agreement in substantially said form, with any additions thereto (including the insertion of the maturity dates, principal amounts, interest rates and redemption provisions of the Bonds) and changes therein as any of the Authorized Officers executing the same may approve and such matters as are authorized by this Resolution, such approval to be conclusively evidenced by the execution and delivery thereof by any one of the Authorized Officers.

6. The City Council hereby authorizes the Authorized Officers, on behalf of the City, to establish and determine: (i) the final principal amount of the Bonds, provided that the aggregate initial principal amount of the Bonds shall not be greater than the lesser of: (a) \$350,000,000; or (b) the sum of the City's Unfunded Liability and Current Obligation as calculated by PERS or another actuary selected by the Authorized Officer, together with the costs of issuing the Bonds as approved by such Authorized Officer; (ii) the final interest rates on various maturities of the Bonds, provided that the issuance of the Bonds results in net present value savings to the City as determined by an Authorized Officer at the time that the Bonds are sold and that the maturity date of the Bonds shall not be later than the last date through which PERS has determined for the amortization of the Unfunded Liability of the City in accordance with its current procedures; and (iii) the Underwriter's discount for the purchase of the Bonds, not to exceed 0.75% of the principal amount of the Bonds.

7. The City Council hereby authorizes the Authorized Officers to negotiate and execute an insurance policy and/or a debt service reserve fund insurance policy for the Bonds (and such other agreements that may be required by the insurer in connection therewith) if it is determined that the

policies will result in interest rate savings for the City, and to pay the insurance premium of such policies from the proceeds of the issuance and sale of the Bonds.

8. The City Council hereby appoints The Bank of New York Mellon Trust Company, N.A., to act as trustee under the Trust Agreement.

9. In order to determine the validity of the Bonds, the Additional Bonds, the Trust Agreement and the Additional Trust Agreements, and the actions authorized hereby to be taken in connection therewith, the City Council hereby authorizes the City Attorney, in concert with Stradling Yocca Carlson & Rauth, Bond Counsel, to prepare and cause to be filed and prosecuted to completion all proceedings required for the judicial validation of the Bonds, the Additional Bonds, the Trust Agreement and the Additional Trust Agreements in the Superior Court of San Diego County, under and pursuant to the provisions of Section 860 et seq. of the California Code of Civil Procedure. The City Council further authorizes the Authorized Officers and all other officers, employees and agents of the City to take any and all actions, including the execution and delivery of appropriate documentation, as may be required to conclude such judicial validation proceedings.

10. The City Council hereby authorizes and directs the Authorized Officers, and each of them, to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated hereby, including, but not limited to, the preparation of an Official Statement (and a Preliminary Official Statement) for use in connection with the offering and sale of the Bonds, the execution and delivery of a continuing disclosure undertaking, and the execution and delivery of any documents required by PERS in order to complete the issuance of the Bonds or Additional Bonds, the refunding of the Unfunded Liability and the funding of the Current Obligation.

11. The City Council hereby approves, confirms and ratifies all actions heretofore taken by the Authorized Officers and by any other officers, employees or agents of the City with respect to the issuance of the Bonds, or in connection with or related to any of the agreements or documents referenced herein

12. In accordance with Section 5852.1 of the Government Code of the State of California, the City has obtained from CSG Advisors Incorporated, the City's Municipal Advisor, required good faith estimates relating to the Bonds, and such estimates are disclosed and set forth in Exhibit A.

13. This Resolution shall take effect from and after its date of adoption.

**EXHIBIT A****GOOD FAITH ESTIMATES**

The good faith estimates set forth herein are provided with respect to the Bonds in accordance with California Government Code Section 5852.1. Such good faith estimates have been provided to the City by CSG Advisors Incorporated (the City's "Municipal Advisor") in consultation with Stifel, Nicolaus & Company, Incorporated, the Underwriter of the Bonds.

*Principal Amount.* The Municipal Advisor has informed the City that, based on the City's financing plan and current market conditions, its good faith estimate of the aggregate principal amount of the Bonds to be sold is \$304,405,000 (the "Estimated Principal Amount").

*True Interest Cost of the Bonds.* The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the true interest cost of the Bonds, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the Bonds, is 5.24%.

*Finance Charge of the Bonds.* The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the finance charge for the Bonds, which means the sum of all fees and charges paid to third parties (or costs associated with the Bonds), is \$1,317,000.

*Amount of Proceeds to be Received.* The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the amount of proceeds expected



to be received by the City for sale of the Bonds, less the finance charge of the Bonds, as estimated above, and any reserves or capitalized interest paid or funded with proceeds of the Bonds, is \$303,088,000.

*Total Payment Amount.* The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the total payment amount, which means the sum total of all payments the City will make to pay debt service on the Bonds, plus the finance charge for the Bonds, as described above, not paid with the proceeds of the Bonds, calculated to the final maturity of the Bonds, is \$481,343,000.

The foregoing estimates constitute good faith estimates only. The actual principal amount of the Bonds issued and sold, the true interest cost thereof, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to: (a) the actual date of the sale of the Bonds being different than the date assumed for purposes of such estimates; (b) the actual principal amount of Bonds sold being different from the Estimated Principal Amount; (c) the actual amortization of the Bonds being different than the amortization assumed for purposes of such estimates; (d) the actual market interest rates at the time of sale of the Bonds being different than those estimated for purposes of such estimates; (e) other market conditions; or (f) alterations in the City's financing plan, delays in the financing, additional legal work or a combination of such factors and additional finance charges, if any, attributable thereto. Market interest rates are affected by economic and other factors beyond the control of the City.

**TRUST AGREEMENT**

**by and between**

**CITY OF ESCONDIDO**

**and**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Trustee**

---

**Dated as of \_\_\_\_\_ 1, 202\_\_**

---

**Relating to**

**\$ \_\_\_\_\_  
CITY OF ESCONDIDO  
PENSION OBLIGATION BONDS, SERIES 202\_\_  
(FEDERALLY TAXABLE)**

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## TRUST AGREEMENT

This **TRUST AGREEMENT** is dated as of \_\_\_\_ 1, 202\_\_, and is made by and between the **CITY OF ESCONDIDO**, a municipal corporation and general law city that is duly organized and validly existing under and pursuant to the Constitution and the laws of the State of California (the "**City**"), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association that is organized and existing under the laws of the United States of America, as trustee (the "**Trustee**").

### RECITALS

A. The City is a member of the California Public Employees' Retirement System ("**PERS**") and, as such, is obligated by the Public Employees' Retirement Law, constituting Part 3 of Division 5 of Title 2 of the California Government Code (the "**Retirement Law**"), and the contract between the Board of Administration of PERS and the City Council of the City, effective November 1, 1958 (as amended, the "**PERS Contract**"), to make contributions to PERS: (1) to fund pension benefits for its employees who are members of PERS; (2) to amortize the unfunded actuarial liability with respect to such pension benefits; and (3) to appropriate funds for the purposes described in clauses (1) and (2).

B. The City is authorized pursuant to Articles 10 and 11 (commencing with Section 53570) of Chapter 3 of Division 2 of Title 5 of the California Government Code (the "**Refunding Law**") to issue bonds for the purpose of refunding certain evidences of indebtedness of the City, including the requirements imposed by the Retirement Law and the PERS Contract.

C. The City has determined to issue its \$\_\_\_\_\_ City of Escondido Pension Obligation Bonds, Series 202\_\_ (Federally Taxable) (the "**Bonds**"), pursuant to and as secured by this Trust Agreement providing for the issuance of the Bonds, all in the manner provided herein: (1) to refund the City's unamortized, unfunded accrued actuarial liability with respect to pension benefits under the PERS Contract and the Retirement Law (the "**Unfunded Liability**"); (2) to prepay all or a portion of the City's annual required retirement contribution that is due and payable within 18 months of the issuance of the Bonds (the "**Current Obligation**"); and (3) to pay Costs of Issuance, including underwriter's discount and any original issue discount.

The City and the Trustee hereby agree as follows, each for the benefit of the other and the benefit of holders of the Bonds (as defined below) issued in accordance with this Trust Agreement.

### ARTICLE I

#### DEFINITIONS; INTERPRETATION

**Section 1.01 Certain Defined Terms.** The terms defined in this Article I shall, for all purposes of this Trust Agreement, have the meanings that are specified below unless the context clearly requires otherwise.

"**Account**" means any account established pursuant to this Trust Agreement.

"**Additional Bonds**" means bonds issued in accordance with Section 2.06 hereof.

**“Annual Debt Service”** means, for any Bond Year, the sum of the aggregate amount of principal required to be paid on the Bonds during such Bond Year either at maturity or pursuant to a mandatory sinking fund payment and the interest due on the Bonds on each Interest Payment Date during such Bond Year.

**“Authorized City Representative”** means the Mayor, the City Manager, any Deputy City Manager, the Finance Director or the City Clerk, or their authorized designees.

**“Authorized Denominations”** means \$5,000 and any integral multiple thereof.

**“Beneficial Owner”** means, whenever used with respect to a Bond, the person in whose name such Bond is recorded as the beneficial owner of such Bond by a Participant on the records of such Participant or such person’s subrogee.

**“Bond”** or **“Bonds”** means the bonds issued under this Trust Agreement and designated as “City of Escondido Pension Obligation Bonds, Series 202\_\_ (Federally Taxable).”

**“Bond Counsel”** means: (a) Stradling Yocca Carlson & Rauth, a Professional Corporation; or (b) a firm of attorneys nationally recognized as experts in the area of municipal finance who are familiar with the transactions contemplated under this Trust Agreement and acceptable to the City.

**“Bond Interest Account”** means the Account of that name established within the Revenue Fund pursuant to Section 6.02 hereof.

**“Bond Principal Account”** means the Account of that name established within the Revenue Fund pursuant to Section 6.02 hereof.

**“Bond Year”** means the twelve-month period commencing on each \_\_\_\_ 2 and ending on the next succeeding \_\_\_\_ 1, except that the first Bond Year shall commence on the Closing Date and end on \_\_\_\_ 1, 202\_\_.

**“Book-Entry Bonds”** means the Bonds held by DTC (or its nominee) as the registered owner thereof pursuant to the terms and provisions of Section 3.03 hereof.

**“Business Day”** means any day of the year in New York, New York or Los Angeles, California other than a Saturday or a Sunday, or a day on which banking institutions in any city in which the Principal Office of the Trustee is located are authorized or obligated by law or executive order to be closed.

**“Closing Date”** means \_\_\_\_ \_\_, 202\_\_.

**“Consultant”** means the accountant, attorney, consultant, municipal finance consultant or investment banker, or firm thereof, retained by the City to perform acts and carry out the duties provided for such Consultant in this Trust Agreement. Such accountant, attorney, consultant, municipal finance consultant or investment banker, or firm thereof, shall be nationally recognized within its profession for work of the character required.

**“Continuing Disclosure Certificate”** means that certain Continuing Disclosure Certificate related to the Bonds, entered into by the City and dated the Closing Date, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

**“Costs of Issuance”** means all costs and expenses incurred by the City in connection with the issuance of the Bonds, the refunding of the Unfunded Liability and the funding of the Current Obligation, including, but not limited to, out-of-pocket expenses of the City, costs and expenses of printing and copying documents and issuing and administering the Bonds, fees, costs and expenses of Rating Agencies, credit providers or enhancers, the Trustee, counsel to the Trustee, Bond Counsel, the verification agent, accountants, municipal finance consultant, disclosure counsel and other consultants and the premium for any municipal bond insurance and surety bond insurance.

**“Current Obligation”** has the meaning assigned to that term in the Recitals of this Trust Agreement.

**“Defeasance Securities”** means any of the following: (a) non-callable direct obligations of the United States of America (**“Treasuries”**); (b) evidence of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any person claiming through the custodian or to whom the custodian may be obligated; and (c) pre-refunded municipal obligations rated **“AAA”** and **“Aaa”** by S&P and Moody’s, respectively (or any combination thereof), which shall be authorized to be used to effect defeasance of the Bonds.

**“DTC”** means The Depository Trust Company, a limited-purpose trust company organized under the laws of the State of New York, and its successors and assigns.

**“Event of Default”** means any occurrence or event specified in Section 11.01 hereof.

**“Fiduciary”** or **“Fiduciaries”** means the Trustee, any Paying Agent, or any or all of them, as may be appropriate.

**“Fiscal Year”** means the period of time beginning on July 1 of each given year and ending on June 30 of the immediately subsequent year, or such other period as the City designates as its fiscal year.

**“Fund”** means any fund established pursuant to this Trust Agreement.

**“Holder,”** or **“Bondholder,”** **“owner”** or **“registered owner”** means the registered owner of any Bonds, including DTC or its nominee as the sole registered owner of Book-Entry Bonds.

**“Information Services”** means any one or more of the national information services that Trustee determines are in the business of disseminating notices of redemption of obligations such as the Bonds.

**“Interest Payment Date”** means \_\_\_\_ 1, 202\_\_ and each \_\_\_\_ 1 and \_\_\_\_ 1 thereafter.

**“Mail”** means by first-class United States mail, postage prepaid.

**“Moody’s”** means Moody’s Investors Service, Inc., and its successors, and, if such corporation shall for any reason no longer perform the functions of a securities rating agency, **“Moody’s”** shall be deemed to refer to any other nationally recognized rating agency designated by the City.



**“Opinion of Bond Counsel”** means a written opinion of Bond Counsel.

**“Outstanding,”** with respect to the Bonds, means all Bonds which have been authenticated and delivered under this Trust Agreement, except:

(a) Bonds cancelled or purchased by the Trustee for cancellation or delivered to or acquired by the Trustee for cancellation and, in all cases, with the intent to extinguish the debt represented thereby.

(b) Bonds deemed to be paid in accordance with Section 10.02 hereof.

(c) Bonds in lieu of which other Bonds have been authenticated under Sections 3.02 and 3.04 hereof.

(d) Bonds that have become due (at maturity, on redemption, or otherwise) and for the payment of which sufficient moneys, including interest accreted or accrued to the due date, are held by the Trustee or a Paying Agent.

(e) For purposes of any consent or other action to be taken by the Holders of a specified percentage of Bonds Outstanding under this Trust Agreement, Bonds held by or for the account of the City or by any person controlling, controlled by or under common control with the City, unless such Bonds are pledged to secure a debt to an unrelated party, shall, for purposes of consents and other Bondholder action, be deemed to be Outstanding and owned by the party to which such Bonds are pledged. Nothing herein shall be deemed to prevent the City from purchasing Bonds from any party out of any funds available to the City.

**“Participant”** means the participants of DTC, which include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations.

**“Paying Agent”** means any paying agent for the Bonds, or successor thereto, appointed by the City pursuant to Sections 7.01 or 7.02 hereof, and any successor appointed pursuant to Section 7.04 hereof.

**“Permitted Investments”** means the following:

(1) Direct obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America (**“U.S. Government Securities”**).

(2) Direct obligations\* of the following federal agencies which are fully guaranteed by the full faith and credit of the United States of America:

---

\* The following are explicitly excluded from the securities enumerated in clauses 2 and 3:

- (i) All derivative obligations, including without limitation inverse floaters, residuals, interest-only, principal-only and range notes;
- (ii) Obligations that have a possibility of returning a zero or negative yield if held to maturity;
- (iii) Obligations that do not have a fixed par value or those whose terms do not promise a fixed dollar amount at maturity or call date; and
- (iv) Collateralized Mortgage-Backed Obligations.

- a. Export-Import Bank of the United States – Direct obligations and fully guaranteed certificates of beneficial interest
- b. Federal Housing Administration – debentures
- c. General Services Administration – participation certificates
- d. Government National Mortgage Association (“GNMAs”) – guaranteed mortgage-backed securities and guaranteed participation certificates
- e. Small Business Administration – guaranteed participation certificates and guaranteed pool certificates
- f. U.S. Department of Housing & Urban Development – local authority bonds
- g. U.S. Maritime Administration – guaranteed Title XI financings
- h. Washington Metropolitan Area Transit Authority – guaranteed transit bonds

(3) Direct obligations\* of the following federal agencies which are not fully guaranteed by the faith and credit of the United States of America:

- a. Federal National Mortgage Association (“FNMA”) – senior debt obligations rated “Aaa” by Moody’s and “AAA” by S&P
- b. Federal Home Loan Mortgage Corporation (“FHLMCs”) – participation certificates and senior debt obligations rated “Aaa” by Moody’s and “AAA” by S&P
- c. Federal Home Loan Banks – consolidated debt obligations
- d. Student Loan Marketing Association – debt obligations
- e. Resolution Funding Corporation – debt obligations

(4) Direct, general obligations of any state of the United States of America or any subdivision or agency thereof whose uninsured and unguaranteed general obligation debt is rated, at the time of purchase, “A2” or better by Moody’s and “A” or better by S&P, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose uninsured and unguaranteed general obligation debt is rated, at the time of purchase, “A2” or better by Moody’s and “A” or better by S&P.

(5) Commercial paper (having original maturities of not more than 270 days) rated, at the time of purchase, “P-1” by Moody’s and “A-1” or better by S&P.

(6) Certificates of deposit, savings accounts, deposit accounts or money market deposits in amounts that are continuously and fully insured by the Federal Deposit Insurance Corporation (the “FDIC”), including the Bank Insurance Fund and the Savings Association Insurance Fund, and including funds for which the Trustee or its affiliates provide investment advisory or other management services.

(7) Certificates of deposit, deposit accounts, federal funds or bankers’ acceptances (in each case having maturities of not more than 365 days following the date of purchase) of any domestic commercial bank or United States branch office of a foreign bank, provided that such bank’s short-term certificates of deposit are rated “P-1” by Moody’s and “A-1” or better by S&P (not considering holding company ratings).

(8) Investments in money-market funds rated “AAAm” or “AAAm-G” by S&P, including funds for which the Trustee and its affiliates provide investment advisory or other management services.

(9) Repurchase agreements that meet the following criteria:

- a. A master repurchase agreement or specific written repurchase agreement, substantially similar in form and substance to the Public Securities Association or Bond Market Association master repurchase agreement, governs the transaction.
- b. Acceptable providers shall consist of: (i) registered broker/dealers subject to Securities Investors’ Protection Corporation (“SIPC”) jurisdiction or commercial banks insured by the FDIC, if such broker/dealer or bank has an uninsured, unsecured and unguaranteed rating of “A3/P-1” or better by Moody’s and “A-/A-1” or better by S&P; or (ii) domestic structured investment companies rated “Aaa” by Moody’s and “AAA” by S&P.
- c. The repurchase agreement shall require termination thereof if the counterparty’s ratings are suspended, withdrawn or fall below “A3” or “P-1” from Moody’s, or “A-” or “A-1” from S&P. Within ten (10) days, the counterparty shall repay the principal amount plus any accrued and unpaid interest on the investments.
- d. The repurchase agreement shall limit acceptable securities to U.S. Government Securities and to the obligations of GNMA, FNMA or FHLMC described in 2(d), 3(a) and 3(b) above. The fair market value of the securities in relation to the amount of the repurchase obligation, including principal and accrued interest, is equal to a collateral level of at least 104% for U.S. Government Securities and 105% for GNMA, FNMA or FHLMCs. The repurchase agreement shall require: (i) the Trustee or the Agent to value the collateral securities no less frequently than weekly; (ii) the delivery of additional securities if the fair market value of the securities is below the required level on any valuation date; and (iii) liquidation of the repurchase securities if any deficiency in the required percentage is not restored within two (2) business days of such valuation.
- e. The repurchase securities shall be delivered free and clear of any lien to the Trustee or to an independent third party acting solely as agent (“Agent”) for the Trustee, and such Agent is: (i) a Federal Reserve Bank; or (ii) a bank which is a member of the FDIC and which has combined capital, surplus and undivided profits or, if appropriate, a net worth, of not less than \$50 million, and the Trustee shall have received written confirmation from such third party that such third party holds such securities, free and clear of any lien, as agent for the Trustee.

- f. A perfected first security interest in the repurchase securities shall be created for the benefit of the Trustee, and the issuer and the Trustee shall receive an opinion of counsel as to the perfection of the security interest in such repurchase securities and any proceeds thereof.
- g. The repurchase agreement shall have a term of one year or less, or shall be due on demand.
- h. The repurchase agreement shall establish the following as events of default, the occurrence of any of which shall require the immediate liquidation of the repurchase securities:
  - (i) insolvency of the broker/dealer or commercial bank serving as the counterparty under the repurchase agreement;
  - (ii) failure by the counterparty to remedy any deficiency in the required collateral level or to satisfy the margin maintenance call under item 9(d) above; or
  - (iii) failure by the counterparty to repurchase the repurchase securities on the specified date for repurchase.

(10) Investment agreements, collateralized at 102% (also referred to as guaranteed investment contracts) that meet the following criteria:

- a. A master agreement or specific investment agreement governs the transaction.
- b. Acceptable providers of uncollateralized investment agreements shall consist of: (i) domestic FDIC-insured commercial banks, or U.S. branches of foreign banks, rated at least "Aa2" by Moody's and "AA" by S&P; (ii) domestic insurance companies rated Aaa by Moody's and "AAA" by S&P; and (iii) domestic structured investment companies rated "Aaa" by Moody's and "AAA" by S&P.
- c. Acceptable providers of collateralized investment agreements shall consist of: (i) registered broker/dealers subject to SIPC jurisdiction, if such broker/dealer has an uninsured, unsecured and unguaranteed rating of "A1" or better by Moody's and "A+" or better by S&P; (ii) domestic FDIC-insured commercial banks, or U.S. branches of foreign banks, rated at least "A1" by Moody's and "A+" by S&P; (iii) domestic insurance companies rated at least "A1" by Moody's and "A+" by S&P; and (iv) domestic structured investment companies rated "Aaa" by Moody's and "AAA" by S&P. Required collateral levels shall be as set forth in 10(f) below.
- d. The investment agreement shall provide that if the provider's ratings fall below "Aa3" by Moody's or "AA-" by S&P, the provider shall within ten (10) days either: (i) repay the principal amount plus any

accrued and interest on the investment; or (ii) deliver Permitted Collateral as provided below.

- e. The investment agreement must provide for termination thereof if the provider's ratings are suspended, withdrawn or fall below "A3" from Moody's or "A-" from S&P. Within ten (10) days, the provider shall repay the principal amount plus any accrued interest on the agreement, without penalty to the City.
- f. The investment agreement shall provide for the delivery of collateral described in (i) or (ii) below ("**Permitted Collateral**") which shall be maintained at the following collateralization levels at each valuation date:
  - (i) U.S. Government Securities at 104% of principal plus accrued interest; or
  - (ii) Obligations of GNMA, FNMA or FHLMC (described in 2(d), 3(a) and 3(b) above) at 105% of principal and accrued interest.
- g. The investment agreement shall require the Trustee to determine the market value of the Permitted Collateral not less than weekly and notify the investment agreement provider on the valuation day of any deficiency. Permitted Collateral may be released by the Trustee to the provider only to the extent that there are excess amounts over the required levels. Market value, with respect to collateral, may be determined by any of the following methods:
  - (i) the last quoted "bid" price as shown in Bloomberg, Interactive Data Systems, Inc., The Wall Street Journal or Reuters;
  - (ii) valuation as performed by a nationally recognized pricing service, whereby the valuation method is based on a composite average of various bid prices; or
  - (iii) the lower of two bid prices by nationally recognized dealers. Such dealers or their parent holding companies shall be rated investment grade and shall be market makers in the securities being valued.
- h. Securities held as Permitted Collateral shall be free and clear of all liens and claims of third parties, held in a separate custodial account and registered in the name of the Trustee or the Agent.
- i. The provider shall grant the Trustee a perfected first security interest in any collateral delivered under an investment agreement. For investment agreements collateralized initially and in connection with the delivery of Permitted Collateral under item 10(f) above, the Trustee shall receive an opinion of counsel as to the perfection of the security interest in the collateral.

- j. The investment agreement shall provide that moneys invested under the agreement must be payable and putable at par to the Trustee without condition, breakage fee or other penalty, upon not more than two (2) business days' notice, or immediately on demand for any reason for which the funds invested may be withdrawn from the applicable fund or account established under the authorizing document, as well as the following:
- (i) In the event of a deficiency in the debt service account;
  - (ii) Upon acceleration after an event of default;
  - (iii) Upon refunding of the Bonds in whole or in part;
  - (iv) Reduction of any debt service reserve requirement for the Bonds; or
  - (v) If a determination is later made by a nationally recognized bond counsel that investments must be yield-restricted.

Notwithstanding the foregoing, the agreement may provide for a breakage fee or other penalty that is payable in arrears and not as a condition of a draw by the Trustee if the City's obligation to pay such fee or penalty is subordinate to its obligation to pay debt service on the Bonds and to make deposits to any debt service reserve fund established for the Bonds.

- (k) The investment agreement shall establish the following as events of default, the occurrence of any of which shall require the immediate liquidation of the investment securities:
- (i) Failure of the provider or the guarantor (if any) to make a payment when due or to deliver Permitted Collateral of the character, at the times or in the amounts described above;
  - (ii) Insolvency of the provider or the guarantor (if any) under the investment agreement;
  - (iii) Failure by the provider to remedy any deficiency with respect to required Permitted Collateral;
  - (iv) Failure by the provider to make a payment or observe any covenant under the agreement;
  - (v) The guaranty (if any) is terminated, repudiated or challenged; or
  - (vi) Any representation of warranty furnished to the Trustee or the issuer in connection with the agreement is false or misleading.

- (l) The investment agreement must incorporate the following general criteria:
- (i) “Cure periods” for payment default shall not exceed two (2) business days;
  - (ii) The agreement shall provide that the provider shall remain liable for any deficiency after application of the proceeds of the sale of any collateral, including costs and expenses incurred by the Trustee;
  - (iii) Neither the agreement nor guaranty agreement, if applicable, may be assigned (except to a provider that would otherwise be acceptable under these guidelines);
  - (iv) If the investment agreement is for a debt service reserve fund, reinvestments of funds shall be required to bear interest at a rate at least equal to the original contract rate.
  - (v) The provider shall be required to immediately notify the Trustee of any event of default or any suspension, withdrawal or downgrade of the provider’s ratings; and
  - (vi) The agreement shall be unconditional and shall expressly disclaim any right of set-off or counterclaim.

(11) Forward delivery agreements in which the securities delivered mature on or before each interest payment date (for debt service or debt service reserve funds) or draw down date (construction funds) that meet the following criteria:

- (a) A specific written investment agreement governs the transaction.
- (b) Acceptable providers shall be limited to: (i) any registered broker/dealer subject to the Securities Investors’ Protection Corporation jurisdiction, if such broker/dealer or bank has an uninsured, unsecured and unguaranteed obligation rated “A3/P-1” or better by Moody’s and “A-/A-1” or better by S&P; (ii) any commercial bank insured by the FDIC, if such bank has an uninsured, unsecured and unguaranteed obligation rated “A3/P-1” or better by Moody’s and “A-/A-1” or better by S&P; and (iii) domestic structured investment companies rated “Aaa” by Moody’s and “AAA” by S&P.
- (c) The forward delivery agreement shall provide for termination or assignment (to a qualified provider hereunder) of the agreement if the provider’s ratings are suspended, withdrawn or fall below “A3” or “P-1” from Moody’s or “A-” or “A-1” from S&P. Within ten (10) days, the provider shall fulfill any obligations it may have with respect to shortfalls in market value. There shall be no breakage fee payable to the provider in such event.

- (d) Permitted securities shall include the investments listed in items 1, 2 and 3 above.
- (e) The forward delivery agreement shall include the following provisions:
  - (i) The permitted securities must mature at least one (1) business day before a debt service payment date or scheduled draw. The maturity amount of the permitted securities must equal or exceed the amount required to be in the applicable fund on the applicable valuation date.
  - (ii) The agreement shall include market standard termination provisions, including the right to terminate for the provider's failure to deliver qualifying securities or otherwise to perform under the agreement. There shall be no breakage fee or penalty payable to the provider in such event.
  - (iii) Any breakage fees shall be payable only on debt service payment dates and shall be subordinated to the payment of debt service and debt service reserve fund replenishments.
  - (iv) The provider must submit at closing a bankruptcy opinion to the effect that upon any bankruptcy, insolvency or receivership of the provider, the securities will not be considered to be a part of the provider's estate.
  - (v) The agreement may not be assigned (except to a provider that would otherwise be acceptable under these guidelines).

(12) Forward delivery agreements in which the securities delivered mature after the funds may be required but provide for the right of the City or the Trustee to put the securities back to the provider under a put, guaranty or other hedging arrangement.

(13) Maturity of investments shall be governed by the following:

- a. Investments of monies (other than reserve funds) shall be in securities and obligations maturing not later than the dates on which such monies will be needed to make payments.
- b. Investments shall be considered as maturing on the first date on which they are redeemable without penalty at the option of the holder or the date on which the Trustee may require their repurchase pursuant to repurchase agreements.
- c. Investments of monies in reserve funds not payable upon demand shall be restricted to maturities of five years or less.

(14) Any other investment which the City is permitted by law to make, including without limitation investment in the Local Agency Investment Fund of the State of California (LAIF), provided that any investment of the type authorized pursuant to paragraphs (d), (f), (h) and (i) of Section 53601 of the California Government Code are additionally restricted as provided in the appropriate paragraph or paragraphs above applicable to such type of investment and provided



further that investments authorized pursuant to paragraphs (k) and (m) of Section 53601 are not permitted.

To the extent that any of the requirements concerning Permitted Investments embodies a legal conclusion, the Trustee shall be entitled to conclusively rely upon a certificate from the appropriate party or an opinion from counsel to such party, that such requirement has been met. In the case of any Permitted Investment, the Trustee shall be entitled to conclusively rely upon any direction of the City as a deemed certification that such investment constitutes an Permitted Investment and is a legal investment under the laws of the State of California and this Trust Agreement.

**“PERS”** means the California Public Employees’ Retirement System.

**“PERS Contract”** has the meaning assigned to that term in the Recitals to this Trust Agreement.

**“Principal Office of the Trustee”** means the corporate trust office of the Trustee at the address set forth in Section 14.06 of this Trust Agreement, or such other addresses may be specified in writing by the Trustee; provided, however, that for purposes of the transfer, registration, exchange, payment and surrender of Bonds, **“Principal Office of the Trustee”** means the office or agency of the Trustee at which, at any time, its corporate trust agency business shall be conducted or such other office or address as may be specified in writing by the Trustee.

**“Rating Agencies”** means Moody’s and S&P.

**“Rating Category”** means: (i) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier; and (ii) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

**“Record Date”** means the fifteenth day of each calendar month preceding any Interest Payment Date, regardless of whether such day is a Business Day.

**“Redemption Fund”** means the Fund by that name established pursuant to Section 6.03.

**“Refunding Law”** has the meaning assigned to that term in the Recitals to this Trust Agreement.

**“Registrar”** means, for purposes of this Trust Agreement, the Trustee or its successor or assignee.

**“Representation Letter”** means the Letter of Representations from the City to DTC with respect to the Bonds.

**“Requisition”** or **“Written Requisition”** means a Requisition or Written Requisition, substantially in the form of Exhibit B.

**“Responsible Officer”** means any managing director, president, vice president, senior associate, associate or other officer of the Trustee within the Principal Office of the Trustee (or any

successor corporate trust office) customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at the Principal Office of the Trustee because of such person's knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Trust Agreement.

**"Retirement Law"** has the meaning assigned to that term in the Recitals to this Trust Agreement.

**"Revenue Fund"** means the Fund by that name established pursuant to Section 6.02.

**"S&P"** means S&P Global Ratings, LLC, a Standard & Poor's Financial Services LLC business, and its successors, and, if such company shall for any reason no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized rating agency designated by the City.

**"Securities Depositories"** means any of The Depository Trust Company or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other securities depositories as the City may indicate in a certificate of the City delivered to the Trustee.

**"State"** means the State of California.

**"Total Bond Obligation"** means, as of any date of calculation, the aggregate principal amount of the Bonds then Outstanding.

**"Trust Agreement"** means this Trust Agreement dated as of \_\_\_\_ 1, 202\_\_ between the City and the Trustee, as it may be amended, supplemented or otherwise modified from time to time.

**"Trustee"** means the entity named as such in the heading of this Trust Agreement until a successor replaces it, and thereafter means such successor.

**"Unfunded Liability"** has the meaning assigned to that term in the Recitals to this Trust Agreement.

**Section 1.02 Other Definitional Provisions.** Except as otherwise indicated, references to Articles and Sections are to the Articles and Sections of this Trust Agreement. Any of the terms defined in Section 1.01 may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference.

## ARTICLE II

### THE BONDS

**Section 2.01 Issuance of Bonds; Form; Dating.** Bonds may be issued by the City under the terms of this Trust Agreement only to refund the City's Unfunded Liability under the PERS Contract and the Retirement Law, to fund the City's Current Obligation and to pay the Costs of Issuance in connection with the issuance of the Bonds. The Bonds shall be designated "City of Escondido Pension Obligation Bonds, Series 202\_\_ (Federally Taxable)" and shall be issued in Authorized Denominations. The Bonds shall be issued hereunder in the aggregate principal amount

of \$\_\_\_\_\_. Interest on the Bonds shall be payable on \_\_\_\_ 1, 202\_\_ and each \_\_\_\_ 1 and \_\_\_\_ 1 thereafter.

**Section 2.02 Description of the Bonds.** Each Bond shall be issued in fully registered form and shall be numbered as determined by the Trustee. The Bonds shall be dated the Closing Date. The Bonds shall be issued in Authorized Denominations; provided, however, that the Bonds shall initially be Book-Entry Bonds.

The Bonds shall mature on the dates, in the principal amounts, and interest thereon shall be computed at the rates, as shown below:

<i>Maturity Date</i>	<i>Principal Amount</i>	<i>Interest Rate</i>
(____ 1)	\$	%
20__		

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\* Term Bond.

**Section 2.03 Interest on the Bonds.** Interest on each Bond of each maturity shall be payable at the respective per annum rates set forth in Section 2.02 hereof and shall be payable on each Interest Payment Date until maturity or earlier redemption, computed using a year of 360 days comprised of twelve 30-day months. Interest on each Bond shall accrue from the Interest Payment Date for the Bonds next preceding the date of authentication and delivery thereof, unless: (i) such date of authentication is an Interest Payment Date, in which event interest shall be payable from such date of authentication; (ii) it is authenticated after a Record Date and before the close of business on the immediately following Interest Payment Date, in which event interest thereon shall be payable from such Interest Payment Date; or (iii) it is authenticated prior to the close of business on the first Record Date, in which event interest thereon shall be payable from the Closing Date; provided, however, that if at the time of authentication of any Bond interest thereon is in default, interest thereon shall be payable from the Interest Payment Date to which interest has previously been paid or made available for payment or, if no interest has been paid or made available for payment, from the Closing Date.

**Section 2.04 Medium of Payment.** Principal, premium, if any, and interest on the Bonds shall be payable in currency of the United States of America which at the time of payment is legal

tender for the payment of public and private debts. Payments of interest on any of the Bonds will be made on each Interest Payment Date by check of the Trustee sent by Mail, or by wire transfer to any Holder of \$1,000,000 or more of Bonds, to the account specified by such Holder in a written request delivered to the Trustee on or prior to the Record Date for such Interest Payment Date, to the Holder thereof on the Record Date; provided, however, that payments of defaulted interest shall be payable to the person in whose name such Bond is registered at the close of business on a special record date fixed therefor by the Trustee which shall not be more than 15 days and not less than ten days prior to the date of the proposed payment of defaulted interest. Payment of the principal of the Bonds upon redemption or maturity will be made upon presentation and surrender of each such Bond, at the Principal Office of the Trustee.

**Section 2.05 Form.** The Bonds shall be substantially in the form set forth in Exhibit A. The Bonds may be printed, lithographed, photocopied or typewritten and shall be in such Authorized Denominations as may be determined by the City.

**Section 2.06 Additional Bonds.** From time to time, the City may enter into: (a) one or more other trust agreements or indentures; and/or (b) one or more agreements supplementing and/or amending this Trust Agreement, for the purpose of providing for the issuance of Additional Bonds to refund the Bonds, to refund all or any portion of any Unfunded Liability under the PERS Contract arising subsequent to the issuance of the Bonds, to fund all or any portion of the Current Obligation of the City arising subsequent to the issuance of the Bonds or to fund any other obligations due to PERS. Such Additional Bonds may be issued on a parity with the Bonds.

### ARTICLE III

#### EXECUTION, AUTHENTICATION AND EXCHANGE OF BONDS; BOOK ENTRY BONDS

##### **Section 3.01 Execution and Authentication; Registration.**

(a) The Bonds will be signed for the City with the manual or facsimile signature of the City Manager or the Mayor of the City. The City may deliver to the Trustee or its agent duly executed Bonds for authentication from time to time by the Trustee or its agent as such Bonds may be required. Bonds executed and so delivered and authenticated will be valid. In case any officer of the City whose signature or whose facsimile signature appears on any Bonds shall cease to be such officer before the authentication of such Bonds, such signature or the facsimile signature thereof shall nevertheless be valid and sufficient for all purposes as if he or she had remained in office until authentication. Also, if a person signing a Bond is the proper officer on the actual date of execution, the Bond will be valid even if that person is not the proper officer on the nominal date of action and even though, at the date of this Trust Agreement, such person was not such officer.

(b) A Bond will not be valid until the Trustee or its agent executes the certificate of authentication on such Bond by manual or facsimile signature. Such signature will be conclusive evidence that such Bond has been authenticated under this Trust Agreement. The Trustee may appoint an authenticating agent acceptable to the City to authenticate Bonds. An authenticating agent may authenticate Bonds whenever the Trustee may do so. Each reference in this Trust Agreement to authentication by the Trustee includes authentication by such agent.

(c) Bonds may be presented at the Principal Office of the Trustee, unless a different office has been designated for such purpose, for registration, transfer and exchange. The Registrar will keep a register of such Bonds and of their transfer and exchange.

**Section 3.02 Transfer or Exchange of Bonds.** Subject to Section 3.03:

(a) All Bonds shall be issued in fully registered form. Upon surrender for transfer of any Bond at the Principal Office of the Trustee, the Trustee shall deliver in the name of the transferee or transferees a new fully authenticated and registered Bond or Bonds of Authorized Denominations of the same maturity for the aggregate principal amount which the Bondholder is entitled to receive.

(b) All Bonds presented for transfer, redemption or payment shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the City, duly executed by the Bondholder or by his or her duly authorized attorney. The Trustee also may require payment from the Bondholder of a sum sufficient to cover any tax or other governmental fee or charge that may be imposed in relation thereto. Such taxes, fees and charges shall be paid before any such new Bond shall be delivered.

(c) Bonds delivered upon any transfer as provided herein, or as provided in Section 3.04, shall be valid obligations of the City, evidencing the same debt as the Bond surrendered, shall be secured by this Trust Agreement and shall be entitled to all of the security and benefits hereof to the same extent as the Bond surrendered.

(d) The City, the Trustee and the Paying Agent shall treat the Bondholder, as shown on the registration books kept by the Trustee, as the person exclusively entitled to payment of principal, premium, if any, and interest with respect to such Bond and to the exercise of all other rights and powers of the Bondholder, except that all interest payments will be made to the party who, as of the Record Date, is the Bondholder.

(e) The Trustee shall not be required to register the transfer or exchange of any Bond during the period in which the Trustee is selecting Bonds for redemption and any Bond that has been selected for redemption.

(f) Prior to any transfer of the Bonds outside the book-entry system (including, but not limited to, the initial transfer outside the book-entry system) the transferor shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045, as amended. The Trustee shall conclusively rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information

**Section 3.03 Book-Entry Bonds.**

(a) Except as provided in paragraph (c) of this Section 3.03, the registered owner of all of the Bonds shall be DTC and the Bonds shall be registered in the name of Cede & Co., as nominee for DTC. Except as provided in paragraph (d) of this Section 3.03, payment of principal, interest and premium, if any, for any Bonds registered in the name of Cede & Co. shall be made as provided in the Representation Letter.

(b) The Bonds shall be initially issued in the form of a separate single authenticated fully registered Bond for each separate stated maturity of the Bonds. The Trustee, the Registrar and the City may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal or redemption price of, or interest on, the Bonds, selecting the Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Bondholders under this Trust Agreement, registering the transfer of Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever, and neither the Trustee, the Registrar nor the City shall be affected by any notice to the contrary. Neither the Trustee, the Registrar nor the City shall have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the Bonds under or through DTC or any Participant or any other person which is not shown on the registration books as being a Bondholder, with respect to: (i) the accuracy of any records maintained by DTC or any Participant; (ii) the payment by DTC or any Participant of any amount in respect of the principal or redemption price of or interest on the Bonds; (iii) any notice which is permitted or required to be given to Bondholders under this Trust Agreement; (iv) the selection by DTC or any Participant of any person to receive payment in the event of a partial redemption of the Bonds; or (v) any consent given or other action taken by DTC as a Bondholder. The Trustee shall pay, from funds held under the terms of this Trust Agreement or otherwise provided by the City, all principal or redemption price of and interest on the Bonds only to DTC as provided in the Representation Letter and all such payments shall be valid and effective to satisfy and discharge fully the City's obligations with respect to the principal or redemption price of and interest on the Bonds to the extent of the sum or sums so paid. No person other than DTC shall receive authenticated Bonds evidencing the obligation of the City to make payments of principal or redemption price and interest pursuant to this Trust Agreement. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions herein with respect to Record Dates, the name "Cede & Co." in this Trust Agreement shall refer to such new nominee of DTC.

(c) In the event that the City determines that it is in the best interest of the Beneficial Owners that they be able to obtain Bond certificates and notifies DTC, the Trustee and the Registrar of such determination, then DTC will notify the Participants of the availability through DTC of Bond certificates. In such event, the Trustee shall authenticate and the Registrar shall transfer and exchange Bond certificates as requested by DTC and any other Bondholders in appropriate amounts. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the City and the Trustee and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is no successor securities depository), the City and the Trustee shall be obligated to deliver Bond certificates as described in this Trust Agreement. In the event that Bond certificates are issued, the provisions of this Trust Agreement shall apply to, among other things, the transfer and exchange of such certificates and the method of payment of principal of and interest on such certificates. Whenever DTC requests the City and the Trustee to do so, the Trustee and the City will cooperate with DTC in taking appropriate action after reasonable notice: (i) to make available one or more separate certificates evidencing the Bonds to any Participant having Bonds credited to its DTC account; or (ii) to arrange for another securities depository to maintain custody of certificates evidencing the Bonds.

(d) Notwithstanding any other provision of this Trust Agreement to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to the principal or redemption price of and interest on such Bonds and all notices with respect

to such Bonds shall be made and given, respectively, to DTC as provided in the Representation Letter.

(e) In connection with any notice or other communication to be provided to Bondholders pursuant to this Trust Agreement by the City or the Trustee with respect to any consent or other action to be taken by Bondholders, the City or the Trustee, as the case may be, shall establish a record date for such consent or other action and give DTC notice of such record date not less than 15 calendar days in advance of such record date to the extent possible. Notice to DTC shall be given only when DTC is the sole Bondholder.

(f) If the City purchases, or causes the Trustee to purchase, any of the Bonds, such purchase of Bonds shall be deemed to have occurred upon the purchase of beneficial ownership interests in the Bonds from a Participant. Upon receipt by DTC of notice from the City and a Participant that a purchase of beneficial ownership interests in the Bonds has been made by the City from such Participant, DTC shall surrender to the Trustee the Bonds referenced in such notice and, if the principal amount referenced in said notice is less than the principal amount of the Bonds so surrendered, the Trustee shall authenticate and deliver to DTC, in exchange for the Bonds so surrendered, a new Bond or Bonds, as the case may be, in Authorized Denominations and in a principal amount equal to the difference between: (i) the principal amount of the Bonds so surrendered; and (ii) the principal amount referenced in said notice.

(g) Notwithstanding any provision herein to the contrary, the City and the Trustee may agree to allow DTC, or its nominee, Cede & Co., to make a notation on any Bond redeemed in part to reflect, for informational purposes only, the principal amount and date of any such redemption.

(h) In the event that DTC notifies the City that it is discontinuing the book-entry system for the Bonds, the City may either appoint another entity to hold the Bonds in book-entry form or deliver Bond certificates to the beneficial owners or Participants, as directed by DTC.

#### **Section 3.04 Mutilated, Lost, Stolen or Destroyed Bonds.**

(a) In the event that any Bond is mutilated or defaced but identifiable by number and description, the City shall execute and the Trustee shall authenticate and deliver a new Bond of like date, maturity and denomination as such Bond, upon surrender thereof to the Trustee; provided that there shall first be furnished to the City and the Trustee proof satisfactory to the Trustee that the Bond is mutilated or defaced. The Bondholder shall accompany the above with a deposit of money required by the City for the cost of preparing the substitute Bond and all other expenses connected with the issuance of such substitute. The City shall then cause proper record to be made of the cancellation of the original, and thereafter the substitute shall have the validity of the original.

(b) In the event that any Bond is lost, stolen or destroyed, the City may execute and the Trustee may authenticate and deliver a new Bond of like date, maturity and denomination as the Bond lost, stolen or destroyed; provided that there shall first be furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to it.

(c) The City may require payment of a sum not exceeding the actual cost of preparing each new Bond delivered under this Section and of the expenses which may be incurred by the City and the Trustee for the preparation, execution, authentication and delivery thereof. All

substitute Bonds issued and authenticated pursuant to this Section shall be issued as a substitute and numbered, if numbering is provided for by the Trustee, as determined by the Trustee. In the event that any such Bond has matured or has been called for redemption, instead of issuing a substitute Bond, the Trustee may pay the same without surrender thereof upon receipt of indemnity satisfactory to the Trustee.

**Section 3.05 Destruction of Bonds.** Whenever any Outstanding Bonds shall be delivered to the Trustee for cancellation pursuant to this Trust Agreement, upon payment of the principal amount and interest represented thereby or for replacement pursuant to Section 3.04 or transfer pursuant to Section 3.02, such Bond shall be cancelled and destroyed by the Trustee and counterparts of a certificate of destruction evidencing such destruction shall, upon the City's request, be furnished by the Trustee to the City.

**Section 3.06 Temporary Bonds.**

(a) Pending preparation of definitive Bonds, the City may execute and the Trustee shall authenticate and deliver, in lieu of definitive Bonds and subject to the same limitation and conditions, interim receipts, certificates or temporary bonds which shall be exchanged for the Bonds.

(b) If temporary bonds shall be issued, the City shall cause the definitive Bonds to be prepared and to be executed and delivered to the Trustee, and the Trustee, upon presentation to it of any temporary bond, shall cancel the same and deliver in exchange therefor at the place designated by the Bondholder, without charge to the Bondholder thereof, definitive Bonds of an equal aggregate principal amount, of the same series, maturity and bearing interest at the same rate or rates as the temporary Bonds surrendered. Until so exchanged, the temporary bonds shall in all respects be entitled to the same benefit and security of this Trust Agreement as the definitive Bonds to be issued and authenticated hereunder.

**ARTICLE IV**

**REDEMPTION OF BONDS**

**Section 4.01 Notices to Trustee; Notices to Bondholders; Notices to DTC.**

(a) Notice of redemption shall be given by the Trustee, on behalf of the City (provided that the City has so instructed the Trustee at least five (5) Business Days prior to the date of delivery of the notice of redemption to the Holders of the Bonds), not less than 20 nor more than 60 days prior to the redemption date: (i) in the case of Bonds not registered in the name of a Securities Depository or its nominee, to the respective Holders of the Bonds designated for redemption at their addresses appearing on the registration books of the Trustee; (ii) in the case of Bonds registered in the name of a Securities Depository or its nominee, to such Securities Depository for such Bonds; and (iii) to the Information Services. Notice of redemption to the Holders pursuant to clause (i) above shall be given by mail at their addresses appearing on the registration books of the Trustee, or any other method agreed upon by such Holder and the Trustee. Notice of redemption to the Securities Depositories pursuant to clause (ii) above and the Information Services pursuant to clause (iii) above shall be given by electronically secure means, or any other method agreed upon by such entities and the Trustee.



(b) Each notice of redemption shall state the Bonds or designated portions thereof to be redeemed, the date of redemption, the place of redemption, the redemption price, the CUSIP number (if any) of the Bonds to be redeemed and, in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed, the original issue date, interest rate and stated maturity date of each Bond to be redeemed in whole or part. Each such notice shall also state that on said date there will become due and payable on each of the Bonds to be redeemed the redemption price, and redemption premium, if any, thereof, and that from and after such redemption date interest thereon shall cease to accrue.

(c) Failure to give the notices described in this Section 4.01 or any defect therein shall not in any manner affect the redemption of any Bonds. Any notice sent as provided herein will be conclusively presumed to have been given whether or not actually received by the addressee.

(d) The City has the right to rescind any notice of the redemption of Bonds under clauses (a) or (b) by written notice to the Trustee on or prior to two (2) Business Days prior to the date fixed for redemption, in which case such redemption shall be cancelled and annulled and such cancellation shall not constitute an Event of Default. In addition, any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an event of default. The City and the Trustee have no liability to the Owners or any other party related to or arising from any such rescission or cancellation of redemption. The Trustee shall mail notice of such rescission and/or cancellation of redemption in the same manner as the original notice of redemption was sent under this Section.

#### **Section 4.02 Optional Redemption of Bonds.**

(a) Optional Par Redemption. The Bonds maturing on or after \_\_\_ 1, 20\_\_ may be redeemed at the option of the City from any source of funds on \_\_\_ 1, 20\_\_ or any date thereafter in whole or in part from such maturities as are selected by the City pursuant to a written notice delivered to the Trustee and by lot within a maturity at a redemption price equal to the principal amount to be redeemed, together with accrued interest to the date of redemption, without premium.

(b) Optional Make-Whole Redemption. The Bonds are subject to redemption prior to \_\_\_ 1, 20\_\_, at the option of the City, in whole or in part (and if in part in any order of maturity selected by the City pursuant to a written notice delivered to the Trustee and within a maturity bearing interest at the same rate on a pro-rata basis as described below), on any date at a redemption price equal to the greater of:

- (i) 100% of the principal amount of the Bonds to be redeemed; or
- (ii) the sum of the present value of the remaining scheduled payments of principal and interest to the maturity date of such Bonds to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which such Bonds are to be redeemed, discounted to the date on which such Bonds are to be redeemed on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months, at the Comparable Treasury Yield (as such term is defined below) plus \_\_ basis points;

plus, in each case, accrued interest on such Bonds to be redeemed to the redemption date.

For purposes of the foregoing, the following terms have the following meanings:

**“Calculation Agent”** means a commercial bank or an investment banking institution of national standing that is a primary dealer of United States government securities in the United States and designated by the City (which may be one of the institutions that served as an underwriter for the Bonds).

**“Comparable Treasury Issue”** means the United States Treasury security selected by the Calculation Agent as having a maturity comparable to the remaining term to maturity of the Bonds being redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term to maturity of the Bonds being redeemed.

**“Comparable Treasury Price”** means, with respect to any date on which a Bond or portion thereof is being redeemed, either: (a) the average of five Reference Treasury Dealer quotations for the date fixed for redemption, after excluding the highest and lowest such quotations; and (b) if the Calculation Agent is unable to obtain five such quotations, the average of the quotations that are obtained. The quotations will be the average, as determined by the Calculation Agent, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of principal amount) quoted in writing to the Calculation Agent, at 5:00 p.m. New York City time on a date selected by the Calculation Agent which is not less than three business days and not more than 20 business days preceding the date fixed for redemption.

**“Comparable Treasury Yield”** means the yield that represents the weekly average yield to maturity for the preceding week appearing in the most recently published statistical release designated “H.15(519) Selected Interest Rates” under the heading “Treasury Constant Maturities,” or any successor publication selected by the Calculation Agent that is published weekly by the Board of Governors of the Federal Reserve System and that establishes yields on actively traded United States Treasury securities adjusted to constant maturity, for the maturity corresponding to the remaining term to maturity of the Bonds being redeemed. The Comparable Treasury Yield will be determined no sooner than the third business day nor earlier than the twentieth calendar day preceding the applicable date fixed for redemption. If the H.15(519) statistical release sets forth a weekly average yield for United States Treasury securities that have a constant maturity that is the same as the remaining term to maturity of the Bonds being redeemed, then the Comparable Treasury Yield will be equal to such weekly average yield. In all other cases, the Comparable Treasury Yield will be calculated by interpolation on a straight-line basis between the weekly average yields on the United States Treasury securities that have a constant maturity: (i) closest to and greater than the remaining term to maturity of the Bonds being redeemed; and (ii) closest to and less than the remaining term to maturity of the Bonds being redeemed. Any weekly average yields calculated by interpolation will be rounded to the nearest 1/100th of 1%, with any figure of 1/200th of 1% or above being rounded upward. If, and only if, weekly average yields for United States Treasury securities for the preceding week are not available in the H.15(519) statistical release or any successor publication, then the Comparable Treasury Yield will be the rate of interest per annum equal to the semiannual equivalent yield to maturity of the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price (each as defined herein) as of the date fixed for redemption.

“**Reference Treasury Dealer**” means a primary dealer of United States Government securities in the United States (which may be one of the institutions that served as an underwriter for the Bonds) appointed by the District and reasonably acceptable to the Calculation Agent.

**Section 4.03 Mandatory Sinking Fund Redemption of Bonds.** The Bonds maturing \_\_\_ 1, 20\_\_ (the “**20\_\_ Term Bonds**”) are subject to mandatory sinking fund redemption at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date, without premium. The 20\_\_ Term Bonds shall be so redeemed on the following dates and in the following amounts:

<i>Redemption Date</i> (___ 1)	<i>Principal Amount</i>
20__	\$

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\* Maturity.

In the event of prior redemption pursuant to Sections 4.01(a) or (b), the City shall provide the Trustee with a revised mandatory sinking fund schedule giving effect to the redemption so complete.

On or before each \_\_\_ 15 next preceding any mandatory sinking fund redemption date, the Trustee shall proceed to select for redemption pro-rata from all Term Bonds subject to mandatory sinking fund redemption at that time, an aggregate principal amount of such Term Bonds equal to the amount for such year as set forth in the table above and shall call such Term Bonds or portions thereof for redemption and give notice of such redemption in accordance with the terms of Section 4.01. At the option of the City, to be exercised by delivery of a written certificate to the Trustee on or before each \_\_\_ 1 next preceding any mandatory sinking fund redemption date, it may: (a) deliver to the Trustee for cancellation Term Bonds or portions thereof (in the amount of an Authorized Denomination) of the stated maturity subject to such redemption; or (b) specify a principal amount of such Term Bonds or portions thereof (in the amount of an Authorized Denomination) which prior to said date have been purchased or redeemed (otherwise than under the provisions of this Section 4.03) and cancelled by the Trustee at the request of the City and not theretofore applied as a credit against any mandatory sinking fund redemption requirement. Each such Term Bonds or portion thereof so delivered or previously redeemed shall be credited by the Trustee at 100% of the principal amount of the Term Bonds so delivered to the Trustee by the City against the obligation of the City on such mandatory sinking fund redemption date.

**Section 4.04 Payment of Bonds Called for Redemption; Effect of Redemption Call.**

(a) Upon surrender to the Trustee or the Trustee’s agent, Bonds called for redemption shall be paid at the redemption price stated in the notice, plus interest accrued to the redemption date.

(b) On the date so designated for redemption, notice having been given in the manner and under the conditions provided herein relating to such Bonds as are to be redeemed and moneys for payment of the redemption price being held in trust to pay the redemption price, the

Bonds so called for redemption shall become and be due and payable on the redemption date, interest on such Bonds shall cease to accrue, such Bonds shall cease to be entitled to any lien, benefit or security under this Trust Agreement and the owners of such Bonds shall have no rights in respect thereof except to receive payment of the redemption price and accrued interest to the redemption date.

(c) Bonds which have been duly called for redemption under the provisions of this Article IV and for the payment of the redemption price of which moneys shall be deposited in the Redemption Fund or otherwise held in trust for the Holders of the Bonds to be redeemed, all as provided in this Trust Agreement, shall not be deemed to be Outstanding under the provisions of this Trust Agreement.

**Section 4.05 Selection of Bonds for Redemption; Bonds Redeemed in Part.** If less than all of the Bonds are called for redemption, the City will designate the maturities from which the Bonds are to be redeemed. For so long as the Bonds are registered in book entry form and DTC or a successor securities depository is the sole registered owner of such Bonds, if fewer than all of such Bonds of the same maturity and bearing the same interest rate are to be redeemed, the particular Bonds to be redeemed shall be selected on a pro rata pass-through distribution of principal basis in accordance with the operational arrangements of DTC then in effect, and if the DTC operational arrangements do not allow for redemption on a pro rata pass-through distribution of principal basis, all Bonds to be so redeemed will be selected for redemption in accordance with DTC procedures by lot; provided further that any such redemption must be performed such that all Bonds remaining outstanding will be in authorized denominations.

In connection with any repayment of principal of the Bonds pursuant to the pass-through distribution of principal as described above, the Trustee will direct DTC to make a pass-through distribution of principal to the owners of the Bonds. A form of Pro Rata Pass-Through Distribution of Principal Notice will be provided to the Trustee that includes a table of factors reflecting the relevant scheduled redemption payments and DTC's applicable procedures, which are subject to change.

For purposes of calculating pro rata pass-through distributions of principal, "pro rata" means, for any amount of principal or interest to be paid, the application of a fraction to such amounts where: (a) the numerator is equal to the amount due to the owners of the Bonds on a payment date; and (b) the denominator is equal to the total original par amount of the Bonds.

It is the City's intent that redemption allocations made by DTC with respect to the Bonds be made on a pro rata pass-through distribution of principal basis as described above. However, the City cannot provide any assurance that DTC, DTC's direct and indirect participants or any other intermediary will allocate the redemption of such Bonds on such basis.

If the Bonds are not registered in book-entry form and if fewer than all of the Bonds of the same maturity and bearing the same interest rate are to be redeemed, the Bonds of such maturity and bearing such interest rate to be redeemed will be selected on a pro rata basis, and the particular Bonds of such maturity and bearing such interest rate to be redeemed will be selected by lot, provided that any such redemption must be performed such that all Bonds remaining outstanding will be in authorized denominations.

Upon surrender of a Bond to be redeemed in part, the Trustee will authenticate for the registered owner a new Bond or Bonds of the same maturity and tenor equal in principal amount to the unredeemed portion of the Bond surrendered.

## ARTICLE V

### APPLICATION OF PROCEEDS; SOURCE OF PAYMENT OF BONDS

**Section 5.01 Application of Proceeds.** The net proceeds of the sale of the Bonds received by the Trustee, \$\_\_\_\_ (consisting of the \_\_\_\_\_.00 principal amount of the Bonds, less \$\_\_\_\_ in underwriter's discount), shall be deposited by the Trustee as follows:

- (i) \$\_\_\_\_ shall be deposited into the Costs of Issuance Fund;
- (ii) \$\_\_\_\_ shall be transferred to PERS and used to pay the Current Obligation relating to the Safety Plan;
- (iii) \$\_\_\_\_ shall be transferred to PERS and used to pay the Current Obligation relating to the Miscellaneous Plan;
- (iv) \$\_\_\_\_ shall be transferred to PERS and used to pay the Unfunded Liability relating to the Safety Plan; and
- (v) \$\_\_\_\_ shall be transferred to PERS and used to pay the Unfunded Liability relating to the Miscellaneous Plan.

The City shall provide written payment instructions to the Trustee for the above-described transfers to PERS, upon which the Trustee may conclusively rely. The Trustee may establish and maintain for so long as is necessary one or more temporary funds and accounts under this Trust Agreement, including but not limited to a temporary fund for holding the proceeds of the Bonds.

### Section 5.02 Sources of Payment of Bonds; Semi-Annual Payments by the City.

(a) The City shall provide for payment of principal or redemption price of and interest on the Bonds from any source of legally available funds of the City. If any Bonds are Outstanding, the City shall, no later than three Business Days preceding each Interest Payment Date beginning \_\_\_\_ 1, 202\_\_, deliver funds to the Trustee for deposit to the Revenue Fund in an aggregate amount equal to the portion of the Annual Debt Service coming due on such Interest Payment Date (less amounts on deposit in the Revenue Fund).

(b) The Bonds shall be obligations of the City payable from any lawfully available funds, shall not be limited as to payment to any special source of funds of the City, and shall be subject to appropriation in accordance with Section 8.01 hereof. The Bonds do not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation.

## ARTICLE VI

### CREATION OF CERTAIN FUNDS AND ACCOUNTS

**Section 6.01 Creation of Costs of Issuance Fund.** There is hereby created a Fund to be held by the Trustee designated "City of Escondido 202\_\_ Taxable Pension Obligation Bonds Costs of Issuance Fund" (the "**Costs of Issuance Fund**"). Funds on deposit in the Costs of Issuance Fund shall be used to pay or to reimburse the City for the payment of Costs of Issuance. Amounts in the Costs of Issuance Fund shall be disbursed by the Trustee upon Written Requisition in the form of Exhibit B executed by an Authorized City Representative. Each such Written Requisition of the City shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts.

At such time as the City delivers to the Trustee written notice that all Costs of Issuance have been paid or otherwise notifies the Trustee in writing that no additional amounts from the Costs of Issuance Fund will be needed to pay Costs of Issuance, the Trustee shall transfer all amounts then remaining in the Costs of Issuance Fund to the Bond Interest Account unless otherwise directed by the City. At such time as no amounts remain in the Costs of Issuance Fund, such Fund shall be closed.

**Section 6.02 Creation of Revenue Fund and Certain Accounts.** There is hereby created a Fund to be held by the Trustee designated "City of Escondido 202\_\_ Taxable Pension Obligation Bonds Revenue Fund" (the "**Revenue Fund**"). There are hereby created in the Revenue Fund two separate Accounts designated "**Bond Interest Account**" and "**Bond Principal Account**".

(a) All amounts received by the Trustee from the City in respect of interest payments on the Bonds shall be deposited in the Bond Interest Account and shall be disbursed to the applicable Bondholders to pay interest on the Bonds. All amounts held at any time in the Bond Interest Account (including amounts deposited pursuant to Section 6.03) shall be held for the security and payment of interest on the Bonds pursuant to this Trust Agreement. If at any time funds on deposit in the Bond Interest Account are insufficient to provide for the payment of such interest, the City shall promptly deposit funds to such Account to cure such deficiency. On \_\_\_\_ 2 of each year beginning \_\_\_\_ 2, 202\_\_, so long as no Event of Default has occurred and is continuing, the Trustee shall transfer all amounts on deposit in the Bond Interest Account to the Revenue Fund to be used for any lawful purpose.

(b) All amounts received by the Trustee from the City in respect of principal payments on the Bonds shall be deposited in the Bond Principal Account and all amounts in the Bond Principal Account will be disbursed to pay principal on the Bonds pursuant to this Trust Agreement. If at any time funds on deposit in the Bond Principal Account are insufficient to provide for the payment of such principal, the City shall promptly deposit funds to such Account to cure such deficiency.

(c) The moneys in such Funds and Accounts shall be held by the Trustee in trust and applied on behalf of the City as herein provided and, pending such application, shall be subject to a lien and charge in favor of the holders of the Bonds issued and Outstanding under this Trust Agreement and for the further security of such holders until paid out or transferred as hereinafter provided.

**Section 6.03 Creation of Redemption Fund.** A Fund to be held by the Trustee is hereby created and designated the "City of Escondido 202\_\_ Taxable Pension Obligation Bonds Redemption Fund" (the "**Redemption Fund**"). All moneys deposited by the City with the Trustee for the purpose of redeeming Bonds shall be deposited in the Redemption Fund. All amounts deposited in the Redemption Fund shall be used and withdrawn by the Trustee, on behalf of the City, solely for the purpose of redeeming Bonds in the manner, at the times and upon the terms and conditions specified in this Trust Agreement; provided that, at any time prior to giving such notice of redemption, the Trustee shall, upon receipt of written instructions from an Authorized City Representative, apply such amounts to the purchase of Bonds at public or private sale, as and when and at such prices (including brokerage and other charges) as directed by the City.

**Section 6.04 Moneys Held in Redemption Fund.** All moneys which shall have been withdrawn from the Revenue Fund and deposited in the Redemption Fund for the purpose of paying any of the Bonds hereby secured, either at the maturity thereof or upon call for redemption, shall be held in trust for the respective Holders of such Bonds.

**Section 6.05 Unclaimed Moneys.** Any moneys which shall be set aside or deposited in the Redemption Fund, the Bond Principal Account, the Bond Interest Account or any other Fund or Account for the benefit of Holders of Bonds and which shall remain unclaimed by the Holders of such Bonds for a period of one year after the date on which such Bonds shall have become due and payable (or such longer period as shall be required by State law) shall be paid to the City, and thereafter the Holders of such Bonds shall look only to the City for payment and the City shall be obligated to make such payment, but only to the extent of the amounts so received without any interest thereon, and the Trustee and any Paying Agent shall have no responsibility with respect to any of such moneys.

## ARTICLE VII

### CONCERNING PAYING AGENT

**Section 7.01 Paying Agent; Appointment and Acceptance of Duties.** The City hereby appoints the Trustee as the Paying Agent for the Bonds.

**Section 7.02 Paying Agent - General Responsibilities.**

(a) The City may at any time or from time to time appoint a different Paying Agent or Paying Agents for the Bonds, and each Paying Agent, if other than the Trustee, shall be a commercial bank with trust powers and shall designate to the City and the Trustee its principal office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the City under which each such Paying Agent will agree, particularly:

(i) to hold all sums held by it for the payment of the principal of, and premium or interest on, Bonds in trust for the benefit of the Bondholders until such sums shall be paid to such Bondholders or otherwise disposed of as herein provided;

(ii) to keep such books and records as shall be consistent with industry practice, to make such books and records available for inspection by the City and the Trustee at all reasonable times upon reasonable prior notice; and

(iii) upon the request of the Trustee, to forthwith deliver to the Trustee all sums so held by such Paying Agent.

(b) The Paying Agent shall perform the duties and obligations set forth in this Trust Agreement, and in particular shall hold all sums delivered to it by the Trustee for the payment of principal or premium of and interest on the Bonds for the benefit of the Bondholders until such sums shall be paid to such Bondholders or otherwise disposed of as herein provided.

(c) In performing its duties hereunder, the Paying Agent shall be entitled to all of the rights, protections and immunities accorded to the Trustee under the terms of this Trust Agreement.

**Section 7.03 Certain Permitted Acts.** Any Fiduciary may become the owner of any Bonds, with the same rights it would have if it were not a Fiduciary. To the extent permitted by law, any Fiduciary may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondholders or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Trust Agreement, whether or not any such committee shall represent the owners of a majority in Total Bond Obligation of the Bonds then Outstanding.

**Section 7.04 Resignation or Removal of Paying Agent and Appointment of Successor.**

(a) Any Paying Agent may at any time resign and be discharged of the duties and obligations created by this Trust Agreement in accordance with the provisions set forth in this Trust Agreement for the removal of the Trustee by giving at least 60 days' written notice to the City and the other Fiduciaries. Any Paying Agent may be removed at any time upon 30 days prior written notice by an instrument filed with such Paying Agent and the Trustee and signed by an Authorized City Representative. Any successor Paying Agent shall be appointed by the City with the approval of the Trustee and shall be a commercial bank with trust powers or trust company organized under the laws of any state of the United States, having capital stock and surplus aggregating at least \$100,000,000, and willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Trust Agreement.

(b) In the event of the resignation or removal of any Paying Agent, such Paying Agent shall assign and deliver any moneys and Bonds, including authenticated Bonds, held by it to its successor, or if there be no successor, to the Trustee. In the event that for any reason there shall be a vacancy in the office of any Paying Agent, the Trustee shall act as such Paying Agent.

## ARTICLE VIII

### COVENANTS OF THE CITY

**Section 8.01 Payment of Principal and Interest.** The City covenants and agrees that it will duly and punctually pay or cause to be paid the principal, premium, if any, and interest on every Bond at the place and on the dates and in the manner specified herein and in the Bonds, according to the true intent and meaning thereof, and that it will faithfully do and perform all covenants and agreements contained herein and in the Bonds. The City agrees that time is of the essence in this Trust Agreement. The obligations of the City under the Bonds, including the obligation to make all



payments of principal, premium, if any, and interest when due, are absolute and unconditional, without any right of set-off or counterclaim.

The City shall in each Fiscal Year include in its budget a provision to provide funds in an amount that is sufficient to pay the principal, premium, if any, and interest on the Bonds coming due in such Fiscal Year, but only to the extent that such amounts exceed the amount of available funds then on deposit in the Revenue Fund, and shall make annual appropriations for all such amounts. If the amount of such principal, premium, if any, and interest on the Bonds coming due in any Fiscal Year exceeds the sum of amounts budgeted in respect thereof together with amounts then on deposit in the Revenue Fund, then the City shall amend or supplement the budget to provide for such excess amounts. The covenants contained in this Section shall be deemed to be and shall be duties imposed by law and it shall be the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Trust Agreement agreed to be carried out and performed by the City.

**Section 8.02 Performance of Covenants by City; Authority; Due Execution.** The City covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Trust Agreement, in any and every Bond executed, authenticated and delivered hereunder and in all of its proceedings pertaining hereto. The City covenants that it is duly authorized under the Constitution and laws of the State to issue the Bonds.

**Section 8.03 Instruments of Further Assurance.** The City covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered such further acts, instruments and transfers as the Trustee may reasonably request for the better assuring and confirming to the Trustee all of the rights and obligations of the City under and pursuant to this Trust Agreement. The City shall, upon the reasonable request of the Trustee, from time to time execute and deliver such further instructions and take such further action as may be reasonable and as may be required to effectuate the purposes of this Trust Agreement or any provisions hereof; provided, however, that no such instruments or actions shall pledge the full faith and credit or the taxing powers of the State.

**Section 8.04 No Inconsistent Action.** The City covenants that no contract or contracts will be entered into or any action taken by the City which shall be inconsistent with the provisions of this Trust Agreement.

**Section 8.05 No Adverse Action.** The City covenants that it will not take any action which will have a material adverse effect upon the rights of the Holders of the Bonds.

**Section 8.06 Maintenance of Powers.** The City covenants that it will at all times use its best efforts to maintain the powers, functions, duties and obligations now reposed in it pursuant to applicable law and will not at any time voluntarily do, suffer or permit any act or thing the effect of which would be to hinder, delay or imperil either the payment of the indebtedness evidenced by any of the Bonds or the performance or observance of any of the covenants herein contained.

**Section 8.07 Covenants of City Binding on Successors.**

(a) All covenants, stipulations, obligations and agreements of the City contained in this Trust Agreement shall be deemed to be covenants, stipulations, obligations and agreements of

the City to the full extent authorized or permitted by law. If the powers or duties of the City shall hereafter be transferred by amendment of any provision of the Constitution or any other law of the State or in any other manner there shall be a successor to the City, and if such transfer shall relate to any matter or thing permitted or required to be done under this Trust Agreement by the City, then the entity that shall succeed to such powers or duties of the City shall act and be obligated in the place and stead of the City as provided in this Trust Agreement, and all such covenants, stipulations, obligations and agreements herein shall be binding upon such successor or successors thereof from time to time and upon any officer, board, body, district, authority or commission to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

(b) Except as otherwise provided in this Trust Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the City by the provisions of this Trust Agreement shall be exercised or performed by the City or by such officers, board, body, district, authority or commission as may be required by law to exercise such powers or to perform such duties.

**Section 8.08 Trust Agreement to Constitute a Contract.** This Trust Agreement is executed by the City for the benefit of the Bondholders and constitutes a contract with the Bondholders.

**Section 8.09 City to Perform Pursuant to Continuing Disclosure Certificate.** The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Trust Agreement, failure of the City to Agreement with the Continuing Disclosure Certificate shall not be considered an Event of Default under this Trust Agreement; provided, however, that the obligations of the City to comply with the provisions of the Continuing Disclosure Certificate shall be enforceable by any Participating Underwriter or any Holder of Outstanding Bonds, or by the Trustee on behalf of the Holders of Outstanding Bonds; provided, further, that the Trustee shall not be required to take any enforcement action whatsoever except at the written direction of the Holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding who shall have provided the Trustee with security and indemnity to its satisfaction, including without limitation, attorney's fees and expenses. The Participating Underwriters', Holders' and Trustee's rights to enforce the provisions of the Continuing Disclosure Certificate shall be limited solely to a right, by action in mandamus or for specific performance, to compel performance of the City's obligations under the Continuing Disclosure Certificate. Notwithstanding the foregoing, the City shall be entitled to amend or rescind the Continuing Disclosure Certificate to the extent permitted by law.

## ARTICLE IX

### INVESTMENTS

**Section 9.01 Investments Authorized.** Money held by the Trustee in any fund or account hereunder shall be invested by the Trustee in Permitted Investments pending application as provided herein solely at the prior written direction of an Authorized City Representative, shall be registered in the name of the Trustee where applicable, as Trustee, and shall be held by the Trustee. The City shall direct the Trustee prior to 12:00 p.m. Pacific time on the last Business Day before the date on which a Permitted Investment matures or is redeemed as to the reinvestment of the proceeds thereof. In the absence of such direction, the Trustee shall hold moneys uninvested. The Trustee may rely on

the City's certification in such investment instructions that such investments are permitted by law and by any policy guidelines promulgated by the City. Money held in any fund or account hereunder may be commingled for purposes of investment only.

The Trustee may, with the prior written approval of an Authorized City Representative, purchase from or sell to itself or any affiliate, as principal or agent, investments authorized by this Section 9.01. Any investments and reinvestments shall be made after giving full consideration to the time at which funds are required to be available hereunder and to the highest yield practicably obtainable giving due regard to the safety of such funds and the date upon which such funds will be required for the uses and purposes required by this Trust Agreement. The Trustee or any of its affiliates may act as agent in the making or disposing of any investment and may act as sponsor or advisor with respect to any Permitted Investment. For investment purposes, the Trustee may commingle the funds and accounts established hereunder, but shall account for each separately.

The City acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations of security transactions as they occur, the City specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the City with periodic cash transaction statements which shall include details for all investment transactions made by the Trustee hereunder.

**Section 9.02 Reports.** The Trustee shall furnish at least quarterly to the City a report (which may be in the form of its regular statements) of all investments made by the Trustee and of all amounts on deposit in each fund and account maintained hereunder.

**Section 9.03 Valuation and Disposition of Investments.** For the purpose of determining the amount in any fund or account hereunder, all Permitted Investments shall be valued at the market value thereof not later than July 1 of each year. With the prior written approval of an Authorized City Representative, the Trustee may sell at the best price obtainable or present for redemption, any Permitted Investment so purchased by the Trustee whenever it shall be necessary in order to provide money to meet any required payment, transfer, withdrawal or disbursement from any fund or account hereunder, and the Trustee shall not be liable or responsible for any loss resulting from such investment or sale, except any loss resulting from its own negligence or willful misconduct.

**Section 9.04 Application of Investment Earnings.** Investments in any Fund or Account shall be deemed at all times to be a part of such Fund or Account, and any profit realized from such investment shall be credited to such Fund or Account and any loss resulting from such investment shall be charged to such Fund or Account. Interest earnings on investments in any Fund or Account shall be deposited in the Bond Interest Account of the Revenue Fund.

## ARTICLE X

### DEFEASANCE

**Section 10.01 Discharge of Bonds; Release of Trust Agreement.** Bonds or portions thereof (such portions to be in an Authorized Denomination) which have been paid in full or which are deemed to have been paid in full shall no longer be entitled to the benefits of this Trust Agreement except for the purposes of payment from moneys and Defeasance Securities. When all Bonds which have been issued under this Trust Agreement have been paid in full or are deemed to have been paid in full, and all other sums payable hereunder by the City, including all necessary and

proper fees, compensation and expenses of the Trustee and any Paying Agents, have been paid or are duly provided for, then the Trustee shall cancel, discharge and release this Trust Agreement, shall execute, acknowledge and deliver to the City such instruments of satisfaction and discharge or release as shall be requisite to evidence such release and such satisfaction and discharge and shall assign and deliver to the City any amounts at the time subject to this Trust Agreement which may then be in the Trustee's possession, except funds or securities in which such funds are invested and held by the Trustee or the Paying Agents for the payment of the principal, premium, if any, and interest on the Bonds.

### **Section 10.02 Bonds Deemed Paid.**

(a) A Bond shall be deemed to be paid within the meaning of this Article X and for all purposes of this Trust Agreement when: (i) payment with respect thereto of the principal, interest and premium, if any, either: (1) shall have been made or caused to be made in accordance with the terms of the Bonds and this Trust Agreement; or (2) shall have been provided for, as certified to the Trustee by a Consultant who is a certified public accountant, by irrevocably depositing with the Trustee in trust and irrevocably setting aside exclusively for such payment: (x) moneys sufficient to make such payment; and/or (y) Defeasance Securities maturing as to principal and interest in such amounts and at such times as will insure the availability of sufficient moneys to make such payment; and (ii) all necessary and proper fees, compensation and expenses of the Trustee and any Paying Agents pertaining to the Bonds with respect to which such deposit is made shall have been paid or provision made for the payment thereof. At such times as Bonds shall be deemed to be paid hereunder, such Bonds shall no longer be secured by or entitled to the benefits of this Trust Agreement, except for the purposes of payment from such moneys and Defeasance Securities.

(b) Notwithstanding the foregoing paragraph, no deposit under clause (i)(2) of the immediately preceding paragraph shall be deemed a payment of such Bonds until: (i) proper notice of redemption of such Bonds shall have been given in accordance with Section 4.01, or in the event that such Bonds are not to be redeemed within the next succeeding 60 days, until the City shall have given the Trustee irrevocable instructions to notify, as soon as practicable, the holders of the Bonds in accordance with Section 4.01, that the deposit required by clause (a)(i)(2) above has been made with the Trustee and that such Bonds are deemed to have been paid in accordance with this Article X and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal of, premium, if any, and unpaid interest on such Bonds; or (ii) the maturity of such Bonds.

## **ARTICLE XI**

### **DEFAULTS AND REMEDIES**

**Section 11.01 Events of Default.** Each of the following events shall constitute and is referred to in this Trust Agreement as an "**Event of Default**":

(a) a failure to pay the principal or premium, if any, on any of the Bonds when the same shall become due and payable at maturity or upon redemption;

(b) a failure to pay any installment of interest on any of the Bonds when such interest shall become due and payable;

(c) a failure by the City to observe and perform any covenant, condition, agreement or provision (other than as specified in clauses (a) and (b) of this Section 11.01) contained in the Bonds or in this Trust Agreement on the part of the City to be observed or performed, which failure shall continue for a period of 60 days after written notice, specifying such failure and requesting that it be remedied, shall have been given to the City by the Trustee; provided, however, that the Trustee shall be deemed to have agreed to an extension of such period if corrective action is initiated by the City within such period and is being diligently pursued; or

(d) if the City files a petition in voluntary bankruptcy, for the composition of its affairs or for its corporate reorganization under any state or federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or admits in writing to its insolvency or inability to pay debts as they mature or consents in writing to the appointment of a trustee or receiver for itself.

Upon its actual knowledge of the occurrence of any Event of Default, the Trustee shall immediately give written notice thereof to the City.

### **Section 11.02 Remedies.**

(a) Upon the occurrence and continuance of any Event of Default, the Trustee in its discretion may, and shall upon the written direction of the holders of a majority of the Total Bond Obligation of the Bonds then Outstanding and, in each case, receipt of indemnity to its satisfaction, in its own name and as the Trustee of an express trust:

(1) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bondholders hereunder, as the case may be, and require the City to carry out any agreements with or for the benefit of the Bondholders and to perform its or their duties under the Refunding Law or any other law to which it is subject and this Trust Agreement; provided that any such remedy may be taken only to the extent permitted under the applicable provisions of this Trust Agreement;

(2) bring suit upon the defaulted Bonds;

(3) commence an action or suit in equity to require the City to account as if it were the trustee of an express trust for the Bondholders; or

(4) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders hereunder.

(b) The Trustee shall be under no obligation to take any action with respect to any Event of Default unless the Trustee has actual knowledge of the occurrence of such Event of Default.

**Section 11.03 Restoration to Former Position.** In the event that any proceeding taken by the Trustee to enforce any right under this Trust Agreement shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then the City, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

**Section 11.04 Bondholders' Right to Direct Proceedings on their Behalf.** Anything in this Trust Agreement to the contrary notwithstanding, Holders of a majority in Total Bond Obligation shall have the right, at any time, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all remedial proceedings on their behalf available to the Trustee under this Trust Agreement to be taken in connection with the enforcement of the terms of this Trust Agreement or exercising any trust or power conferred on the Trustee by this Trust Agreement; provided that such direction shall not be otherwise than in accordance with the provisions of the law and this Trust Agreement and that there shall have been provided to the Trustee security and indemnity satisfactory to the Trustee against the costs, expenses and liabilities to be incurred as a result thereof by the Trustee; provided further that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would be unjustly prejudicial to Bondholders not parties to such direction.

**Section 11.05 Limitation on Bondholders' Rights to Institute Proceedings.** No owner of any Bond shall have the right to institute any suit, action or proceeding at law in equity, for the protection or enforcement of any right or remedy under this Trust Agreement, or applicable law with respect to such Bond, unless: (a) such owner shall have given to the Trustee written notice of the occurrence of an Event of Default; (b) the owners of not less than a majority in Total Bond Obligation shall have made written request upon the Trustee to exercise the powers heretofore granted or to institute such suit, action or proceeding in its own name; (c) such owner or said owners shall have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee shall have refused or failed to comply with such request for a period of 60 days after such written request shall have been received by and said tender of indemnity shall have been made to, the Trustee; and (e) the Trustee shall not have received contrary directions from the owners of a majority in aggregate principal amount of the Total Bond Obligation.

**Section 11.06 No Impairment of Right to Enforce Payment.** Notwithstanding any other provision in this Trust Agreement, the right of any Bondholder to receive payment of the principal of and interest on such Holder's Bond, on or after the respective due dates expressed therein, or to institute suit for the enforcement of any such payment on or after such respective date, shall not be impaired or affected without the consent of such Bondholder.

**Section 11.07 Proceedings by Trustee Without Possession of Bonds.** All rights of action under this Trust Agreement or under any of the Bonds secured hereby which are enforceable by the Trustee may be enforced by it without the possession of any of the Bonds, or the production thereof at the trial or other proceedings relative thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the equal and ratable benefit of the Bondholders, as the case may be, subject to the provisions of this Trust Agreement.

**Section 11.08 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Trustee or to Bondholders is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute; provided, however, that any conditions set forth herein to the taking of any remedy to enforce the provisions of this Trust Agreement or the Bonds shall also be conditions to seeking any remedies under any of the foregoing pursuant to this Section 11.08.

**Section 11.09 No Waiver of Remedies.** No delay or omission of the Trustee or of any Bondholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or an acquiescence therein and every power and remedy given by this Article XI to the Trustee and to the Bondholders, respectively, may be exercised from time to time and as often as may be deemed expedient.

**Section 11.10 Application of Moneys.**

(a) Any moneys received by the Trustee for the benefit of Bondholders, by any receiver or by any Bondholder pursuant to any right given or action taken under the provisions of this Article XI, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses, liabilities and advances incurred or made by the Trustee (including without limitation reasonable fees and reasonable expenses of its attorneys), shall be deposited in the Revenue Fund and all moneys so deposited in the Revenue Fund during the continuance of an Event of Default shall be applied: (i) first, to the payment to the persons entitled thereto of all installments of interest then due on the Bonds, with interest on overdue installments, if lawful, at the rate per annum borne by the Bonds, as the case may be, in the order of maturity of the installments of such interest (if the amount available for such interest installments shall not be sufficient to pay in full any particular installment of interest, then to the payment ratably, according to the amounts due on such installment), and if the amount available for such interest shall not be sufficient to make payment thereof, then to the payment thereof ratably according to the respective aggregate amounts due; and (ii) second, to the payment to the persons entitled thereto of the unpaid principal, as applicable, of any of the Bonds which shall have become due with interest on such Bonds at their respective rate from the respective dates upon which they became due (if the amount available for such unpaid principal and interest shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal and interest due on such date, in each case to the persons entitled thereto, without any discrimination or privilege among Holders of Bonds), and, if the amount available for such principal and interest shall not be sufficient to make full payment thereof, then to the payment thereof ratably according to the respective aggregate amounts due.

(b) Whenever moneys are to be applied pursuant to the provisions of this Section 11.10, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts to be paid on such date shall cease to accrue. The Trustee shall give notice of the deposit with it of any such moneys and of the fixing of any such date by Mail to all Bondholders and shall not be required to make payment to any Bondholder until such Bonds shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

**Section 11.11 Severability of Remedies.** It is the purpose and intention of this Article XI to provide rights and remedies to the Trustee and the Bondholders which may be lawfully granted under the provisions of applicable law, but should any right or remedy herein granted be held to be unlawful, the Trustee and the Bondholders shall be entitled, as above set forth, to every other right and remedy provided in this Trust Agreement and by applicable law.

**Section 11.12 Additional Events of Default and Remedies.** So long as any Bonds are Outstanding, the Events of Default and remedies as set forth in this Article XI may be supplemented with additional Events of Default and remedies as set forth from time to time in a supplemental agreement.

## ARTICLE XII

### TRUSTEE; REGISTRAR

**Section 12.01 Acceptance of Trusts.** The Trustee hereby accepts and agrees to execute the trusts specifically imposed upon it by this Trust Agreement, but only upon the additional terms set forth in this Article XII, to all of which the City agrees and the respective Bondholders agree by their acceptance of delivery of any of the Bonds.

#### Section 12.02 Duties of Trustee.

(a) Except during the continuance of an Event of Default:

(i) the Trustee need perform only those duties that are specifically set forth in this Trust Agreement and no others; and

(ii) in the absence of negligence on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Trust Agreement.

(b) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section 12.02;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer unless the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action it takes or fails to take in good faith in accordance with a direction received by it from Bondholders or the City in the manner provided in this Trust Agreement; and

(iv) no provision of this Trust Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.

(c) Every provision of this Trust Agreement that in any way relates to the Trustee is subject to all the paragraphs of this Section 12.02.

(d) The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity reasonably satisfactory to it against any loss, liability or expense.

(e) The Trustee shall not be liable for interest on any cash held by it except as the Trustee may agree with the City.



(f) For all purposes hereunder, the Trustee shall not be deemed to have notice or knowledge of any event (including any default or event of default) unless a Responsible Officer of the Trustee has received written notice of such event which references this Trust Agreement or the City. The delivery of reports and other documents and information to the Trustee hereunder is for informational purposes only and the Trustee's receipt of such documents and information shall not constitute constructive notice of any information contained therein or determinable from information contained therein.

### **Section 12.03 Rights of Trustee.**

(a) The recitals of facts contained herein and in the Bonds shall be taken as statements of the City, and the Trustee assumes no responsibility for the correctness of the same (other than the certificate of authentication of the Trustee on each Bond), and makes no representations as to the validity or sufficiency of this Trust Agreement or of the Bonds or of any Permitted Investment and shall not incur any responsibility in respect of any such matter, other than in connection with the duties or obligations expressly assigned to or imposed upon it herein or in the Bonds. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence, willful misconduct or breach of the express terms and conditions hereof. The Trustee and its directors, officers, employees or agents may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Holder of a Bond may be entitled to take, with like effect as if the Trustee was not the Trustee under this Trust Agreement.

(b) The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, and the opinion of such counsel shall be authorization for any action taken or not taken in reliance on such opinion, but the Trustee shall be answerable for the negligence or misconduct of any such attorney, agent or receiver selected by it.

(c) No permissive power, right or remedy conferred upon the Trustee hereunder shall be construed to impose a duty to exercise such power, right or remedy.

(d) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the City, personally or by agent or attorney.

(e) The Trustee shall not be responsible for the application or handling by the City of any moneys transferred to or pursuant to any requisition or request of the City in accordance with the terms and conditions hereof.

(f) Whether or not therein expressly so provided, every provision of this Trust Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article XII.

(g) The Trustee shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, facsimile transmission, electronic mail, opinion, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(h) The Trustee shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.

(i) The Trustee shall have the right to accept and act upon instructions, including funds transfer instructions (“**Instructions**”) given pursuant to this Trust Agreement and delivered using the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder (collectively, “**Electronic Means**”); provided, however, that the City shall provide to the Trustee an incumbency certificate listing Authorized City Representatives with the authority to provide such Instructions and containing specimen signatures of such Authorized City Representatives, which incumbency certificate shall be amended by the City whenever a person is to be added or deleted from the listing. If the City elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee’s understanding of such Instructions shall be deemed controlling. The City understands and agrees that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized City Representative listed on the incumbency certificate provided to the Trustee have been sent by such Authorized City Representative. The City shall be responsible for ensuring that only authorized persons transmit such Instructions to the Trustee and the City is solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt thereof. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee’s reliance upon and compliance with such Instructions, notwithstanding the fact that such directions conflict or are inconsistent with a subsequent written instruction. The City agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the City; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

**Section 12.04 Individual Rights of Trustee.** The Trustee in its individual or any other capacity may become the owner or pledgee of Bonds and may otherwise deal with the City with the same rights it would have if it were not Trustee. Any Paying Agent or other agent may do the same with like rights.

**Section 12.05 Trustee's Disclaimer.** The Trustee makes no representations as to the validity or adequacy of this Trust Agreement or the Bonds, it shall not be accountable for the City's use of the proceeds from the Bonds paid to the City and it shall not be responsible for any statement in any official statement or other disclosure document or in the Bonds other than its certificate of authentication.

**Section 12.06 Notice of Defaults.** If an event occurs which with the giving of notice or lapse of time or both would be an Event of Default, and if the event is continuing and if it is actually known to a Responsible Officer of the Trustee, the Trustee shall mail to each Bondholder notice of the event within 90 days after it occurs. Except in the case of a default in payment or purchase on any Bonds, the Trustee may withhold the notice to Bondholders if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Bondholders.

**Section 12.07 Compensation of Trustee.** The City shall from time to time, but only in accordance with a written agreement in effect with the Trustee, pay to the Trustee reasonable compensation for its services and shall reimburse the Trustee for all of its reasonable advances and expenditures, including but not limited to advances to and fees and expenses of independent appraisers, accountants, consultants, counsel, agents and attorneys-at-law or other experts employed by it in the exercise and performance of its powers and duties hereunder, including the enforcement of any provision hereunder. The Trustee shall not otherwise have any claims or lien for payment of compensation for its services against any other moneys held by it in the funds or accounts established hereunder, except as provided in Section 11.10, but may take whatever legal actions are lawfully available to it directly against the City. To the extent permitted by applicable law, the City agrees to indemnify and save the Trustee, its officers, employees, directors and agents, harmless against any costs, expenses, claims or liabilities whatsoever, including, without limitation, fees and expenses of its attorneys, that it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or willful misconduct. The agreement contained in this Section shall survive the payment of the Bonds, the discharge of this Trust Agreement and the appointment of a successor trustee.

**Section 12.08 Eligibility of Trustee.** This Trust Agreement shall always have a Trustee that is a trust company, a bank or an association having trust powers and is organized and doing business under the laws of the United States or any state or the District of Columbia, is subject to supervision or examination by United States, state or District of Columbia authority and has a combined capital and surplus of at least \$100,000,000 as set forth in its most recent published annual report of condition.

**Section 12.09 Replacement of Trustee.**

(a) The Trustee may resign as trustee hereunder by notifying the City in writing prior to the proposed effective date of the resignation. The Holders of a majority in Total Bond Obligation of the Bonds may remove the Trustee by notifying the removed Trustee and may appoint a successor Trustee with the City's consent. The City may remove the Trustee, by notice in writing

delivered to the Trustee 30 days prior to the proposed removal date; provided, however, that the City shall have no right to remove the Trustee during any time when an Event of Default has occurred and is continuing unless: (i) the Trustee fails to comply with the foregoing Section; (ii) the Trustee is adjudged to be a bankrupt or an insolvent; (iii) the Trustee otherwise becomes incapable of acting; or (iv) the City determines that the Trustee's services are no longer satisfactory to the City. No resignation or removal of the Trustee under this Section shall be effective until a new Trustee has taken office. If the Trustee resigns or is removed or for any reason is unable or unwilling to perform its duties under this Trust Agreement, the City shall promptly appoint a successor Trustee.

(b) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the City. Immediately thereafter, the retiring Trustee shall transfer all property held by it as Trustee to the successor Trustee, the resignation or removal of the retiring Trustee shall then (but only then) become effective and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Trust Agreement. If a successor Trustee does not take office within 60 days after the retiring Trustee delivers notice of resignation or the City delivers notice of removal, the retiring Trustee, the City or the Holders of a majority in Total Bond Obligation of the Bonds may petition any court of competent jurisdiction for the appointment of a successor Trustee.

**Section 12.10 Successor Trustee or Agent by Merger.** If the Trustee, any Paying Agent or Registrar consolidates with, merges or converts into, or transfers all or substantially all its assets (or, in the case of a bank or trust company, its corporate trust business) to, another corporation, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee, Paying Agent or Registrar.

**Section 12.11 Registrar.** The City shall appoint the Registrar for the Bonds and may from time to time remove a Registrar and name a replacement upon notice to the Trustee. The City hereby appoints the Trustee as Registrar. Each Registrar, if other than the Trustee, shall designate to the Trustee, the Paying Agent, and the City its principal office and signify its acceptance of the duties imposed upon it hereunder by a written instrument of acceptance delivered to the City and the Trustee under which such Registrar will agree, particularly, to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the City, the Trustee and the Paying Agent at all reasonable times.

**Section 12.12 Other Agents.** The City or the Trustee may from time to time appoint other agents to perform duties and obligations under this Trust Agreement which agents may include, but not be limited to, authenticating agents all as provided by resolution of the City.

**Section 12.13 Several Capacities.** Anything in this Trust Agreement to the contrary notwithstanding, the same entity may serve hereunder as the Trustee, Registrar and any other agent as appointed to perform duties or obligations under this Trust Agreement or an escrow agreement, or in any combination of such capacities, to the extent permitted by law.

**Section 12.14 Accounting Records and Reports of Trustee.**

(a) The Trustee shall at all times keep, or cause to be kept, proper books of record and account in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of the Bonds and all Funds and Accounts established pursuant to this Trust Agreement and held by the Trustee. Such books of record and account shall be available for

inspection by the City and any Bondholder, or his or her agent or representative duly authorized in writing, upon prior reasonable notice, at reasonable hours and under reasonable circumstances.

(b) The Trustee shall file and furnish to the City and to each Bondholder who shall have filed his or her name and address with the Trustee for such purpose (at such Bondholder's cost), on an annual basis (or, with respect to the City, such other interval that the City may request), a complete financial statement (which may be its regular account statements and which need not be audited) covering receipts, disbursements, allocation and application of moneys in any of the funds and accounts established pursuant to this Trust Agreement for the preceding year.

**Section 12.15 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute.

### ARTICLE XIII

#### MODIFICATION OF THIS TRUST AGREEMENT

**Section 13.01 Limitations.** This Trust Agreement shall not be modified or amended in any respect subsequent to the first delivery of fully executed and authenticated Bonds except as provided in and in accordance with and subject to the provisions of this Article XIII.

#### **Section 13.02 Supplemental Agreements Not Requiring Consent of Bondholders.**

(a) The City may, from time to time and at any time, without the consent of or notice to the Bondholders, execute and deliver supplemental agreements supplementing and/or amending this Trust Agreement as follows:

(i) to cure any defect, omission, inconsistency or ambiguity in this Trust Agreement;

(ii) to add to the covenants and agreements of the City in this Trust Agreement other covenants and agreements, or to surrender any right or power reserved or conferred upon the City, and which shall not adversely affect the interests of the Bondholders;

(iii) to confirm, as further assurance, any interest of the Trustee in and to the Funds and Accounts held by the Trustee or in and to any other moneys, securities or funds of the City provided pursuant to this Trust Agreement or to otherwise add security for the Bondholders;

(iv) to comply with the requirements of the Trust Indenture Act of 1939, as from time to time amended;

(v) to modify, alter, amend or supplement this Trust Agreement in any other respect which, in the judgment of the City, is not materially adverse to the Bondholders;

(vi) to qualify the Bonds for a rating or ratings by any Rating Agency; and

(vii) to authorize the issuance of Additional Bonds in accordance with this Trust Agreement.

(b) Before the City shall, pursuant to this Section 13.02, execute any supplemental agreement, there shall have been delivered to the City an Opinion of Bond Counsel to the effect that such supplemental agreement: (i) is authorized or permitted by this Trust Agreement and the Refunding Law and complies with the provisions thereof and conditions precedent thereunder; and (ii) will, upon the execution and delivery thereof, be valid and binding upon the City in accordance with its terms.

### **Section 13.03 Supplemental Agreement Requiring Consent of Bondholders.**

(a) Except for any supplemental agreement entered into pursuant to Section 13.02, the Holders of not less than a majority in Total Bond Obligation shall have the right from time to time to consent to and approve the execution by the City of any supplemental agreement deemed necessary or desirable by the City for the purposes of modifying, altering, amending, supplementing or rescinding, in any particular, any of the terms or provisions contained in this Trust Agreement or in a supplemental agreement; provided, however, that, unless approved in writing by the Holders of all of the Bonds then Outstanding, nothing contained herein shall permit or be construed as permitting: (i) a change in the times, amounts or currency of payment of the principal of or interest on any Outstanding Bonds; or (ii) a reduction in the principal amount or redemption price of any Outstanding Bonds or the rate of interest thereon; and provided that nothing contained herein, including the provisions of Section 13.03(b) below, shall, unless approved in writing by the Holders of all the Bonds then Outstanding, permit or be construed as permitting: (1) a preference or priority of any Bond or Bonds over any other Bond or Bonds; or (2) a reduction in the aggregate principal amount of Bonds the consent of the Holders of which is required for any such supplemental agreement. Nothing herein contained, however, shall be construed as making necessary the approval by Holders of the execution of any supplemental agreement as authorized in Section 13.02.

(b) If at any time the City shall desire to enter into any supplemental agreement for any of the purposes of this Section 13.03, the City shall cause notice of the proposed execution of the supplemental agreement to be given by Mail to all Holders. Such notice as prepared by the City shall briefly set forth the nature of the proposed supplemental agreement and shall state that a copy thereof is on file at the office of the City for inspection by all Holders.

(c) Within two weeks after the date of the first mailing of such notice, the City may execute and deliver such supplemental agreement in substantially the form described in such notice, but only if there shall have first been delivered to the City: (i) the required consents, in writing, of Holders; and (ii) an Opinion of Bond Counsel stating that such supplemental agreement is authorized or permitted by this Trust Agreement and other applicable law, complies with their respective terms and, upon the execution and delivery thereof, will be valid and binding upon the City in accordance with its terms.

(d) If Holders of not less than the percentage of Bonds required by this Section 13.03 shall have consented to and approved the execution and delivery thereof as herein provided, no Holders shall have any right to object to the adoption of such supplemental agreement, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution and delivery thereof, or to enjoin or restrain the City from executing the same or from taking any action pursuant to the provisions thereof.

**Section 13.04 Effect of Supplemental Agreements.** Upon execution and delivery of any supplemental agreement pursuant to the provisions of this Article XIII, this Trust Agreement and all

supplemental agreements shall be, and shall be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Trust Agreement and all supplemental agreements of the City, the Trustee, the Registrar, any Paying Agent and all Holders shall thereafter be determined, exercised and enforced under this Trust Agreement and all supplemental agreements, subject in all respects to such modifications and amendments.

**Section 13.05 Supplemental Agreements to be Part of this Trust Agreement.** Any supplemental agreement adopted in accordance with the provisions of this Article XIII shall thereafter form a part of this Trust Agreement or the supplemental agreement which they supplement or amend, and all of the terms and conditions contained in any such supplemental agreement as to any provision authorized to be contained therein shall be and shall be deemed to be part of the terms and conditions of this Trust Agreement which they supplement or amend for any and all purposes.

## ARTICLE XIV

### MISCELLANEOUS PROVISIONS

**Section 14.01 Parties in Interest.** Except as herein otherwise specifically provided, nothing expressed or implied in this Trust Agreement is intended or shall be construed to confer upon any person, firm or corporation other than the City, the Paying Agent, the Trustee and the Bondholders any right, remedy or claim under or by reason of this Trust Agreement, this Trust Agreement being intended to be for the sole and exclusive benefit of the City, the Paying Agent, the Trustee and the Bondholders.

**Section 14.02 Severability.** In case any one or more of the provisions of this Trust Agreement, or of any Bonds issued hereunder shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Trust Agreement or the Bonds, and this Trust Agreement and any Bonds issued hereunder shall be construed and enforced as if such illegal or invalid provisions had not been contained herein or therein.

**Section 14.03 No Personal Liability of City Officials; Limited Liability of City to Bondholders.**

(a) No covenant or agreement contained in the Bonds or in this Trust Agreement shall be deemed to be the covenant or agreement of any present or future official, officer, agent or employee of the City in their individual capacity, and neither the members of the City Council of the City nor any person executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

(b) Except for the payment when due of the payments and the observance and performance of the other agreements, conditions, covenants and terms required to be performed by it contained in this Trust Agreement, the City shall not have any obligation or liability to the Bondholders with respect to this Trust Agreement or the preparation, execution, delivery, transfer, exchange or cancellation of the Bonds or the receipt, deposit or disbursement of the payments by the Trustee, or with respect to the performance by the Trustee of any obligation required to be performed by it contained in this Trust Agreement.

#### **Section 14.04 Execution of Instruments; Proof of Ownership.**

(a) Any request, direction, consent or other instrument in writing required or permitted by this Trust Agreement to be signed or executed by Bondholders or on their behalf by an attorney-in-fact may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Bondholders in person or by an agent or attorney-in-fact appointed by an instrument in writing or as provided in the Bonds. Proof of the execution of any such instrument and of the ownership of Bonds shall be sufficient for any purpose of this Trust Agreement and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument if made in the following manner:

(i) the fact and date of the execution by any person of any such instrument may be proved by the certificate of any officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments within such jurisdiction, to the effect that the person signing such instrument acknowledged before him the execution thereof, or by an affidavit of a witness to such execution; and

(ii) the ownership of Bonds shall be proved by the registration books kept under the provisions of Section 3.01 hereof;

(b) Nothing contained in this Section 14.04 shall be construed as limiting the Trustee to such proof. The Trustee may accept any other evidence of matters herein stated which it may deem sufficient. Any request, consent of, or assignment by any Bondholder shall bind every future Bondholder of the same Bonds or any Bonds issued in lieu thereof in respect of anything done by the Trustee or the City in pursuance of such request or consent.

**Section 14.05 Governing Law; Venue.** This Trust Agreement is made in the State under the Constitution and laws of the State and is to be so construed. If any party to this Trust Agreement initiates any legal or equitable action to enforce the terms of this Trust Agreement, to declare the rights of the parties under this Trust Agreement or which relates to this Trust Agreement in any manner, each such party agrees that the place of making and for performance of this Trust Agreement shall be the City, and the proper venue for any such action is the Superior Court of the State of California, County of San Diego.

#### **Section 14.06 Notices.**

(a) Any notice, request, direction, designation, consent, acknowledgment, certification, appointment, waiver or other communication required or permitted by this Trust Agreement or the Bonds must be in writing except as expressly provided otherwise in this Trust Agreement or the Bonds.

(b) The Trustee shall give written notice to the Rating Agencies if at any time: (i) a successor Trustee is appointed under this Trust Agreement; (ii) there is any amendment to this Trust Agreement; (iii) Bonds are to be redeemed pursuant to Section 4.01; (iv) Bonds are defeased prior to maturity pursuant to Article X; or (v) the Bonds shall no longer be Book-Entry Bonds. Notice in the case of an event referred to in clause (ii) hereof shall include a copy of any such amendment.



(c) Except as otherwise required herein, all notices required or authorized to be given to the City, the Trustee and Paying Agent, and the Rating Agencies pursuant to this Trust Agreement shall be in writing and shall be sent by registered or certified mail, postage prepaid, to the following addresses:

1. if to the City, to:

City of Escondido  
201 North Broadway  
Escondido, California 92025  
Attention: Finance Director

2. if to the Trustee and Paying Agent, to:

The Bank of New York Mellon Trust Company, N.A.  
633 West Fifth Street, 24th Floor  
Los Angeles, California 90071  
Attention: Global Corporate Trust

3. if to S&P, to:

S&P Global Ratings  
55 Water Street  
New York, New York 10041

or to such other addresses as may from time to time be furnished to the parties, effective upon the receipt of notice thereof given as set forth above.

**Section 14.07 Holidays.** If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Trust Agreement, shall not be a Business Day, such payment may, unless otherwise provided in this Trust Agreement be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Trust Agreement, and no interest shall accrue for the period from and after such nominal date.

**Section 14.08 Captions.** The captions and table of contents in this Trust Agreement are for convenience only and do not define or limit the scope or intent of any provisions or Sections of this Trust Agreement.

**Section 14.09 Counterparts.** This Trust Agreement may be signed in several counterparts, each of which will be an original, but all of them together constitute the same instrument.

**Section 14.10 OFAC.**

(a) The City covenants and represents that neither it nor any of its affiliates, subsidiaries, directors or officers are the target or subject of any sanctions enforced by the United States Government (including the Office of Foreign Assets Control of the United States Department of the Treasury, the United Nations Security Council, the European Union, HM Treasury, or other relevant sanctions authority (collectively “**Sanctions**”).

(b) The City covenants and represents that neither it nor any of their affiliates, subsidiaries, directors or officers will use any payments made pursuant to this Agreement: (i) to fund or facilitate any activities of or business with any person who, at the time of such funding or facilitation, is the subject or target of Sanctions; (ii) to fund or facilitate any activities of or business with any country or territory that is the target or subject of Sanctions; or (iii) in any other manner that will result in a violation of Sanctions by any person.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Trust Agreement by their officers thereunto duly authorized as of the date first above written.

CITY OF ESCONDIDO

By: \_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**  
**FORM OF BOND**

*Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.*

No. \_\_\_\_\_

\$ \_\_\_\_\_

**CITY OF ESCONDIDO**  
**PENSION OBLIGATION BONDS, SERIES 202\_\_**  
**(FEDERALLY TAXABLE)**

*Neither the faith and credit nor the taxing power of the State of California or any public agency is pledged to the payment of the principal of, or interest on, this Bond.*

<i>Maturity</i>	<i>Interest Rate Per Annum</i>	<i>Dated Date</i>	<i>CUSIP</i>
____ 1, 20____	____%	____ __, 202__	____ __

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: \_\_\_\_\_ AND NO/100 DOLLARS

**THE CITY OF ESCONDIDO**, a municipal corporation and general law city duly that is organized and validly existing under and pursuant to the Constitution and the laws of the State of California (the "**City**"), for value received, hereby promises to pay to the registered owner named above or registered assigns, on the maturity date specified above, the principal sum specified above together with interest on such principal sum at the rates determined as herein provided on each Interest Payment Date (hereinafter defined) from the Interest Payment Date next preceding the date of authentication and delivery thereof, unless: (i) such date of authentication is an Interest Payment Date, in which event interest shall be payable from such date of authentication; (ii) it is authenticated after a Record Date and before the close of business on the immediately following Interest Payment Date, in which event interest thereon shall be payable from such Interest Payment Date; or (iii) it is authenticated prior to the close of business on the first Record Date, in which event interest thereon shall be payable from its Dated Date; provided, however, that if at the time of authentication of any

Bond interest thereon is in default, interest thereon shall be payable from the Interest Payment Date to which interest has previously been paid or made available for payment or, if no interest has been paid or made available for payment, from its Dated Date. The principal hereof and premium, if any, hereon are payable when due upon presentation hereof at the Principal Office of The Bank of New York Mellon Trust Company, N.A., as trustee (together with any successor as trustee under the Trust Agreement (hereinafter defined), the “**Trustee**”), in lawful money of the United States of America.

This Bond is one of a duly authorized issue of City of Escondido Pension Obligation Bonds, Series 202\_\_ (Federally Taxable) (the “**Bonds**”) of the designation indicated on the face hereof. Said authorized issue of Bonds is limited in aggregate principal amount as provided in the Trust Agreement and consists or may consist of one or more series of varying denominations, dates, maturities, interest rates and other provisions, as provided in the Trust Agreement, all issued and to be issued pursuant to the provisions of Articles 10 and 11 (commencing with Section 53570 of Chapter 3 of Division 2 of Title 5 of the California Government Code (the “**Refunding Law**”). This Bond is issued pursuant to the Trust Agreement dated as of \_\_\_\_ 1, 202\_\_ by and between the City and The Bank of New York Mellon Trust Company, N.A., as trustee, providing for the issuance of the Bonds and setting forth the terms and authorizing the issuance of the Bonds (said Trust Agreement as amended, supplemented or otherwise modified from time to time being the “**Trust Agreement**”). Reference is hereby made to the Trust Agreement and to the Refunding Law for a description of the terms on which the Bonds are issued and to be issued, and the rights of the registered owners of the Bonds; and all the terms of the Trust Agreement and the Refunding Law are hereby incorporated herein and constitute a contract between the City and the registered owner from time to time of this Bond, and to all the provisions thereof the registered owner of this Bond, by its acceptance hereof, consents and agrees. All capitalized terms that are used herein and not otherwise defined shall have the meanings given such terms in the Trust Agreement.

The City is required under the Trust Agreement to make payments on the Bonds from any source of legally available funds. The City has covenanted to make the necessary annual appropriations for such purpose.

The obligation of the City to make payments on the Bonds does not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation.

This Bond is one of the Bonds described in the Trust Agreement.

### **Interest on Bonds**

Interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The Bonds or the principal portion thereof called for redemption will cease to bear interest after the specified redemption date, provided that notice has been given pursuant to the Trust Agreement and sufficient funds for redemption are on deposit at the place of payment on the redemption date.

### **Redemption of Bonds**

Optional Par Redemption. The Bonds maturing on or after \_\_\_ 1, 20\_\_ may be redeemed at the option of the City from any source of funds on \_\_\_\_ 1, 20\_\_ or any date thereafter in whole or in part from such maturities as are selected by the City pursuant to a written notice delivered to the

Trustee and by lot within a maturity at a redemption price equal to the principal amount to be redeemed, together with accrued interest to the date of redemption, without premium.

Optional Make-Whole Redemption. The Bonds are subject to redemption prior to \_\_\_\_ 1, 20\_\_, at the option of the City, in whole or in part (and if in part in any order of maturity selected by the City pursuant to a written notice delivered to the Trustee and within a maturity bearing interest at the same rate on a pro-rata basis as described below), on any date at a redemption price equal to the greater of:

(a) 100% of the principal amount of the Bonds to be redeemed; or

(b) the sum of the present value of the remaining scheduled payments of principal and interest to the maturity date of such Bonds to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which such Bonds are to be redeemed, discounted to the date on which such Bonds are to be redeemed on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months, at the Comparable Treasury Yield (as such term is defined below) plus \_\_ basis points;

plus, in each case, accrued interest on such Bonds to be redeemed to the redemption date.

For purposes of the foregoing, the following terms have the following meanings:

**“Calculation Agent”** means a commercial bank or an investment banking institution of national standing that is a primary dealer of United States government securities in the United States and designated by the City (which may be one of the institutions that served as an underwriter for the Bonds).

**“Comparable Treasury Issue”** means the United States Treasury security selected by the Calculation Agent as having a maturity comparable to the remaining term to maturity of the Bonds being redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term to maturity of the Bonds being redeemed.

**“Comparable Treasury Price”** means, with respect to any date on which a Bond or portion thereof is being redeemed, either: (a) the average of five Reference Treasury Dealer quotations for the date fixed for redemption, after excluding the highest and lowest such quotations; and (b) if the Calculation Agent is unable to obtain five such quotations, the average of the quotations that are obtained. The quotations will be the average, as determined by the Calculation Agent, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of principal amount) quoted in writing to the Calculation Agent, at 5:00 p.m. New York City time on a date selected by the Calculation Agent which is not less than three business days and not more than 20 business days preceding the date fixed for redemption.

**“Comparable Treasury Yield”** means the yield that represents the weekly average yield to maturity for the preceding week appearing in the most recently published statistical release designated “H.15(519) Selected Interest Rates” under the heading “Treasury Constant Maturities,” or any successor publication selected by the Calculation Agent that is published weekly by the Board of Governors of the Federal Reserve System and that establishes yields on actively traded United States Treasury securities adjusted to constant maturity, for the maturity corresponding to the remaining

term to maturity of the Bonds being redeemed. The Comparable Treasury Yield will be determined no sooner than the third business day nor earlier than the twentieth calendar day preceding the applicable date fixed for redemption. If the H.15(519) statistical release sets forth a weekly average yield for United States Treasury securities that have a constant maturity that is the same as the remaining term to maturity of the Bonds being redeemed, then the Comparable Treasury Yield will be equal to such weekly average yield. In all other cases, the Comparable Treasury Yield will be calculated by interpolation on a straight-line basis between the weekly average yields on the United States Treasury securities that have a constant maturity: (i) closest to and greater than the remaining term to maturity of the Bonds being redeemed; and (ii) closest to and less than the remaining term to maturity of the Bonds being redeemed. Any weekly average yields calculated by interpolation will be rounded to the nearest 1/100th of 1%, with any figure of 1/200th of 1% or above being rounded upward. If, and only if, weekly average yields for United States Treasury securities for the preceding week are not available in the H.15(519) statistical release or any successor publication, then the Comparable Treasury Yield will be the rate of interest per annum equal to the semiannual equivalent yield to maturity of the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price (each as defined herein) as of the date fixed for redemption.

“**Reference Treasury Dealer**” means a primary dealer of United States Government securities in the United States (which may be one of the institutions that served as an underwriter for the Bonds) appointed by the District and reasonably acceptable to the Calculation Agent.

Mandatory Sinking Fund Redemption of Bonds. The Bonds maturing \_\_\_ 1, 20\_\_ (the “**20\_\_ Term Bonds**”) are subject to mandatory sinking fund redemption at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date, without premium. The 20\_\_ Term Bonds shall be so redeemed on the following dates and in the following amounts:

<i>Redemption Date</i> (___ 1)	<i>Principal Amount</i>
20__	\$

---

\* Maturity.

On or before each \_\_\_ 15 next preceding any mandatory sinking fund redemption date, the Trustee shall proceed to select for redemption pro-rata from all Term Bonds subject to mandatory sinking fund redemption at that time, an aggregate principal amount of such Term Bonds equal to the amount for such year as set forth in the table above and shall call such Term Bonds or portions thereof for redemption and give notice of such redemption in accordance with the terms of Section 4.01. At the option of the City, to be exercised by delivery of a written certificate to the Trustee on or before each \_\_\_ 1 next preceding any mandatory sinking fund redemption date, it may: (a) deliver to the Trustee for cancellation Term Bonds or portions thereof (in the amount of an Authorized Denomination) of the stated maturity subject to such redemption; or (b) specify a principal amount of such Term Bonds or portions thereof (in the amount of an Authorized Denomination) which prior to said date have been purchased or redeemed (otherwise than under the provisions of this Section 4.03) and cancelled by the Trustee at the request of the City and not

therefore applied as a credit against any mandatory sinking fund redemption requirement. Each such Term Bonds or portion thereof so delivered or previously redeemed shall be credited by the Trustee at 100% of the principal amount of the Term Bonds so delivered to the Trustee by the City against the obligation of the City on such mandatory sinking fund redemption date.

### **Certain Defined Terms**

**“Interest Payment Date”** means \_\_\_\_ 1, 202\_\_ and each \_\_\_\_ 1 and \_\_\_\_ 1 thereafter.

**“Record Date”** means the fifteenth day of each calendar month preceding any Interest Payment Date, regardless of whether such day is a Business Day.

### **Other Provisions**

The rights and obligations of the City and of the holders and registered owners of the Bonds may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Trust Agreement, which provide, in certain circumstances, for modifications and amendments without the consent of or notice to the registered owners of the Bonds.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this Bond, and in the issuing of this Bond, do exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California, and that this Bond is within every debt and other limit prescribed by the Constitution and the statutes of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Trust Agreement or the Refunding Law.

This Bond shall not be entitled to any benefit under the Trust Agreement, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.



**IN WITNESS WHEREOF, THE CITY OF ESCONDIDO**, a municipal corporation and general law city that is duly organized and validly existing under and pursuant to the Constitution and the laws of the State of California, has caused this Bond to be executed in its name and on its behalf by the City Manager, and attested by the City Clerk, and this Bond to be dated as of the Dated Date.

**CITY OF ESCONDIDO**

By: \_\_\_\_\_  
Its: City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

**[FORM OF CERTIFICATE OF AUTHENTICATION AND REGISTRATION]**

This is one of the Bonds described in the within-mentioned Trust Agreement and authenticated the date set forth below.

Dated: \_\_\_\_ \_\_, 202\_\_

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

**[FORM OF LEGAL OPINION]**

The following is a true copy of the opinion rendered by Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, in connection with the issuance of, and dated as of the date of the original delivery of, the Bonds. A signed copy is on file in my office.

---

City Clerk of the City of Escondido

[FORM OF ASSIGNMENT]

For value received \_\_\_\_\_ hereby sells, assigns and transfers unto \_\_\_\_\_ (Tax I.D. No.: \_\_\_\_\_) the within Bond and hereby irrevocably constitute and appoints \_\_\_\_\_ attorney, to transfer the same on the books of the City at the office of the Trustee, with full power of substitution in the premises.

NOTE: The signature to this Assignment must correspond with the name on the face of the within Registered Bond in every particular, without alteration or enlargement or any change whatsoever.

Dated: \_\_\_\_\_

Signature Guaranteed by: \_\_\_\_\_

NOTE: Signature must be guaranteed by an eligible guarantor institution.

**EXHIBIT B**  
**FORM OF REQUISITION**

TO: The Bank of New York Mellon Trust Company, N.A. City of Escondido Use Only  
Request No. \_\_

DISBURSEMENT REQUEST: REGARDING \$\_\_\_\_ CITY OF ESCONDIDO PENSION  
OBLIGATION BONDS, SERIES 202\_\_ (FEDERALLY TAXABLE)

You are hereby requested to pay from the Costs of Issuance Fund established by the Trust Agreement with respect to the above-referenced bonds, to the person, corporation or other entity designated below as Payee, the sum set forth below such designation, in payment of all ( ) or a portion ( ) of the Costs of Issuance described below.

Name of Payee: \_\_\_\_\_  
Address: \_\_\_\_\_  
Amount: \$ \_\_\_\_\_  
Method of Payment: \_\_\_\_\_  
Service Provided: \_\_\_\_\_

The undersigned hereby certifies that:

- (i) s/he is an Authorized City Representative;
- (ii) this requisition for payment is in accordance with the terms and provisions of Section 6.01 of the Trust Agreement;
- (iii) each item to be paid with the requisitioned funds represents either incurred or due and payable Costs of Issuance;
- (iv) such Costs of Issuance have not been paid from other funds withdrawn from the Costs of Issuance Fund; and
- (v) to the best of the signatory's knowledge no Event of Default has occurred and is continuing under the Trust Agreement.

Dated: \_\_\_\_\_

CITY OF ESCONDIDO

By: \_\_\_\_\_  
Name:  
Title:

\$ \_\_\_\_\_  
**CITY OF ESCONDIDO**  
**PENSION OBLIGATION BONDS, SERIES 202\_\_**  
**(FEDERALLY TAXABLE)**

**BOND PURCHASE AGREEMENT**

\_\_\_\_\_, 202\_\_

City of Escondido  
 201 North Broadway  
 Escondido, California 92025

Ladies and Gentlemen:

Stifel, Nicolaus & Company, Incorporated (the “**Underwriter**”), offers to enter into this Bond Purchase Agreement (this “**Purchase Agreement**”) with the City of Escondido, California (the “**City**”), which, upon the acceptance by the City, will be binding upon the City and the Underwriter. This offer is made subject to acceptance by the City by the execution of this Purchase Agreement and delivery of the same to the Underwriter prior to 11:59 P.M., California time, on the date hereof, and, if not so accepted, will be subject to withdrawal by the Underwriter upon notice delivered to the City at any time prior to the acceptance hereof by the City. Capitalized terms that are used herein and not otherwise defined shall have the meanings set forth in the Trust Agreement (as such term is defined herein).

**Section 1. Purchase and Sale.** Upon the terms and conditions and on the basis of the representations, warranties and agreements herein set forth, the Underwriter hereby agrees to purchase from the City, and the City hereby agrees to issue, sell and deliver to the Underwriter all (but not less than all) of the City of Escondido Pension Obligation Bonds, Series 202\_\_ (Federally Taxable) (the “**Bonds**”) in the aggregate principal amount of \_\_\_\_\_. The Bonds shall be dated as of their date of delivery. Interest on the Bonds shall be payable semiannually on \_\_\_ 1 and \_\_\_ 1 in each year, commencing \_\_\_ 1, 202\_\_ (each, an “**Interest Payment Date**”) and will bear interest at the rates and on the dates as set forth in Exhibit A. In addition, the Bonds shall be subject to redemption as set forth in Exhibit A. The purchase price for the Bonds shall be \$\_\_\_\_\_ (which represents the principal amount of the Bonds in the amount of \_\_\_\_\_, less an Underwriter’s discount of \$\_\_\_\_\_).

The scheduled payment of principal or interest on the Bonds will be insured pursuant to a bond insurance policy (the “**Policy**”) will be issued by \_\_\_\_\_ (the “**Insurer**”).

The Underwriter agrees to make a bona fide public offering of the Bonds at the initial offering yields set forth in the Official Statement (defined herein); however, the Underwriter reserves the right to make concessions to dealers and to change such initial offering yields as the Underwriter shall deem necessary in connection with the marketing of the Bonds. The Underwriter agrees that, in connection with the public offering and initial delivery of the Bonds to the purchasers thereof from the Underwriter, the Underwriter will deliver or cause to be delivered to each purchaser a copy of the final Official Statement prepared in connection with the Bonds, for the time period required under Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended (“**Rule**

**15c2-12**”). Terms defined in the Preliminary Official Statement, and to be set forth in the final Official Statement are used herein as so defined.

The City acknowledges and agrees that: (i) the purchase and sale of the Bonds pursuant to this Purchase Agreement is an arm’s-length commercial transaction between the City and the Underwriter; (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriter is and has been acting solely as a principal and is not acting as a municipal advisor (as defined in Section 15B of the Securities Exchange Act of 1934, as amended), financial advisor or fiduciary; (iii) the Underwriter has not assumed an advisory or fiduciary responsibility in favor of the City with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter had provided other services or are currently providing other services to the City on other matters); (iv) the only obligations that the Underwriter has to the City with respect to the transaction that is contemplated hereby expressly are set forth in this Purchase Agreement; and (v) the City has consulted its own financial and/or municipal, legal, accounting, tax, financial and other advisors, as applicable, to the extent that it has deemed appropriate.

**Section 2. The Bonds.** The Bonds are being issued pursuant to Articles 10 and 11 (commencing with Section 53570) of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (the “**Refunding Law**”) and the Trust Agreement, dated as of \_\_\_\_ 1, 202\_\_ (the “**Trust Agreement**”), by and between the City and The Bank of New York Mellon Trust Company, N.A., as trustee (together with any successor as trustee under the Trust Agreement, the “**Trustee**”), and the Resolutions (as such term is defined herein). The Bonds shall be obligations of the City payable from any lawfully available funds, shall not be limited as to payment to any special source of funds of the City and the payment thereof shall not be subject to appropriation. The Bonds do not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. The Bonds otherwise shall be as described in the Preliminary Official Statement and the Official Statement, the Refunding Law and the Legal Documents (as such term is defined herein). The agreement of the Underwriter to purchase the Bonds from the City is made in reliance upon the City’s representations, covenants and warranties and on the terms and conditions set forth in this Purchase Agreement.

The City is obligated by the Public Employees’ Retirement Law, constituting Part 3 of Division 5 of Title 2 of the California Government Code (the “**Retirement Law**”), and the contract between the Board of Administration of the California Public Employees’ Retirement System (“**PERS**”), established under the Retirement Law, and the City Council of the City, effective November 1, 1958 (as amended, the “**PERS Contract**”), to make contributions to PERS: (a) to fund pension benefits for its employees who are members of PERS; (b) to amortize the unfunded actuarial liability with respect to such pension benefits; and (c) to appropriate funds for the purposes described in clauses (a) and (b). The City participates in two retirement plans (with tiers within such plans) under the PERS Contract.

The proceeds of the Bonds will be used: (1) to refund the City’s unamortized, unfunded accrued actuarial liability with respect to pension benefits under the PERS Contract and the Retirement Law (the “**Unfunded Liability**”); (2) to prepay all or a portion of the City’s annual required retirement contribution that is due and payable within 18 months of the issuance of the Bonds (the “**Current Obligation**”); and (3) to pay costs of issuance, including Underwriter’s discount and any original issue discount.

**Section 3. Public Offering.** The Underwriter agrees to make an initial public offering of all the Bonds at the public offering prices (or yields) set forth on Exhibit A and incorporated herein by reference. Subsequent to the initial public offering, the Underwriter reserves the right to change the public offering prices (or yields) as it deems necessary in connection with the marketing of the Bonds, provided that the Underwriter shall not change the interest rates set forth on Exhibit A. The Bonds may be offered and sold to certain dealers at prices lower than such initial public offering prices.

**Section 4. The Official Statement.** By its acceptance of this Purchase Agreement, the City ratifies, confirms and approves of the use and distribution by the Underwriter prior to the date hereof of the Preliminary Official Statement relating to the Bonds, dated \_\_ \_\_, 202\_\_ (including the cover page, all appendices and all information incorporated therein and any supplements or amendments thereto and as disseminated in its printed physical form or in electronic form in all respects materially consistent with such physical form, the "**Preliminary Official Statement**") that the City has deemed "final" as of its date for purposes of Rule 15c2-12, except for certain omissions permitted by Rule 15c2-12. The City hereby agrees to deliver or cause to be delivered to the Underwriter, within seven (7) business days of the date hereof, copies of the final official statement, dated the date hereof, relating to the Bonds (including all information that was previously permitted to have been omitted by Rule 15c2-12, the cover page, all appendices, all information incorporated therein and any amendments or supplements as have been approved by the City and the Underwriter, the "**Official Statement**") in such quantity as the Underwriter shall reasonably request to comply with Rule 15c2-12(b)(4) and the rules of the Municipal Securities Rulemaking Board (the "**MSRB**"). To the extent required by applicable MSRB Rules, the City hereby confirms that it does not object to distribution of the Official Statement in electronic form.

**Section 5. Closing.** At 8:00 a.m., California time, on \_\_ \_\_, 202\_\_ (the "**Closing Date**"), or at such other time or date as the City and the Underwriter mutually agree upon, the City shall deliver or cause to be delivered to the Trustee, and the Trustee shall deliver or cause to be delivered through the facilities of The Depository Trust Company, New York, New York ("**DTC**"), the Bonds in definitive form, duly executed and authenticated. Concurrently with the delivery of the Bonds, the City shall deliver the documents hereinafter mentioned at the offices of Stradling Yocca Carlson & Rauth, Newport Beach, California ("**Bond Counsel**"), or another place to be mutually agreed upon by the City and the Underwriter. The Underwriter will accept such delivery and pay the purchase price of the Bonds as set forth in Section 1 hereof by wire transfer in immediately available funds. This payment for and delivery of the Bonds, together with the delivery of the aforementioned documents referenced herein, is called the "**Closing**."

The Bonds shall be registered in the name of Cede & Co., as nominee of DTC, in denominations of \$5,000 and any integral multiple thereof as provided in the Trust Agreement, and shall be made available to the Underwriter at least one (1) business day before the Closing for purposes of inspection and packaging. The City acknowledges that the services of DTC will be used initially by the Underwriter to permit the issuance of the Bonds in book-entry form, and agrees to cooperate fully with the Underwriter in employing such services.

**Section 6. Representations, Warranties and Covenants of the City.** The City represents, warrants and covenants to the Underwriter as follows.

(a) The City is a general law city and municipal corporation of the State of California (the “**State**”), duly organized and validly existing pursuant to the Constitution and laws of the State.

(b) The City had full legal right, power and authority to adopt Resolution No. 2022-\_\_\_, adopted by a majority of the City Council of the City (the “**City Council**”) on \_\_\_ \_\_, 2022 (the “**Approving Resolution**”) and Resolution No. 202\_\_-\_\_ adopted by a majority of the City Council on \_\_\_ \_\_, 202\_\_ (the “**Official Statement Resolution**” and, together with the Approving Resolution, the “**Resolutions**”), and the City has, and upon the Closing will have, full legal right, power and authority: (i) to execute and deliver the Trust Agreement, the Continuing Disclosure Certificate, dated the Closing Date, of the City relating to the Bonds (the “**Continuing Disclosure Certificate**”) and this Purchase Agreement (collectively, the “**Legal Documents**”), and to perform its obligations under the Legal Documents, and has by official action duly authorized and approved the execution and delivery of, and the performance by the City of the obligations on its part contained in the Legal Documents; (ii) to issue, sell and deliver the Bonds to the Underwriter as provided herein; and (iii) to carry out, give effect to and consummate the transactions contemplated by the Legal Documents and the Resolutions.

(c) The City Council has duly and validly adopted the Resolutions at meetings of the City Council that were duly noticed and held and at each of which a quorum was present and acting throughout, and the Resolutions have not been modified or amended and are in full force and effect; and the City Council has duly approved the execution and delivery of the Bonds and the other Legal Documents and the performance by the City of its obligations contained therein, and the taking of any and all action as may be necessary to carry out, give effect to and consummate the transactions contemplated by each of said documents.

(d) The Bonds and the other Legal Documents will be duly executed and delivered by the City on or before the Closing Date, and the Bonds, when authenticated and delivered to the Underwriter in accordance with the Trust Agreement, and the Legal Documents will constitute legally valid and binding obligations, enforceable against the City in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors’ rights generally.

(e) The City is, and on the Closing Date will be, in compliance, in all respects, with the Legal Documents.

(f) The City is not in breach of or default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is a party or is otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument, in each case which breach or default has or may have a material adverse effect on the ability of the City to perform its obligations under the Legal Documents.

(g) No consent, approval, authorization or other action by any governmental or regulatory authority having jurisdiction over the City that has not been obtained is or will be required for the issuance and delivery of the Bonds or the consummation by the City of the other transactions contemplated by the Trust Agreement.



(h) The adoption of the Resolutions and the execution and delivery by the City of the Legal Documents and the approval by the City of the Official Statement and compliance with the provisions on the City's part contained in the Legal Documents, will not conflict with, or result in a violation or breach of, or constitute a default under, any law, administrative regulation, judgment, decree, loan agreement, indenture, trust agreement, bond, note, resolution, agreement or other instrument to which the City is a party or is otherwise subject, which conflict, breach or default has or may have a material adverse effect on the ability of the City to carry out its obligations under the Legal Documents, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any material lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of City under the terms of any such law, administrative regulation, judgment, decree, loan agreement, indenture, trust agreement, bond, note, resolution, agreement or other instrument, except as provided by the Legal Documents.

(i) Prior to the date hereof, the City has provided to the Underwriter for its review the Preliminary Official Statement, which the City has deemed final for purposes of Rule 15c2-12, has approved the distribution of the Preliminary Official Statement and the Official Statement and has duly authorized the execution and delivery of the Official Statement (including in electronic form). The Preliminary Official Statement, at the date thereof, and as of the date hereof, did not and does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein (other than the information relating to DTC and its book-entry system, as to which no view is expressed), in light of the circumstances under which they were made, not misleading. As of the date hereof and on the Closing, the Official Statement did not and will not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein (other than the information relating to DTC and its book-entry system, as to which no view is expressed), in light of the circumstances under which they were made, not misleading.

(j) [Reserved].

(k) The City will advise the Underwriter promptly of any proposal to amend or supplement the Official Statement and will not effect or consent to any such amendment or supplement without the consent of the Underwriter, which consent will not be unreasonably withheld. The City will advise the Underwriter promptly of the institution of any proceedings known to it by any governmental authority prohibiting or otherwise affecting the use of the Official Statement in connection with the offering, sale or distribution of the Bonds.

(l) The financial statements relating to the receipts, expenditures and cash balances of the City as of June 30, 202\_\_ as set forth in the Preliminary Official Statement and in the Official Statement fairly represent the financial position and results of operations of the City as of the dates and for the periods therein set forth in accordance with generally accepted accounting principles. Except as disclosed in the Preliminary Official Statement or the Official Statement or as otherwise disclosed in writing to the Underwriter, there has not been any materially adverse change in the financial position and results of operations of the City or in its operations since June 30, 202\_\_ and, except as disclosed in the Preliminary Official Statement or the Official Statement or as otherwise disclosed in writing to the Underwriter, there has been no occurrence, circumstance or combination thereof which is reasonably expected to result in any such materially adverse change.

(m) As of the time of acceptance hereof and as of the Closing Date, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government

agency, public board or body, is pending or, to the knowledge of the City, threatened: (i) in any way questioning the corporate existence of the City or the titles of the officers of the City to their respective offices; (ii) affecting, contesting or seeking to prohibit, restrain or enjoin the execution or delivery of any of the Bonds, or in any way contesting or affecting the validity of the Bonds or the Legal Documents or the consummation of the transactions contemplated thereby or contesting the power of the City to enter into the Legal Documents; (iii) which may result in any material adverse change to the financial condition of the City or to its ability to make payment of principal or redemption price of and interest on the Bonds when due; or (iv) contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto or asserting that the Preliminary Official Statement or the Official Statement contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and there is no basis for any action, suit, proceeding, inquiry or investigation of the nature described in clause (i) through (iv) of this sentence.

(n) To the extent required by law, the City will undertake, pursuant to the Continuing Disclosure Certificate, to provide annual reports and notices of certain events. A description of this undertaking is set forth in the Preliminary Official Statement and will also be set forth in the Official Statement. Except as otherwise disclosed in the Preliminary Official Statement, the City has not failed to comply in all material respects with any previous undertakings with regard to Rule 15c2-12 to provide annual reports or notices of enumerated events in the past five years and, the City has been in material compliance during the past five years with its continuing disclosure obligations in accordance with Rule 15c2-12.

(o) Any certificate that is signed by any officer of the City who is authorized to execute such certificate in connection with the issuance, sale and delivery of the Bonds and delivered to the Underwriter shall be deemed a representation and warranty of the City to the Underwriter as to the statements made therein but not of the person signing such certificate.

(p) The City will promptly apply the proceeds of the Bonds to refund the Unfunded Liability and fund the Current Obligation as of the date of issuance of the Bonds and to pay costs associated with the issuance and delivery of the Bonds.

(q) The City is not in material default, nor has the City been in material default at any time, as to the payment of principal or interest with respect to a material obligation issued by the City or with respect to a material obligation guaranteed by the City as guarantor.

(r) As of the date hereof, the City does not have any revenue bonds, capital lease obligations, installment payment obligations or other material financial obligations, nor other material obligations secured by payments from the general fund of the City, except as disclosed in the Preliminary Official Statement and the Official Statement.

(s) The judgment dated \_\_\_\_ \_\_, 202\_\_ entered in the Superior Court of the State of California for the County of San Diego in favor of the City in connection with *City of Escondido v. All Persons Interested, etc.* (Case No. \_\_\_\_\_) (the “**Judgment**”) was duly entered, the appeal period has run without any appeal having been filed, and the Judgment is in full force and effect.

(t) The City had, prior to the adoption of the Approving Resolution, and has, in full force and effect, a Debt Management Policy that complies with Government Code Section 8855(i).

**Section 7. Conditions to the Obligations of the Underwriter.** The Underwriter has entered into this Purchase Agreement in reliance upon the representations and warranties of the City contained herein. The obligations of the Underwriter to accept delivery of and pay for the Bonds on the Closing Date shall be subject, at the option of the Underwriter, to the accuracy in all respects of the statements of the officers and other officials of the City, as well as authorized representatives of the City Attorney, Bond Counsel, Disclosure Counsel and the Trustee made in any certificates or other documents furnished pursuant to the provisions hereof, to the performance by the City of its obligations to be performed hereunder at or prior to the Closing Date and to the following additional conditions:

(a) The representations, warranties and covenants of the City contained herein shall be true, complete and correct at the date hereof and at the time of the Closing, as if made on the Closing Date;

(b) At the time of Closing, the Legal Documents shall be in full force and effect as valid and binding agreements between or among the various parties thereto, and the Legal Documents, the Preliminary Official Statement and the Official Statement shall not have been amended, modified or supplemented except as may have been agreed to in writing by the Underwriter, and all such reasonable actions as, in the opinion of Bond Counsel, are reasonably deemed necessary in connection with the transactions contemplated hereby, shall have been done and taken;

(c) At the time of the Closing, no default shall have occurred or be existing under the Legal Documents, or any other agreement or document pursuant to which any of the City's financial obligations were executed and delivered, and the City shall not be in default in the payment of principal or interest with respect to any of its financial obligations, which default would result in any material adverse change to the financial condition of the City or adversely impact its ability to make payments of the principal or redemption price of and interest on the Bonds when due;

(d) In recognition of the desire of the City and the Underwriter to effect a successful public offering of the Bonds, and in view of the potential adverse impact of any of the following events on such a public offering, this Purchase Agreement shall be subject to termination in the absolute discretion of the Underwriter by notification, in writing, to the City prior to delivery of and payment for the Bonds, if at any time prior to such time, regardless of whether any of the following statements of fact were in existence or known of on the date of this Purchase Agreement:

(i) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of America of a national emergency or war or other calamity or crisis the effect of which on financial markets is materially adverse such as to make it, in the sole judgment of the Underwriter, impractical to proceed with the purchase or delivery of the Bonds as contemplated by the Official Statement (exclusive of any amendment or supplement thereto); or

(ii) a general banking moratorium shall have been declared by federal, State or New York authorities, or the general suspension of trading on any national securities exchange; or

(iii) any event shall occur which makes untrue any statement or results in an omission to state a material fact necessary to make the statements in the Preliminary Official Statement and the Official Statement, in the light of the circumstances under which they were made, not misleading, which event, in the reasonable opinion of the Underwriter would materially or adversely affect the ability of the Underwriter to market the Bonds; or

(iv) any legislation, ordinance, rule or regulation shall be introduced in, or be enacted by any governmental body, department or agency of the State, or a decision by any court of competent jurisdiction within the State shall be rendered which materially adversely affects the market price of the Bonds; or

(v) the marketability of the Bonds or the market price thereof, in the reasonable opinion of the Underwriter, has been materially adversely affected by an amendment to the Constitution of the United States of America or by any legislation in or by the Congress of the United States of America or by the State, or the amendment of legislation pending as of the date of this Purchase Agreement in the Congress of the United States of America, or the recommendation to Congress or endorsement for passage (by press release, other form of notice or otherwise) of legislation by the President of the United States of America, the Treasury Department of the United States of America, the Internal Revenue Service or the Chairman or ranking minority member of the Committee on Finance of the United States Senate or the Committee on Ways and Means of the United States House of Representatives, or the proposal for consideration of legislation by either such Committee or by any member thereof, or the presentment of legislation for consideration as an option by either such Committee, or by the staff of the Joint Committee on Taxation of the Congress of the United States of America, or the favorable reporting for passage of legislation to either House of the Congress of the United States of America by a Committee of such House to which such legislation has been referred for consideration; or

(vi) an order, decree or injunction shall have been issued by any court of competent jurisdiction, or order, ruling, regulation (final, temporary or proposed), official statement or other form of notice or communication issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, to the effect that: (i) obligations of the general character of the Bonds, or the Bonds, including any or all underlying arrangements, are not exempt from registration under the Securities Act of 1933, as amended, or that the Trust Agreement is not exempt from qualification under the Trust Indenture Act of 1939; or (ii) the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including any or all underlying obligations, as contemplated hereby or by the Preliminary Official Statement and the Official Statement, is or would be in violation of the federal securities laws as amended and then in effect; or

(vii) legislation shall be introduced, by amendment or otherwise, or be enacted by the House of Representatives or the Senate of the Congress of the United States of America, or a decision by a court of the United States of America shall be rendered, or a stop order, ruling, regulation or official statement by or on behalf of the Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall be made or proposed, to the effect that the issuance, offering or sale of obligations of the general character of the Bonds, as contemplated hereby or by the Preliminary Official Statement and the Official Statement, is or would be in violation of any provision of the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect, or with the purpose or effect of otherwise prohibiting the

issuance, offering or sale of the Bonds or obligations of the general character of the Bonds, as contemplated hereby or by the Preliminary Official Statement and the Official Statement; or

(viii) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange, which, in the reasonable opinion of the Underwriter, materially adversely affects the marketability or market price of the Bonds; or

(ix) the Comptroller of the Currency, the New York Stock Exchange, any other national securities exchange or association or any governmental authority, shall impose as to the Bonds, or obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by or the charge to the net capital requirements or financial responsibility requirements of broker dealers; or

(x) trading in securities on the New York Stock Exchange or the American Stock Exchange shall have been suspended or limited or minimum prices have been established on either such exchange which, in the reasonable opinion of the Underwriter, materially adversely affects the marketability or market price of the Bonds; or

(xi) any rating of the Bonds or the rating of any general fund obligations of the City shall have been downgraded, withdrawn or placed on negative watch by a national rating service, which, in the reasonable opinion of the Underwriter, materially adversely affects the market price of the Bonds; or

(xii) any action shall have been taken by any government in respect of its monetary affairs which, in the reasonable opinion of the Underwriter, has a material adverse effect on the United States securities market, rendering the marketing and sale of the Bonds, or enforcement of sale contracts with respect thereto impracticable; or

(xiii) the commencement of any action, suit or proceeding described in Section 6(m).

(e) at or prior to the Closing, the Underwriter shall receive or have received the following documents, in each case to the reasonable satisfaction, in form and substance, of the Underwriter and \_\_\_\_\_ (“**Underwriter’s Counsel**”):

(i) a copy of the Judgment;

(ii) the Resolutions, certified as of the Closing Date by an authorized official of the City;

(iii) the Legal Documents duly executed and delivered by the respective parties thereto, with only such amendments, modifications or supplements as may have been agreed to in writing by the Underwriter;

(iv) the approving opinion of Bond Counsel, dated the Closing Date and addressed to the City, in substantially the form attached as an appendix to the Official Statement, together with a reliance letter thereon addressed to the Underwriter and the Trustee;

(v) a supplemental opinion of Bond Counsel, dated the Closing Date and addressed to the Underwriter, to the effect that:

(A) the statements on the cover of the Official Statement and in the Official Statement under the captions ["INTRODUCTION," "THE BONDS," "SECURITY AND SOURCE OF PAYMENT FOR THE BONDS," "TAX MATTERS" and "VALIDATION," and in Appendices \_\_ and \_\_], excluding any material that may be treated as included under such captions and appendices by any cross-reference, insofar as such statements expressly summarize provisions of the Bonds, the Trust Agreement and Bond Counsel's final opinion relating to the Bonds, are accurate in all material respects as of the Closing Date;

(B) the Purchase Agreement and the Continuing Disclosure Certificate have been duly authorized, executed and delivered by the City and are the valid, legal and binding agreements of the City enforceable in accordance with their respective terms, except that the rights and obligations under the Purchase Agreement and the Continuing Disclosure Certificate are subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws affecting creditors' rights, to the application of equitable principles if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State, and provided that no opinion is expressed with respect to any indemnification or contribution provisions contained therein; and

(C) the Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Trust Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended, provided that no opinion is provided with respect to bond insurance, if any;

(vi) the Preliminary Official Statement and the Official Statement, the latter executed on behalf of the City;

(vii) evidence that the rating(s) on the Bonds are as described in the Official Statement;

(viii) a certificate, dated the Closing Date, signed by a duly authorized officer of the City satisfactory in form and substance to the Underwriter to the effect that: (i) the representations, warranties and covenants of the City contained in this Purchase Agreement are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date by the City, and the City has complied with all of the terms and conditions of the Purchase Agreement required to be complied with by the City at or prior to the Closing Date; (ii) to the best of such officer's knowledge, no event affecting the City has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purposes for which it is to be used or which is necessary to disclose therein in order to make the statements and information therein not misleading in any material respect; (iii) the information and statements contained in the Preliminary Official Statement and the Official Statement (other than information relating to DTC and its book entry system) did not as their respective dates and in the Official Statement does not as of the Closing Date contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect; (iv) the City is not in breach of or default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgment or decree or any loan agreement, indenture, bond, note,

resolution, agreement or other instrument to which the City is a party or is otherwise subject, which would have a material adverse impact on the City's ability to perform its obligations under the Legal Documents, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute such a default or an event of default under any such instrument; and (v) no further consent is required for inclusion of its audited financial statements in the Preliminary Official Statement and the Official Statement;

(ix) an opinion, dated the Closing Date and addressed to the Underwriter, the Trustee and the Bond Counsel, of the City Attorney of the City of Escondido, substantially in the form attached as Exhibit B;

(x) a letter of Stradling Yocca Carlson & Rauth, Newport Beach, California, Disclosure Counsel to the City, dated the Closing Date and addressed to the Underwriter substantially to the effect that, on the basis of the information made available to them in the course of their participation in the preparation of the Official Statement as Disclosure Counsel, but without having undertaken to determine or verify independently, or assuming any responsibility for, the accuracy, completeness or fairness of any of the statements contained in the Official Statement, no facts have come to the attention of the personnel in such firm directly involved in rendering legal advice and assistance to the City in connection with the preparation of the Official Statement which caused them to believe that: (A) the Preliminary Official Statement as of its date or as of \_\_\_\_ \_\_, 202\_\_ (excluding therefrom financial, demographic and statistical data; forecasts, projections, estimates, assumptions and expressions of opinions; statements relating to DTC, Cede & Co. and the operation of the book-entry system; statements relating to the treatment of the Bonds or the interest, discount or premium, if any, thereon or therefrom for tax purposes under the law of any jurisdiction; and the statements contained in the Preliminary Official Statement under the caption "TAX MATTERS," and in the appendices to the Preliminary Official Statement; as to all of which they express no view) contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading, except for such information as is permitted to be excluded from the Preliminary Official Statement pursuant to Rule 15c2-12, including but not limited to information as to pricing, yields, interest rates, maturities, amortization, redemption provisions, debt service requirements, Underwriter's discount and CUSIP numbers; or (B) the Official Statement as of its date or as of the Closing Date (excluding therefrom financial, demographic and statistical data; forecasts, projections, estimates, assumptions and expressions of opinions; statements relating to DTC, Cede & Co. and the operation of the book-entry system, statements relating to the treatment of the Bonds or the interest, discount or premium, if any, thereon or therefrom for tax purposes under the law of any jurisdiction; and the statements contained in the Official Statement under the caption "TAX MATTERS," and in the appendices to the Official Statement; as to all of which they express no view) contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(xi) an opinion of counsel to the Trustee, addressed to the Underwriter and the City, dated the Closing Date, to the effect that:

(A) the Trustee is a national banking association that is duly organized and validly existing under the laws of the United States of America, having full corporate power to undertake the trust created under the Trust Agreement;

(B) the Trust Agreement has been duly authorized, executed and delivered by the Trustee and, assuming due authorization, execution and delivery by the City, the Trust Agreement constitutes the valid, legal and binding obligation of the Trustee enforceable in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles, if equitable remedies are sought;

(C) the Trustee has duly authenticated the Bonds upon the order of the City;

(D) the Trustee's actions in executing and delivering the Trust Agreement are in full compliance with and do not conflict with any applicable law or governmental regulation and, to the best of such counsel's knowledge, after reasonable inquiry with respect thereto, do not conflict with or violate any contract to which the Trustee is a party or any administrative or judicial decision by which the Trustee is bound;

(E) no consent, approval, authorization or other action by any governmental or regulatory authority having jurisdiction over the banking or trust powers of the Trustee that has not been obtained is or will be required for the execution and delivery of the Bonds or the consummation by the Trustee of its obligations under the Trust Agreement; and

(F) there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court or public body pending or, to the best of such counsel's knowledge, threatened against or affecting the Trustee, which would materially adversely impact the Trustee's ability to complete the transactions contemplated by the Trust Agreement.

(xii) a certificate, dated the Closing Date, signed by a duly authorized officer of the Trustee satisfactory in form and substance to the Underwriter, to the effect that:

(A) the Trustee is duly organized and existing as a national banking association under the laws of the United States of America, having the full corporate power and authority to enter into and perform its duties under the Trust Agreement;

(B) the Trustee is duly authorized to enter into the Trust Agreement and has duly executed and delivered the Trust Agreement, and assuming due authorization and execution by the City, the Trust Agreement is legal, valid and binding upon the Trustee and enforceable against the Trustee in accordance with its terms;

(C) the Trustee has duly authenticated the Bonds under the Trust Agreement and delivered the Bonds to or upon the order of the Underwriter;

(D) no consent, approval, authorization or other action by any governmental or regulatory authority having jurisdiction over the banking or trust powers of the Trustee that has not been obtained is required for the execution and delivery of the Bonds or the consummation by the Trustee of its obligations under the Trust Agreement; and

(E) there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court or public body pending or threatened against or affecting the



Trustee, which would materially adversely impact the Trustee's ability to complete the transactions contemplated by the Trust Agreement.

(xiii) the preliminary and final forms required to be delivered to the California Debt and Investment Advisory Commission ("CDIAC") pursuant to Section 53583 of the Government Code of the State of California and Section 8855(i) and (j) of the Government Code;

(xiv) a copy of the executed Blanket Issuer Letter of Representations by and between the City and DTC relating to the book-entry system;

(xv) an opinion of Underwriter's Counsel, in form and substance acceptable to the Underwriter;

(xvi) evidence from the Insurer that the principal of, premium, if any, and interest on the Bonds is guaranteed under a municipal bond insurance policy to be issued concurrently with the delivery of the Bonds by the Insurer, together with a closing certificate of the Insurer and an opinion of the Insurer's counsel, all in form and substance satisfactory to Bond Counsel;

(xvii) a Rule 15c2-12 certificate, dated the date of the Preliminary Official Statement and executed by the City;

(xviii) a certificate of the PERS actuary setting forth the amount of the discounted prepayment of the annual contribution of the City to the System for Fiscal Year 202\_\_-2\_\_ together with acknowledgment of payment of the Unfunded Liability and the Current Obligation; and

(xix) such additional legal opinions, proceedings, instruments or other documents as the Underwriter or Underwriter's Counsel may reasonably request.

If the City shall be unable to satisfy the conditions to the obligations of the Underwriter to purchase, accept delivery of and pay for the Bonds contained in this Purchase Agreement, this Purchase Agreement shall terminate, and except as set forth in Section 9 hereof, neither the Underwriter nor the City shall be under further obligation hereunder.

**Section 8. Changes in Official Statement.** Within 90 days after the Closing or within 25 days following the "end of the underwriting period" (as such term is defined in Rule 15c2-12), whichever occurs first, if any event relating to or affecting the Bonds, the Trustee, or the City shall occur as a result of which it is necessary, in the reasonable opinion of the Underwriter, to amend or supplement the Official Statement in order to make the Official Statement not misleading in any material respect in the light of the circumstances existing at the time it is delivered to a purchaser, the City will forthwith prepare and furnish to the Underwriter an amendment or supplement that will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to purchasers, not misleading. The City shall cooperate with the Underwriter in the filing by the Underwriter of such amendment or supplement to the Official Statement with the MSRB. The Underwriter acknowledges that the "end of the underwriting period" will be the Closing Date unless the Underwriter otherwise notifies the City in writing that it still owns some or all of the Bonds.

**Section 9. Expenses.** (a) Whether or not the Underwriter accepts delivery of and pays for the Bonds as set forth herein, the Underwriter shall be under no obligation to pay, and the City shall pay out of the proceeds of the Bonds or any other legally available funds of the City, all expenses incidental to the performance of the City's obligations hereunder, including but not limited to the cost of printing and delivering the Legal Documents to the Underwriter, the costs of printing and shipping and electronic distribution of the Preliminary Official Statement and the Official Statement in reasonable quantities, the fees and disbursements of the City, the Trustee and its counsel, Bond Counsel, Disclosure Counsel, the City Attorney, the City's actuaries, accountants, engineers, appraisers, economic consultants and any other experts or consultants retained by the City in connection with the issuance and sale of the Bonds, rating agency fees, bond insurance fees, advertising expenses and any other expenses that are not specifically enumerated in paragraph (b) of this section incurred in connection with the issuance and sale of the Bonds. The City shall pay out of the proceeds of the Bonds for any expenses incurred by the Underwriter on behalf of the City's employees and representatives which are incidental to implementing this Purchase Agreement, including meals, transportation and lodging (but not entertainment expenses) of those employees and representatives.

(b) Whether or not the Bonds are delivered to the Underwriter as set forth herein, the City shall be under no obligation to pay, and the Underwriter shall be responsible for and pay (which may be included as an expense component of the Underwriter's discount), MSRB, CUSIP Bureau and CDIAC fees and expenses to qualify the Bonds for sale under any "blue sky" laws, and all other expenses incurred by the Underwriter in connection with its public offering and distribution of the Bonds not specifically enumerated in paragraph (a) of this section, including the cost of preparing this Purchase Agreement and other documents of the Underwriter, travel expenses and the fees and disbursements of Underwriter's Counsel.

**Section 10. Notices.** Any notice or other communication to be given to the Underwriter or the Underwriter under this Purchase Agreement may be given by delivering the same in writing to Stifel, Nicolaus & Company, Incorporated, 1 Montgomery Street, 35th Floor, San Francisco, California 94104, Attention: Public Finance. Any notice or communication to be given to the City under this Purchase Agreement may be given by delivering the same in writing at the address first set forth above, Attention: City Manager. All notices or communications hereunder by any party shall be given and served upon each other party.

**Section 11. Parties in Interest.** This Purchase Agreement is made solely for the benefit of the City and the Underwriter (including the successors or assigns thereof) and no other person shall acquire or have any right hereunder or by virtue hereof. All representations, warranties and agreements of the City in this Purchase Agreement shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Underwriter and shall survive the delivery of and payment for the Bonds.

**Section 12. Electronic Transactions.** The parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 13. Counterparts.** This Purchase Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

*[Remainder of Page Intentionally Left Blank]*

**Section 14. Governing Law.** This Purchase Agreement shall be governed by and construed in accordance with the laws of the State.

**STIFEL, NICOLAUS & COMPANY,  
INCORPORATED,** as Underwriter

By \_\_\_\_\_  
Authorized Officer

Accepted:

CITY OF ESCONDIDO

By \_\_\_\_\_  
City Manager

Time of Execution: \_\_\_\_:\_\_\_\_, California time

**EXHIBIT A**

**MATURITY SCHEDULE**

**CITY OF ESCONDIDO**  
**PENSION OBLIGATION BONDS, SERIES 202\_\_**  
**(FEDERALLY TAXABLE)**

<i>Maturity Date</i>	<i>Principal Amount</i>	<i>Interest Rate</i>	<i>Yield</i>	<i>Price</i>
(____ 1)	\$	%	%	
20__				

<sup>T</sup> Term Bond.

\* Insured pursuant to a bond insurance policy to be issued by \_\_\_\_\_.

**EXHIBIT B**

**FORM OF CITY ATTORNEY OPINION**

\_\_\_\_\_, 202\_\_

City of Escondido  
Escondido, California

Stifel, Nicolaus & Company, Inc.  
Los Angeles, California

City of Escondido  
Pension Obligation Bonds, Series 202\_\_  
(Federally Taxable)

Ladies and Gentlemen:

We have acted as counsel to the City of Escondido (the "City") in connection with the issuance and sale by the City of \$\_\_\_\_\_ aggregate principal amount of its City of Escondido Pension Obligation Bonds, Series 202\_\_ (Federally Taxable) (the "Bonds"). We have examined and relied upon originals (or copies certified or otherwise identified to our satisfaction) of such documents, records and other instruments as we deem necessary or appropriate for the purposes of this opinion, including, without limitation: (i) those documents relating to the existence, organization and operation of the City; (ii) Resolution No. 2022-\_\_\_\_, adopted by a majority of the City Council of the City (the "City Council") on \_\_\_\_\_, 2022 (the "Approving Resolution") and Resolution No. 202\_\_-\_\_\_\_, adopted by a majority of the City Council on \_\_\_\_\_, 202\_\_ (the "Official Statement Resolution" and, together with the Approving Resolution, the "Resolutions"); (iii) all necessary documentation of the City relating to the authorization, execution and delivery of the Trust Agreement, dated as of \_\_\_\_\_ 1, 202\_\_ (the "Trust Agreement"), by and between the City and The Bank of New York Mellon Trust Company, N.A., as trustee; (iii) the judgment dated \_\_\_\_\_, 202\_\_ entered in the Superior Court of the State of California for the County of San Diego in favor of the City in connection with *City of Escondido v. All Persons Interested, etc.* (Case No. \_\_\_\_\_); (iv) the Bond Purchase Agreement, dated \_\_\_\_\_, 202\_\_ (the "Purchase Agreement"), executed by Stifel, Nicolaus & Company, Incorporated (the "Underwriter"), and accepted by the City; (v) the Preliminary Official Statement, dated \_\_\_\_\_, 202\_\_ (the "Preliminary Official Statement"), relating to the Bonds; (vi) the Official Statement, dated \_\_\_\_\_, 202\_\_ (the "Official Statement"), relating to the Bonds; (vii) the Continuing Disclosure Certificate, dated the date hereof (the "Continuing Disclosure Certificate"), of the City relating to the Bonds; and (viii) such other records, documents, certificates, opinions, and other matters as are in our judgment necessary or appropriate to enable us to render the opinions expressed herein. All capitalized terms that are used herein and not otherwise defined shall have the meaning given to such terms as set forth in the Trust Agreement.

Based on the foregoing, and with regard to State of California (the "State") law and United States federal law, we are of the opinion that:

(a) The City is a general law city and municipal corporation of the State, duly organized and validly existing pursuant to the Constitution and laws of the State.

(b) The Resolutions approving and authorizing the execution and delivery of the Bonds, the Trust Agreement, the Purchase Agreement, and the Continuing Disclosure Certificate (collectively, the "Legal Documents") and approving and authorizing the issuance of the Bonds and the delivery of the Official Statement and other actions of the City were duly adopted at meetings of the governing body of the City which were called and held pursuant to law and with all public notice required by law and at each of which a quorum was present and acting throughout, and such Resolutions are now in full force and effect and have not been amended or superseded in any way.

(c) Except as disclosed in the Preliminary Official Statement and in the Official Statement, there is no action, suit or proceeding pending, or to the best of our knowledge, threatened against the City: (i) to restrain or enjoin the execution or delivery of the Legal Documents; (ii) in any way contesting or affecting the validity of the Legal Documents, the Resolutions or the authority of the City to enter into the Legal Documents; or (iii) in any way contesting or affecting the powers of the City in connection with any action contemplated by the Official Statement, the Resolutions or the Legal Documents.

(d) The execution and delivery of the Legal Documents and compliance with the provisions thereof, do not and will not in any material respect conflict with or constitute on the part of the City a breach of or default under any agreement or other instrument to which the City is a party or by which it is bound or any existing law, regulation, court order or consent decree to which the City is subject, which breach or default has or may have a material adverse effect on the ability of the City to perform its obligations under the Legal Documents.

(e) No authorization, approval, consent, or other order of the State or any other governmental body within the State is required for the valid authorization, execution and delivery of the Legal Documents or the consummation by the City of the transactions on its part contemplated therein, except such as have been obtained and except such as may be required under state securities or blue sky laws in connection with the purchase and distribution of the Bonds by the Underwriter.

Very truly yours,



**CITY of ESCONDIDO**  
FUTURE AGENDA

7/13/2022

**CONSENT CALENDAR** - (J. GOULART) - ANNUAL FUEL PURCHASE - Request the City Council adopt Resolution 2022-67 authorizing the City Council to approve the purchase of unleaded and diesel fuels from SC Fuels.

**CONSENT CALENDAR** - (J. PROCOPIO) - SANDAG SMART GROWTH INCENTIVE PROGRAM GRANT AGREEMENT - Request the City Council City Council authorize the City Manager or their designee to execute the Smart Growth Inceptive Program Grant (SGIP) Agreement

**CONSENT CALENDAR** - (C. HOLMES) - COMMUNITY FACILITIES DISTRICT (CFD) 2006-01 (EUREKA RANCH) ANNUAL SPECIAL TAX LEVY - Request the City Council adopt Resolution No.2022-85 that will set the Special Tax Levy for Community Facilities District No. 2006-01 (Eureka Ranch) (the "District") for Fiscal Year 2022-23

**CONSENT CALENDAR** - (C. HOLMES) - COMMUNITY FACILITIES DISTRICT (CFD) 2000-01 (HIDDEN TRAILS) ANNUAL SPECIAL TAX LEVY - Request the City Council adopt Resolution No.2022-86 that will set the Special Tax Levy for Community Facilities District No. 2000-01 (Hidden Trails) for Fiscal Year 2022-23

**CONSENT CALENDAR** - (C. HOLMES) - COMMUNITY FACILITIES DISTRICT (CFD) 2020-01 (PUBLIC SERVICES) ANNUAL SPECIAL TAX LEVY - Request the City Council adopt Resolution No.2022-87 that will set the Special Tax Levy for Community Facilities District No. 2020-01 (Public Services) for Fiscal Year 2022-23

**CONSENT CALENDAR** - (C. HOLMES) - COMMUNITY FACILITIES DISTRICT (CFD) 2020-02 (THE VILLAGES) ANNUAL SPECIAL TAX LEVY - Request the City Council adopt Resolution No.2022-88 that will set the Special Tax Levy for Community Facilities District No. 2020-02 (The Villages) for Fiscal Year 2022-23

**CONSENT CALENDAR** - (J. MURDOCK) - FY2022 CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES (Cal OES) HIGH FREQUENCY COMMUNICATIONS GRANT PROGRAM AND BUDGET ADJUSTMENT - Request the City Council authorize the Escondido Fire Department to accept FY 2022 Cal OES Grant funds in the amount of \$55,516; authorize the Fire Chief or his designee to execute grant documents on behalf of the City; and approve budget adjustments needed to spend grant funds.

**CONSENT CALENDAR** - (J. PROCOPIO) - OUT-OF-AGENCY SERVICE AGREEMENT FOR 2314 FELICITA AVENUE - PL22-0196

**CONSENT RESOLUTIONS AND ORDINANCES** - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE DEPUTY CITY MANAGER TO EXECUTE CDBG, HOME, AND ESG CONTRACTS, INCLUDING THOSE INVOLVING NON-SUBSTANTIAL CHANGES - Ordinance No. 2022-11 (2nd reading and adoption)

**CURRENT BUSINESS** - (Z. BECK) - DESIGNATION OF VOTING DELEGATE – League of California Cities Conference

7/20/2022

PRESENTATION: Clean Energy Alliance Update

**CONSENT CALENDAR** - (C. MCKINNEY) - AMENDMENT TO EXHIBIT B OF MWD EXCHANGE AGREEMENT - Request the City Council adopt Resolution No. 2022-XX, authorizing an amendment to Exhibit B of the 2003 Agreement Relating to Supplemental Water Among the Metropolitan Water District of Southern California, the San Luis Rey Settlement Parties, and the United States.

**CURRENT BUSINESS** - (J. PROCOPIO) - ADOPTION ORDINANCE 2022-10 - UPDATES TO CALIFORNIA VEHICLE CODE SECTION 22358.8 TO RETAIN EXISTING SPEED LIMITS ON CERTAIN STREET SEGMENTS (first reading and introduction)

**CURRENT BUSINESS** - (CITY MANAGER'S OFFICE) - COMMUNITY OPINION POLL RESULTS FOR A POTENTIAL REVENUE MEASURE