



# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

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**WEDNESDAY, SEPTEMBER 14, 2022**

**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**



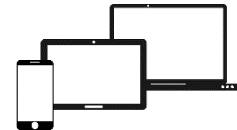
201 N. Broadway

##### **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, SEPTEMBER 14, 2022

## HOW TO PARTICIPATE

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

### In Person



Fill out Speaker Slip and Submit to City Clerk

### In Writing



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

## ASSISTANCE PROVIDED

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





# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, SEPTEMBER 14, 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, Inscoe, 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.

#### CONSENT CALENDAR

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

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



# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, SEPTEMBER 14, 2022

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

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

366075 – 366316 dated August 17, 2022

366317 – 366519 dated August 24, 2022

366520 – 366706 dated August 31, 2022

Staff Recommendation: Approval (Finance Department: Christina Holmes)

**3. APPROVAL OF MINUTES: Regular Meetings of August 17, 2022 and August 24, 2022**

**4. AWARD OF CONTRACT FOR CONSTRUCTION OF THE BEAR VALLEY PKWY AND MARY LANE TRAFFIC SIGNAL MODIFICATION**

Request the City Council approve to adopt Resolution No. 2022-126 awarding the construction contract to Lekos Electric, Inc., determined to be the lowest responsive and responsible bidder and authorizing the Mayor to execute, on behalf of the City, a Public Improvement Agreement in the amount of \$327,073 for the Bear Valley Pkwy and Mary Lane Traffic Signal Modification Project (“Project”).

Staff Recommendation: Approval (Development Services: Andrew Firestine, Director of Development Services)

Presenter: Julie Procopio, City Engineer

a) Resolution No. 2022-126

**5. AWARD CONSULTING SERVICES AGREEMENT TO KIMLEY-HORN & ASSOCIATES, INC. FOR THE ENGINEERING DESIGN OF GRAND AVENUE VISION PHASE II PROJECT**

Request the City Council approve to adopt Resolution No. 2022-122, authorizing the Mayor to execute, on behalf of the City, a consulting services agreement with Kimley-Horn and Associates, Inc. for engineering design of the Grand Avenue Vision Phase II Project in the amount of \$362,500.

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

Presenter: Jonathan Schauble, Principal Engineer

a) Resolution No. 2022-122



# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, SEPTEMBER 14, 2022

**6. CONSULTING AGREEMENT FOR THE TREATED WATER INTERCONNECT PROJECT**

Request the City Council approve to adopt Resolution No. 2022-120, authorizing the Mayor to execute, on behalf of the City, a Consulting Agreement with Kennedy/Jenks Consultants, Inc., in the amount of \$212,282 for engineering services for the Treated Water Interconnect Project (“Project”).

Staff Recommendation: Approval (Utilities Department: Christopher W. McKinney, Deputy City Manager/Director of Utilities)

Presenter: Angela Morrow, Deputy Director of Utilities

a) Resolution No. 2022-120

**7. FISCAL YEAR 2021-2022 REGIONAL REALIGNMENT RESPONSE GRANT**

Request the City Council approve to adopt Resolution No. 2022-128, authorizing the Chief of Police to accept a FISCAL YEAR 2021-22 Regional Realignment Response Grant in the amount of \$80,000 from the State of California Board of Community Corrections; authorize the Chief of Police or his designee to execute grant documents on behalf of the City; and approve budget adjustments needed to spend grant funds. Funding was provided by Assembly Bill 118 and Senate Bill 89, initiatives to reduce state prison overcrowding and support local law enforcement efforts to efficiently manage offenders and parole-violators. Escondido’s allocation is used to support regional and local enforcement operations. Funds must be used for police officer overtime and associated overhead.

Staff Recommendation: Approval (Escondido Police Department: David Cramer)

Presenter: David Cramer, Interim Chief of Police

a) Resolution No. 2022-128

**8. FISCAL YEAR 2021 STATE HOMELAND SECURITY GRANT PROGRAM AND BUDGET ADJUSTMENT**

Request the City Council approve to adopt Resolution No. 2022-135, authorizing the Escondido Police Department to accept FISCAL YEAR 2021 State Homeland Security Grant funds in the amount of \$114,919; authorize the Chief of Police or his designee to execute grant documents on behalf of the City; and approve budget adjustments needed to spend grant funds. The County of San Diego Office of Emergency Services has authorized the City of Escondido to spend its funds on equipment to support regional public safety projects. The Fire Department will receive \$79,000 and the Police Department will receive \$35,919 from this award.

Staff Recommendation: Approval (Police Department: David Cramer)

Presenter: David Cramer, Interim Chief of Police; Rick Vogt, Fire Chief

a) Resolution No. 2022-135



# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, SEPTEMBER 14, 2022

**9. RESOLUTION OF INTENT TO VACATE A PORTION OF VALLEY BOULEVARD, GRAPE STREET, FIG STREET AND ADJACENT ALLEY**

Request the City Council approve Resolution No. 2022-125 to set October 12, 2022 as the date to conduct a hearing to consider authorizing the street vacation for portions of the public streets known as Valley Parkway, Grape Street, Fig Street and adjoining alley.

Staff Recommendation: Approval (City Manager's Department: Jennifer Schoeneck, Director of Economic Development)

Presenter: Vince McCaw, Real Property Manager

a) Resolution No. 2022-125

### **PUBLIC HEARINGS**

**10. AN AMENDMENT TO THE ESCONDIDO MUNICIPAL AND ZONING CODES TO CREATE OBJECTIVE DEVELOPMENT STANDARDS FOR THE IMPLEMENTATION OF SENATE BILL 9 (PLANNING CASE NO. PL22-0363)**

Request that the City Council consider the introduction and adoption of Ordinance No. 2022-19R, approving an amendment to the Escondido Municipal and Zoning Codes to create objective development standards for the local implementation of Senate Bill 9.

Staff Recommendation: Approval (Development Services: Andrew Firestine)

Presenter: Sean Nicholas, Principal Planner

a) Ordinance No. 2022-19R (First Reading and Introduction)

### **CURRENT BUSINESS**

**11. APPOINTMENT TO THE SAN DIEGO COUNTY WATER AUTHORITY BOARD OF DIRECTORS**

Request the City Council appoint a representative to serve on the San Diego County Water Authority Board of Directors.

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

Presenter: Zack Beck, City Clerk



# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, SEPTEMBER 14, 2022

### **12. REIDY CREEK GOLF COURSE MANAGEMENT AND CONCESSION AGREEMENTS**

Request the City Council adopt Resolution No. 2022-124, authorizing the Mayor to execute a Golf Course Management Agreement and a Lease and Concession Agreement with Escondido Golf, LLC, Inc. for the management and operation of Reidy Creek Golf Course.

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

Presenter: Vince McCaw, Real Property Manager  
Escondido Golf, LLC representative: Tom Bugbee

a) Resolution No. 2022-124

### **FUTURE AGENDA**

#### **13. FUTURE AGENDA**

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

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

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

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

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

#### **ORAL COMMUNICATIONS**

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#### **ADJOURNMENT**



# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, SEPTEMBER 14, 2022

### 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.

### UPCOMING MEETING SCHEDULE

Wednesday, September 21, 2022	4:00 & 5:00 PM	Regular Meeting, <i>Council Chambers</i>
Wednesday, September 28, 2022	4:00 & 5:00 PM	Regular Meeting, <i>Council Chambers</i>





**A F F I D A V I T S**

**O F**

**I T E M**

**P O S T I N G –**

**CONTINUANCE: SENATE BILL 9**

**IMPLEMENTATION ORDINANCE –**

**PL22-0363**



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 that on Wednesday, September 14, 2022, at 5 p.m., the City Council of the City of Escondido will hold a public hearing to consider the following item:

**SENATE BILL 9 IMPLEMENTATION ORDINANCE – PL22-0363:**

**REQUEST:** An amendment to the Escondido Zoning and Municipal Codes to create objective development standards for the implementation of Senate Bill 9 (“SB 9”). SB 9 amends the Government Code to allow two-family dwellings and urban lot splits on single-family zoned parcels in many areas throughout the State, and limits a local governments authority to regulate such projects without codified objective development standards. The request includes amendments to Articles 1 (General Provisions and Definitions), 6 (Residential Zones), and 61 (Administration and Enforcement) of the Zoning Code, and Chapters 23 (Streets and Sidewalks) and 32 (Subdivisions) of the Municipal Code, to establish appropriate provisions. This item was tabled at the August 24, 2022, City Council Meeting.

**PROPERTY SIZE AND LOCATION:** N/A

**ENVIRONMENTAL STATUS:** Pursuant to Government Code Sections 65852.21(j) and 66411.7(n), adoption of local requirements consistent with the provisions of SB 9 are not subject to CEQA.

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.

**Planning Commission Action:** On July 12, 2022, the Planning Commission voted 6-0 to recommend approval. One commissioner was absent.

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.

**PUBLIC COMMENT:** To submit comments in writing, please do so at the following link: (<https://escondido.ca.municodemeetings.com/bc-citycouncil/webform/public-comment>) All comments received from the public will be made a part of the record of the meeting.

For additional information, please contact Sean Nicholas, Principal Planner, at (760) 839-4546, or via email at [snicholas@escondido.org](mailto:snicholas@escondido.org), and refer to Case No. PL22-0277

DocuSigned by:

*Zack Beck*

1566352880021420  
ZACK BECK, City Clerk  
City of Escondido  
September 1, 2022

Published in THE ESCONDIDO TIMES-ADVOCATE:  
09/01/22



# STAFF REPORT

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September 14, 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:

366075 – 366316 dated August 17, 2022  
366317 – 366519 dated August 24, 2022  
366520 – 366706 dated August 31, 2022

Staff Recommendation: Approval (Finance Department: Christina Holmes)

## **FISCAL ANALYSIS**

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

August 11 – August 17, 2022, is \$6,893,104.66  
August 18 – August 24, 2022, is \$963,293.05  
August 25 – August 31, 2022, is \$695,084.10

## **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

### REGULAR SESSION

5:00 PM Regular Session

August 17, 2022

### 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

### ORAL COMMUNICATIONS

William Fence III – Expressed concern regarding environmental issues.

### CONSENT CALENDAR

Motion to approve all Consent Calendar items, except item 4: Morasco; Second: Inscoe; 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 365644 – 365881 dated August 17, 2022.

Staff Recommendation: Approval (Finance Department: Christina Holmes)

3. **APPROVAL OF MINUTES: None**



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

**4. ANNEXING PROPERTY TO CITYWIDE SERVICES COMMUNITY FACILITIES DISTRICT (CFD) 2020-1**

Request that City Council adopt Resolution No. 2022-65 annexing eight (8) projects containing 150 units into the Citywide Services CFD 2020-1. Each property owner has voluntarily provided a signed form consenting to annexation as a streamlined method for offsetting the cost of ongoing municipal services. (File Number 0685-10)

Staff Recommendation: Approval and File (Development Services: Andrew Firestine, Director of Development Services)

Presenter: Allen Yun, Management Analyst II

Resolution No. 2022-65

Item pulled from the agenda by staff

**5. APPROVAL OF AGREEMENT WITH ESCONDIDO UNION SCHOOL DISTRICT FOR \$1,161,000 FOR BEFORE AND AFTER SCHOOL PROGRAM SERVICES**

Request the City Council Approve Resolution 2022-110 authorizing the Mayor to execute an agreement for \$1,161,000 annually with the Escondido Union School District to operate before and after school programming at selected schools within the district. (File Number 0600-10;A-3423)

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

Presenter: Danielle Lopez, Assistant Director of Community Services

Resolution No. 2022-110

**6. FISCAL YEAR 2021/22 PAUL COVERDELL FORENSIC IMPROVEMENT PROGRAM GRANT**

Request the City Council Adopt Resolution No. 2022-118 authorizing the Interim Chief of Police to accept a FY 2021-22 California Office of Emergency Services (“CalOES”) Paul Coverdell Forensic Science Improvement Program Grant in the amount of \$52,033; execute all documents necessary for the management and completion of the grant scope; and authorize the necessary budget adjustment needed to spend grant funds. (File Number 0480-70)

Staff Recommendation: Approval (Department Name: David Cramer, Interim Chief of Police)

Presenter: David Cramer, Interim Chief of Police



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

Resolution No. 2022-118

### **7. AUTHORIZATION OF PARTICIPATION AGREEMENT, EASEMENT, AND PLOT PLAN APPROVAL FOR EV CHARGERS**

It is requested that the City Council adopt Resolution No. 2022-119 authorizing the Mayor to execute, on behalf of the City, a Power Your Drive for Parks Public EV Charging Program Participation Agreement (“Agreement”) and related easement (“Easement”) with San Diego Gas & Electric (“SDG&E”) for the installation of nine electric vehicle (“EV”) charging stations at the Woodward Parking Lot of Grape Day Park, and approve SDG&E’s Plot Plan (City Case No. PL22-0323) for the design of the EV charging stations (“Plot Plan”). (File Number 0600-10;A-3426)

Staff Recommendation: Approval (Development Services Department: Andrew Firestine)

Presenter: Adam Finestone, City Planner

Resolution No. 2022-119

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

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

### **CURRENT BUSINESS**

### **8. CITY COUNCIL DISCUSSION OF THE OPERATION AND MANAGEMENT AGREEMENT BETWEEN THE CITY AND THE CALIFORNIA CENTER FOR ARTS, ESCONDIDO, FOUNDATION AND THE FUNDING ASSOCIATED WITH AN EXTENSION OF THIS AGREEMENT**

Request the City Council (1) receive and file a staff report concerning the Management Agreement between the City and the California Center for Art, Escondido, Foundation (“CCAEF”); and (2) provide direction to staff regarding any budget adjustments to be made to the FY2023 General Fund Operating Budget concerning annual funding for the CCAEF.(File Number 0600-10)

Staff Recommendation: Receive and file the Staff Report; provide direction regarding budget adjustment

Presenter: Christopher W. McKinney, Deputy City Manager/Director of Utilities

Cynthia Weir – Expressed support for the CCAE.



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

Jose Jaimes – Expressed support for the CCAE.

Kristin Moss – Expressed support for the CCAE.

Carl Skaja – Expressed support for the CCAE.

Victoria Tenbrink – Expressed support for the CCAE.

Martha Tucker – Expressed support for the CCAE.

Ryan Sattoff – Expressed support for the CCAE.

Marcell Vois Rossman – Expressed support for the CCAE.

Councilmember Garcia – Directed staff to require quarterly reports of activity at CCAE reported back to Council after a new Management Agreement has been finalized. Invest \$500,000 in performing arts portion of CCAE, \$100,000 in the Caliente portion of CCAE, investment money to lower costs for nonprofits that use CCAE.

Mayor McNamara – Direct there be more transparency in the monies that are spent in the next Management Agreement. Create a value statement for the Council and CCAE Board to sign.

### FUTURE AGENDA

#### 9. FUTURE AGENDA

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

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

Morasco – Service CFD’s

### 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).



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

### ORAL COMMUNICATIONS

None.

### ADJOURNMENT

Mayor McNamara adjourned the meeting at 6:36 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

August 24, 2022

### MOMENT OF REFLECTION

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### FLAG SALUTE

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### CALL TO ORDER

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

### PROCLAMATIONS

National Preparedness Month, September 2022

### PRESENTATIONS

Pilot Agtech Incubator - 455 N Quince St.

### ORAL COMMUNICATIONS

Jill Litschewski – Expressed support for the Ag-Tech Incubator

Erik Bruvold – Expressed support for the Ag-Tech Incubator

Neal Bloom – Expressed support for the Ag-Tech Incubator

Carmen Romo – Expressed concern regarding the landscaping and trees in Escondido.

### CONSENT CALENDAR

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# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

Motion: Morasco; Second: Inscoe; 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 365882 – 366074 dated August 10, 2022.

Staff Recommendation: Approval (Finance Department: Christina Holmes)

3. **APPROVAL OF MINUTES: Regular Meeting of August 10, 2022**

4. **AUTHORIZING GRANT APPLICATION TO THE DEPARTMENT OF TRANSPORTATION SAFE STREETS FOR ALL PROGRAM AND APPROVING AN AMENDMENT TO THE LOCAL ROADWAY SAFETY PLAN**

Request the City Council adopt Resolution No. 2022-116 authorizing an application to the Department of Transportation for the Safe Streets for All Program for traffic and approving an amendment to the Local Roadway Safety Plan to meet grant criteria. (File Number 0150-30)

Staff Recommendation: Receive and File (Development Services: Andrew Firestine, Director of Development Services)

Presenter: Eddmond Alberto, City Traffic Engineer

a. Resolution 2022-116

5. **2022 SAFE SAN DIEGO GRANT PROGRAM AWARD ACCEPTANCE AND BUDGET ADJUSTMENT**

Request the City Council accept a SAFE San Diego Grant Award in the amount of \$2,000 to purchase supplies for the Escondido Community Emergency Response Team (“CERT”). It is also requested that Council authorize the Fire Chief or his designee to execute, on behalf of the City, all documents required for the management of this grant and that Council authorize the necessary budget adjustment to establish a new project number to track these grant funds. (File Number 0480-70)

Staff Recommendation: Approval (Emergency Management: Jeff Murdock, Emergency Disaster Preparedness Manager)

Presenter: Jeff Murdock, Emergency Disaster Preparedness Manager



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

**6. SANDAG SMART GROWTH INCENTIVE PROGRAM GRANT AGREEMENT FOR THE 2022 GENERAL PLAN AMENDMENT ENVIRONMENTAL REVIEW**

Request the City Council adopt Resolution No. 2022-123 authorizing the Mayor to execute, on behalf of the City, the Smart Growth Inceptive Program Grant (“SGIP”) Agreement. (File Number 0480-70)

Staff Recommendation: Approval (Development Services: Andrew Firestine, Director of Development Services)

Presenter: Veronica Morones, Senior Planner

a. Resolution No. 2022-123

### 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.)

**7. REQUEST THE CITY COUNCIL ADOPT ORDINANCE NO. 2022-10 RETAINING THE POSTED SPEED LIMITS ON SEVEN (7) STREET SEGMENTS; AND ADOPT ORDINANCE NO. 2022-12 DETERMINING GRAND AVENUE FROM CENTRE CITY PARKWAY TO SOUTH JUNIPER STREET TO BE A BUSINESS ACTIVITY DISTRICT AND DECLARE A PRIMA FACIE SPEED LIMIT OF 25 MPH.**

a. Ordinance No. 2022-10

b. Ordinance No. 2022-12

### PUBLIC HEARINGS

**8. AN AMENDMENT TO THE ESCONDIDO MUNICIPAL AND ZONING CODES TO CREATE OBJECTIVE DEVELOPMENT STANDARDS FOR THE IMPLEMENTATION OF SENATE BILL 9 (PLANNING CASE NO. PL22-0363)**

Request that the City Council consider the introduction and adoption of Ordinance No. 2022-19, approving an amendment to the Escondido Municipal and Zoning Codes to create objective development standards for the local implementation of Senate Bill 9. (File Number 0810-20)

Staff Recommendation: Approval (Development Services: Andrew Firestine, Director of Development Services)

Presenter: Sean Nicholas, Principal Planner

a. Ordinance No. 2022-19R (Introduction)



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

Ardeshir Pabdari – Expressed support for this item.

Item moved to a future meeting.

### CURRENT BUSINESS

#### 9. BID AWARD FOR THE GRAPE DAY PARK MASTER PLAN AND AQUATIC CENTER DESIGN

Request the City Council adopt Resolution No. 2022-111, authorizing the Mayor, on behalf of the City, to execute a Consulting Agreement with LPA, Inc. in the amount of \$1,040,400, for the completion of a Grape Day Park Master Plan and design of an Aquatic Center (“Project”) on Woodward Avenue. (File Number 0600-10;A-3424)

Staff Recommendation: Approval (Communications and Community Services: Joanna Axelrod)

Presenter: Danielle Lopez, Assistant Director of Community Services

a. Resolution No. 2022-111

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

### WORKSHOP

#### 10. TRANSPORTATION SAFETY UPDATE

Request that the City Council receive a presentation and hold a workshop to discuss transportation safety. (File Number 1080-65)

Staff Recommendation: Receive and File (Development Services/ Engineering, Edd Alberto), (Police Department/ Interim Chief of Police, Dave Cramer)

No Council Action Required.

### FUTURE AGENDA

#### 11. 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)

Garcia – Participating with National League of Cities



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

### 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

None.

#### ADJOURNMENT

Mayor McNamara adjourned the meeting at 7:07 p.m.

\_\_\_\_\_  
MAYOR

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



# STAFF REPORT

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September 14, 2022  
File Number 0600-10; A-3427

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## SUBJECT

### **AWARD OF CONTRACT FOR CONSTRUCTION OF THE BEAR VALLEY PKWY AND MARY LANE TRAFFIC SIGNAL MODIFICATION**

## DEPARTMENT

Development Services, Engineering

## RECOMMENDATION

Request that the City Council adopt Resolution No. 2022-126 awarding the construction contract to Lekos Electric, Inc., determined to be the lowest responsive and responsible bidder and authorizing the Mayor to execute, on behalf of the City, a Public Improvement Agreement in the amount of \$327,073 for the Bear Valley Pkwy and Mary Lane Traffic Signal Modification Project (“Project”).

Staff Recommendation: Approval (Development Services: Julie Procopio, City Engineer)

Presenter: Julie Procopio, City Engineer

## FISCAL ANALYSIS

The adopted Capital Improvement Program budget programmed TransNet funding for this project in the Traffic Signals CIP project. Remaining funds, in the amount of \$454,964, are adequate to cover anticipated costs of this project.

## PREVIOUS ACTION

On April 21, 2021, the City Council adopted Resolution 2021-36 approving the FY2020-21 Traffic Signal Priority List that includes a list of priority new signal and signal modification locations. This intersection was included as the highest priority traffic signal modification location.

## BACKGROUND

The purpose of the Project is to provide protected left-turn phasing for the east-bound and west-bound left-turn movements at the intersection of Bear Valley Parkway and Mary Lane. Improvements include new traffic signal poles, signal indications, pedestrian push buttons, fiber optic cable for communication, striping, and signage to enhance the safety for vehicular and pedestrian traffic at this location.



# CITY of ESCONDIDO

## STAFF REPORT

On August 30, 2022, three sealed bids were received in response to the advertised request for bids on this Project. The low bid was 8-percent higher than the engineer's cost estimate of \$303,600.

The bid results are listed below:

DBX, Inc.	\$492,559.00
Southwest Traffic Signal Service, Inc.	\$432,249.04
Lekos Electric, Inc.	\$327,073.00

It is recommended that the contract be awarded to Lekos Electric, Inc., determined to be the lowest responsive and responsible bidder. After award and execution of the contract, traffic signal equipment will be procured. It is estimated that the procurement period will require four to five months. Installation is estimated to occur in Spring 2023.

### RESOLUTIONS

- a. Resolution No. 2022-126
- b. Resolution No. 2022-126 Exhibit "A" Public Improvement Agreement

## RESOLUTION NO. 2022-126

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY, TO EXECUTE A PUBLIC IMPROVEMENT AGREEMENT WITH LEKOS ELECTRIC, INC., FOR THE BEAR VALLEY PKWY AND MARY LANE TRAFFIC SIGNAL MODIFICATION PROJECT

WHEREAS, the adopted Capital Improvement Program includes funding for the Bear Valley Pkwy and Mary Lane Traffic Signal Modification (“Project”); and

WHEREAS, a notice inviting bids for construction of said improvements was duly published in the Escondido Times-Advocate on August 11, 2022 and August 18, 2022; and

WHEREAS, pursuant to said notice, three sealed bids for the Project were opened and evaluated on August 30, 2022; and

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

WHEREAS, the City Council desires at this time and deems it to be in the best public interest to award this construction contract to Lekos Electric, Inc. in the amount of \$327,073.

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

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





CITY OF ESCONDIDO  
PUBLIC IMPROVEMENT AGREEMENT

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

Between: CITY OF ESCONDIDO  
a California municipal corporation  
201 N. Broadway  
Escondido, CA 92025  
Attn: Virpi Kuukka-Ruotsalainen  
760-839 4655  
("CITY")

And: LEKOS ELECTRIC, INC.  
a California corporation  
1370 Pioneer Way  
El Cajon, CA 92020  
Attn: J. Riley Lekos  
619-447-7661  
("CONTRACTOR").

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

WHEREAS, the Parties desire to enter into this Agreement for the performance of work relating to the Bear Valley and Mary Lane Traffic Signal Modification Project (“Project”), occurring on property located at the intersection of Mary Lane and Bear Valley Parkway (“Property”), as further described herein.

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

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

2. Description and Performance of Work. CONTRACTOR shall furnish all work described in the Project Documents ("Work"). All Work to be performed and materials to be furnished shall be completed in a good workmanlike manner, free from defects, in strict accordance with the plans, drawings, specifications, and requirements set forth in the Project Documents and all provisions of this Agreement.
3. Compensation. In exchange for CONTRACTOR's completion of the Work, the CITY shall pay, and CONTRACTOR shall accept in full, an amount not to exceed the sum of \$327,073.00 ("Contract Price"). CONTRACTOR shall be compensated only for performance of the Work described in this Agreement. No compensation shall be provided for any other work or services without the CITY's prior written consent.
4. Term and Time of Performance. CONTRACTOR shall commence work within 15 days after it has been notified in writing of award of contract, shall commence construction immediately after the CITY's notice to proceed. CONTRACTOR shall diligently perform and complete the Work with professional quality and technical accuracy within 30 working days after the City's Notice to Proceed ("Completion Date"). Extension of terms or time of performance shall be subject to the CITY's sole discretion.
5. Time Is of the Essence. If the Work is not completed by the Completion Date, it is understood that the CITY will suffer damage. It being impractical and infeasible to determine the amount of actual damage, in accordance with Government Code section 53069.85, the Parties agree that CONTRACTOR shall pay to the CITY as fixed and liquidated damages, and not as a penalty, the sum of \$500 per day for each calendar day of delay until the Work is completed and accepted ("Liquidated Damages Amount"). The Liquidated Damages Amount shall be deducted from any payments due to, or that become due to, CONTRACTOR. CONTRACTOR and CONTRACTOR'S surety shall be liable for the Liquidated Damages Amount.
6. Insurance Requirements.
  - a. CONTRACTOR shall procure and maintain, at its own cost, during the entire term of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Work, and the results of such Work, by CONTRACTOR, its agents, representatives, employees, or subcontractors. Insurance coverage shall be at least as broad as the following:
    - (1) *Commercial General Liability.* Insurance Services Office ("ISO") Form CG 0001 11188 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury (including emotional distress), sickness, disease, or death of any person other than the CONTRACTOR's employees, and personal and advertising injury, and damages because of injury or destruction of tangible property, including loss of use resulting there from, with limits no less than \$3,000,000 combined single limit coverage per occurrence for bodily injury and property damage; or, if a general aggregate limit is applicable, either: (i) the general aggregate limit shall specifically apply to the project identified in the bid specifications or to the location of such project which is the subject of these bid specifications with coverage to be no less than \$3,000,000, or (ii) the general aggregate shall be at least \$3,000,000 combined single limit coverage per occurrence for bodily injury and property damage.
    - (2) *Automobile Liability.* ISO Form CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired (Code 8) and non-owned autos (Code 9), including damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles

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

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

Agreement, and CONTRACTOR shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.

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

Agreement and/or withhold any payment that becomes due to CONTRACTOR until CONTRACTOR demonstrates compliance with the insurance requirements in this Agreement.

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

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

8. Bonds.

- a. CONTRACTOR shall furnish and deliver to the CITY, simultaneously with the execution of this Agreement, the following surety bonds:
  - (1) *Faithful Performance Bond.* CONTRACTOR shall furnish to the CITY a surety bond in an amount equal to the Contract Price as security for faithful performance of this Agreement.
  - (2) *Labor and Materials Bond.* CONTRACTOR shall furnish to the CITY a surety bond in an amount equal to the Contract Price as security for payment to persons performing labor and furnishing materials in connection with the Project.
- b. All bonds furnished to the CITY pursuant to this Agreement shall be in the form set forth herein and approved by the City Attorney.
- c. All bonds shall be executed by sureties that are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- d. If the surety on any bond furnished by the CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Work is located, the CONTRACTOR shall, within seven days thereafter, substitute another bond and surety, which must be acceptable to the CITY. No portion of the Work shall be performed without bonds, in a form and issued by a surety acceptable to the City. If one or more of such bonds

shall, at any time, not be in full force and effect, CONTRACTOR shall immediately cease performance of the Work until CONTRACTOR is in full compliance with the bonding requirements of this Agreement and California law. All delays and costs incurred or resulting from such occurrence shall be to the exclusive account of CONTRACTOR. Failure of the CONTRACTOR to promptly cure any failure to have the necessary bonds in full force and effect shall be grounds for immediate termination of this Agreement.

- e. All bonds shall be obtained from surety companies that are duly licensed or authorized in the State of California. Such surety companies shall also meet any additional requirements and qualifications as may be provided in the Supplementary General Conditions.
9. Substitution of Securities. This Agreement is subject to California Public Contract Code section 22300, which permits the substitution of securities for any monies withheld by the CITY to ensure performance of this Agreement. At the request and expense of the CONTRACTOR, securities equivalent to the amount withheld shall be deposited with the CITY, or with a state- or federally-chartered bank in this state as the escrow agent, who shall then pay those moneys to CONTRACTOR. Upon satisfactory completion and acceptance of the Work, such securities shall be returned to the CONTRACTOR.
10. Contractor Default. In the event CONTRACTOR, for a period of 10 calendar days after receipt of written demand from the CITY to do so ("Cure Period"), fails to furnish tools, equipment, or labor in the necessary quantity or quality required by this Agreement, or fails to prosecute the Work and all parts thereof in a diligent and workmanlike manner, or after commencing to do so within the Cure Period, fails to continue to do so, then the CITY in its sole discretion may exclude the CONTRACTOR from the Property, or any portion thereof, and take exclusive possession of the Property or any portion thereof, together with all material and equipment thereon, and may complete the Work or any portion of the Work, either by (i) furnishing the necessary tools, equipment, labor, or materials; or (ii) letting the unfinished portion of the work, or any portion thereof, to another contractor; or (iii) demanding the surety hire another contractor; or (iv) any combination of such methods. The CITY's procuring of the completion of the Work, or the portion of the Work taken over by the CITY, shall be a charge against the CONTRACTOR and may be deducted from any money due or to become due to CONTRACTOR from the CITY, or the CONTRACTOR shall pay the CITY the amount of such charge, or the portion thereof unsatisfied. The sureties provided for under this Agreement shall become liable for payment if CONTRACTOR fails to pay in full any such cost incurred by the CITY. The permissible charges for any such procurement of the completion of the Work include actual costs and fees incurred to third party individuals and entities (including but not limited to consultants, attorneys, inspectors, and designers) and actual costs incurred by the CITY for the increased dedication of time of the CITY's employees to the Project.
11. Other Legal Requirements Incorporated. Each and every provision of law and clause required by law to be inserted in this Agreement or its attachments shall be deemed to be inserted herein, and this Agreement shall be read and enforced as though such law or clause were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either Party, the Agreement shall forthwith be physically amended to make such insertion or correction, without further changes to the remainder of the Agreement.
12. Merger Clause. This Agreement, together with its attachments or other documents described or incorporated herein, if any, constitutes the entire agreement and understanding of the CITY and CONTRACTOR concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. In the event of any conflict between the provisions of this Agreement and any of its attachments or related documents, if any, the provisions of this Agreement shall prevail.

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

under this Agreement. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. CONTRACTOR shall post all job site notices required by regulation. CONTRACTOR, as well as any subcontractors, shall be registered pursuant to California Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal (subject to the requirements of Public Contract Code section 4104), or engage in the performance of any public works contract subject to the requirements of Division 2, Part 7, Chapter 1 of the California Labor Code. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.

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

(SIGNATURE PAGE FOLLOWS)



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

CITY OF ESCONDIDO

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

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

LEIKOS ELECTRIC, INC.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
J. Riley Lekos, Vice President

\_\_\_\_\_  
Contractor's License #588410

\_\_\_\_\_  
Tax ID/Social Security No.

APPROVED AS TO FORM:

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

BY: \_\_\_\_\_

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



# STAFF REPORT

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September 14, 2022  
File Number 0600-10; A-3428

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## SUBJECT

**AWARD CONSULTING SERVICES AGREEMENT TO KIMLEY-HORN & ASSOCIATES, INC. FOR THE ENGINEERING DESIGN OF GRAND AVENUE VISION PHASE II PROJECT**

## DEPARTMENT

Development Services

## RECOMMENDATION

Request that the City Council adopt Resolution No. 2022-122, authorizing the Mayor to execute, on behalf of the City, a consulting services agreement with Kimley-Horn and Associates, Inc. for engineering design of the Grand Avenue Vision Phase II Project in the amount of \$362,500.

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

Presenter: Jonathan Schauble, Principal Engineer

## FISCAL ANALYSIS

The Grand Avenue Vision Phase II Project ("Project") is funded through the American Rescue Plan Act of 2021. The Phase II Project budget is \$5,000,000 as programmed in the current Capital Improvement Program. There are adequate funds in the Project account to fund the engineering design and estimated construction costs for the Project.

## PREVIOUS ACTION

On February 14, 2018, the City Council approved the Grand Avenue Vision Plan that was developed through a public process that included multiple stakeholders, including downtown merchants, property owners, residents and technical professionals, and authorized grant applications.

On February 13, 2019, the City Council approved a SGIP grant agreement and related budget adjustment for the Grand Avenue Vision Phase I Project.

On August 21, 2019, the City Council approved a Consulting Services Agreement to complete environmental clearance for the Grand Avenue Vision Plan and engineering design of the Phase I Project.

On July 21, 2021, the City Council approved an environmental document (Mitigated Negative Declaration) for the Grand Avenue Vision Plan.



# CITY of ESCONDIDO

## STAFF REPORT

On September 15, 2021, the City Council adopted Resolution No. 2021-126, authorizing the award of a construction contract for Phase I of the Grand Avenue Vision Plan to the lowest responsive and responsible bidder, 3Sixty Innovation, Inc., in the amount of \$994,776.50.

On September 29, 2021, the City Council adopted Resolution No. 2021-146 accepting American Rescue Plan Act recovery funds and authorizing the funding of a number of programs and projects, including \$5,000,000 for the Grand Avenue Vision Plan Phase II Project in order to permanently expand outdoor dining areas in the downtown area.

### BACKGROUND

The Grand Avenue Vision Plan is a streetscape improvement plan for Escondido’s historic downtown aimed at improving walkability and creating a pedestrian-friendly environment between Juniper Street and Escondido Boulevard. The Vision Plan narrows Grand Avenue to one (1) lane in each direction, provides wider sidewalks for permanent outdoor dining space, increases parking opportunities via diagonal parking, and removes center medians. The Grand Vision Plan also includes the installation of three (3) traffic circles on Grand Avenue (Maple Street, Broadway, and Kalmia Street) to calm traffic on Grand Avenue in the downtown area.

Phase I of the Grand Vision Plan is substantially complete. Among the many improvements, the Project has widened the sidewalk and installed railing for outdoor dining on the north-side of Grand Avenue between Maple Street and Broadway, installed irrigation and landscaping, removed center medians, installed decorative lighting, provided diagonal parking, installed an ADA parking stall, and resurfaced the roadway. The City’s contractor is currently waiting for SDG&E to install the electric meter in order to power the festoon lighting, after which a lighting ceremony is planned.

Phase II of the Grand Vision Plan will support outdoor dining and walkability by widening the sidewalk on both sides of Grand Avenue from Maple Street to Juniper Street and installing railing to separate the permanent outdoor dining areas from the walkway. The Phase II Project will also install a traffic circle at the intersection of Grand Avenue and Broadway.

A request for engineering design proposals for Phase II of the Grand Vision Plan was posted on June 15, 2022. Four (4) proposals were received on July 14, 2022. Staff from Economic Development and Engineering Services evaluated the proposals against criteria including the approach and project scope; team qualifications; experience from similar projects; and schedule. The proposal provided by Kimley-Horn and Associates, Inc. (Kimley-Horn) was ranked highest as providing the most experienced and best qualified consultant team. Kimley-Horn has extensive experience in the engineering design of street improvements and traffic circles. Previously, Kimley-Horn has completed SANDAG’s North Park Mid-City Bikeway Project which included thirty-two neighborhood traffic circles and eight (8) mini-roundabouts. Kimley-Horn has also successfully worked with the City to develop the Grand Vision Plan which was



# CITY of ESCONDIDO

## STAFF REPORT

approved by City Council in 2018 and Kimley-Horn performed the engineering design of the Phase I Project in 2021. The proposal provided by Kimley-Horn also represents excellent value for the City as it is \$88,000 less than the estimated cost of services of \$450,000.

The consultant team will design the Phase II improvements to be consistent with the Phase I improvements, the approved Grand Vision Plan and Specific Alignment Plan as shown at the webpage below.

<https://www.escondido.org/Data/Sites/1/media/GrandAveVisionPlan/9.29.21SpecificAlignmentPlanforGrandAvenue.pdf>

As part of their scope of work, Kimley-Horn will work with the City to conduct up to three (3) public meetings with stakeholders, businesses, and the community during the design process. Engineering design of the Grand Avenue Vision Phase II Project will begin immediately upon approval of this consulting agreement and be completed by mid-2023. The schedule and phasing of construction will be determined during the design phase based on the availability of materials and desired schedule after public outreach.

### RESOLUTIONS

1. Resolution No. 2022-122
2. Resolution No. 2022-122 – Exhibit “A”

## RESOLUTION NO. 2022-122

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, A CONSULTING SERVICES AGREEMENT WITH KIMLEY-HORN & ASSOCIATES, INC. FOR THE GRAND AVENUE VISION PHASE II PROJECT

WHEREAS, the City Council has allocated funding in the adopted Capital Improvement Program Budget for the Grand Avenue Vision Phase II Project ("Project"); and

WHEREAS, a request for engineering design proposals for the Project was posted on June 12, 2022, and four proposals were received on July 14, 2022.

WHEREAS, upon evaluation of all of the proposals received, Kimley-Horn and Associates, Inc. was selected as the most qualified consultant.

WHEREAS, the City Council desires at this time and deems it to be in the best public interest to approve a Consulting Services Agreement with Kimley-Horn and Associates, Inc. for engineering design of the Project.

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

1. That the above recitations are true.
2. That Mayor is authorized to execute, on behalf of the City, a Consulting Services Agreement with Kimley-Horn and Associates Inc. for engineering design of the Project in the amount of \$362,500, 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  
CONSULTING AGREEMENT

This Consulting 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: Jonathan Schauble  
(760) 839-4072  
("CITY")

And: KIMLEY-HORN AND ASSOCIATES, INC.  
a North Carolina corporation  
401 B St., Suite 600  
San Diego, CA 92101  
Attn: Mark Araujo  
619-744-0177  
("CONSULTANT").

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

WHEREAS, the CITY has determined that it is in the CITY’s best interest to retain the professional services of a consultant to perform engineering design of the Grand Avenue Vision Phase II Project;

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

WHEREAS, the CITY and CONSULTANT desire to enter into this Agreement for the performance of the Services described herein.

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

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

2. Compensation. In exchange for CONSULTANT's completion of the Services, the CITY shall pay, and CONSULTANT shall accept in full, an amount not to exceed the sum of **\$362,500**. CONSULTANT shall be compensated only for performance of the Services described in this Agreement. No compensation shall be provided for any other work or services without the CITY's prior written consent. If this Agreement is amended at any time, additional compensation of CONSULTANT contained in any subsequent amendments shall not exceed a cumulative total of 25% of the maximum payment provided for in this Section 2, unless approved by resolution of the City Council.
3. Performance. CONSULTANT shall faithfully perform the Services in a proficient manner, to the satisfaction of the CITY, and in accord with the terms of this Agreement. CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other information furnished by CONSULTANT pursuant to this Agreement, except that CONSULTANT shall not be responsible for the accuracy of information supplied by the CITY.
4. Personnel. The performance of the Services by certain professionals is significant to the CITY. As such, CONSULTANT shall only assign the persons listed on Attachment "B", attached to this Agreement and incorporated herein by this reference ("Personnel List"), to perform the Services. CONSULTANT shall not add or remove persons from the Personnel List without the City's prior written consent. If CONSULTANT has not designated a person to perform a component of the Services, CONSULTANT shall not assign such component of the Services to a person without obtaining the City's prior written consent. CONSULTANT shall not subcontract any component of the Services without obtaining the City's prior written consent.
5. Termination. The Parties may mutually terminate this Agreement through a writing signed by both Parties. The CITY may terminate this Agreement for any reason upon providing CONSULTANT with 10 days' advance written notice. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of any notice of termination. If the CITY terminates this Agreement due to no fault or failure of performance by CONSULTANT, then CONSULTANT shall be compensated based on the work satisfactorily performed at the time of such termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the Services.
6. City Property. All original documents, drawings, electronic media, and other materials prepared by CONSULTANT pursuant to this Agreement immediately become the exclusive property of the CITY, and shall not be used by CONSULTANT for any other purpose without the CITY's prior written consent.
7. Insurance Requirements.
  - a. CONSULTANT shall procure and maintain, at its own cost, during the entire term of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services, and the results of such work, by CONSULTANT, its agents, representatives, employees, or subcontractors. Insurance coverage shall be at least as broad as the following:
    - (1) *Commercial General Liability.* Insurance Services Office ("ISO") Form CG 00 01 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 general aggregate.
    - (2) *Automobile Liability.* ISO Form CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage, unless waived by the CITY and approved in writing by the CITY's Risk and Safety Division.

- (3) *Workers' Compensation.* Worker's Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
  - (4) *Professional Liability (Errors and Omissions).* Professional Liability (Errors and Omissions) appropriate to CONSULTANT's profession, with limits no less than \$2,000,000 per occurrence or claim and \$2,000,000 aggregate.
  - (5) If CONSULTANT maintains broader coverage and/or higher limits than the minimums otherwise required by this Agreement, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by CONSULTANT.
- b. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:
- (1) *Acceptability of Insurers.* Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A-: FSC VII, or as approved by the CITY.
  - (2) *Additional Insured Status.* Both the Commercial General Liability and the Automobile Liability policies must name the CITY (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of *both* CG 20 10, CG 20 26, CG 20 33, or CG 20 38, *and* CG 20 37 if a later edition is used. The Automobile Liability endorsement shall be at least as broad as ISO Form CA 20 01.
  - (3) *Primary Coverage.* CONSULTANT's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the CITY, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, officers, agents, employees, or volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.
  - (4) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.
  - (5) *Subcontractors.* If applicable, CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated within this Agreement, and CONSULTANT shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.
  - (6) *Waiver of Subrogation.* CONSULTANT hereby grants to the CITY a waiver of any right to subrogation that any insurer of CONSULTANT may acquire against the CITY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this subsection shall apply regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Agreement shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONSULTANT, its agents, representatives, employees, and subcontractors.
  - (7) *Self-Insurance.* CONSULTANT may, with the CITY's prior written consent, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-insurance. CONSULTANT shall only be permitted to utilize such self-insurance if, in the opinion of the CITY, CONSULTANT's (i) net worth and (ii) reserves for payment of claims of liability against CONSULTANT are sufficient to adequately compensate for the lack of



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

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

- c. *Verification of Coverage.* At the time CONSULTANT executes this Agreement, CONSULTANT shall provide the CITY with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting the insurance coverage required by this Agreement), which shall meet all requirements under this Agreement. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Agreement, at any time.
- d. *Special Risks or Circumstances.* The CITY reserves the right, at any point during the term of this Agreement, to modify the insurance requirements in this Agreement, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- e. *No Limitation of Obligations.* The insurance requirements in this Agreement, including the types and limits of insurance coverage CONSULTANT must maintain, and any approval of such insurance by the CITY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant to this Agreement, including but not limited to any provisions in this Agreement concerning indemnification.
- f. Failure to comply with any of the insurance requirements in this Agreement, including, but not limited to, a lapse in any required insurance coverage during the term of this Agreement, shall be a material breach of this Agreement. In the event that CONSULTANT fails to comply with any such insurance requirements in this Agreement, in addition to any other remedies the CITY may have, the CITY may, at its sole option, (i) immediately terminate this Agreement; or (ii) order CONSULTANT to stop work under this Agreement and/or withhold any payment that becomes due to CONSULTANT until CONSULTANT demonstrates compliance with the insurance requirements in this Agreement.

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

- a. CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "Claims"), of every nature caused by, arising out of, or in connection with CONSULTANT's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY, and only to the extent such Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT. Further, in no event shall the cost to defend charged to the CONSULTANT exceed the CONSULTANT's proportionate percentage of fault.
- b. CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all Claims caused by, arising under, or resulting from any violation, or claim of violation, of the San Diego Municipal Storm Water Permit (Order No. R9-2013-0001, as amended) of the California Regional Water Quality Control Board, Region 9, San

Diego, that the CITY might suffer, incur, or become subject to by reason of, or occurring as a result of, or allegedly caused by, any work performed pursuant to this Agreement.

c. All terms and provisions within this Section 8 shall survive the termination of this Agreement.

9. Anti-Assignment Clause. Because the CITY has relied on the particular skills of CONSULTANT in entering into this Agreement, CONSULTANT shall not assign, delegate, subcontract, or otherwise transfer any duty or right under this Agreement, including as to any portion of the Services, without the CITY's prior written consent. Any purported assignment, delegation, subcontract, or other transfer made without the CITY's consent shall be void and ineffective. Unless CONSULTANT assigns this entire Agreement, including all rights and duties herein, to a third party with the CITY's prior written consent, CONSULTANT shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.
10. Attorney's Fees and Costs. In any action to enforce the terms and conditions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs.
11. Independent Contractor. CONSULTANT is an independent contractor, and no agency or employment relationship is created by the execution of this Agreement.
12. Amendment. This Agreement shall not be amended except in a writing signed by the CITY and CONSULTANT.
13. Merger Clause. This Agreement, together with its attachments or other documents described or incorporated herein, if any, constitutes the entire agreement and understanding of the CITY and CONSULTANT concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. In the event of any conflict between the provisions of this Agreement and any of its attachments or related documents, if any, the provisions of this Agreement shall prevail.
14. Anti-Waiver Clause. None of the provisions of this Agreement shall be waived by the CITY because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived by the CITY, in whole or in part.
15. Severability. This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.
16. Governing Law. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Venue for any action arising from this Agreement shall be conducted only in the state or federal courts of San Diego County, California.
17. Counterparts. This Agreement may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement by electronic means, including an attachment to an email, shall be effective as delivery of an executed original. The Agreement on file with the City is the copy of the Agreement that shall take precedence if any differences exist between or among copies or counterparts of the Agreement.
18. Provisions Cumulative. The foregoing provisions are cumulative to, in addition to, and not in limitation of any other rights or remedies available to the CITY.

19. Notice. Any statements, communications, or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated herein, and the CITY and CONSULTANT shall promptly provide the other Party with notice of any changes to such contact information.
20. Business License. CONSULTANT shall obtain a City of Escondido Business License prior to execution of this Agreement and shall maintain such Business License throughout the term of this Agreement.
21. Compliance with Laws, Permits, and Licenses. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements in effect during the term of this Agreement. CONSULTANT shall obtain any and all permits, licenses, and other authorizations necessary to perform the Services. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
22. Prevailing Wages. If applicable, pursuant to California Labor Code section 1770 et seq., CONSULTANT agrees that a prevailing rate and scale of wages, in accordance with applicable laws, shall be paid in performing this Agreement. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements pertaining to the payment of prevailing wages. The prevailing rate and scale to be paid shall be the same as the applicable "General Prevailing Wage Determination" approved by the Department of Industrial Relations as of the Effective Date of this Agreement, which are available online at <http://www.dir.ca.gov/oprl/dprevwagedetermination.htm> and incorporated into this Agreement by this reference. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
23. Immigration Reform and Control Act of 1986. CONSULTANT shall keep itself informed of and shall comply with the Immigration Reform and Control Act of 1986 ("IRCA"). CONSULTANT represents and warrants that all of its employees and the employees of any subcontractor retained by CONSULTANT who perform any of the Services under this Agreement, are and will be authorized to perform the Services in full compliance with the IRCA. CONSULTANT affirms that as a licensed contractor and employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will perform the Services. CONSULTANT agrees to comply with the IRCA before commencing any Services, and continuously throughout the performance of the Services and the term of this Agreement.
24. Effective Date. Unless a different date is provided in this Agreement, the effective date of this Agreement shall be the latest date of execution set forth by the names of the signatories below.

(SIGNATURE PAGE FOLLOWS)

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

CITY OF ESCONDIDO

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

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

KIMLEY-HORN AND ASSOCIATES, 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

Kimley-Horn and Associates, Inc., a North Carolina corporation (“Consultant”), will provide the City of Escondido, a California municipal corporation (“City”), with consulting engineering services related to the City’s Grand Avenue Vision Phase II Project (“Project”).

### B. Location

The Consultant will provide services on Grand Avenue from Maple Street to Juniper Street with some striping modifications which may extend east to Ivy Street.

### C. Services

Consultant shall provide the services as specified in the Proposal for Grand Avenue Vision Project – Phase II, dated August 26, 2022 and attached hereto, which services shall include the following:

1. Engineering Design Services
  - a. Project administration
  - b. Survey, base mapping and field verification
  - c. Preliminary engineering
  - d. Stakeholder engagement meetings (up to 3)
  - e. PS&E development through final construction bid documents
2. Construction Support Services
  - a. Archaeological monitoring
  - b. Bid support
  - c. Construction support; including RFI responses and submittal reviews
  - d. As-Built engineering drawings

Services shall be performed only by those persons listed in the Personnel List attached hereto as Exhibit B.

### D. Scheduling

Engineering is expected to begin in September 2022. Design is expected to be completed by May 1, 2023. Construction could begin in 2023. Consultant has provided a tentative design schedule as part of their proposal.

### E. Contract Price and Payment Terms

The contract price of this Consulting Agreement shall not exceed **\$362,500**. Consultant shall submit monthly invoices to the City. Invoices shall describe the work accomplished in the pay period and detail the hours worked by each staff person. The City shall pay Consultant for invoiced services within 30 days of receipt of a complete and accurate invoice. Transportation costs and miscellaneous expenses shall not exceed the expenses line item in the proposal.

### F. Term

The term of this Third Amendment shall be from the Effective Date of this Consulting Agreement through **June 30, 2024**.

## ATTACHMENT "B" Personnel List

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

Name	Title	Email	Company
Mark Araujo	Project Manager	mark.araujo@kimley-horn.com	Kimley-Horn
Dennis Landaal	Principal-in-charge	dennis.landaal@kimley-horn.com	Kimley-Horn
Kirk Ammerman	Constructability	kirk.ammerman@kimley-horn.com	Kimley-Horn
Megan Ulery	QA/QC	megan.ulery@kimley-horn.com	Kimley-Horn
Randall Kopff	Landscape Architect	randall.kopff@kimley-horn.com	Kimley-Horn
Sean Houck	Roundabout Designer	sean.houck@kimley-horn.com	Kimley-Horn
Naomi Willis	Roundabout Designer	naomi.willis@kimley-horn.com	Kimley-Horn
Sam McWhorter	Wet Utilities Lead	sam.mcwhorter@kimley-horn.com	Kimley-Horn
Renee Chuang	Drainage Designer	renee.chuang@kimley-horn.com	Kimley-Horn
Rich Lucera	Drainage Lead	rich.lucera@kimley-horn.com	Kimley-Horn
Matt Horton	Public Outreach Lead	matt.horton@kimley-horn.com	Kimley-Horn
Jon Collins	Traffic Lead	jon.collins@kimley-horn.com	Kimley-Horn
Joe Shultz	Traffic Designer	joe.shultz@kimley-horn.com	Kimley-Horn
Dalia Ansari	Traffic Designer	dalia.ansari@kimley-horn.com	Kimley-Horn
Mike Colombo	Electrical Lead	mike.colombo@kimley-horn.com	Kimley-Horn
Jackson Modrak	Electrical Designer	jackson.modrak@kimley-horn.com	Kimley-Horn
Melanie Duenas	Analyst	melanie.duenas@kimley-horn.com	Kimley-Horn
Manny Guzman	Analyst	manny.guzman@kimley-horn.com	Kimley-Horn
Madeline David	Analyst	madeline.david@kimley-horn.com	Kimley-Horn
Israa Khan	Analyst	israa.khan@kimley-horn.com	Kimley-Horn
Jillian Arthur	Analyst	jillian.arthur@kimley-horn.com	Kimley-Horn
Cliff Selbert	Branding Identity Lead	cselbert@selbertperkins.com	Selbert Perkins
Dominique Logan	Branding Identity	dlogan@selbertperkins.com	Selbert Perkins
Stacie Wilson	Environ./Cultural Lead	StacieW@helixepi.com	HELIX
Nick Loera	Potholing	NickL@CBelow.com	C-Below
Mickey Aguirre	Survey	mickey@aguirre-inc.com	Aguirre & Assoc.
Mike Havener	Survey Lead	mike@aguirre-inc.com	Aguirre & Assoc.

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

Acknowledged by:



Date: 8/26/2022

\_\_\_\_\_  
 Mark Araujo, Project Manager



August 26, 2022

Jonathan Schauble, PE  
Principal Engineer  
201 North Broadway  
Escondido, CA 92025

Re: **GRAND AVENUE VISION PROJECT – PHASE II**

Dear Jonathan Schauble,

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) is pleased to submit this letter agreement (the “Agreement”) to the City of Escondido (“City”) for providing Civil Design Plans, Specifications, and Estimate (“PS&E”) for the Grand Avenue Vision Project – Phase II.

**PROJECT UNDERSTANDING**

The City of Escondido accepted funding from the American Rescue Plan Act of 2021 with a portion of the funding being allocated to addressing negative economic impacts caused by Covid-19 pandemic. \$5M of the funding will be available to build upon the grant-funded Grand Avenue Vision Plan - Phase I improvements by providing permanent expansion of outdoor dining and sidewalk areas along Grand Avenue between Maple Street to Juniper Street. The goal of the Vision Plan is to build on the identity of Grand Avenue as a charming historic street by improving the comfort and experience of its patrons, circulation, parking, and visibility to local businesses. This phase of improvements will include the design of all three roundabouts at Maple Street, Broadway and Kalmia Street. Based on the available funding the roundabout at Broadway will be constructed as part of Phase II and the remaining roundabouts will be constructed as part of Phase III once funding becomes available. It is assumed that the sidewalk expansions design features will match the improvements in the Phase I. Additional amenities including a kiosk and gateway signs will be included as part of this phase.

AutoCAD 2022 will be utilized for all base files and deliverables within this scope. The files can be saved down to an earlier version (AutoCAD 2015), if requested by the Client.

Kimley-Horn will contract with the following sub consultants:

- Aguirre & Associates, Inc – Topographic Survey
- Selbert Perking Design – Branding Identity
- Helix Environmental Planning, Inc. – Cultural Resources Monitoring
- C-Below – Dry Utility Potholing

**SCOPE OF SERVICES**

Kimley-Horn will provide the services specifically set forth below.



## TASK 1: PROJECT ADMINISTRATION, MEETINGS & COORDINATION

### Task 1.1: Project Administration

Kimley-Horn will provide project management and coordination with subconsultants. We will review sub-consultant team contracts, deliverables and prevailing wage monitoring and compliance during the subconsultants prevailing wage activities for the project. Kimley-Horn will develop a project schedule at the start of the project and will review and update it monthly. Kimley-Horn will track and manage the scope of work versus the agreed upon schedule. We anticipate the total duration of this scope of work (Tasks 1-7) to be 8 months.

#### Deliverables

- One electronic copy of the monthly invoices in accordance with contract requirements (PDF Format)
- One electronic copy of the project schedule (PDF Format)

#### Assumptions

- We estimate the total duration of this task and project to be 8 months.

### Task 1.2: Project Meetings and Coordination

Kimley-Horn will coordinate with the City throughout the duration of activities identified in this scope of services. Coordination could include phone calls and/or site and office meetings to discuss specific project related items. Kimley-Horn estimates one 1) monthly in-person/virtual meeting with City Staff, a total of 8 meetings for the duration of the project. It is assumed that each meeting will be one (1) hour and require up to one (1) hour of preparation and will have up to two (2) Kimley-Horn team members in attendance.

Kimley-Horn will maintain an action item matrix that will be used to track action items, responsible parties identified throughout the duration of the project. The action item matrix will be presented at each bi-weekly meeting. The action item matrix will be kept up to date and will be provided to the City upon request.

#### Deliverables

- One electronic copy of the meeting minutes (PDF Format)
- One electronic copy of the action item matrix (PDF Format)

### Task 1.3: Project Initiation and Kick-Off

Kimley-Horn will facilitate a project kick-off meeting at the City of Escondido to discuss project schedule, design objectives, budget and deliverables. The City shall provide direction on key design preferences, site constraints and any issues prior to starting the design process.

Kimley-Horn will present the project schedule as detailed in the scope. The outlined process will be organized and mapped to show the relationship between tasks to allow effective and timely planning of tasks, designate key project milestones and deliverable dates for each phase.

The project lines of communication will be established between the Kimley-Horn and the City of Escondido. The level of involvement and roles for each task and phase will also be identified.

#### Deliverables

- One electronic copy of the project schedule (PDF Format)





## TASK 2: SURVEY, UTILITY BASE MAPPING AND FIELD VERIFICATION

### Task 2.1: Topographic Survey

The field survey will include roadway sections every 25-ft from top of curb to top of curb, intersection survey, curb returns, top of curb, flowline, gutter lip, grade breaks, pedestrian ramps, concrete pads, limits of asphalt concrete and other changes in material. At the location where the sidewalk will be extended, additional focused survey will be captured including survey of existing building edges concrete band, building corners, street lights, trees, tree grates, railing, posts, site furniture, existing wet and dry utilities, all above ground appurtenances (valves, meters, hose bibs, manholes, cleanouts, handholes, risers, pull boxes, vaults, transformers, etc.) within the limits of work (outlined in the project understanding). Field work will include dipping up to three (3) gravity structures (storm drains).

#### Deliverables

- Topographic Survey File (AutoCAD 2022).

#### Assumptions

- Topographic Survey support beyond the scope described herein will be considered an additional service.
- Record of Survey to document pre-construction survey monuments is not included as part of this scope.

### Task 2.2: Utility Base Mapping

The Kimley-Horn team will obtain readily available wet and dry as-builts and utility facility maps from the City and utility providers operating within the project area to update existing utility base map used for the Phase I design. Kimley-Horn will send utility request letters and create a matrix to file existing dry utility information throughout the project site. Known utility types, sizes, and materials will be added to the utility base map in an AutoCAD file for distribution to the design team. Utility infrastructure research will be limited to the project limits described in the project understanding

#### Deliverables

- Utility Base Map (AutoCAD 2018).
- Facility Maps obtained from Utility Providers available upon request.
- Utility notification letters (and responses) available upon request.

#### Assumptions

- City to provide as-builts records.
- Utility request letters will be on City letter head.
- Utility companies may take up to two (2) months to respond to As-Built request letters.
- Profiles of existing pipes are excluded from the dry utility base mapping effort. AutoCAD drawings shall depict plan information only.
- It is possible that existing utilities that have been abandoned may not be properly indicate in As- Built information. There are instances that fiber optics lines or abandoned storm lines are discovered during construction. The team will map pertinent infrastructure on records files obtained.



**Task 2.3: Field Verification**

Two Kimley-Horn staff will field check the base map and utility locations based on field conditions. Field notes and pictures will be taken to supplement design and document discrepancies. Discrepancies will be addressed.

**Deliverables**

- Site photos and field notes available upon request.

**TASK 3: 30% PRELIMINARY ENGINEERING**

**Task 3.1: Concept Refinement**

Kimley-Horn will revise the preliminary concept drawing previously developed as part of the Phase I project based upon the description in the RFP and input from City staff at the project initiation meeting. Kimley-Horn will research and provide temporary alternatives for the roundabouts at Maple Street and Kalmia Street for the City to review (up to two alternatives). Striping revisions east of Grand Avenue between Juniper Street and Ivy Street will be included as part of this effort. Kimley-Horn assumes that sidewalk widening will match the Grand Avenue Phase I and that the design will be based on previously established design parameters vetted as part of the Grand Avenue Visioning process. Variations of sidewalk widening may be considered based on existing business needs identified in recent surveys performed by the City. These variations will be captured in the concept refinement phase. Kimley-Horn assumes up to (up to two alternatives).

**Task 3.2: 30% Preliminary Engineering Drawings**

Once the concept has been approved by the City, Kimley-Horn will prepare 30% preliminary engineering drawings and design check calculations to obtain geometric approval of the refined concept developed under Task 3.1. Preliminary engineering plans are assumed to extend to the point where the improvements conform with existing street infrastructure.

Preliminary engineering drawings will be prepared to identify the horizontal design limits of critical geometric elements such as curb geometry, lane widths, channelization, lane transitions, pavement markings, sightlines, and conform conditions to the existing street infrastructure.

Design checks specific to vehicles navigating roundabout intersections will be calculated and documented in a technical memorandum. Roundabout curb geometry and lane markings will be adjusted to achieve target design values for estimated speeds, design vehicles, and sight lines. If site conditions or other constraints require a deviation from guidance described in NCHRP Report 672, the deviation will be identified in the technical memorandum along with a description why the deviation is being requested.

The following design checks will be evaluated for vehicles:

- Fastest path estimation for R1 through R5
- Swept path and tire tracking for design vehicles (Assume up to two design vehicles)
- Intersection angle of visibility
- Intersection Sight Distance (Assume  $t_c=5.0$  seconds)
- Stopping Sight Distance



The design checks and roundabout operations will be summarized and documented in a Roundabout Performance Memorandum that will be submitted to the City with the 30% Preliminary Engineering Drawings.

### Task 3.3: Project Kiosk and Gateway Sign Concept Development

The Kimley-Horn team will provide up to three (3) kiosks and gateway sign types for the City's input and selection. The following tasks will be performed as part of this task.

- Develop conceptual approaches to the digital kiosk and gateway. Design approaches will include visual approach, dimensions, font sizes and styles, symbols, colors, and preliminary materials for both sign types.
- Present a preliminary conceptual design for all elements for the City's selection.
- Develop concept design package to illustrate the recommended type face, color, the use of the appropriate identity elements, message layout template and the general overall appearance of the digital kiosk and gateway.
- Present programming information alternatives for City review and approval.

### Task 3.4: 30% Opinion of Probable Construction Cost

Kimley-Horn shall prepare an OPCC for the preferred 30% design. The OPCC will be presented to show the proposed bid items, unit prices, contingencies, and an overall cost.

### Task 3.5: Potholing

The Kimley-Horn team will perform pothole investigations for utilities determined to be in potential conflict with the proposed improvements, up to 5 potholes. A Pothole Data Report identifying the location, depth, material and size of utilities in question will be developed and used for design considerations.

#### Deliverables

- One electronic copy of the final Concept Plan (PDF Format).
- One electronic copy of the Preliminary Engineering Drawings (PDF Format).
- One electronic copy of Roundabout Performance Memorandum (PDF Format)
- One electronic copy of the 30% OPCC.
- One electronic copy of the Kiosk and Gateway Sign Conceptual Design (PDF Format).
- One electronic copy of the Pothole Report (PDF Format)

## TASK 4: STAKEHOLDER COORDINATION

### Task 4.1: Public Outreach and Coordination

Kimley-Horn will facilitate up to three (3) stakeholder meetings with the community and merchant/stakeholder working groups. It is anticipated that parking, fences, schedule, construction operations and construction phasing will be covered as part of these meetings, including other topics as necessary.

It is assumed that each meeting will be one (1) hour and require up to two (2) hours of preparation and will have up to two (2) Kimley-Horn team members in attendance.

#### Deliverables

- Electronic copy of the meeting minutes (PDF Format).



Photo documentation of current site conditions and project milestone (such as workshops, community meetings, presentation to community groups).

**Assumptions**

- City to secure meeting location.
- City to coordinate advertising and invites for the community meetings.
- City responsible for posting information on the City website, if desired.

**Task 5: 60% PLANS, SPECIFICATIONS AND OPINION OF PROBABLE CONSTRUCTION COST (PS&E)**

**Task 5.1: 60% Plans**

Kimley-Horn will prepare 60% plans based on the approval of Task 3 for City’s review and comment. The design will be based on the following standards: City of Escondido Design Standards, San Diego Regional Standards, San Diego County Design Standards, Caltrans Highway Design Manual and the 2014 California Manual on Uniform Traffic Control Devices (CA-MUTCD). Kimley-Horn’s design will consist of the following sheets:

Sheet Description		No. of Sheets	Scale
1	Title Sheet	1	NTS
2	Legend, Abbreviations and General Notes Sheets	2	NTS
3	Demolition Plans	2	1’ = 20’
4	Sidewalk Improvement Plans	3	1’ = 20’
5	Roundabout Improvement Plans	3	1’ = 10’
6	Sidewalk Horizontal & Vertical Control Plans	6	1’ = 10’
7	Roundabout Horizontal & Vertical Control Plans	9	1’ = 10’
9	Drainage & BMP Plans	2	1’ = 20’
10	Construction Details	2	NTS
11	Urban Design & Landscape Plans and Details	5	1’ = 20’
12	Irrigation Plans and Details	6	1’ = 20’
13	Sign, Pavement Marking & Plans, Notes and Details	3	1’ = 20’
14	*Kiosk & Gateway Sign Plans and Details		
15	Electrical Plans and Details	5	1’ = 20’
Total Sheets		49	

\*Not included in total sheet count.

**Assumptions**

- Geotechnical Investigation for infiltration testing and pavement design was performed as part of Phase I and recommendations provided will be used for this phase of work.
- Drainage Analysis was previously completed to factor in all phases of the Grand Avenue Vision and therefore a Drainage Report will not be necessary. Should revisions be deemed necessary, this effort will be considered an additional service.

**Task 5.2: Standard Special Provision/Specifications**



Kimley-Horn shall prepare standard special provisions/specifications outline for the 60% submittal. The special provisions shall refer to the 2021 standard specifications for Public Works Construction (Greenbook) and amended by the City’s Standard General Conditions and General Provisions, as necessary. Additional source documents may be used by Kimley-Horn to cover urban design and landscape, irrigation, and other project features not covered by the City Standard General Conditions and General Provisions or Greenbook.

**Task 5.3: Opinion of Probable Construction Cost (OPCC)**

Kimley-Horn shall prepare an OPCC for the Partial 60% submittal that will include cost identified in Task 3 (30% Preliminary Engineering). The OPCC will be presented to show the proposed bid items, unit prices, contingencies, and an overall cost.

**Task 5.4: Quality Control/Assurances**

Kimley-Horn will perform an on-going quality assurance/quality control (QA/QC) review of documents prepared under this task.

**Deliverables**

- One electronic copy of the 60% Plans (PDF Format).
- One electronic copy of the OPCC (PDF Format)
- One electronic copy of the 60% Comment Resolution Form (PDF Format)

**Assumptions**

- City will provide one (1) set of consolidated review comments.
- Adequate water pressure will be available for the specified performance of the irrigation system.
- Pressure readings and/or pump station design is not considered a part of this scope of work.

**Task 6: 90% PLANS, SPECIFICATIONS AND OPINION OF PROBABLE CONSTRUCTION COST (PS&E)**

**Task 6.1: 90% Plans**

After the City has concluded their review of the 60% PS&E Submittal, Kimley-Horn will provide written responses to the City’s single set of consolidated, non-conflicting comments. Kimley-Horn will attend one meeting with the City to review comments and resolve any outstanding issues. Kimley-Horn will prepare a 90% PS&E package based on the final horizontal layout developed in Task 3.1.

**Task 6.2: Standard Special Provision/Specifications**

Kimley-Horn shall prepare standard special provisions/specifications for the 60% submittal. The special provisions shall refer to the 2021 standard specifications for Public Works Construction (Greenbook) and amended by the City’s Standard General Conditions and General Provisions, as necessary. Additional source documents may be used by Kimley-Horn to cover urban design and landscape, irrigation, and other project features not covered by the City Standard General Conditions and General Provisions or Greenbook.

**Task 6.3: Opinion of Probable Construction Cost (OPCC)**

Kimley-Horn will revise the projects OPCC based on the City’s comments and revisions made to the plans.



**Task 6.4: Quality Control/ Assurances**

Kimley-Horn will perform an on-going quality assurance/quality control (QA/QC) review of documents prepared under this task.

**Task 6.5: Comment Resolution Meeting**

After the City has concluded their review of the 90% PS&E package, Kimley-Horn will attend one meeting with the City to review comments and resolve remaining issues. Kimley-Horn will provide written responses to the consolidated set of comments one day prior to the comment resolution meeting.

**Deliverables**

- One electronic copy of the 90% Plans (PDF Format).
- Seven (7) hard copies of the 90% Plans.
- One electronic copy of the OPCC (PDF Format).
- Three (3) hard copies of the OPCC.
- One electronic copy of the Standard Special Provisions/Specifications (PDF Format).
- Three (3) hard copies of the Standard Special Provisions/Specifications.
- One electronic copy of the 90% Comment Resolution (PDF Format).

**Assumptions**

- City will provide one (1) set of consolidated review comments.

**TASK 7: 100% PLANS, TECHNICAL SPECIFICATIONS AND ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST (PS&E)**

**Task 7.1: 100% Plans**

Kimley-Horn will finalize the 100% plan sheets based on direction agreed upon during 90% comment resolution meeting.

**Task 7.2: Standard Special Provision/Specifications**

Kimley-Horn will finalize the 100% standard special provisions/specification based on direction agreed upon during 90% comment resolution meeting.

**Task 7.3: Opinion of Probable Construction Cost**

Kimley-Horn will finalize the 100% OPCC based on direction agreed upon during 90% comment resolution meeting.

**Task 7.4: Quality Control/ Assurances**

Kimley-Horn will perform an on-going quality assurance/quality control (QA/QC) review of documents prepared under this task.

**Task 7.5: Project Preparation and Final Mylar Submittal**

Kimley-Horn will prepare the final PS&E revisions and printing of mylars for final submittal. This effort includes separating the roundabout improvements at Maple Street and Kalmia Street into a separate set from the rest of the improvements as identified in the RFP.



**Deliverables**

- One Mylar copy of full-size plans (24"x36") (PH II Improvements including Broadway).
- One electronic copy of the 100% Plans (Maple Street and Kalmia Street) (PDF Format).
- One electronic copy of the 100% OPCC (PH II Improvements including Broadway) (PDF Format).
- One electronic copy Technical Specifications (Word Document).
- 100% Comment Resolution (PDF Format).
- AutoCAD Design Files (2022).

**TASK 8: BID AND CONSTRUCTION PHASE SUPPORT SERVICES**

**Task 8.1: Bid and Construction Support**

The duration of the bidding and construction phase is assumed to be 12 months. Kimley-Horn will provide assistance to the City with the bidding documents, bidding and construction phase of the project to respond to Requests for Clarification and questions from bidders; prepare contents for addenda to be issued by the City, respond to engineering-related technical questions, prepare revisions to design plans and technical specifications limited to the improvements described above. This task includes review of civil-related material submittals, responding to Requests for Information (“RFI”), meetings and coordination with the City and the Contractor.

**Assumptions**

- Services do not include revising the City approved mylars.
- Task assumes up to 62 hours of effort only. Support services beyond the scope and 62 hours of effort described herein will be considered an additional service.

**Task 8.2: Cultural Resources Monitoring**

The City adopted a Final Mitigated Negative Declaration (MND) and a Mitigation Monitoring and Reporting Program (MMRP) in compliance with the California Environmental Quality Act (CEQA) for the project in 2021 that addressed full implementation of the project (Phase I and Phase II). As such, it is assumed that preparation of subsequent CEQA documentation for the project will not be required. As the project advances through preliminary design, the Kimley-Horn team will review and evaluate the project to

1. Confirm that the conclusions and mitigation measures, as identified in the adopted CEQA documentation, remain applicable.
2. Determine whether the potential exists for the project, at final design, to result in any new significant environmental effects or substantially increase the severity of previously identified significant effects. The Kimley-Horn team will prepare a brief memorandum summarizing the results of this review.

The Kimley-Horn team will provide a cultural resources monitoring program for the project based on the mitigation measures (MM) in the project’s adopted mitigation monitoring and reporting program (MMRP) dated July 2021. Specifically, we will:

1. Prepare a letter of verification from the project archaeologist that confirms the selected Native American monitor(s) are associated with a Traditionally Culturally Affiliated (TCA) Tribe (MM-CUL-2).



2. Provide a qualified archaeologist from HELIX to attend at a pre-grading meeting to explain and coordinate the requirements of the monitoring program with the Native American monitor(s) and General Contractor and any of their on-site subcontractors (MM-CUL-3).
3. Provide a qualified archaeologist to be on site full time during the initial grubbing, site grading, excavation or disturbance of the ground surface (MM-CUL-4). While Native American monitors will be retained directly by the City, we will coordinate the daily project requirements with the Native American monitor(s).

In the event that previously unidentified archaeological or tribal cultural resources are discovered, the qualified archaeologist shall have the authority to temporarily divert or temporarily halt ground disturbance operation within 100 feet of the discovery to allow for the evaluation of potentially significant cultural resources (MM-CUL-5). Any such evaluation shall be carried out in consultation with the City, TCA tribes, and Native American monitor(s). Isolates and clearly non-significant deposits shall be minimally documented in the field and collected so the monitored grading can proceed. Following completion of field monitoring and assuming site evaluation and data recovery are not required, the Kimley-Horn team will prepare a monitoring report for submittal to the City (MM-CUL-10).

The scope assumes eight (8) days of full-time monitoring by an archaeologist. Nine-hour days are assumed for the archaeological monitor to account for drive time and the preparation of daily notes. Cultural resources monitoring is not expected to occur for excavations within the upper portion of the Project that has been disturbed by modern fill (approximately 1-2 feet in depth) and will not be required in cuts into formational material, below cultural layers. While Native American monitors will be retained directly by the City, HELIX will coordinate the daily project requirements with the Native American monitor(s).

In the event that previously unidentified archaeological or tribal cultural resources are discovered, the qualified archaeologist shall have the authority to temporarily divert or temporarily halt ground disturbance operation within 100 feet of the discovery to allow for the evaluation of potentially significant cultural resources (MM-CUL-5). Any such evaluation shall be carried out in consultation with the City, TCA tribes, and Native American monitor(s). Isolates and clearly non-significant deposits shall be minimally documented in the field and collected so the monitored grading can proceed. Following completion of field monitoring and assuming site evaluation and data recovery are not required, the Kimley-Horn team will prepare a monitoring report for submittal to the City (MM-CUL-10).

Per MM-CUL-1, “Prior to the issuance of a grading permit, the Applicant shall enter into a Tribal Cultural Resource Treatment and Monitoring Agreement (also known as a Pre-Excavation Agreement) with a tribe that is traditionally and culturally affiliated with the Project Location (“TCA Tribe”).” The Pre-Excavation Agreement will be negotiated and executed directly between the TCA Tribes and City. Preparation or support related to the Pre-Excavation Agreement is not included in this scope of services.

**Deliverables**

- One electronic copy of a memorandum summarizing the results of review of CEQA compliance.
- One electronic copy of the Cultural Resources Monitoring Report.





**Assumptions**

Costs associated with meetings, focused species surveys, permit preparation and processing, California Environmental Quality Act processing, and/or technical studies and reports (“additional work”) are not included within the scope of services.

The following assumptions and limitations are a material component of this agreement.

- If unanticipated potentially significant cultural material is encountered, it will need to be documented and collected. Additional excavation or other research may be required per MMs-CUL-5, -6 and -7, which may result in additional costs, requiring a contract augment. The scope and cost of additional work would depend on the nature and extent of cultural material encountered. We will notify you promptly if cultural material is encountered.
- This scope assumes that any Native American cultural material recovered will be turned over to the TCA tribes; thus, no curation will be required for this material. If cataloging of such collections is necessary, it will be performed in coordination with the TCA tribes, per MM-CUL-9. If significant historic archaeological material is collected, it will be curated at the San Diego Archaeological Center at additional cost to the Client; the Client will be promptly notified of these costs.

**TASK 9: OPTIONAL TASKS**

**Task 9.1: Boundary Mapping and Supplemental Survey**

The Kimley-Horn team will perform supplemental topographic survey, perform reconnaissance for monuments and prepare R/W base mapping as requested and up to the limit of effort identified in the fee proposal.

**Deliverables**

- One electronic copy the Pothole Report.
- Supplemental topographic survey and boundary mapping (AutoCAD 2022)

**Assumptions**

- After completion of our potholing, the potholes will be surface patched using hot-patch asphalt.
- Traffic control permit fees will be waived.

**INFORMATION PROVIDED BY THE CITY**

Kimley-Horn shall be entitled to rely on the completeness and accuracy of information provided by the City. The City will provide information requested by Kimley-Horn during the project. Information provided by the client will be as follows:

- City will provide Standard General Conditions and General Provisions (Word Document).
- The City will provide all as-built reference construction documents for existing improvements, (wet and dry utilities).



### ADDITIONAL SERVICES

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Bid services and DSDC beyond the effort identified
- Grant support
- SWPPP
- Water Pollution Control Plans
- GIS Services
- Color exhibits and/or rendered Landscape and Hardscape plans, perspectives, and/or elevations
- Construction Phasing Plans
- Franchise utility studies and/or design
- Construction Staking
- Replacement of existing monuments (disturbed during construction)
- Title report research
- Coordination with property owners
- Pressure readings and/or pump station design
- Attendance at Public Hearings and/or preparation of graphics beyond the scope

### SCHEDULE

Kimley-Horn will complete the services contained in Tasks 1 – 7 within 8 months from notice to proceed. Task 8 will be performed once the project is out to bid.

### FEE AND EXPENSES

Kimley-Horn and Subconsultant Fees for the scope of services outlined in Tasks 1 – 9 will be performed on a time and material not to exceed basis of \$265,560 and \$94,436, respectively. For a Grand Total of \$362,500.00 (see Exhibit A).

Fees will be invoiced monthly based upon the percentage of services performed as of the invoice date. Payment will be due within 30 days of the date of the invoice.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions at (619) 744-0177 or [mark.araujo@kimley-horn.com](mailto:mark.araujo@kimley-horn.com).

Very truly yours,

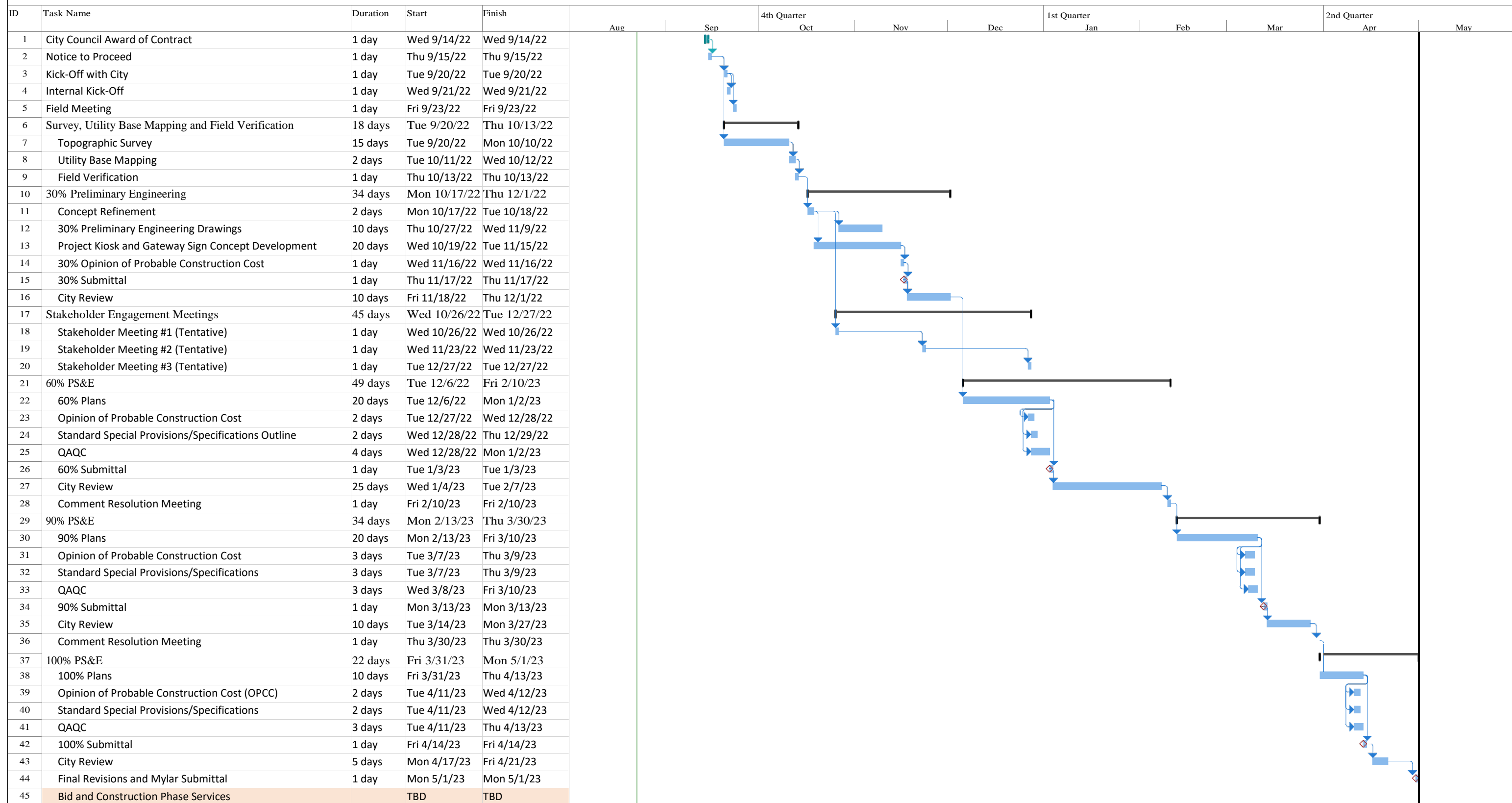
KIMLEY-HORN

Mark Araujo, PE  
Project Manager

Dennis Landaal, PE  
Senior Vice President



GRAND AVENUE VISION IMPROVEMENT PROJECT - PH II



Date: Tue 8/23/22

Task		Project Summary		Manual Task		Start-only		Deadline	
Split		Inactive Task		Duration-only		Finish-only		Progress	
Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
Summary		Inactive Summary		Manual Summary		External Milestone			



# STAFF REPORT

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September 14, 2022  
File Number 0600-10; A-3429

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## SUBJECT

### CONSULTING AGREEMENT FOR THE TREATED WATER INTERCONNECT PROJECT

## DEPARTMENT

Utilities Department, Construction and Engineering Division

## RECOMMENDATION

Request the City Council adopt Resolution No. 2022-120, authorizing the Mayor to execute, on behalf of the City, a Consulting Agreement with Kennedy/Jenks Consultants, Inc., in the amount of \$212,282 for engineering services for the Treated Water Interconnect Project ("Project").

Staff Recommendation: Approval (Utilities: Christopher W. McKinney, Director of Utilities)

Presenter: Angela Morrow, Deputy Director of Utilities

## FISCAL ANALYSIS

Funds for the Consulting Agreement are available in the Water Capital Improvement Project ("CIP") No. 701906.

## PREVIOUS ACTION

None.

## BACKGROUND

The City of Escondido ("City") purchases raw water from the San Diego County Water Authority ("Water Authority") and treats it at the Escondido-Vista Water Treatment Plant. The City does not have any treated water connections to the Water Authority. The Water Authority has informed its customers of a planned shutdown of their raw water deliveries in 2024/2025 to perform required maintenance and has asked member water agencies to plan accordingly. The City has several small treated water interconnections with the Rincon del Diablo Municipal Water District ("Rincon"), however these existing interconnections are not large enough to provide the City's water demands during the Water Authority's extended raw water shutdown.

The proposed Project includes the upsizing and replacement of an existing underground potable water interconnect so that the City will receive the needed treated water from Rincon during the Water Authority's scheduled shutdown. While the Water Authority's raw water shutdown is anticipated to occur



# CITY of ESCONDIDO

## STAFF REPORT

during cooler months with minimum water demands, the shutdown could last up to five months, extending the shutdown into warmer months with higher water demands. City staff have researched alternate ways to obtain raw or treated water, and have determined that the most economical way to supplement its water supply during the Water Authority shutdown is to upgrade an existing potable water interconnection with Rincon.

The City currently has a 20-inch potable water interconnect with Rincon located at the intersection of Sheridan Avenue and Ash Street. Rincon receives treated water from the Water Authority, which will not be affected by the scheduled raw water shutdown. Rincon staff have indicated that they could provide up to 26 million gallons per day (MGD) of treated potable water to the City; however, the existing interconnect is undersized to handle this amount of flow. The proposed Project includes the replacement of the existing 20-inch interconnect with new 30-inch piping, valves, and flow meter, all of which will be located in a new underground vault. The location of the existing interconnect that will be replaced as a part of this Project is shown below:



The location of the proposed Project is within the public right-of-way. The proposed improvements should minimize environmental and community impacts, while maintaining water service to customers.



# CITY of ESCONDIDO

## STAFF REPORT

A request for proposal was sent to three engineering firms specializing in the design of water and wastewater projects. Proposals were received and reviewed by City staff for responsiveness, understanding of the work, proposed project approach, scope of work, relevant experience, project team, schedule, and proposed fee. Kennedy/Jenks Consultants, Inc. was selected based on their extensive experience with similar projects, proposed project approach, and fee. The scope of work for engineering services includes:

- utility research;
- survey;
- geotechnical investigations;
- potholing; development of detailed engineering plans and specifications;
- cost estimate and construction schedule;
- coordination with the State Water Resources Control Board; and
- bid support services and engineering services during construction as optional, future scope of work.

It is recommended that the contract be awarded to Kennedy/Jenks Consultants, Inc., determined to be the best value proposal.

### RESOLUTIONS

- A. Resolution No. 2022-120
- B. Resolution No. 2022-120 Exhibit "A"

RESOLUTION NO. 2022-120

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, A CONSULTING AGREEMENT WITH KENNEDY/JENKS CONSULTANTS, INC. FOR ENGINEERING SERVICES FOR THE TREATED WATER INTERCONNECT PROJECT

WHEREAS, the City of Escondido (“City”) desires to design the Treated Water Interconnect Project (“Project”); and

WHEREAS, the Project will upsize and replace an existing underground potable water interconnect for the purposes of the City receiving the required treated water from Rincon del Diablo Municipal Water District during San Diego County Water Authority’s scheduled shutdown; and

WHEREAS, City staff solicited proposals from engineering firms specializing in the design of water projects; and

WHEREAS, City staff thoroughly evaluated and ranked the proposals received using weighted criteria to determine the best value proposal; and

WHEREAS, the proposal from Kennedy/Jenks Consultants, Inc. was determined to be the best value proposal; and

WHEREAS, City staff have completed negotiations with Kennedy/Jenks Consultants, Inc., and the Deputy City Manager / Director of Utilities recommends that the Consulting Agreement (“Agreement”) be entered into; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to enter into said Agreement.



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

1. That the above recitations are true.
  
2. That the Mayor and City Council accepts the recommendation of the Deputy City Manager / Director of Utilities.
  
3. That the Mayor is authorized to execute, on behalf of the City, an Agreement with Kennedy/Jenks Consultants, Inc. in substantially the same format as Exhibit "A," which is attached hereto and incorporated by this reference, subject to final approval as to form by the City Attorney.



CITY OF ESCONDIDO  
CONSULTING AGREEMENT

This Consulting 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: Angela Morrow  
760-839-6290 x 7035  
("CITY")

And: Kennedy/Jenks Consultants, Inc.  
9325 Sky Park Court, Suite 300  
San Diego, CA 92123  
Attn: David Harrison  
858-676-7532  
("CONSULTANT").

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

WHEREAS, the CITY has determined that it is in the CITY's best interest to retain the professional services of a consultant to provide detailed design including preparation of construction drawings and specifications for the Treated Water Interconnect Project; and

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

WHEREAS, the CITY and CONSULTANT desire to enter into this Agreement for the performance of the Services described herein.

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

1. Description of Services. CONSULTANT shall furnish all of the Services described in the Scope of Work, which is attached to this Agreement as Attachment "A" and incorporated herein by this reference ("Services").
2. Compensation. In exchange for CONSULTANT's completion of the Services, the CITY shall pay, and CONSULTANT shall accept in full, an amount not to exceed the sum of **\$212,282**.

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

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

- (3) *Workers' Compensation.* Worker's Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
  - (4) *Professional Liability (Errors and Omissions).* Professional Liability (Errors and Omissions) appropriate to CONSULTANT's profession, with limits no less than \$2,000,000 per occurrence or claim and \$2,000,000 aggregate.
  - (5) If CONSULTANT maintains broader coverage and/or higher limits than the minimums otherwise required by this Agreement, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by CONSULTANT.
- b. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:
- (1) *Acceptability of Insurers.* Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A-: FSC VII, or as approved by the CITY.
  - (2) *Additional Insured Status.* Both the Commercial General Liability and the Automobile Liability policies must name the CITY (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of *both* CG 20 10, CG 20 26, CG 20 33, or CG 20 38, *and* CG 20 37 if a later edition is used. The Automobile Liability endorsement shall be at least as broad as ISO Form CA 20 01.
  - (3) *Primary Coverage.* CONSULTANT's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the CITY, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, officers, agents, employees, or volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.
  - (4) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.
  - (5) *Subcontractors.* If applicable, CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated within this Agreement, and CONSULTANT shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.
  - (6) *Waiver of Subrogation.* CONSULTANT hereby grants to the CITY a waiver of any right to subrogation that any insurer of CONSULTANT may acquire against the CITY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this subsection shall apply regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Agreement shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONSULTANT, its agents, representatives, employees, and subcontractors.
  - (7) *Self-Insurance.* CONSULTANT may, with the CITY's prior written consent, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-insurance. CONSULTANT shall only be permitted to utilize such self-insurance if, in the opinion of the CITY, CONSULTANT's (i) net worth and (ii) reserves for payment of claims of liability against CONSULTANT are sufficient to adequately compensate for the lack of

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

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

- c. *Verification of Coverage.* At the time CONSULTANT executes this Agreement, CONSULTANT shall provide the CITY with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting the insurance coverage required by this Agreement), which shall meet all requirements under this Agreement. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Agreement, at any time.
- d. *Special Risks or Circumstances.* The CITY reserves the right, at any point during the term of this Agreement, to modify the insurance requirements in this Agreement, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- e. *No Limitation of Obligations.* The insurance requirements in this Agreement, including the types and limits of insurance coverage CONSULTANT must maintain, and any approval of such insurance by the CITY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant to this Agreement, including but not limited to any provisions in this Agreement concerning indemnification.
- f. Failure to comply with any of the insurance requirements in this Agreement, including, but not limited to, a lapse in any required insurance coverage during the term of this Agreement, shall be a material breach of this Agreement. In the event that CONSULTANT fails to comply with any such insurance requirements in this Agreement, in addition to any other remedies the CITY may have, the CITY may, at its sole option, (i) immediately terminate this Agreement; or (ii) order CONSULTANT to stop work under this Agreement and/or withhold any payment that becomes due to CONSULTANT until CONSULTANT demonstrates compliance with the insurance requirements in this Agreement.

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

- a. CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "Claims"), of every nature caused by, arising out of, or in connection with CONSULTANT's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY, and only to the extent such Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT. Further, in no event shall the cost to defend charged to the CONSULTANT exceed the CONSULTANT's proportionate percentage of fault.
- b. CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all Claims caused by, arising under, or resulting from any violation, or claim of violation, of the San Diego Municipal Storm Water Permit (Order No. R9-2013-0001, as amended) of the California Regional Water Quality Control Board, Region 9, San

Diego, that the CITY might suffer, incur, or become subject to by reason of, or occurring as a result of, or allegedly caused by, any work performed pursuant to this Agreement.

c. All terms and provisions within this Section 8 shall survive the termination of this Agreement.

9. Anti-Assignment Clause. Because the CITY has relied on the particular skills of CONSULTANT in entering into this Agreement, CONSULTANT shall not assign, delegate, subcontract, or otherwise transfer any duty or right under this Agreement, including as to any portion of the Services, without the CITY's prior written consent. Any purported assignment, delegation, subcontract, or other transfer made without the CITY's consent shall be void and ineffective. Unless CONSULTANT assigns this entire Agreement, including all rights and duties herein, to a third party with the CITY's prior written consent, CONSULTANT shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.
10. Attorney's Fees and Costs. In any action to enforce the terms and conditions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs.
11. Independent Contractor. CONSULTANT is an independent contractor, and no agency or employment relationship is created by the execution of this Agreement.
12. Amendment. This Agreement shall not be amended except in a writing signed by the CITY and CONSULTANT.
13. Merger Clause. This Agreement, together with its attachments or other documents described or incorporated herein, if any, constitutes the entire agreement and understanding of the CITY and CONSULTANT concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. In the event of any conflict between the provisions of this Agreement and any of its attachments or related documents, if any, the provisions of this Agreement shall prevail.
14. Anti-Waiver Clause. None of the provisions of this Agreement shall be waived by the CITY because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived by the CITY, in whole or in part.
15. Severability. This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.
16. Governing Law. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Venue for any action arising from this Agreement shall be conducted only in the state or federal courts of San Diego County, California.
17. Counterparts. This Agreement may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement by electronic means, including an attachment to an email, shall be effective as delivery of an executed original. The Agreement on file with the City is the copy of the Agreement that shall take precedence if any differences exist between or among copies or counterparts of the Agreement.
18. Provisions Cumulative. The foregoing provisions are cumulative to, in addition to, and not in limitation of any other rights or remedies available to the CITY.

19. Notice. Any statements, communications, or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated herein, and the CITY and CONSULTANT shall promptly provide the other Party with notice of any changes to such contact information.
20. Business License. CONSULTANT shall obtain a City of Escondido Business License prior to execution of this Agreement and shall maintain such Business License throughout the term of this Agreement.
21. Compliance with Laws, Permits, and Licenses. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements in effect during the term of this Agreement. CONSULTANT shall obtain any and all permits, licenses, and other authorizations necessary to perform the Services. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
22. Prevailing Wages. If applicable, pursuant to California Labor Code section 1770 et seq., CONSULTANT agrees that a prevailing rate and scale of wages, in accordance with applicable laws, shall be paid in performing this Agreement. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements pertaining to the payment of prevailing wages. The prevailing rate and scale to be paid shall be the same as the applicable "General Prevailing Wage Determination" approved by the Department of Industrial Relations as of the Effective Date of this Agreement, which are available online at <http://www.dir.ca.gov/oprl/dprevwagedetermination.htm> and incorporated into this Agreement by this reference. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
23. Department of Industrial Relations Compliance. This public project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. CONSULTANT shall post all job site notices required by regulation. CONSULTANT, as well as any subcontractors, shall be registered pursuant to California Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal (subject to the requirements of Public Contract Code section 4104), or engage in the performance of any public works contract subject to the requirements of Division 2, Part 7, Chapter 1 of the California Labor Code. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
24. Immigration Reform and Control Act of 1986. CONSULTANT shall keep itself informed of and shall comply with the Immigration Reform and Control Act of 1986 ("IRCA"). CONSULTANT represents and warrants that all of its employees and the employees of any subcontractor retained by CONSULTANT who perform any of the Services under this Agreement, are and will be authorized to perform the Services in full compliance with the IRCA. CONSULTANT affirms that as a licensed contractor and employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will perform the Services. CONSULTANT agrees to comply with the IRCA before commencing any Services, and continuously throughout the performance of the Services and the term of this Agreement.
25. Effective Date. Unless a different date is provided in this Agreement, the effective date of this Agreement shall be the latest date of execution set forth by the names of the signatories below.

(SIGNATURE PAGE FOLLOWS)

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

CITY OF ESCONDIDO

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

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

Kennedy/Jenks Consultants, 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

Kennedy/Jenks Consultants, Inc. ("KJ" or "Consultant") will prepare construction drawings and specifications for the Treated Water Interconnect Project ("Project").

### B. Location

The location of the interconnect is at the intersection of North Ash Street and Sheridan Avenue.



### C. Services

Consultant shall provide the follows tasks:

#### Task 1 – Project Management

##### 1.1 Kick-off Meeting

The project kick-off meeting will be scheduled immediately after receipt of a notice-to-proceed. At this kickoff meeting, project reporting/communication protocols will be established, a design schedule will be provided, and key technical issues will be discussed to establish the project guidelines.

##### 1.2 Meetings

KJ will attend three progress meetings with the City throughout the project following City review at each submittal stage. At each review meeting, KJ will go over how previous review comments were addressed and/or incorporated in the revised design. KJ will prepare meeting agendas and distribute minutes after each meeting. Meetings will include the following:

## ATTACHMENT "A" Scope of Work

1. 30% design review meeting – will include findings of control valve evaluation
2. 60% design review meeting
3. 100% design review meeting

### 1.3 Project Updates

KJ will prepare bi-weekly project updates consisting of an email report to the City. Updates will identify and discuss project issues, coordination efforts, action items, schedule, budget, and other items of concern.

### 1.4 Quality Assurance/Quality Control (QA/QC)

KJ will provide quality assurance and quality control (QA/QC) reviews throughout the course of project. Specific QA/QC efforts on this project will include:

- Development of a Quality Assurance Plan, which will outline how QA/QC reviews, will take place during the course of the work. The Plan will also outline specific technical protocols, methods, and checklists for KJ to use in preparing work products.
- Concept and Criteria Review of the project design at the 10% design stage.
- Review of all notes and design calculations, along with design drawings and specifications, by an appropriate reviewer independent of the project design team prior to each design submittal.
- Constructability and operational review of the design submittals.

### 1.5 Management

This task addresses the management responsibilities associated with project setup, proper scheduling, budget control, invoice preparation and coordination with the City and the KJ project team.

- **Deliverables –**

- KJ will submit bi-weekly project updates and monthly invoices to the City.
- KJ will submit all meeting agendas/presentations to the City a minimum of two working days prior to each meeting, and all meeting minutes within five working days following the meeting. City's comments will be incorporated, and final minutes will be submitted.
- KJ will submit a design schedule following the Notice-to-Proceed.

## Task 2 – Investigations

### 2.1 Utility Research and Review

KJ will contact Underground Service Alert to determine the utility owners within the project limits and send formal requests to each utility owner requesting record drawings and any future utility plans. KJ will coordinate with the California State Water Resources Control Board to meet utility separation requirements, if applicable.

## ATTACHMENT "A" Scope of Work

### 2.2 Survey

BHA, as a subconsultant to KJ, will provide surveying and aerial mapping for the project. BHA's scope of services includes the following:

- **Research/Coordination:** Investigate public records, obtain copies of record maps and any documents pertinent to the project. Determine location of control monuments and benchmarks necessary to establish project control.
- **Right-of-Way Survey:** Project control will be based on the California Coordinate System of 1983 (CCS83), Zone 6, by utilizing the City of Escondido Survey Control Network. Vertical control will be based on City of Escondido benchmarks. A field survey will be performed that will locate and tie any recovered monuments shown on maps of record, along with any non-record monuments discovered during the field survey, sufficient to establish a procedure for determining street centerlines and rights-of-way. Office calculations will be performed to reduce the field data, as necessary.
- **Topographic Survey:** BHA will conduct a field survey, location existing street improvements, curb, and gutter, sidewalks, driveway aprons, traffic striping, visible utilities, sewer manholes, storm drain structures, water valves, fire hydrants, water meters, vaults, transformers, pull boxes, hand holes, gas valves, telephone and cable pedestals, street lights, fencing and walls within the public right-of-way. Sufficient surface elevations will be surveyed to determine one-foot contours.
- **Base Map:** A drawing file, in AutoCAD format, will be prepared of the survey outlining the street centerlines, property lines, rights-of-way, easements, aerial mapping and items located during the field topography survey. The drawing will contain a basis of bearing and benchmark statement, together with the labeling of found monuments, course bearings and distances. A table listing the coordinates and elevations of all monuments found or set during the course of the surveys will be included.
- **Pothole Locations:** Provide field surveying for the horizontal and vertical location for the for the designated excavated utilities. For scope purposes, it is assumed that five pothole locations will be surveyed.

### 2.3 Geotechnical Investigation

Leighton, as a subconsultant to KJ, will perform a geotechnical investigation for the project. Based on Leighton's site visit and literature review, the pipeline alignment is generally underlain by minor amounts of fill materials associated with the construction of Sheridan Avenue and Ash Street. Where the majority of the proposed water pipeline alignment is underlain by Old Alluvium and by Granitic Rock, groundwater is anticipated in portions of the alignment. Geologic considerations for the proposed vault and pipeline alignment consist of

## ATTACHMENT "A" Scope of Work

elevated groundwater conditions at a depth of 8 feet or greater, potential caving conditions in unconsolidated alluvium, and dense rock materials associated with the Granitic Rock.

Leighton scope of services consists of the following:

- Review available pertinent geotechnical literature and background materials, including geotechnical reports, geologic maps, topographic maps, groundwater data, and historical stereoscopic aerial photographs.
- Perform a geologic reconnaissance of the proposed pipeline alignment and adjacent area.
- Perform compilation and geotechnical analysis of our background review and project alignment observations.
- Obtain a traffic control permit from the City and a County of San Diego DEH boring permit, as required; it is assumed the City will waive permit fees.
- Provide traffic control to complete the subsurface exploration; it is assumed the City will waive permit fees.
- In preparation for the subsurface geotechnical exploration, Underground Services Alert (USA) will be notified for locating public utilities on site.
- Perform a subsurface exploration taking approximately one day at the new vault and along the 20-inch pipeline alignment replacement that will consist of the excavation of two exploratory borings at representative locations to a depth of approximately 25 feet. The purpose of the borings is to characterize the subsurface materials regarding their soil properties as they relate to the vault and pipeline construction and trench excavation. Boring logs will show existing pavements and thicknesses, road base thicknesses, soil types, groundwater elevation, soil tests taken, sample locations, dry density, and moisture content. The borings will be excavated to plan depth, with a hollow stem rig or until refusal. If drilling refusal occurs before the bottom elevation of the proposed vault or pipeline, Leighton will attempt the boring with a rock core drilling rig. Leighton will utilize a specialized heavy-duty, high torque drill rig to help penetrate the underlying soil and rock materials. The borings will be backfilled with soil cuttings or bentonite depending on groundwater depth. After backfilling the borings will be capped with asphalt.
- Driven samples will be obtained at 2.5- and/or 5-foot representative intervals with a standard penetration test and ring sampler and selected bulk samples will also be collected from the drill cuttings. Soil samples will be sealed and packaged in the field and then returned to our laboratory for testing.
- After completion of the soil borings, Leighton will replace the temporary boring patches with a 5' x 5' square hot mix asphalt patch in accordance with the City's Permanent Roadway Repair Standard Drawing No. G-4-E. The patch includes saw cutting the existing AC around (3'x3') the boring, excavating to an approximate depth of 12-inches and hauling excess material to the landfill. The existing subgrade material and imported Class II aggregate base will be compacted to 95% relative compaction under observation of a soils technician from Leighton followed by placement and compaction of the base asphalt layer. Leighton will return after several weeks to perform a 1.5-inch mill and overlay. Leighton

## **ATTACHMENT "A"**

### Scope of Work

will provide traffic control at each AC patch area and secure the work area. Our scope is based on restoring three borings and assumes the subgrade material will be at or near optimum moisture content, and that our subcontractor will be able to leave equipment and patch material secured overnight.

- Conduct geotechnical laboratory testing on selected soil samples. Lab testing will consist of dry unit weights, moisture contents, sieve analyses, shear strength, and corrosivity tests including minimum electrical resistivity and pH, water-soluble sulfates and chlorides content tests.
- Prepare a draft and final geotechnical design report for the project.
- Review of project plans and specifications

#### **2.4 Potholing**

KJ will prepare a potholing plan based on the 60% design plans for the City's approval. Following the City's approval, Underground Solutions, as a subconsultant to KJ, will provide potholing services. For scope purposes, ten potholes will be performed with a maximum depth of 12 feet. A pothole report will be prepared documenting the potholed utility depth from ground surface to the bottom of pipe, pipe material and diameter. The pothole location will be marked in the field and will be surveyed to determine the coordinates of the pothole location. Underground Solutions will obtain an encroachment permit from the City. Underground Solutions will prepare detailed traffic control plans to be included with the permit application. It is assumed the City will pay permit fees if required.

Hot patch asphalt will be used for pavement restoration and based on the following conditions:

- For potholes performed in the final trench alignment, paving restoration will consist of a 6-inch overgrind with a base pave of ¾-inch asphalt to match existing thickness plus 1-inch. For potholes performed outside of the final trench alignment, paving restoration will be in accordance with the City's Standard Drawing G-4-E with a 5' x 5' grind overlay.

#### **2.5 Field Investigations**

KJ will walk the alignment with City staff to perform a visual inspection of the alignment and identify constraints. Two field investigations will be performed prior to the 60% and 100% design submittals.

- **Deliverables –**
  - Potholing plan for City review and approval
  - Electronic copies (PDF) of the geotechnical and pothole reports

### **Task 3 – Contract Documents**

## ATTACHMENT "A"

### Scope of Work

#### 3.1 Design Plans

KJ will prepare detailed design plans in accordance with the City’s Standards, DDW requirements, and local agency requirements. Design drawings will be prepared in AutoCAD Civil 3D utilizing the City’s standard title block. KJ will prepare 30%, 60%, 100% and Final Design plans.

This scope is based on the understanding that 22 design drawings will be prepared per the table below. It is assumed that traffic control plans will be prepared by the Contractor in accordance with the Contract Specifications.

Sheet No.	Description
1	Title, Vicinity and Location Maps
2	Sheet Index and General Notes
3	Legend and Abbreviations
4	Key Plan, Basis of Bearing, and Horizontal Control
5	Overall Site Piping Plan
6	Paving Plan
7	Mechanical Legend and Symbols
8	Mechanical Details
9	Valve and Meter Vault Mechanical Plans and Sections
10	Structural Legend and Symbols
11	Structural Details
12	Valve and Meter Vault Structural Plans and Sections
13	Electrical Abbreviations and Notes
14	Electrical Symbols
15	Overall Electrical Site Plan
16	Single Line/Panelboard Schedule
17	Conduit Block Diagram and Conduit/Cable Schedule
18	Valve and Meter Vault Electrical Plans

## ATTACHMENT "A"

### Scope of Work

19	Instrumentation Symbols
20	I&C Details and Network Block Diagram
21	Control Panel Layout, Elevations, and Wiring Diagram
22	Process and Instrumentation Diagram (P&ID)

#### 3.2 Technical Specifications, Bid Schedule, and Submittal List

KJ will prepare the required technical specifications for the 60%, 100%, and final stages of design submittals. KJ will prepare a project bid schedule, including measurement and payment description for each bid item at the 60%, 100%, and final stages. The City shall provide the bid schedule format. The project bid schedule will be provided in Microsoft Excel for the City to upload to eBidboard. The specifications and bid schedule will be revised, as necessary, to address the City's 60% and 100% design level review comments. Stamped and signed technical specifications will be provided with the final design submittal. It is assumed that the City will prepare the Front-End (Division 0 and Division 1) specifications. KJ will review the entire specifications and revise the technical specifications as required. KJ will also provide a list of contractors' required submittals during construction at the 100% and final submittal.

#### 3.3 Opinion of Estimated Construction Cost

KJ will prepare an opinion of probable construction cost (OPCC) presented as an Excel spreadsheet for the 60%, 100%, and final design submittals. A Class 3 OPCC will be prepared for the 60% design submittal and a Class 2 OPCC will be prepared for the 100% and final design submittal.

#### 3.4 Construction Schedule

KJ will prepare a construction schedule for the project using Microsoft Project and will include any required project milestones.

#### 3.5 DDW Application

KJ will prepare the DDW application for the review and approval of the City at the 100% design phase. Once City approval is received, KJ will coordinate with DDW directly to receive and address their comments. If required, KJ will obtain a waiver for any DDW separation requirement deviations.

- **Deliverables –**

- Prepare the DDW Application for City review and approval.
- KJ will submit design calculations and drawings at the 30%, 60%, 100%, and final design levels in Adobe Acrobat PDF format. Three (3) hardcopy sets of both full-size plans (24-inch x 36-inch) and half-size plans (11-inch x 17-inch) will be submitted at the request of the City. Technical specifications will be

## **ATTACHMENT "A"**

### Scope of Work

submitted at 60%, 100%, and final design in Microsoft Word and Adobe Acrobat PDF formats. PDFs will be bookmarked for each section. Comments from the 100% design submittal will be incorporated into the final design submittal consisting of one set of design drawings and technical specifications signed and sealed by a licensed civil engineer in the State of California.

- Project bid schedule submittals shall be provided at the 60%, 100% and final stages per the City provide bid schedule format. The project bid schedule will be provided in Microsoft Excel for upload to eBidboard.
- The construction schedule and opinion of estimated construction cost submittals will be provided at the 60%, 100%, and final stages of design.
- A list of the contractors' required submittals during construction will also be provided.

#### **Task 4 – Bid Phase Services**

##### **4.1 Pre-bid Meeting**

KJ will attend and lead the pre-bid meeting assumed to be at the City's office. This includes preparation of the presentation/slide show, meeting minutes, and an action items list.

##### **4.2 Responses to Questions and Addenda**

KJ will respond to questions from potential bidders at the City's request. KJ will prepare up to two addenda as necessary and/or directed by the City. The addenda will be submitted to the City for review and distribution.

#### **Task 5 – Construction Phase Services**

This task is included to allow for a future amendment, at the sole option of the City, for engineering services during construction. The fee for these engineering services will be determined once the design has been completed and if the City determines to proceed with KJ for such services.

This task will include, but not be limited to, the following items: attend preconstruction meeting, attend construction progress meetings, prepare conformed set of contract documents, respond to contractor requests for information (RFI's), respond to design clarifications, review and approve submittals and shop drawings and prepare record drawings.

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

The contract price shall not exceed **\$212,282**. Services shall be charged on a time-and-materials basis in accordance with the attached rate schedule and fee proposal (see Exhibit '1' and Exhibit '2' which are attached hereto and incorporated by reference). 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.

#### **E. Term**



## **ATTACHMENT "A"**

### Scope of Work

The term of this Agreement shall be for three years, commencing on the Effective Date of the Agreement.

## ATTACHMENT "B"

### KJ Employees:

David Harrison, PE, BCEE – Principal-in-Charge

Bill Yates, PE – QA/QC

Rachel Druffel-Rodriguez, PE – Project Manager

Ray Lyons, PE – Project Engineer

Allie Syiem, PE – Civil/Mechanical

Thuc Khuong, PE - Structural

Jeff Mohr, PE, CEM – Electrical/I&C

Bill Moser, PE – Senior Technical Advisor

Gary Stine, PE – SDCWA Liaison

### Subconsultants:

Leighton Consulting, Inc. – Geotechnical

Underground Solutions, Inc. – Potholing

BHA, Inc. – Survey/Mapping

# Proposal Fee Estimate

CLIENT Name: City of Escondido

PROJECT Description: City of Escondido/Rincon del Diablo Municipal Water District Treated Water Emergency Interconnect Project

Proposal/Job Number: \_\_\_\_\_ Date: 6/7/2022

January 1, 2020 Rates	Eng-Sci-6 W. Yates & J. Mohr & Struc QC & B. Moser	Eng-Sci-6 R. Lyons & J. Hoffman & Z. Devlin	Eng-Sci-4 R. Druffel-Rodriguez & A. Syiem	Eng-Sci-3 L. Santos & R. Mejia	Eng-Sci-2 D. Kureishy	CAD-Design K. Cobabe	Project Assistant M. Norman	Admin. Assist. T. Sullivan	Total	KJ Labor	Sub BHA	Sub Leighton	Sub USI	KJ Sub-Markup	KJ ODCs	KJ ODCs Markup	Total Labor	Total Subs	Total Expenses	Total Labor + Subs + Expenses
Classification:	\$290	\$245	\$200	\$185	\$165	\$155	\$130	\$110	Hours	Fees	Fees	Fees	Fees	5%	Fees	10%				Fees
<b>Task 1 - Project Management</b>																				
1.1 Kick-off Meeting			2	2					4	\$890				\$0	\$150	\$15	\$890	\$0	\$165	\$1,055
1.2 Meetings (3)			5	5					9	\$2,003				\$0	\$450	\$45	\$2,003	\$0	\$495	\$2,498
1.3 Project Updates (16)				8					8	\$1,600				\$0		\$0	\$1,600	\$0	\$0	\$1,600
1.4 QA/QC	46	4							50	\$14,320				\$0		\$0	\$14,320	\$0	\$0	\$14,320
1.5 Management			56				4		60	\$11,720				\$0		\$0	\$11,720	\$0	\$0	\$11,720
<b>Task 1 - Subtotal</b>	<b>46</b>	<b>11</b>	<b>71</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>131</b>	<b>\$30,533</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$600</b>	<b>\$60</b>	<b>\$30,533</b>	<b>\$0</b>	<b>\$660</b>	<b>\$31,193</b>
<b>Task 2 - Investigations</b>																				
2.1 Utility Research & Review			8		12			2	22	\$4,160				\$0	\$500	\$50	\$4,160	\$0	\$550	\$4,710
2.2 Survey			2		4		1		7	\$1,280	\$14,025			\$701		\$0	\$1,280	\$14,726	\$0	\$16,006
2.3 Geotechnical Investigation			2		3	4	1		10	\$1,835		\$31,000		\$1,550		\$0	\$1,835	\$32,550	\$0	\$34,385
2.4 Potholing (5)			5		8		1		14	\$2,675			\$15,660	\$783		\$0	\$2,675	\$16,443	\$0	\$19,118
2.5 Field Investigations (2)			6		6				12	\$2,460				\$0	\$300	\$30	\$2,460	\$0	\$330	\$2,790
<b>Task 2 - Subtotal</b>	<b>0</b>	<b>23</b>	<b>0</b>	<b>3</b>	<b>34</b>	<b>0</b>	<b>3</b>	<b>2</b>	<b>65</b>	<b>\$12,410</b>	<b>\$14,025</b>	<b>\$31,000</b>	<b>\$15,660</b>	<b>\$3,034</b>	<b>\$800</b>	<b>\$80</b>	<b>\$12,410</b>	<b>\$63,719</b>	<b>\$880</b>	<b>\$77,009</b>
<b>Task 3 - Contract Documents</b>																				
3.1 Design Plans (30%, 60%, 100%, Final)			39	32	162	56	120	12	421	\$75,085				\$0	\$1,000	\$100	\$75,085	\$0	\$1,100	\$76,185
3.2 Technical Specifications, Bid Schedule and Submittal List			58	6	9	11		12	96	\$20,210				\$0	\$500	\$50	\$20,210	\$0	\$550	\$20,760
3.3 Opinion of Estimated Construction Cost			10	1		6			17	\$3,640				\$0		\$0	\$3,640	\$0	\$0	\$3,640
3.4 Construction Schedule			1	1		4			6	\$1,105				\$0		\$0	\$1,105	\$0	\$0	\$1,105
3.5 DDW Application			4	1		6		1	12	\$2,280				\$0	\$100	\$10	\$2,280	\$0	\$110	\$2,390
<b>Task 3 - Subtotal</b>	<b>0</b>	<b>112</b>	<b>41</b>	<b>171</b>	<b>83</b>	<b>120</b>	<b>0</b>	<b>25</b>	<b>552</b>	<b>\$102,320</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,600</b>	<b>\$160</b>	<b>\$102,320</b>	<b>\$0</b>	<b>\$1,760</b>	<b>\$104,080</b>
<b>Tasks 1-3 Total</b>	<b>46</b>	<b>146</b>	<b>112</b>	<b>174</b>	<b>117</b>	<b>120</b>	<b>7</b>	<b>27</b>	<b>748</b>	<b>\$145,263</b>	<b>\$14,025</b>	<b>\$31,000</b>	<b>\$15,660</b>	<b>\$3,034</b>	<b>\$3,000</b>	<b>\$300</b>	<b>\$145,263</b>	<b>\$63,719</b>	<b>\$3,300</b>	<b>\$212,282</b>

# Proposal Fee Estimate

CLIENT Name: City of Escondido

PROJECT Description: City of Escondido/Rincon del Diablo Municipal Water District Treated Water Emergency Interconnect Project

Proposal/Job Number: \_\_\_\_\_ Date: 6/7/2022

January 1, 2020 Rates	Eng-Sci-6 W. Yates & J. Mohr & Struc QC & B. Moser	Eng-Sci-6 R. Lyons & J. Hoffman & Z. Devlin	Eng-Sci-4 R. Druffel-Rodriguez & A. Syiem	Eng-Sci-3 L. Santos & R. Mejia	Eng-Sci-2 D. Kureishy	CAD-Design K. Cobabe	Project Assistant M. Norman	Admin. Assist. T. Sullivan	Total	KJ Labor	Sub BHA	Sub Leighton	Sub USI	KJ Sub-Markup	KJ ODCs	KJ ODCs Markup	Total Labor	Total Subs	Total Expenses	Total Labor + Subs + Expenses
Classification:	\$290	\$245	\$200	\$185	\$165	\$155	\$130	\$110	Hours	Fees	Fees	Fees	Fees	5%	Fees	10%				Fees
<b>Task 4 - Bid Phase Services (Optional)</b>																				
4.1 Pre-Bid Meeting		4	4						8	\$1,780				\$0	\$150	\$15	\$1,780	\$0	\$165	\$1,945
4.2 Responses to Questions and Addenda (2)	2	16			12	6			36	\$7,410				\$0		\$0	\$7,410	\$0	\$0	\$7,410
<b>Task 4 - Subtotal</b>	<b>2</b>	<b>20</b>	<b>4</b>	<b>0</b>	<b>12</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>44</b>	<b>\$9,190</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$150</b>	<b>\$15</b>	<b>\$9,190</b>	<b>\$0</b>	<b>\$165</b>	<b>\$9,355</b>
<b>Task 5 - Construction Phase Services (Optional)</b>																				
5.1 Project Management	8		60						68	\$14,320				\$0		\$0	\$14,320	\$0	\$0	\$14,320
5.2 Pre-Construction Meeting (1)		3	3						6	\$1,335				\$0	\$150	\$15	\$1,335	\$0	\$165	\$1,500
5.3 Construction Progress Meetings (10)		30							30	\$7,350				\$0	\$1,000	\$100	\$7,350	\$0	\$1,100	\$8,450
5.4 Conformed Set of Contract Documents		4	4	10	8	16		2	44	\$7,650				\$0	\$250	\$25	\$7,650	\$0	\$275	\$7,925
5.5 Shop Drawing Submittal Review (30 submittals, 8 resubmittals)		103	11	10	28				152	\$33,905				\$0		\$0	\$33,905	\$0	\$0	\$33,905
5.6 Request for Information (16)	8	16	4	13	24				65	\$13,405				\$0		\$0	\$13,405	\$0	\$0	\$13,405
5.7 Record Drawings		1	2	3	4	33		1	44	\$7,085				\$0	\$250	\$25	\$7,085	\$0	\$275	\$7,360
<b>Task 5 - Subtotal</b>	<b>16</b>	<b>157</b>	<b>84</b>	<b>36</b>	<b>64</b>	<b>49</b>	<b>0</b>	<b>3</b>	<b>409</b>	<b>\$85,050</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,650</b>	<b>\$165</b>	<b>\$85,050</b>	<b>\$0</b>	<b>\$1,815</b>	<b>\$86,865</b>

# EXHIBIT '2'



**Client/Address:** City of Escondido  
 1521 S. Hale Avenue  
 Escondido, CA 92029

**Contract/Proposal:** City of Escondido/Rincon del Diablo Municipal Water District Treated Water  
 Emergency Interconnect Project

## Schedule of Charges

**Date:** January 1, 2020

### PERSONNEL COMPENSATION

Classification	Hourly Rate
Engineer-Scientist-Specialist 1 .....	\$130
Engineer-Scientist-Specialist 2 .....	\$165
Engineer-Scientist-Specialist 3 .....	\$185
Engineer-Scientist-Specialist 4 .....	\$200
Engineer-Scientist-Specialist 5 .....	\$220
Engineer-Scientist-Specialist 6 .....	\$245
Engineer-Scientist-Specialist 7 .....	\$270
Engineer-Scientist-Specialist 8 .....	\$290
Engineer-Scientist-Specialist 9 .....	\$305
CAD-Technician .....	\$120
Senior CAD-Technician .....	\$140
CAD-Designer .....	\$155
Senior CAD-Designer .....	\$175
Project Administrator .....	\$130
Administrative Assistant .....	\$110
Aide .....	\$85

### Direct Expenses

Reimbursement for direct expenses, as listed below, incurred in connection with the work, will be at cost plus ten percent for items such as:

- a. Maps, photographs, 3rd party reproductions, 3rd party printing, equipment rental, and special supplies related to the work.
- b. Consultants, soils engineers, surveyors, contractors, and other outside services.
- c. Rented vehicles, local public transportation and taxis, travel and subsistence.
- d. Project specific telecommunications and delivery charges.
- e. Special fees, insurance, permits, and licenses applicable to the work.
- f. Outside computer processing, computation, and proprietary programs purchased for the work.

Reimbursement for vehicles used in connection with the work will be at the federally approved mileage rates or at a negotiated monthly rate.

If prevailing wage rates apply, the above billing rates will be adjusted as appropriate.

Overtime for non-exempt employees will be billed at one and a half times the Hourly Rates specified above.

Rates for professional staff for legal proceedings or as expert witnesses will be at rates one and one-half times the Hourly Rates specified above.

Excise and gross receipts taxes, if any, will be added as a direct expense.

The foregoing Schedule of Charges is incorporated into the agreement for the services provided, effective January 1, 2020 through January 31, 2023. After January 31, 2023, invoices will reflect the Schedule of Charges currently in effect.



# STAFF REPORT

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September 14, 2022  
File Number 0480-70

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## **SUBJECT**

### **FISCAL YEAR 2021-2022 REGIONAL REALIGNMENT RESPONSE GRANT**

## **DEPARTMENT**

Police Department

## **RECOMMENDATION**

Request the City Council Adopt Resolution No. 2022-128 authorizing the Chief of Police to accept a FY 2021-22 Regional Realignment Response Grant in the amount of \$80,000 from the State of California Board of Community Corrections; authorize the Chief of Police or his designee to execute grant documents on behalf of the City; and approve budget adjustments needed to spend grant funds. Funding was provided by Assembly Bill 118 and Senate Bill 89, initiatives to reduce state prison overcrowding and support local law enforcement efforts to efficiently manage offenders and parole-violators. Escondido's allocation is used to support regional and local enforcement operations. Funds must be used for police officer overtime and associated overhead.

Staff Recommendation: Approval (Escondido Police Department: David Cramer)

Presenter: David Cramer, Interim Chief of Police

## **FISCAL ANALYSIS**

The acceptance of this grant will have no impact on the General Fund Budget. The FY 2021-22 Regional Realignment Response Grant is state funded. Funding will cover expenses through June 30, 2023.

## **PREVIOUS ACTION**

On October 13, 2021, the City Council authorized the Chief of Police to accept an \$80,000 FY 2021 Regional Realignment Response Grant.

## **BACKGROUND**

The Escondido Police Department has been allocated \$80,000 under the FY 2021-22 Regional Realignment Response Grant through the State of California Board of Community Corrections. This funding was provided by Assembly Bill 118 and Senate Bill 89, initiatives to reduce state prison overcrowding and support local law enforcement efforts to efficiently manage offenders and parole-violators. These bills allow for the release of subjects into the community from prison before their sentences were fully served,



# CITY of ESCONDIDO

## STAFF REPORT

putting the responsibility of monitoring them on local law enforcement. Grant funds are used for regional and local enforcement operations to monitor prisoners that were released as a result of Assembly Bill 118 and Senate Bill 89.

### ATTACHMENTS

- a. Attachment "1" Budget Adjustment

### RESOLUTIONS

- a. Resolution 2022-128

## RESOLUTION NO. 2022-128

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE CHIEF OF POLICE TO ACCEPT A FY 2021-22 REGIONAL REALIGNMENT RESPONSE GRANT FROM THE STATE OF CALIFORNIA BOARD OF COMMUNITY CORRECTIONS IN THE AMOUNT OF \$80,000; EXECUTE ALL DOCUMENTS NECESSARY FOR THE MANAGEMENT AND COMPLETION OF THE GRANT SCOPE; AND AUTHORIZE THE NECESSARY BUDGET ADJUSTMENT

WHEREAS, the Regional Realignment Response Grant will be financed from funds made available by the State of California Board of Community Corrections, through Assembly Bill 118 and Senate Bill 89, initiatives to reduce state prison overcrowding and support local law enforcement efforts to efficiently manage offenders and parole-violators; and

WHEREAS, the City of Escondido desires to support local law enforcement efforts in regards to legislation reducing state prison overcrowding; and

WHEREAS, the Escondido Police Department has designated the FY 2021-22 Regional Realignment Response Grant to conduct specific programs to address these goals.

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 Chief of Police of the City of Escondido to accept Regional Realignment Response Grant in the amount of \$80,000 and execute all documents necessary for the management and completion of the grant scope.
3. That the City Council hereby also approves and authorizes the necessary budget adjustment needed to establish a new project number for tracking and spending of grant funds.



4. That grant funds received hereunder shall not be used supplant expenditures controlled by this body.



CITY OF ESCONDIDO
BUDGET ADJUSTMENT REQUEST

Date of Request: August 24, 2022
Department: Police Department
Division: Administration
Project/Budget Manager: Lisa Rodelo 4905
Name Extension
Council Date (if applicable): September 14, 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-RRRG22, \$80,000) and Police Grants (451-RRRG22, \$80,000).

Explanation of Request:

A budget adjustment is needed to receive grant funds and establish a spending account for police officer overtime and overhead expenses related to the FY 2022 Regional Realignment Response Grant funds.

APPROVALS

DocuSigned by: David Cramer 9/6/2022
Department Head Date City Manager Date
Jodi Coco 9/6/2022
Finance Date City Clerk Date

Distribution (after approval): Original: Finance



# STAFF REPORT

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September 14, 2022  
File Number 0480-70

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## **SUBJECT**

### **FY 2021 STATE HOMELAND SECURITY GRANT PROGRAM AND BUDGET ADJUSTMENT**

## **DEPARTMENT**

Police and Fire Departments

## **RECOMMENDATION**

Request the City Council adopt Resolution No. 2022-135, authorizing the Escondido Police Department to accept FY 2021 State Homeland Security Grant funds in the amount of \$114,919; authorize the Chief of Police or his designee to execute grant documents on behalf of the City; and approve budget adjustments needed to spend grant funds. The County of San Diego Office of Emergency Services has authorized the City of Escondido to spend its funds on equipment to support regional public safety projects. The Fire Department will receive \$79,000 and the Police Department will receive \$35,919 from this award.

Staff Recommendation: Approval (Police Department: David Cramer, Interim Chief of Police)

Presenter: David Cramer, Interim Chief of Police; Rick Vogt, Fire Chief

## **FISCAL ANALYSIS**

The acceptance of this grant will have no impact on the General Fund Budget. The State Homeland Security Grant Program is federally funded. There is no match requirement.

## **PREVIOUS ACTION**

On November 3, 2021, the City Council authorized the Police and Fire Departments to accept a 2020 State Homeland Security Program Grant award in the amount of \$120,718. The City of Escondido began participating in the State Homeland Security Grant Program in 2003. As a result of this program, the City of Escondido has received valuable safety equipment and preparedness funding.

## **BACKGROUND**

The implementation of the State Homeland Security Management Grant program is to support state, local, tribal and territorial efforts to prevent terrorism and other catastrophic events.

The Escondido Police and Fire Departments applied for FY 2021 State Homeland Security Grant Program funds in April 2021. The departments received notification in July 2022 that the application was approved



# CITY of ESCONDIDO

## STAFF REPORT

for \$114,919 in funding. The County of San Diego Office of Emergency Services authorized the City of Escondido to utilize funding on equipment to support regional public safety projects. The funding amount received is based on a formula that considers the jurisdiction’s population and number of first responder personnel. Funds may be used to purchase the following approved items:

- \$27,100 – Police Department – Truck box
  - Grant funds may be used to cover the cost of a truck box to be placed on top of an existing chassis owned by the City of Escondido. The truck box will be modeled specifically to carry equipment for officers who respond to emergencies. This will allow for a quicker response time when an emergency occurs.
- \$ 8,819 – Police Department – Equipment and software for criminal investigations
  - Grant funds may be used to cover the cost of technology software to enhance investigative capabilities. These software packages will help analysts and detectives pinpoint areas of criminal activity. The information will then be used to strategically deploy resources to prevent crimes and improve community safety.
- \$79,000 – Fire Department – Radios were requested in the original application, but the request will be modified to an SCBA air compressor.
  - When the FY 2021 grant application was submitted, the Fire Department had a need to utilize \$79,000 in grant funds to purchase new VHF portable radios. However, Escondido Fire was able to use FY 2020 SHSGP grant funds to purchase the radios. Escondido Fire Department has now applied for a modification to the FY 2021 SHSGP award to utilize the funding to purchase and install an air compressor to fill self-contained breathing apparatus cylinders that are used to fight fire and enter spaces with hazardous environments. This use of SHSGP funds is on a pre-established use approval list.

### RESOLUTIONS

- a. Resolution No. 22-135

### ATTACHMENTS

- a. Attachment “1” – Budget adjustment

## RESOLUTION NO. 2022-135

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE CHIEF OF POLICE TO ACCEPT THE FY 2021 STATE HOMELAND SECURITY GRANT IN THE AMOUNT OF \$114,919; EXECUTE ALL NECESSARY GRANT DOCUMENTS; AND AUTHORIZE THE NECESSARY BUDGET ADJUSTMENT

WHEREAS, the City of Escondido desires to obtain updated equipment and software for emergency preparedness for Police and Fire Departments; and

WHEREAS, the Escondido Police and Fire Departments have designated the FY 2021 State Homeland Security Grant to address this goal; and

WHEREAS, the FY 2021 State Homeland Security Grant Program has designated \$114,919 to be awarded to the City of Escondido for this purpose.

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 Chief of Police of the City of Escondido to accept the FY 2021 State Homeland Security Grant in the amount of \$114,919 and execute all documents necessary for the management and completion of the grant scope, including any extensions and amendments thereof.
3. That the City Council hereby also approves and authorizes the necessary budget adjustment needed to establish a new project number for tracking and spending of grant funds.



**CITY OF ESCONDIDO**

**BUDGET ADJUSTMENT REQUEST**

Date of Request: August 29, 2022

Department: Police and Fire Departments

Division: Administration

Project/Budget Manager: Lisa Rodelo 4905  
Name Extension

Council Date (if applicable): September 14, 2022  
 (attach copy of staff report)

**For Finance Use Only**

Log # \_\_\_\_\_

Fiscal Year \_\_\_\_\_

ear \_\_\_\_\_

\_\_\_\_\_ Budget Balances

\_\_\_\_\_ General Fund Accts

\_\_\_\_\_ Revenue

\_\_\_\_\_ Interfund Transfers

\_\_\_\_\_ Fund Balance

Project/Account Description	Account Number	Amount of Increase	Amount of Decrease
Revenue	4128-451-New Project Number	\$114,919	
Police Grants	451-New Project Number	\$114,919	

**Explanation of Request:**

A budget adjustment is needed to spend grant funds for FY 2021 State Homeland Security Grant Program equipment expenses.

**APPROVALS**

	DocuSigned by:		
Department Head	<i>David Cramer</i>	9/6/2022	City Manager <span style="float: right;">Date</span>
Finance	<i>Jodi Coco</i>	9/6/2022	City Clerk <span style="float: right;">Date</span>

Distribution (after approval):                      Original: Finance



# STAFF REPORT

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September 14, 2022  
File Number 0690-40

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## SUBJECT

**RESOLUTION OF INTENT TO VACATE A PORTION OF VALLEY BOULEVARD, GRAPE STREET, FIG STREET AND ADJACENT ALLEY**

## DEPARTMENT

City Manager

## RECOMMENDATION

Request the City Council approve Resolution No. 2022-125 to set October 12, 2022 as the date to conduct a hearing to consider authorizing the street vacation for portions of the public streets known as Valley Parkway, Grape Street, Fig Street and adjoining alley.

Staff Recommendation: Approval (City Manager: Jennifer Schoeneck)

Presenter: Vince McCaw, Real Property Manager

## FISCAL ANALYSIS

The \$1,670.00 Street Vacation processing fee has been paid into the General Fund.

## PREVIOUS ACTION

None.

## BACKGROUND

A developer has purchased the property for the Palomar Heights Project Development project and has requested to vacate portions of public streets known as Valley Parkway, Grape Street, Fig Street and adjoining alley, which will be necessary for the proposed development. California Streets and Highways Code § 8324 (a) requires that City Council shall hear evidence offered by persons interested.

The State of California Streets and Highways Code Section 8320, et seq. authorizes the City to vacate a street if the City Council finds that such street or portion of the street is unnecessary for present or prospective public use. The City Council may initiate street vacation proceedings by adopting a Resolution of Intent to Vacate and setting a Public Hearing on the proposed vacation. The notice requirements for the Public Hearing are as follows:



# CITY of ESCONDIDO

## STAFF REPORT

Notice of the Public Hearing must be published in the newspaper for at least two successive weeks prior to the Public Hearing, as required by the California Street and Highways Code, Section 8322. Notices of the Public Hearing must be posted on the street proposed to be vacated at least two weeks before the date set for the hearing, in conformity with and in the manner provided by California Streets and Highways Code, Section 8323.

If, at the conclusion of the Public Hearing, the City Council finds the street right-of-way proposed to be vacated is unnecessary for present or prospective public street use, the City Council may adopt a resolution vacating the street right-of-way.

### RESOLUTIONS

- a. Resolution No. 2022-125
- b. Resolution No. 2022-125 - Exhibit "A" Legal Description
- c. Resolution No. 2022-125 - Exhibit "B" Plat Depiction



RESOLUTION NO. 2022-125

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, OF INTENTION TO VACATE AND ABANDON PORTIONS OF PUBLIC STREETS AND ALLEY, SPECIFICALLY DESCRIBED HEREIN, LOCATED IN THE CITY OF ESCONDIDO, AND SETTING A PUBLIC HEARING TO RECEIVE PROTESTS

WHEREAS, as part of the Palomar Heights Development Project, the vacation of portions of certain City streets known as Valley Parkway, Grape Street, Fig Street and adjoining alley, and more specifically identified and described in Exhibits “A” and “B” hereto, is needed; and

WHEREAS, the Escondido Planning Commission having made findings consistent with the proposed vacation of certain City streets and an alleyway to be consistent with the Escondido General Plan; and

WHEREAS, the City Council of the City of Escondido, California, having received the recommendations of the Manager of Real Property and staff, and being fully advised in the premises, finds that it is in the public interest and convenience to hold a public hearing in order to consider the City Council’s intent to vacate and abandon portions of the herein described streets and adjoining alley.

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 it is the intention of the City Council to order a portion of the public streets known as Valley Parkway, Grape Street, Fig Street, and adjoining alley as more fully described in Exhibits “A” and “B” hereto to be vacated, abandoned, and closed to public use.

3. That portions of the public street and alley proposed to be vacated are legally described in Exhibit "A" and depicted on plats in Exhibit "B." Exhibits "A" and "B" are attached to this resolution and are incorporated by this reference.

4. That this street vacation shall be conducted pursuant to the provisions of the Public Streets, Highways, and Service Easements Vacation Law, which is incorporated in Part 3, Division 9, Chap. 1 commencing at § 8300 of the California Streets and Highways Code.

5. That notice is hereby given that the City Council will hear protests made by any person interested in or objecting to the said proposed street vacation at 5:00 p.m. on Wednesday, October 12, 2022, at the City Council Chambers, 201 North Broadway, Escondido, California.

6. That the City Clerk shall cause a copy of this resolution to be published consistent with the California Streets and Highways Code § 8322, to post at least three notices of vacation along the line of the proposed streets and alley to be vacated at least two weeks prior to the hearing in accordance with California Streets and Highways Code § 8323, and to send notice to affected public utility companies, if any, at least two weeks prior to the hearing.

**EXHIBIT "A"**  
**CITY OF ESCONDIDO**  
**PUBLIC STREET VACATION**

THAT CERTAIN 20.00 FOOT WIDE ALLEY IN BLOCK 34 OF PALOMAR MEMORIAL HOSPITAL SUBDIVISION, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 2574 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON JULY 1, 1949 TOGETHER WITH THOSE PORTIONS OF VALLEY BOULEVARD, GRAPE STREET, AND FIG STREET AS DEDICATED TO THE PUBLIC FOR USE AS STREETS PER SAID MAP, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**PARCEL A1 (VALLEY BOULEVARD)**

**BEGINNING** AT THE MOST NORTHERLY CORNER OF LOT 20 IN BLOCK 64 OF TOWN OF ESCONDIDO, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 336, FILED IN THE OFFICE OF SAID COUNTY RECORDER JULY 10, 1886; THENCE ALONG THE EASTERLY LINE OF SAID BLOCK 64 SOUTH 05°27'07" WEST, 84.09 FEET TO THE BEGINNING OF A NON-TANGENT 883.50 FOOT RADIUS CURVE CONCAVE EASTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 82°23'55" WEST; THENCE LEAVING SAID EASTERLY LINE NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 05°51'06" A DISTANCE OF 90.23 FEET TO THE NORTHEASTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID BLOCK 64; THENCE ALONG SAID PROLONGATION SOUTH 59°39'59" WEST, 9.84 FEET TO THE **POINT OF BEGINNING**.

CONTAINS 266 SQUARE FEET, MORE OR LESS.

**PARCEL A2 (VALLEY BOULEVARD)**

**BEGINNING** AT THE SOUTHEAST CORNER OF LOT 8 IN BLOCK 64 OF SAID MAP NO. 336; THENCE ALONG THE EASTERLY LINE OF SAID BLOCK 64 NORTH 05°27'07" EAST, 175.23 FEET; THENCE LEAVING SAID EASTERLY LINE SOUTH 04°58'00" WEST, 21.91 FEET TO THE BEGINNING OF A 643.50 FOOT RADIUS CURVE CONCAVE EASTERLY; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 12°40'19" A DISTANCE OF 142.32 FEET TO THE NORTHEASTERLY PROLONGATION

OF THE SOUTHERLY LINE OF SAID BLOCK 64; THENCE ALONG SAID PROLONGATION SOUTH 59°40'23" WEST, 21.02 FEET TO THE **POINT OF BEGINNING**.

CONTAINS 950 SQUARE FEET, MORE OR LESS.

**PARCEL A3 (VALLEY BOULEVARD)**

**COMMENCING** AT THE SOUTHWEST CORNER OF BLOCK 338 OF SAID MAP NO. 2574; THENCE ALONG THE NORTHWESTERLY LINE OF SAID BLOCK NORTH 05°27'07" EAST, 55.54 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE CONTINUING NORTH 05°27'07" EAST, 292.53 FEET TO THE BEGINNING OF A NON-TANGENT 810.50 FOOT RADIUS CURVE CONCAVE EASTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 76°41'04" WEST; THENCE LEAVING SAID NORTHWESTERLY LINE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 08°20'56" A DISTANCE OF 118.10 FEET; THENCE SOUTH 04°58'00" WEST, 86.05 FEET; THENCE SOUTH 85°02'00" EAST, 3.67 FEET; THENCE SOUTH 04°58'00" WEST, 19.00 FEET; THENCE NORTH 86°23'52" WEST, 3.51 FEET TO THE BEGINNING OF A NON-TANGENT 570.50 FOOT RADIUS CURVE CONCAVE EASTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 86°23'52" WEST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 07°01'48" A DISTANCE OF 70.00 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINS 1,575 SQUARE FEET, MORE OR LESS.

**PARCEL B (GRAPE STREET)**

**COMMENCING** AT THE INTERSECTION OF THE NORTHERLY LINE OF GRAND AVENUE, DEDICATED FOR PUBLIC USE PER SAID MAP NO. 2574, WITH THE EASTERLY LINE OF SAID GRAPE STREET, BEING THE SOUTHEAST CORNER OF THAT PORTION OF GRAPE STREET PREVIOUSLY VACATED AND CLOSED TO PUBLIC USE BY ORDINANCE OF THE CITY OF ESCONDIDO NO. 764 RECORDED MAY 29, 1961 AS FILE NO. 92029; THENCE ALONG SAID VACATED GRAPE STREET NORTH 11°38'41" EAST, 164.21 FEET TO THE SOUTHERLY LINE OF SAID ALLEY AND THE **TRUE POINT OF BEGINNING**; THENCE ALONG THE SOUTHWESTERLY PROLONGATION OF SAID SOUTHERLY LINE SOUTH 70°06'06" WEST, 46.93 FEET TO THE CENTERLINE OF SAID GRAPE STREET; THENCE LEAVING SAID PROLONGATION ALONG SAID CENTERLINE NORTH 11°38'41" EAST,

23.47 FEET TO THE SOUTHWESTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID ALLEY; THENCE LEAVING SAID CENTERLINE ALONG SAID PROLONGATION NORTH 70°06'06" EAST, 46.90 FEET TO THE EASTERLY LINE OF SAID GRAPE STREET; THENCE LEAVING SAID PROLONGATION ALONG SAID EASTERLY LINE SOUTH 02°54'18" EAST, 0.10 FEET; THENCE SOUTH 11°38'41" WEST, 23.35 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINS 939 SQUARE FEET, MORE OR LESS.

**PARCEL C (FIG STREET)**

**COMMENCING** AT THE INTERSECTION OF THE NORTHERLY LINE OF SAID GRAND AVENUE WITH THE WESTERLY LINE OF SAID FIG STREET; THENCE ALONG SAID FIG STREET NORTH 19°47'20" WEST, 6.78 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE CONTINUING ALONG SAID WESTERLY LINE AND THE NORTHWESTERLY PROLONGATION THEREOF NORTH 19°47'20" WEST, 333.08 FEET TO THE CENTERLINE OF OHIO STREET, DEDICATED FOR PUBLIC USE PER SAID MAP; THENCE ALONG SAID CENTERLINE NORTH 70°05'40" EAST, 7.00 FEET TO A LINE LYING 7.00 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY LINE OF SAID FIG STREET; THENCE LEAVING SAID CENTERLINE ALONG SAID PARALLEL LINE SOUTH 19°47'20" EAST, 317.89 FEET TO THE BEGINNING OF A 20.00 FOOT RADIUS CURVE CONCAVE WESTERLY; THENCE LEAVING SAID PARALLEL LINE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 49°27'30" A DISTANCE OF 17.26 FEET TO SAID WESTERLY LINE OF FIG STREET AND THE **TRUE POINT OF BEGINNING**.

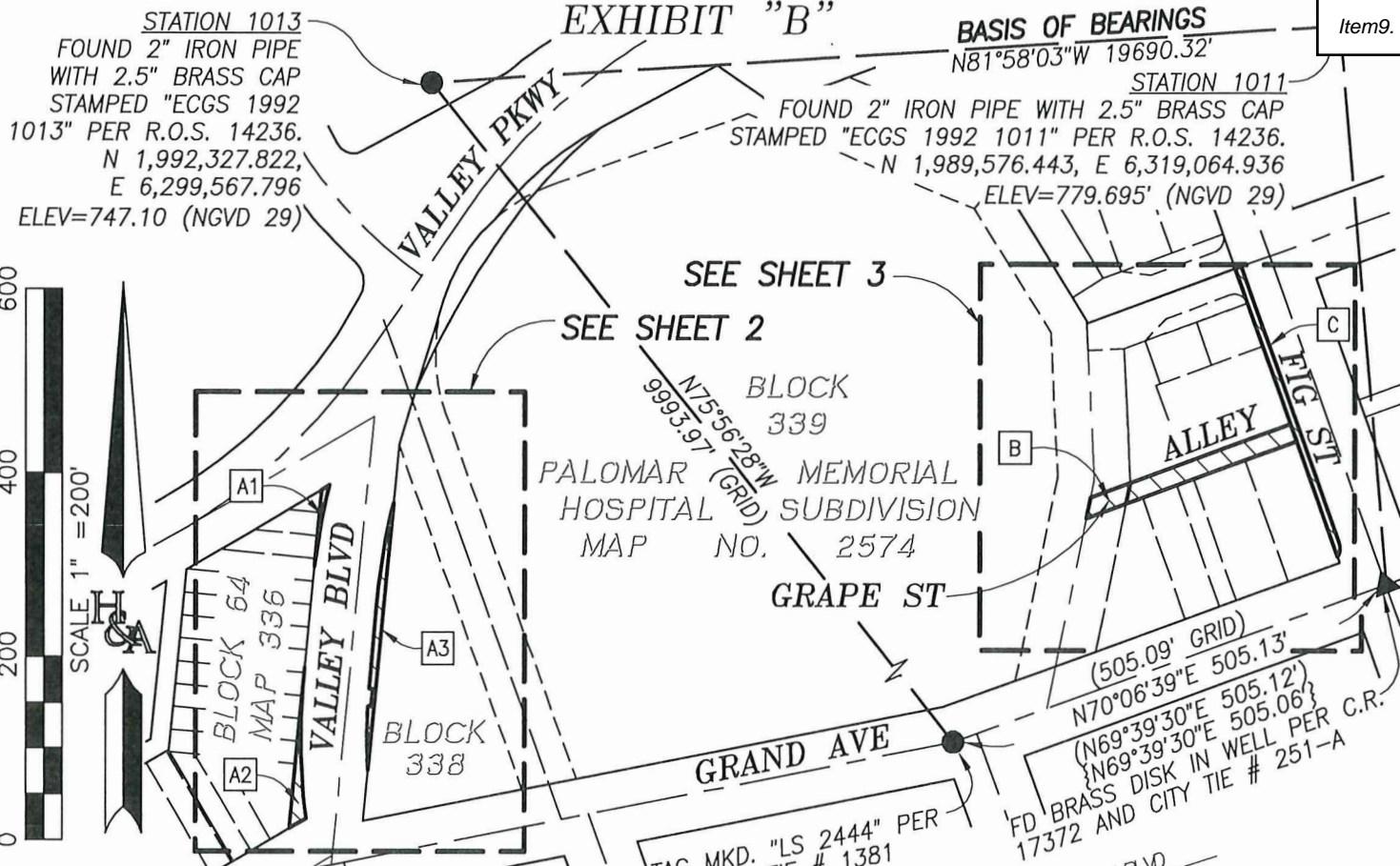
CONTAINS 2,299 SQUARE FEET, MORE OR LESS.

  
\_\_\_\_\_  
DOUGLAS B. STROUP  
HUNSAKER & ASSOCIATES SAN DIEGO, INC.

*6/09/22*  
\_\_\_\_\_  
P.L.S. 8553



# EXHIBIT "B"



- [A1]-[A3] PORTION OF VALLEY BOULEVARD, DEDICATED TO THE PUBLIC PER MAP NO. 2574 BEING VACATED HEREON.  
(A1 CONTAINS 266 SQ. FT., MORE OR LESS  
A2 CONTAINS 950 SQ. FT., MORE OR LESS  
A3 CONTAINS 1,575 SQ. FT., MORE OR LESS)
- [B] PORTION OF GRAPE STREET, DEDICATED TO THE PUBLIC PER MAP NO. 2574 BEING VACATED HEREON.  
(CONTAINS 939 SQ. FT, MORE OR LESS)
- [C] PORTION OF FIG STREET, DEDICATED TO THE PUBLIC PER MAP NO. 2574 BEING VACATED HEREON. (CONTAINS 2,299 SQ. FT., MORE OR LESS)
- [1] PORTIONS OF GRAPE STREET AND OHIO STREET VACATED AND CLOSED TO PUBLIC USE BY ORDINANCE OF THE CITY OF ESCONDIDO NO. 764 RECORDED MAY 29, 1961 AS FILE NO. 92029, O.R.
- [2] PORTION OF OHIO AVENUE VACATED AND CLOSED TO PUBLIC USE BY RESOLUTION NO. 74-211 RECORDED OCTOBER 21, 1974 AS FILE NO. 1974-280073, O.R.

**LEGEND**  
 [Hatched Box] VACATION AREAS  
 ( ) RECORD DATA PER MAP 2574  
 < > RECORD DATA PER ROS 14553  
 { } RECORD DATA PER ROS 8248

**BASIS OF BEARINGS**  
 THE BASIS OF BEARINGS FOR THIS SURVEY IS THE CALIFORNIA COORDINATE SYSTEM-1983, ZONE 6, 1991.35 EPOCH, NORTH AMERICAN DATUM OF 1983 (NAD83). GRID BEARING BETWEEN STATIONS 1011 AND 1012 OF CITY OF ESCONDIDO CONTROL SURVEY ESTABLISHED BY RECORD OF SURVEY NO. 14236. I.E. NORTH 81°58'03" WEST

REFERENCED BEARINGS FROM OTHER DOCUMENTS/DEEDS MAY OR MAY NOT BE IN TERMS OF SAID SYSTEM.

THE COMBINED SCALE FACTOR AT STATION 1011 IS 0.999923539.  
 GRID DISTANCE = GROUND DISTANCE X COMBINED SCALE FACTOR.

**POC** POINT OF COMMENCEMENT  
**TPOB** TRUE POINT OF BEGINNING  
**POB** POINT OF BEGINNING

**DOUGLAS B. STROUP** 6/09/22 L.S. 8553





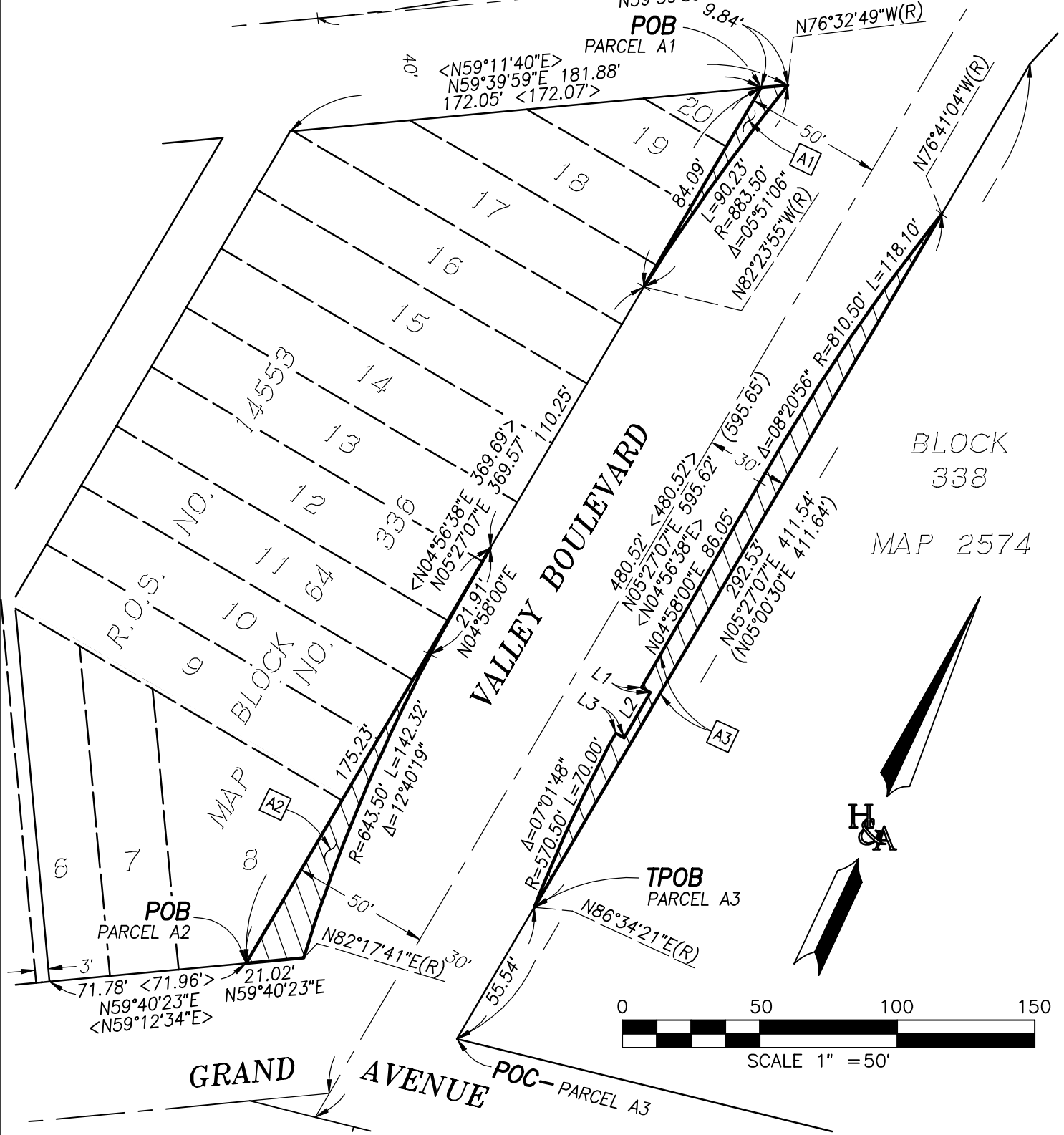
 <p><b>HUNSAKER &amp; ASSOCIATES</b> SANDIEGO, INC. 9707 Waples Street (858)558-4500 San Diego, CA 92121</p>	<p><b>ENGINEERING SERVICES</b> 201 North Broadway, CA 92025 (760) 839-4651</p>	 <p>DOC. NO. - SHEET: 1 OF 102</p>
PUBLIC STREET VACATION		

EXHIBIT "B"

#	BEARING	DISTANCE
L1	N85°02'00"W	3.67'
L2	N04°58'00"E	19.00'
L3	N86°23'52"W(R)	3.51'

VALLEY PARKWAY

Item 9.



**H & A**  
HUNSAKER & ASSOCIATES  
SAN DIEGO, INC.  
9707 Waples Street (858)558-4500  
San Diego, CA 92121

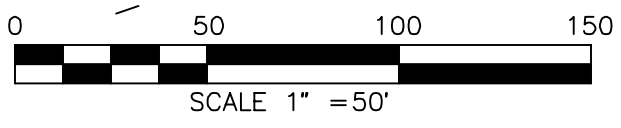
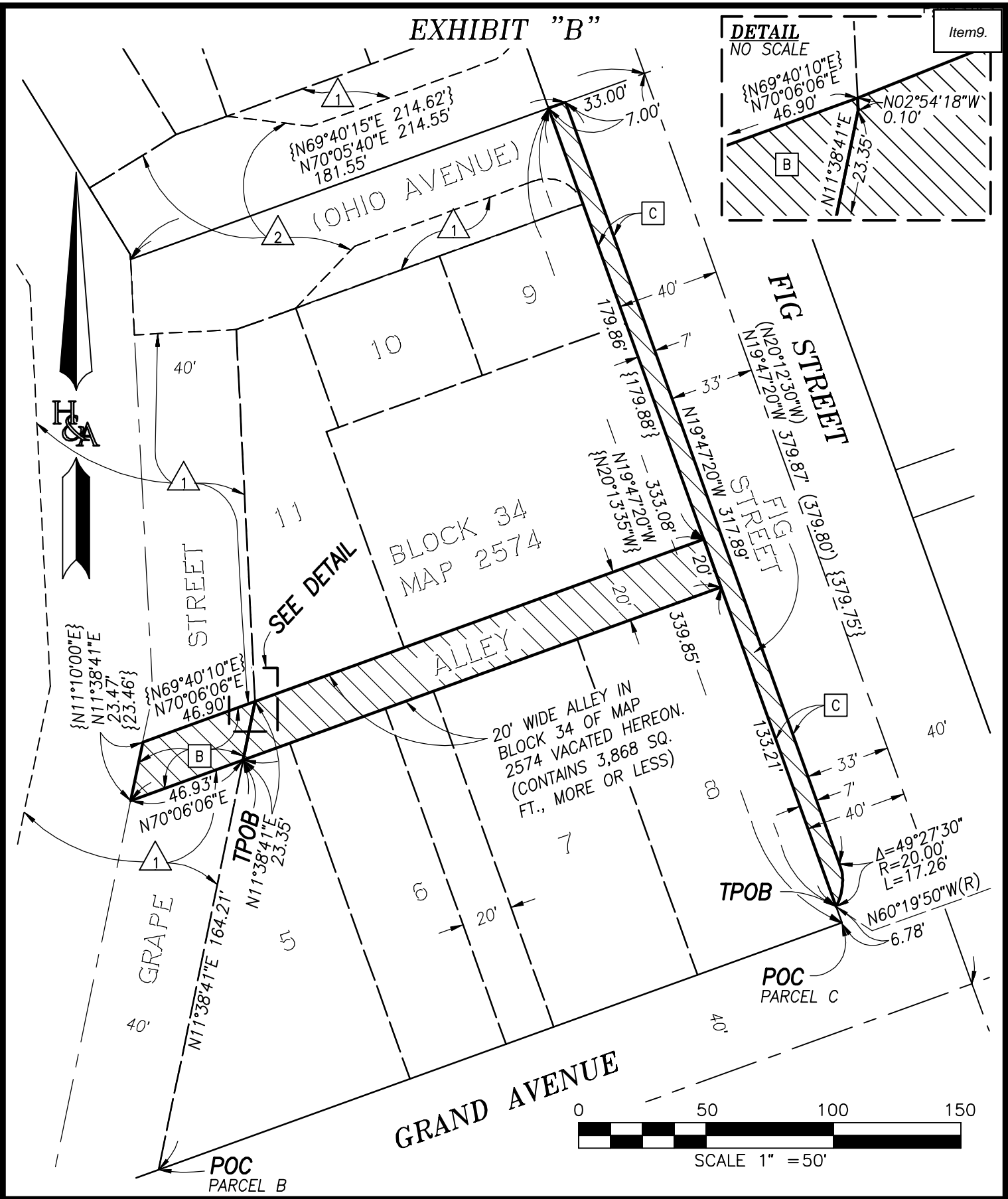
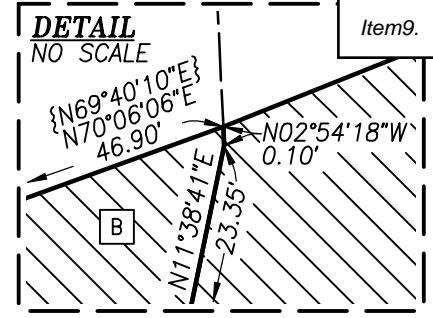
ENGINEERING SERVICES  
201 North Broadway, CA 92025 (760) 839-4651

**PUBLIC STREET VACATION**

**ESCONDIDO**  
City of Choice

DOC. NO. -  
SHEET: 2 OF 103

EXHIBIT "B"



**HUNSAKER & ASSOCIATES**  
SAN DIEGO, INC.

9707 Waples Street (858)558-4500  
San Diego, CA 92121

ENGINEERING SERVICES  
201 North Broadway, CA 92025 (760) 839-4651

**PUBLIC STREET VACATION**



DOC. NO. -  
SHEET: 3 OF 104





# STAFF REPORT

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September 14, 2022  
File Number 0810-20

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## SUBJECT

**AN AMENDMENT TO THE ESCONDIDO MUNICIPAL AND ZONING CODES TO CREATE OBJECTIVE DEVELOPMENT STANDARDS FOR THE IMPLEMENTATION OF SENATE BILL 9 (PLANNING CASE NO. PL22-0363)**

## DEPARTMENT

Development Services (Planning Division)

## RECOMMENDATION

Request that the City Council consider the introduction and adoption of Ordinance No. 2022-19R, approving an amendment to the Escondido Municipal and Zoning Codes to create objective development standards for the local implementation of Senate Bill 9.

Staff Recommendation: Approval (Development Services: Andrew Firestine)

Presenter: Sean Nicholas, Principal Planner

## FISCAL ANALYSIS

Adoption of the Senate Bill 9 (“SB 9”) Implementing Ordinance will have no direct fiscal impact on the City. As proposed, a Major Plot Plan fee will be assessed on every SB 9 application for a two-family dwelling and a Tentative Parcel Map and Parcel Map fee will be assessed on every SB 9 application for an urban lot split. These fees will offset staff resources required to review the applications.

## PREVIOUS ACTION

On August 24, 2022, the City Council directed staff to continue this item to a future date.

## BACKGROUND AND ANALYSIS

On January 1, 2022, SB 9 went into effect statewide. SB 9 is part of the State legislature’s effort to increase housing production throughout California, and establishes two major provisions to help accommodate this: it allows for two primary dwelling units to be developed on parcels zoned for single-family residences as the primary use (“two-family dwellings”); and it creates an administrative process to allow for the subdivision of parcels zoned for single-family residences as the primary use (“urban lot splits”).



# CITY of ESCONDIDO

## STAFF REPORT

Government Code Section 65852.21(b), allows for jurisdictions to adopt local requirements to regulate development of properties pursuant to SB 9, as long as the requirements are objective and not in conflict with the provisions of the bill. The provisions included in the draft implementing ordinance under consideration are intended to provide clarity on the City's objective development standards related to projects undertaken pursuant to SB 9. They also identify the permitting process for such projects. Provisions related to two-family dwellings are identified in draft Escondido Zoning Code section 33-115, and those related to urban lot splits can be found in section 33-116.

At its August 24, 2022, meeting, the City Council conducted a public hearing and received a staff report and presentation regarding the proposed Municipal and Zoning Code amendments. A copy of the staff report from that meeting is included with this report as Attachment 1 for reference. At that public hearing, the City Council requested additional information in the form of graphics and other exhibits to provide a clearer picture of what the impacts of developments undertaken pursuant to SB 9 would be, and continued the hearing to a future date so that staff could provide the additional information requested. That information is contained in this report.

It is important to note that City regulations cannot be more restrictive than those prescribed in the SB 9. In light of such limitation, staff has drafted code language intended to incentivize compatibility with the existing community character and development patterns, and also applied development standards in instances where SB 9 is silent.

### **Two-Family Dwellings**

Table 1 below provides a summary of development standards for two-family dwelling projects undertaken pursuant to SB 9 and identifies the areas where additional objective standards have been applied in the draft Zoning Code amendment. Absent adoption of the local SB 9 Implementing Ordinance, developments undertaken pursuant to SB 9 are not subject to the development standards prescribed in the local ordinance. A more detailed table has also been provided as Attachment 2 to this staff report.



# CITY of ESCONDIDO

## STAFF REPORT

Table 1: Development Standards

Development Standard	SB 9 Requirement	Proposed Escondido Requirement
Number of Units	4 (2 primary dwelling units 2 ADUs)	Same
Unit Size	Min Allowed: 800 square feet Max Allowed: None	Min Allowed: 400 square feet Max Allowed: 800 square feet*
Setbacks	Front: Not addressed Side: 4 feet Rear: 4 feet	Front: Per underlying zone Side: 4 feet Rear: 4 feet
Building Separation	Not addressed	Per underlying zone
Height	No limitation	16 feet/1-story*
Parking	1 space per unit**	1 covered space per unit**
Access	No requirements	- 20 foot wide driveway constructed per City standards - Emergency, public facilities/utility, and access easements required
Design/Construction Standards	No requirements	- Same colors and materials - Permanent foundation - Full kitchen - Shared water and sewer connection and meter
Rental Terms (if rented)	30-day minimum	Same
Process	Ministerial	Major Plot Plan

\* May be increased for developments on larger lots that are consistent with development standards of the underlying zoning, do not contain ADUs, and subject to other regulations

\*\* Waived if less than ½ mile of public transit or 1 block of car share

Staff would like to draw attention to development standards that affect the maximum unit size allowance. As noted in Table 1, in most circumstances the draft ordinance would limit the unit size to the minimum the City could allow pursuant to SB 9 (800 square feet), and building heights would be limited to 16 feet and one story. However, staff has included language in the draft ordinance that would allow increases in size and height for two-family dwellings under certain circumstances. Specifically, the projects must be on larger-than-standard lots; both dwelling units would have to be consistent with the setbacks, floor area,



# CITY of ESCONDIDO

## STAFF REPORT

and lot coverage requirements applicable to the underlying zone; the lot cannot have any ADUs (either currently or in the future); and the project would have to provide two covered parking spaces per unit. Under these provisions, the maximum size for a two-family dwellings could be up to 2,000 square feet, provided the parcel is at least one acre in size. More detail on this is provided in Attachment 2. Allowing this increase would incentivize a developer to build within development envelope of the underlying zone. This helps maintain the character of the neighborhood while also providing housing options that can accommodate larger families.

### Urban Lot Splits

As described in the August 24, 2022, staff report, in addition to allowing two primary dwelling units on a property, SB 9 also establishes provisions for urban lot splits. An urban lot split is the subdivision of one existing parcel into two parcels in an urbanized area, and must be permitted in single-family residential zones in most circumstances. Each new lot created as part of an urban lot split must be at least 1,200 square feet and at least 40% of the size of the existing lot. Construction of homes on lots created by an urban lot split must comply with the development standards in Table 1 above, except that only two units are permitted on each lot created via an urban lot split instead of four. Additionally, parcels created via an urban lot split shall not be required to dedicate land for public right(s)-of-way nor to provide off-site (frontage) improvements, and shall not be required to correct nonconforming zoning conditions.

### Additional Requirements

The following additional provisions apply to both two-family dwellings and urban lot splits:

- Allowed only on parcels where single-family residential development is the primary use:
  - o R-1 Zone
  - o R-E Zone
  - o Some specific plans
- Prohibited in the following locations:
  - o Agricultural, multi-family, and mixed use zones, even if single-family residential uses are permitted
  - o Commercial and industrial zones
  - o Historic districts and local-register properties
  - o Properties requiring demolition or alteration of affordable housing units or units occupied by a tenant in the last three years



# CITY of ESCONDIDO

## STAFF REPORT

- Environmentally sensitive properties
- Deed restriction or notes on parcel maps stipulating compliance with applicable provisions

### Associated Municipal and Zoning Code Amendments

Minor revisions to other sections of the Escondido Municipal and Zoning Codes are necessary in order to ensure consistency with proposed sections 33-115 and 33-116 of the Zoning Code. Zoning Code revisions include a new definition of an Urban Lot Split in section 33-8 of Article 1, references to two-family development standards in sections 33-90, 33-95, 33-97, 33-106 and 33-107, and tables 33-94 and 33-98a of Article 6, and processing requirements in section 33-1314 of Article 6. Revisions to the Escondido Municipal Code are proposed to sections 23-47, 23-119, 23-120, and 32-204.02, to address limitations on right-of-way dedications and public improvements.

Revisions to the Municipal and Zoning Code are identified in ~~strike-thru~~/underline format in Attachment 3 to this report, and are incorporated into Exhibit “B” to draft City Council Ordinance 2022-19R. Exhibits depicting potential two-family dwelling and urban lot split developments are included as Attachment 4.

### ENVIRONMENTAL REVIEW

Pursuant to Government Code Sections 65852.21(j) and 66411.7(n), adoption of local requirements consistent with the provisions of SB 9 are not subject to CEQA.

### ATTACHMENTS

1. Attachment 1 – August 24, 2022, City Council Staff Report
2. Attachment 2 – Table comparing SB 9 development standards to local ordinance development standards
3. Attachment 3 – Draft Zoning and Municipal Code Amendment language (~~strike-thru~~/underline)
4. Attachment 4 – Two-family Dwelling and Urban Lot Split development examples

### ORDINANCES

1. Ordinance No. 2022-19R
2. Ordinance No. 2022-19R Exhibit “A”
3. Ordinance No. 2022-19R Exhibit “B”



# STAFF REPORT

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August 24, 2022  
File Number 0810-20

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## SUBJECT

**AN AMENDMENT TO THE ESCONDIDO MUNICIPAL AND ZONING CODES TO CREATE OBJECTIVE DEVELOPMENT STANDARDS FOR THE IMPLEMENTATION OF SENATE BILL 9 (PLANNING CASE NO. PL22-0363)**

## DEPARTMENT

Development Services (Planning Division)

## RECOMMENDATION

Request that the City Council consider the introduction and adoption of Ordinance No. 2022-19, approving an amendment to the Escondido Municipal and Zoning Codes to create objective development standards for the local implementation of Senate Bill 9.

Staff Recommendation: Approval (Development Services: Andrew Firestine, Director of Development Services)

Presenter: Sean Nicholas, Principal Planner

## FISCAL ANALYSIS

Adoption of the Senate Bill 9 ("SB 9") Implementing Ordinance will have no direct fiscal impact on the City. As proposed, a Major Plot Plan fee will be assessed on every SB 9 application for a two-family dwelling and a Tentative Parcel Map and Parcel Map fee will be assessed on every SB 9 application for an urban lot split. These fees will offset staff resources required to review the applications.

## PREVIOUS ACTION

None.

## BACKGROUND AND ANALYSIS

On January 1, 2022, SB 9 went into effect statewide. SB 9 is part of the State legislature's effort to increase housing production throughout California, and establishes two (2) major provisions to help accommodate this: it allows for two (2) primary dwelling units to be developed on parcels zoned for single-family residences as the primary use ("two-family dwellings"); and it creates an administrative process to allow for the subdivision of parcels zoned for single-family residences as the primary use ("urban lot splits").

Government Code Section 65852.21(b), allows for jurisdictions to adopt local requirements to regulate development of properties pursuant to SB 9, as long as the requirements are objective and not in conflict with the provisions of the bill. The provisions included in the draft implementing ordinance under consideration are intended to provide clarity on the City's objective development standards related to projects undertaken pursuant to SB 9. They also identify the permitting process for such projects. Provisions related to two-family dwellings are identified in draft Escondido Zoning Code section 33-115, and those related to urban lot splits can be found in section 33-116.

Planning Commission reviewed the proposed Escondido Zoning Code amendment on July 12, 2022, and recommended unanimously that City Council approve the proposed changes.

### **Objective Development Standards**

Any development standards established by a local government to implement the provisions of SB 9 must be objective (not subject to discretion) and known in advance, and cannot be more restrictive than those prescribed in the bill. Staff has identified objective development standards including limitations to number of units, unit size, height limitations, and parking requirements, among others, that have been tailored to the extent possible to maintain the character of existing single-family neighborhoods. As such, it is important to note that staff has provided flexibility in certain development standards in order to encourage more-livable dwelling units where impacts to the surrounding neighborhoods can be minimized. All objective standards included in the draft ordinance are consistent with the limitations set forth in SB 9.

*Number of Units* – SB 9 allows the owner of an existing parcel currently zoned for single-family residential use to apply for an urban lot split resulting in two lots, and to apply to develop two residential units on a single lot. Consistent with SB 9, the draft ordinance allows for ministerial review of those applications, in conjunction with existing laws relating to accessory and junior accessory dwelling units. If an existing parcel is divided pursuant to section 33-116, each lot will be limited to no more than two total units.

### **Two-Family Dwellings**

*Unit Size Limitations* – SB 9 limits the ability of local jurisdictions to require a unit be less than 800 square feet. This does not prevent applicants from proposing less than 800 square feet for each unit. For the purposes of compatibility with existing neighborhoods, staff has included provisions in the draft ordinance requiring minimum unit size of 400 square feet. In addition, for portions of the community with larger lots

that propose to utilize the provisions of the ordinance pertaining to two-family dwellings, clear objective standards based primarily on lot area would allow units to be a maximum of 2,000 square feet of living space, provided all provisions of the underlying zoning district are adhered to.

*Height Limitations* – Similar to recent state-mandated housing legislation, local provisions and units created consistent with SB 9 are allowed to have a minimum side and rear setback of four (4) feet, and a height of 16 feet. Consistent with those requirements, any development utilizing provisions of the ordinance pertaining to two-family dwellings and having minimum side and/or rear setbacks less than that required in the underlying zone, are limited to a maximum of one-story and 16 feet in height. This is directly consistent with the State requirements. If a proposed development undertaken pursuant to the provisions the ordinance pertaining to two-family dwellings is consistent with the setbacks of the underlying zone, height limitations shall also be permitted to be consistent with those allowed in the underlying zone. Again, the emphasis of this regulation is consistency with State law, while allowing for developments to be in character with the neighboring residential development.

*Parking Requirements* – SB 9 allows local jurisdictions to require up to one (1) onsite parking space for each dwelling unit created unless proximity requirements to public transportation options are met, in which case no parking can be required. To be consistent with standard parking requirements for a single-family residential development, the draft ordinance requires one parking space for each unit that does not meet the public transportation proximity exclusion. SB 9 is silent regarding whether parking needs to be covered, however to ensure compatibility with surrounding residential developments, the draft ordinance requires the parking space to be covered and to be on the same parcel as the unit which the parking space serves. A maximum of a 450 square foot garage or covered parking area has been set for any residential unit created pursuant to the implementing ordinance.

### **Urban Lot Splits**

The second change created by SB 9 is the establishment of Urban Lot Splits. Draft Escondido Zoning Code section 33-116 identifies requirements for processing an Urban Lot Split. As ministerial actions, urban lot splits are approved at staff level and do not require a public hearing unless other aspects of the project would require such. Applicable provisions of the Subdivision Map Act must still be met, but the goal is to streamline the process. Any lot created utilizing section 33-116 must be at least 1,200 square feet in size, and no resulting lot can be less than 40% of the original parcel area. Any parcel created pursuant to section 33-116 cannot be further subdivided in the future. Additionally, any parcel created pursuant to this section is limited to two residential units, consistent with the objective development standards described above.



As with the draft provisions of section 33-115, requirements set forth in section 33-116 are only applicable in the R-E and R-1 zones, and on parcels in specific plans designated for single-family residential uses as the primary use.

### **Additional Zoning and Municipal Code Amendments**

In order to implement the provisions of SB 9, revisions to other sections of the Escondido Municipal and Zoning Codes have been identified. The revisions to the Zoning Code are required to provide internal consistency and compliance with SB 9. The revisions to the Municipal Code address SB 9 exemptions from right-of-way dedication and installation public improvements. Both revisions are included in strike-thru/underline format in Attachment "1" to this report, and are incorporated into Exhibit "B" to draft City Council Ordinance No. 2022-19.

### **Applicability of SB 9 Provisions**

Draft Escondido Zoning Code sections 33-115 and 33-116 apply to parcels zoned primarily for single-family residential use, including the estate residential (R-E) and single-family residential (R-1) zones, as well as properties in specific plans where the property is intended for development with one single-family residence. The provisions of Sections 33-115 and 33-116 do not apply to properties in the agriculture residential (R-A) zone, any multi-family residential zones, or any areas designated for non-residential or mixed-use zoning.

### **ENVIRONMENTAL REVIEW**

Pursuant to Government Code Sections 65852.21(j) and 66411.7(n), adoption of local requirements consistent with the provisions of SB 9 are not subject to CEQA.

### **ATTACHMENTS**

- ~~1. Attachment "1" Draft Zoning and Municipal Code Amendment language~~

### **ORDINANCES**

- ~~1. Ordinance No. 2022-19~~
- ~~2. Ordinance No. 2022-19 Exhibit "A"~~
- ~~3. Ordinance No. 2022-19 Exhibit "B"~~

**Two-family Dwelling Units SB 9**

**Local Ordinance**

<i>Location</i>	<ul style="list-style-type: none"> <li>Single-family residential zones - 65852.21(a)</li> <li>Not on a property included on the State Historic Resources Inventory, or within a site that is designated or listed as a city or county landmark or historic resource or district</li> <li>Excludes those properties described in 65913.4(B) through (K)</li> </ul>	<ul style="list-style-type: none"> <li>R-E and R-1 zones and on properties in specific plans intended primarily for single-family use - 33-115(e)</li> <li>Excludes parcels with legal nonconforming uses or structures unless brought into conformance - 33-115(e)(2)(F)</li> <li>Same exceptions as SB 9</li> </ul>
<i>Floor Area</i>	<ul style="list-style-type: none"> <li>Local agencies must allow at least 800 square feet per unit - 65852.21(b)(2)(A)</li> </ul>	<ul style="list-style-type: none"> <li>Unit size is set at a minimum of 400 square feet and a maximum of 800 square feet unless additional conditions are met - 33-115(f)(1)</li> <li>Exceptions to the minimum and maximum unit size allow for a maximum unit size of 1,200; 1,500; or 2,000 based on a series of locally controlled criteria in - 33-115(f)(1)(B):                             <ul style="list-style-type: none"> <li>Lot size (1.5x for 1,200sf unit; 1.5x and at least 20,000sf for 1,500sf unit; and at least 1 acre for 2,000sf unit)</li> <li>No existing ADU /JADU and deed restriction prohibiting the construction of an ADU/JADU</li> <li>Covered parking spaces (2 per unit)</li> <li>Maximum garage size for 1,200 sf unit</li> <li>Setbacks per underlying zone</li> <li>Complies with maximum floor area ratio (FAR) and lot coverage</li> </ul> </li> </ul>
<i>Setbacks</i>	<ul style="list-style-type: none"> <li>Up to four feet from the side and rear lot lines for new structures - 65852.21(b)(2)(B)(ii)</li> <li>No requirement for existing structure or structure constructed in the same location and to the same dimensions as existing - 65852.21(b)(2)(B)(i)</li> </ul>	<ul style="list-style-type: none"> <li>No less than four feet from side and rear lot lines - 33-115(f)(2)(A)</li> <li>Projections into setbacks not allowed - 33-115(f)(2)(B)</li> <li>Front setback measured from ultimate right-of-way - 33-115(f)(2)(C)</li> <li>Setback requirements not applicable for existing structure or new structure constructed in the same location as an existing structure - 33-115(f)(2)(D)</li> <li>Minimum separation requirements between structures - 33-115(f)(2)(E)</li> <li>Structures with less than 10 feet of separation must meet fire construction standards - 33-115(f)(2)(F)</li> </ul>
<i>Height</i>	<ul style="list-style-type: none"> <li>Not addressed</li> </ul>	<ul style="list-style-type: none"> <li>When located in the rear or side setback of the underlying zone district (and up to 4 feet), limited to 16 feet in height and one-story - 33-115(f)(3)(A)</li> <li>If it meets setbacks for underlying zoning district, allowed up to maximum height of zoning district - 33-115(f)(3)(B)</li> </ul>
<i>Parking</i>	<ul style="list-style-type: none"> <li>Up to one space per unit - 65852.21(c)(1)<sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>One on-site covered parking space per unit and not in tandem - 33-115(f)(4)</li> <li>Same exceptions as SB 9</li> </ul>
<i>Access</i>	<ul style="list-style-type: none"> <li>Not addressed</li> </ul>	<ul style="list-style-type: none"> <li>Driveway width must be a minimum of 20 feet and must be paved; minimum vertical clearance of at least 13.5 feet - 33-115(f)(5)(A)</li> <li>Access must meet city standards (dead ends, fire access) and easements for emergency access, public facilities, utilities, and/or access required - 33-115(f)(5)(B)</li> </ul>
<i>Design and Construction Standards</i>	<ul style="list-style-type: none"> <li>Not addressed</li> </ul>	<ul style="list-style-type: none"> <li>New structures may not be oriented to the side or rear property line unless they meet the setbacks in the underlying zoning district - 33-115(f)(6)</li> <li>Units must be constructed on permanent foundation and connected to public sewer or septic approved by County - 33-115(f)(7)</li> <li>Requires full kitchen facilities and washer/dryer hookups for each unit - 33-115(f)(8)</li> <li>Units must share the same water and sewer utility connections and meter - 33-115(f)(9)</li> <li>Colors and materials need to match - 33-115(g)(5)</li> </ul>
<i>Short-term Rentals</i>	<ul style="list-style-type: none"> <li>Any rental must be for a term longer than 30 days - 65852.21(e)</li> </ul>	<ul style="list-style-type: none"> <li>Same standard as SB 9 - 33-115(g)(2)</li> </ul>
<i>ADU/JADUs</i>	<ul style="list-style-type: none"> <li>Local agency not required to permit an ADU or JADU on parcels that were created through an urban lot split and have a two-family dwelling unit - 65852.21(f)</li> </ul>	<ul style="list-style-type: none"> <li>Any existing parcel may be permitted to construct up to four total units - 33-115(g)(7)(B)<sup>2</sup></li> </ul>
<i>Process</i>	<ul style="list-style-type: none"> <li>Ministerial, without discretionary review - 65852.21(a)</li> </ul>	<ul style="list-style-type: none"> <li>Approval by the director through a major plot plan application - 33-115(c)</li> </ul>

<sup>1</sup>Except when a parcel is located within one-half mile walking distance of a high-quality transit corridor or major transit stop or there is a car share vehicle located within one block of the parcel

<sup>2</sup>This could be achieved through: 1) urban lot split with two-family dwelling units on each new lot; 2) two-family dwelling unit with an ADU/JADU for each unit; or 3) urban lot split with single-family dwellings on each new lot with an ADU/JADU for each unit

<b>Urban Lot Split SB 9</b>	<b>Local Ordinance</b>
<i>Location</i>	<ul style="list-style-type: none"> <li>• Single-family residential zones - 66411.7(3)(A)</li> <li>• Not on a property included on the State Historic Resources Inventory, or within a site that is designated or listed as a city or county landmark or historic resource or district</li> <li>• Excludes those properties restricted for use as affordable housing or subject to rent control</li> </ul>
<i>Parcel Size</i>	<ul style="list-style-type: none"> <li>• Same standards as SB 9</li> </ul>
<i>Number of Units, Setbacks, Unit Size, Parking Requirements</i>	<ul style="list-style-type: none"> <li>• Local agency not required to permit more than two units on a parcel created by an urban lot split - 66411.7(j)</li> <li>• Up to four feet from the side and rear lot lines for new structures - 66411.7(c)(3)(B)</li> <li>• No requirement for existing structure or structure constructed in the same location and to the same dimensions as existing - 66411.7(c)(3)(A)</li> <li>• Local agencies must allow at least 800 square feet per unit - 66411.7(c)(2)</li> <li>• Parking may be required up to one space per unit - 66411.7(e)(3)<sup>1</sup></li> </ul>
<i>Access and Easements</i>	<ul style="list-style-type: none"> <li>• Each dwelling unit and parcel shall have access to, provide access to, or adjoin the public right-of-way - 33-116(k)</li> <li>• Access must be a minimum of 20 feet in width - 33-116(j)</li> <li>• Easements shall be provided for the provision of public facilities, utilities, access, and/or emergency access - 33-116(k)</li> </ul>
<i>Occupancy</i>	<ul style="list-style-type: none"> <li>• Restricted to residential uses - 66411.7(f)</li> <li>• Owner occupancy required of one of the housing units as a principal residence for a minimum of three years - 66411.7(g)(1)</li> <li>• Rental of any unit shall be for a term longer than 30 days - 66411.7(h)</li> </ul>
<i>Non-conforming Zoning Conditions</i>	<ul style="list-style-type: none"> <li>• Local agency prohibited from conditioning approval on the correction of non-conforming zoning conditions - 66411.7(i)</li> </ul>
<i>Process</i>	<ul style="list-style-type: none"> <li>• Ministerial, without discretionary review - 66411.7(b)(1)</li> <li>• Approval by the director as a tentative parcel map - 33-116(o)</li> </ul>

<sup>1</sup>Except when a parcel is located within one-half mile walking distance of a high-quality transit corridor or major transit stop or there is a car share vehicle located within one block of the parcel

## NEW ZONING CODE SECTIONS:

### **Sec. 33-115. Two-family dwellings in single-family residential zones and specific plans**

- (a) Purpose. The purpose of section 33-115 is to appropriately regulate qualifying Senate Bill 9 two-family dwelling unit developments within single-family residential zones in accordance with California Government Code section 65852.21.
- (b) For the purposes of this section and section 33-116 only, the term *two-family dwelling* shall mean two (2) attached or detached units on single-family zoned properties, and on properties in specific plans intended for single-family residential use.
- (c) Permit required. Two (2) family dwellings shall require processing of a major Plot Plan application as described in division 8 of article 61 of this chapter.
  - (1) The Director of Development Services or their designee (Director) shall review complete applications for compliance with the requirements of this section and the underlying development standards in the zoning district or specific plan in which it is located, and any other applicable objective development standards stated in the Municipal Code. Notwithstanding language in any specific plan to the contrary, provisions of this section shall supersede where any conflict exists. The Director shall ministerial approve complete applications found to be in compliance with these standards.
  - (2) The Director may deny a complete application if it fails to comply with the requirements of this section, the underlying development standards in the zoning district or specific plan in which it is located, and any other applicable objective development standards stated in the Municipal Code. In addition to the foregoing, the Director may deny an application if such denial is based upon a preponderance of evidence and the written finding of the building official that the proposed two-family dwelling project would have a specific, adverse impact, as defined in Government Code section 65589.5, subdivision (d)(2), upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. Notwithstanding the foregoing, an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards.
- (d) Appeals of the Director's decision shall be governed by section 33-1303.

(1) If the development of a two-family dwelling project requires another entitlement pursuant to the Escondido Zoning Code, the two-family dwelling project shall not be approved until that entitlement process is completed and approved. If the entitlement is not approved, the two-family dwelling project cannot be approved unless it is redesigned to eliminate the need for the denied entitlement.

(e) Location.

(1) Except as specified below, two-family dwellings shall be permitted in estate residential (R-E) and single-family residential (R-1) zones, and on properties in specific plans intended primarily for single-family residential use.

(2) Two-family dwellings shall not be permitted in the following locations:

(A) On properties that allow as the primary use multi-family residential, commercial, industrial, agricultural, or mixed uses, regardless of the allowance of single-family residential uses.

(B) On properties described in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Government Code section 65913.4.

(C) Within a historic district or upon property included on the State Historic Resources Inventory, as defined in section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic resource or district pursuant to a city or county ordinance.

(D) On parcels requiring demolition or alteration of any of the following types of housing:

i. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

ii. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

iii. Housing that has been occupied by a tenant in the last three years.

(E) On parcels which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with section 7060) of Division 7 of Title 1 of the Government Code to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(F) On parcels with legal nonconforming uses or structures unless development of the two-family dwelling brings the property into conformance.

(f) Objective Development Standards: The development standards set forth below shall apply to all two-family dwellings. Any development standard not explicitly identified below shall be subject to the underlying zoning designation or specific plan, and all applicable provisions of this code, unless superseded by Government Code sections 65852.21, 66411.7, and 66452.6.

(1) Unit Size:

(A) The minimum unit size of any unit created as part of a two-family dwelling shall be 400 square feet.

(B) Except as described below, no new unit constructed as part of a two-family dwelling may exceed 800 square feet.

i. New units may be up to 1,200 square feet if they meet all of the following requirements:

a. The parcel on which the two-family dwelling is located is in the R-E or R-1 zone and has a lot size of at least one and a half (1 ½) times the minimum size otherwise permitted in the zone.

b. No accessory dwelling unit or junior ADU exist on the parcel.

c. A deed restriction is recorded prohibiting the construction of an ADU or junior ADU on the parcel.

d. Existing and new dwelling units shall each have two covered parking spaces.

e. An attached or detached garage or covered parking space(s) associated with the 1,200 square foot unit does not exceed 450 square feet.

f. Existing and new dwelling units shall meet the minimum setbacks in the underlying zone.

g. Addition of the new unit does not result in the parcel being out of compliance with the maximum floor area ratio and lot coverage for the underlying zone.

- ii. New units may be up to 1,500 square feet if they meet all of the following requirements:
  - a. The parcel on which the two-family dwelling is located is in the R-E zone and has a lot size of one and one half (1 ½) times the minimum size otherwise permitted in the zone, or is in the R-1 zone and has a minimum lot size of 20,000 square feet.
  - b. The unit satisfies all requirements identified in subsections b through g of section 33-115(f)(1)(B)i.
- iii. New units may be up to 2,000 square feet if they meet all of the following requirements:
  - a. The parcel on which the two-family dwelling is located is in the R-E or R-1 zone and has a lot size of at least one acre.
  - b. The unit satisfies all requirements identified in subsections b through g of section 33-115(f)(1)(B)i.
- (C) Any future subdivision of a parcel with a two-family dwelling project shall not cause the parcel to be out of compliance with the provisions of this subsection.

(2) Setbacks and building separation:

- (A) Minimum side and rear yard setbacks for a two-family dwelling shall be no less than four feet.
- (B) Section 33-104(c), projections into setbacks, shall not apply to any projects utilizing sections 33-115 or 33-116.
- (C) For two family dwellings constructed on properties which have frontage on streets which have not been dedicated to their ultimate width, setbacks shall be measured from the ultimate right-of-way.
- (D) Setback requirements noted above shall not apply to a legally existing detached accessory structure that is utilized as one of the two units associated with the two-family dwelling or for a new structure constructed in the same location as a legally existing detached accessory structure.
- (E) Detached dwelling units and associated covered parking shall be a minimum of 10 feet from each other unless all structures are single-story

and not more than 16 feet in height, in which case the minimum separation shall be five feet.

- (F) Notwithstanding subsection (E) above, all dwellings with less than 10 feet of separation shall meet the fire resistive construction requirements contained in the California Residential and Fire codes.

(3) Maximum Height/Stories:

- (A) If located within the rear or side yard setback of the underlying zoning district, the two-family dwelling shall be limited to 16 feet and one-story.
- (B) If compliant with the setbacks for the underlying zoning district, the two-family dwelling shall comply with the height limitations of the underlying zoning district.

(4) Parking Requirements:

- (A) At least one off-street parking space shall be provided for each new unit constructed under the provisions of this section. Said parking spaces shall be covered, and shall not be in tandem with parking spaces for any other unit on the property.
- (B) The required parking shall be located onsite with the two-family dwelling the parking is associated with.
- (C) Parking spaces shall be designed pursuant to section 33-769. Compact spaces are not permitted.
- (D) The foregoing parking standards shall not be required in either of the following circumstances:
- i. The two-family dwelling is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of section 21155 of the Public Resources Code, or a major transit stop as defined in section 21064.3 of the Public Resources Code. The applicant shall be responsible for demonstrating applicability of this section; or
  - ii. There is a car share vehicle located within one block of the two-family dwelling.

(5) Access and easements



- (A) Vehicular access from the public right of way shall meet the following requirements:
- i. Driveways that provide access to two homes shall have a minimum paved width of 20 feet.
  - ii. Driveways that provide access to three homes, or that provide access to parking facilities with nine or more parking spaces, shall have a minimum width of 24 feet, unless the parking facility is served by 2 one-way driveways, in which case each driveway shall be at least 12 feet wide.
  - iii. All driveways shall have a height clearance of at least 13 feet 6 inches, and shall be paved with cement, asphaltic concrete, or other all-weather construction material(s) and to the City Design Standards for Driveway Structural Design.
  - iv. Access improvements shall be provided in compliance with the City's adopted standard drawings.
  - v. Access to lots shall be in conformance with Article 39 of the Escondido Zoning Code. Dead end access shall be no longer than 150-feet in length unless a Fire Department approved turn-around is provided. Fire Department access shall be a minimum of 20 feet in unobstructed width.
- (B) Access to lots shall be in conformance with Article 39 of the Escondido Zoning Code. Dead end access shall be no longer than 150-feet in length unless a Fire Department approved turn-around is provided. Fire Department access shall be a minimum of 20 feet in unobstructed width.
- (C) Emergency access and easements for the provision of public facilities, utilities, and/or access shall be provided in compliance with applicable sections of the municipal code.
- (6) The primary entrance for any new dwelling unit constructed as part of a two-family dwelling shall not be oriented to the side or rear property line unless the structure meets the side or rear setback established by the underlying zoning district.
- (7) Each unit in a two-family dwelling shall be placed on a permanent foundation and permanently connected to the public sewer system or an onsite wastewater treatment system approved by the County of San Diego Health Department.

(8) Each unit in a two-family dwelling shall include sufficient permanent provision for living, sleeping, eating, cooking, and sanitations, including but not limited to washer/dryer hookups and full kitchen facilities.

(9) Both units in a two-family dwelling shall share the same water and sewer utility connections and meter, and shall be subject to connection fees or capacity charges, or both.

(g) Additional Requirements:

(1) Construction of a two-family dwelling project shall not require the demolition of more than 25 percent of the exterior structural walls of an existing dwelling unless the site has not been occupied by a tenant in the last three (3) years.

(2) Any unit created pursuant to this section shall, if rented, be rented for a term longer than 30 days.

(3) A deed restriction prepared by the City shall be recorded against the subject property prior to issuance of any building permit(s) for a two-family dwelling. The deed restriction shall run with the land and shall stipulate compliance with the applicable provisions of this section.

(4) New dwelling units constructed as part of a two-family dwelling shall meet the requirements of the California Building, Residential, and Fire codes, as such codes have been adopted and amended by Chapters 6 and 11 of the Escondido Municipal Code.

(5) Both units in a two-family dwelling project shall utilize the same colors and materials. This requirement applies whether both units are constructed at the same time or if one (1) unit is added to a property that is currently developed with an existing unit.

(6) Solar panels shall be required on newly constructed units within a two-family dwelling project in compliance with the California Energy Code.

(7) Accessory Dwelling Units:

(A) For the purposes of this subsection, *Unit* refers to either a primary dwelling unit, an accessory dwelling unit (ADU), or a junior ADU.

(B) Inclusive of the two-family dwelling requirements described in this section, any existing parcel may be permitted to construct up to four total units.

(C) Any parcel created pursuant to section 33-116 shall be permitted to have no more than two total units.

(D) ADUs and Junior ADUs shall be governed by the provisions of Article 70.

**Sec. 33-116. Urban lot split**

- (a) Purpose. The purpose of section 33-116 is to appropriately regulate qualifying Senate Bill 9 urban lot split developments within single-family residential zones in accordance with California Government Code section 66411.7.
- (b) For the purposes of this section, *two-family dwelling* shall have the same meaning as that identified in section 33-115.
- (c) Urban lot splits, as defined in section 33-8, shall be approved ministerially without discretionary review.
- (d) Urban lot splits are not permitted on the following parcels:
  - (1) Those described in section 33-115(e)(2);
  - (2) Parcels that were created by a prior urban lot split;
  - (3) Parcels adjacent to those which the owner or someone acting in concert with the owner has previously subdivided through an urban lot split process.
  - (4) Parcels where subdivision would result in either of the new parcels being out of compliance with the maximum unit sizes identified in subsection 33-115(f)(1).
  - (5) Parcels containing more than two units, as that term is described in subsection 33-115(g)(7)(A).
- (e) All provisions of the Subdivision Map Act and Escondido Municipal Code shall apply unless expressly modified in this section.
  - (1) No dedication of right-of-way or construction of offsite improvements shall be required as a condition of parcel map approval.
  - (2) If the urban lot split is proposed on a public street that has not been dedicated to its ultimate width, public facilities, utilities, and/or access easements shall be recorded as a condition of parcel map approval.
- (f) Development Standards. Parcels shall be subject to all development standards of the zone in which the property is located, except as modified below:

- (1) Lot size:
- (A) Each newly created lot shall be at least 40% of the lot area of the parcel being divided.
  - (B) Each newly created parcel shall be no smaller than 1,200 square feet.
- (2) Setbacks, unit size, and parking requirements shall be the same as those in section 33-115(f).
- (g) A parcel created by an urban lot split shall be permitted to have a total of two units. This can be achieved through either a two-family dwelling, a single-family dwelling with an ADU, or a single-family dwelling with a junior ADU.
  - (h) Parcels created by an urban lot split shall not be required, as a condition of ministerial approval, to correct nonconforming zoning conditions.
  - (i) An application for an urban lot split shall not be rejected solely because it proposes adjacent or connected structures, provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.
  - (j) Access to lots shall be in conformance with Article 39 of the Escondido Zoning Code. Dead end access shall be no longer than 150-feet in length unless a Fire Department approved turn-around is provided. Fire Department access shall be a minimum of 20 feet in unobstructed width.
  - (k) Each dwelling unit and parcel shall have access to, provide access to, or adjoin the public right of way. Accessibility shall be in conformance with the Building Code and Americans with Disability Act, and shall not preclude construction of future public improvements
  - (l) Easements for the provision of public facilities, utilities, access, and/or emergency access shall be provided as a condition of approval of an urban lot split.
  - (m) Unless specifically exempted pursuant to Government Code sections 66411.7(g)(2) and (3), an applicant for an urban lot split shall sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.
  - (n) Units on parcels created subject to this section shall, if rented, be rented for a term longer than 30 days.
  - (o) Applications for urban lot splits shall be processed in the same manner as those for tentative parcel maps, and shall be subject to the applicable requirements contained in Chapter 32 of the Escondido Municipal Code.

- (p) Notes shall be included on the parcel map which reference compliance with sections 33-115 and 33-116 of the Escondido Zoning Code, and any other provisions of said code related to urban lot splits.
- (q) Fees for urban lot split applications shall be the same as those assessed for other tentative parcel map and parcel map applications.
- (r) Denial of permit:
  - (1) The City may deny a request for an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the request would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of section 65589.5 the California Government Code, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.
- (s) Appeals:
  - (1) Appeals of the director's decision shall be governed by section 33-1303.

## **ADDITIONAL MODIFICATIONS**

### **Sec. 33-8. Definitions.**

Urban lot split means the subdivision of any lot in a single-family residential zone or parcels designated for primarily single-family development in a specific plan into two lots.

### **Sec. 33-90. Purpose.**

- (a) Residential zones are established to provide for residential districts of various population densities so that the various types of residential developments may be separated from each other as necessary to assure compatibility of uses within family living areas, including the necessary appurtenant and accessory facilities associated with such areas.
- (b) The following classes of residential use zones are established:
  - (1) The agriculture residential (R-A) zone is established to provide an agricultural setting in which agricultural pursuits can be encouraged and supported within the city. The R-A zone is designed to include single-family detached dwellings and to protect agricultural uses from encroachment by urban uses until residential, commercial or industrial uses in such areas become necessary or desired.
  - (2) The estate residential (R-E) zone is established to provide a rural setting for family life in single-family detached dwellings. Provisions are made for the

maintenance of limited agricultural pursuits as well as those uses necessary and incidental to single-family living.

- (3) The single-family residential (R-1) zone is established to provide a suburban setting suitable for family life in single-family, detached dwellings.
- (4) The mobilehome residential (R-T) zone is established to provide a mobilehome park setting for family life in single-family detached mobilehomes. No land shall be classified into this zone where such classification would create an R-T zone area of less than four hundred thousand (400,000) square feet.
- (5) The light multiple residential (R-2) zone is established to provide a multifamily setting for family life in low-height, low density dwelling units in close proximity to single-family residential neighborhoods.
- (6) The medium multiple residential (R-3) zone is established to provide a multifamily setting for family life in low-height, medium density dwelling units in close proximity to other multifamily neighborhoods.
- (7) The high multiple residential (R-4) zone is established to provide a multifamily setting for family life in mid-height, high density dwelling units in close proximity to other multifamily neighborhoods and near the city's center.
- (8) The very high multiple residential (R-5) zone is established to provide a multifamily setting for family life in higher-height, very high density dwelling units in close proximity to other multifamily neighborhoods and near the city's center.

(c) Subsection 33-90(a) notwithstanding, this section also serves to implement provisions of sections 65852.21 and 66411.7 of the Government Code.

**Sec. 33-94. Permitted and conditional uses and structures.** (Note: the only revisions to this section are as shown on the portion of Table 33-94 below, including the addition of Footnote 2.)

**Table 33-94**

Permitted/Conditional Uses & Structures	R-A	R-E	R-1	R-T	R-2	R-3	R-4	R-5
Residential and Lodging								
Single-family dwellings detached	P	P	P		P	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>
Mobilehome on parcel alone, pursuant to section 33-111	P	P	P	P				

Permitted/Conditional Uses & Structures	R-A	R-E	R-1	R-T	R-2	R-3	R-4	R-5
<u>Two-family dwelling units and urban lot splits</u>		<u>P<sup>2</sup></u>	<u>P<sup>2</sup></u>					
Two-family, <u>three-family</u> , and multiple-family dwellings					P	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>

**Notes:**

1 No vacant or underdeveloped lot or parcel of land in any R-3, R-4, and R-5 zone shall be improved or developed at a density below seventy (70) percent of the maximum permitted density. Exceptions to the minimum density requirement may be granted in writing as part of the plan approval required by section 33-106 provided the development will not preclude the city from meeting its housing needs as described in the housing element of the Escondido general plan. Minimum density requirements shall not apply to property owners seeking to enhance or enlarge existing dwelling units or construct other accessory structures on a site.

2 Pursuant to sections 33-115 and 33-116.

**Sec. 33-95. Permitted accessory uses and structures.** (Note that tables in this section are not shown; no changes are proposed to those tables.)

(a) Accessory uses and structures are permitted in residential zones, provided they are incidental to, and do not substantially alter the character of the permitted principal use or structure. Such permitted accessory uses and structures include, but are not limited to, those listed in Table 33-95.

(1) When provided by these regulations, it shall be the responsibility of the director to determine if a proposed accessory use is necessarily and customarily associated with, and is appropriate, incidental, and subordinate to, the principal use, based on the director’s evaluation of the resemblance of the proposed accessory use to those uses specifically identified as accessory to the principal uses and the relationship between the proposed accessory use and the principal use.

(b) The permitted types and quantities of animals allowed in residential zones is listed in Table 33-95a. Other household pets are allowed pursuant to section 33-1116 of Article 57 of this chapter.

(1) At no time shall the keeping of such animals and pets constitute a nuisance or other detriment to the health, safety, or general welfare of the community.

(2) All animal keeping is subject to the animal control and humane treatment standards in Chapter 4 of the Municipal Code (Animal Control) and other regulations found in County and State codes, including, but not limited to, State Health and Safety Code.

- (3) No more than the quantities of animals specifically listed in Table 33-95(a) or section 33-1116 shall be kept on any premises, except that offspring may be kept onsite for up to four (4) months from birth.
- (4) The number of animals allowed on properties that have been divided pursuant to section 33-116 shall be one half of that otherwise allowed in the underlying zoning district.

**Sec. 33-97. Property development standards.**

- (a) In addition to the property development standards set forth in this chapter, the development standards set forth in this article shall apply to land and structures in residential zones.
- (b) Properties developed pursuant to sections 33-115 or 33-116 shall be subject to the development standards contained in those sections. For any development standards not addressed in those sections, the standards contained elsewhere in this chapter shall apply.

**Sec. 33-98. Parcel requirements.**

**Table 33-98a**

Zoning Suffix	Minimum Lot Area (square feet)	Average Lot Width (feet)	Minimum Street Lot Frontage	Population Density
R-T <sup>2</sup>	4,500*	55*	35 feet on a line parallel to the centerline of the street or on a cul-de-sac improved to city standards <sup>1</sup> .  Frontage on a street end that does not have a cul-de-sac improved to city standards shall not be counted in meeting this requirement except for panhandle lots.  Panhandle lots pursuant to Article 56.	Not more than one single-family dwelling may be placed on a lot or parcel of land in this zone. <sup>3</sup>
R-1-6	6,000	60		
R-1-7	7,000	65		
R-1-8	8,000	70		
R-1-9	9,000	75		
R-1-10	10,000	80		
R-1-12	12,000	85		
R-1-15	15,000	90		
R-1-18	18,000	95		
R-1-20	20,000	100		
R-1-25	25,000	110		



Zoning Suffix	Minimum Lot Area (square feet)	Average Lot Width (feet)	Minimum Street Lot Frontage	Population Density
			*Mobilehome parks pursuant to Article 45 allow different lot requirements. Title 25 provisions apply where applicable.	
R-E-20	20,000	100	20 feet or be connected to a public street by a permanent access easement <sup>1</sup> .  Panhandle lots pursuant to Article 56.	
R-E-25	25,000	110		
R-E-30	30,000	125		
R-E-40	40,000	150		
R-E-50	50,000			
R-E-60	60,000			
R-E-70	70,000			
R-E-80	80,000			
R-E-90	90,000			
R-E-100	100,000			
R-E-110	110,000			
R-E-130	130,000			
R-E-150	150,000			
R-E-170	170,000			
R-E-190	190,000			
R-E-210	210,000			
R-A-5	217,800	150	60 feet or be connected to a public street by a permanent access easement. <sup>1</sup>	
R-A-10	435,600			

Zoning Suffix	Minimum Lot Area (square feet)	Average Lot Width (feet)	Minimum Street Lot Frontage	Population Density
			Panhandle lots pursuant to Article 56.	

**Notes:**

1. Exception: Access to lots or parcels may be provided by private road easement conforming to the following standards:
  - (a) The minimum easement widths shall be 20 to 24 feet as determined by the city engineer and fire marshal; subject to the Escondido Design Standards and Standard Drawings;
  - (b) Pavement section widths, grades and design shall be approved by the city engineer;
  - (c) A cul-de-sac or turnaround shall be provided at the terminus to the satisfaction of the planning, engineering and fire departments.
2. Except for land that was being used for mobile homes prior to the effective date of the ordinance codified in this article, no land shall be classified into this zone where such classification would create an R-T zone area of less than 400,000 square feet.
3. Properties developed pursuant to section 33-115 and/or 33-116 shall be allowed one two-family dwelling project/Urban Lot Split.

**Sec. 33-106. Plan approval required.**

- (a) Building plan review and building permits are required for the construction or modification of single-family detached dwellings, mobilehomes, and some accessory structures in residential and R-T zones. Application shall be made to the building division for plan review, which is subject to planning division confirmation of zoning compliance. Two-family dwellings and urban lot splits in single-family residential zones shall be processed pursuant to section 33-115 and 33-116 of this article, respectively.
- (b) An appropriate development application for the construction or modification of ~~two-family~~ more than one dwellings on any lot in R-2, R-3, R-4 and R-5 zones, multiple-family dwellings, some accessory structures, and nonresidential development in all residential zones is required pursuant to Article 61 of this chapter.

**Sec. 33-107. Building requirements, generally.**

Table 33-107 lists building requirements in residential zones (excluding mobilehome parks approved pursuant to Article 45).

**Table 33-107**

<b>Building Requirements</b>	<b>R-A</b>	<b>R-E</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>R-4</b>	<b>R-5</b>	<b>R-T*</b>
Building height (feet), except as otherwise provided in this chapter	35	35	35	35 <sup>1</sup>	35 <sup>1</sup>	75	75	35
Maximum building stories				2 <sup>1</sup>	3 <sup>1</sup>	4 <sup>1</sup>	4 <sup>1</sup>	
Minimum distance between residence and accessory buildings (feet)	10 <sup>5</sup>	10 <sup>5</sup>	10 <sup>5</sup>	10 <sup>5</sup>	10 <sup>5</sup>	10 <sup>5</sup>	10 <sup>5</sup>	10 <sup>5</sup>
Dwelling unit minimum floor area (square feet) <sup>2</sup>	850	1,000 <sup>6</sup>	850 <sup>6</sup>	500	400	400	400	700
Maximum percent lot coverage by primary and accessory structures	20%	30%	40%	50%	none	none	none	60%
Maximum floor area ratio (FAR) <sup>3</sup>	0.3	0.4 <sup>4</sup>	0.5	0.6	0.7	0.8	0.9	none
Minimum square feet allowed for residential and parking regardless of the FAR	1,500	1,500	1,500	2,500	3,500	4,500	5,000	700

**Notes:**

1. Buildings or structures in excess of one (1) story and located adjacent to single-family zoned land, shall provide a setback equal to the abutting setback required by the single-family zone standards, plus five (5) additional feet for each story over two (2) on the property line(s) abutting the single-family zone(s) as noted in sections 33-100 and 33-101. Additionally, building features such as windows, doors, balconies, etc., bulk and scale shall not adversely affect the adjacent single-family property.
  2. Area is exclusive of porches, garages, carports, entries, terraces, patios or basements.
  3. FAR is the numerical value obtained by dividing the total gross floor area of all buildings on the site by the total area of the lot or premises.
  4. Except that the maximum FAR for the RE-20 zone shall be 0.5; and for the RE-170 and RE-210 zones the maximum FAR shall be 0.3.
  5. Pursuant to section 33-103(c), if the residence (or main building) and detached accessory building are both one (1) story in height, then the minimum separation requirement may be reduced to five (5) feet, unless a greater distance is required by local building and fire code requirements for fire separation.
  6. Dwelling unit minimum floor area does not apply to units created subject to section 33-115.
- \* Requirements apply unless superseded by Title 25.

**Sec. 33-1314. Definition and purpose.**

- (a) *Plot plan* means a zoning instrument used primarily to review the location and site development of certain permitted land uses. The plot plan review process is required when any of the following are proposed in a multi-family, commercial, or industrial zone:
- (1) A new building, structure, or addition;
  - (2) A new permitted use of land or existing structure that may require additional off-street parking;
  - (3) A modification of an existing development affecting the building area, parking (when a reduction in parking spaces is proposed), outdoor uses, or on-site circulation. Changes to parking areas that do not result in a reduction in parking spaces are exempt from plot plan review, but require design review, as provided in section 33-1355(b)(2);
  - (4) As may otherwise be required by this chapter.

Plot plan review is not required for residential development created by a planned development or residential subdivision of single-family lots.

- (b) *Minor plot plan* may include, but shall not be limited to, a change in use with no additional floor area, minor building additions, outdoor storage as an accessory use in the industrial zones, or other site plan changes affecting site circulation and parking, as determined by the director.
- (c) *Major plot plan* may include, but shall not be limited to, new construction, reconstruction and additions of facilities permitted in the underlying zone, or other projects that exceed thresholds for a minor plot plan, as determined by the director. All two-family dwelling projects proposed pursuant to section 33-115 shall be subject to the approval of a major Plot Plan.

**MUNICIPAL CODE AMENDMENTS**

**Sec. 23-119. Public dedication of rights-of-way required.**

- (a) Subject to the "individualized determination" of section 23-121, any applicant who constructs any new building or dwelling in the city shall grant necessary public dedication or have provided a grant of easement or other appropriate conveyance, as approved by the city attorney. Accessory structures with a valuation less than twenty-three thousand eight hundred twenty-eight dollars (\$23,828.00), as determined by building permit valuation, and accessory structures to single-family

residences shall be exempt from this section. Rights-of-way shall also be provided for any improvements to existing facilities including rights-of-way for storm drains or other required public facilities. All rights-of-way shall be accompanied by a title examination report and be free of all liens and encumbrances.

- (b) The public dedications required by subsection (a) of this section shall also apply to any person who enlarges or expands any building in the city if the cost of such work exceeds the sum of twenty-three thousand eight hundred twenty-eight dollars (\$23,828.00) as determined by building permit valuation. By resolution of city council, said amount may be increased annually consistent with the International Code Council valuation schedule for the appropriate construction type.
- (c) The required public dedications shall be granted prior to issuance of the building permit for the subject property.
- (d) In determining the building permit valuation, the building official shall include the cumulative building permit valuation of multiple building permit applications within a twelve (12) month period to determine whether the development is exempt from this section.
- (e) Projects developed under the provisions of sections 33-116 of the Escondido Zoning Code shall be exempt from the provisions of this section. Easement(s) may be required for public facilities, utilities, and/or access.

**Sec. 23-120. Public improvements required.**

- (a) Subject to the "individualized determination" of section 23-121, any applicant who constructs any building or dwelling in the city shall construct all necessary public improvements in accordance with city specifications upon the property and along all street frontages adjoining the property upon which such building is constructed unless adequate improvements already exist. Accessory structures with a valuation less than twenty-three thousand eight hundred twenty-eight dollars (\$23,828.00), as determined by building permit valuation, and accessory structures to single-family residences shall be exempt from this section. In each instance, the city engineer shall determine whether the necessary improvements exist and are adequate. Each building permit application shall be so endorsed at the time it is issued. All new and redevelopment projects are subject to undergrounding of overhead utilities.
- (b) The improvements required by subsection (a) of this section shall also apply to any person who enlarges or expands any building or dwelling in the city if the cost of such work exceeds twenty-three thousand eight hundred twenty-eight dollars (\$23,828.00), as determined by building permit valuation.

- (c) By resolution of city council, such amount may be increased annually consistent with the International Code Council valuation scheduled for the appropriate construction type. Tenant and façade improvements to any building that do not result in enlargement or expansion of the building area are exempt from public improvements and undergrounding of overhead utilities.
- (d) In determining the building permit valuation, the building official shall examine the cumulative building permit valuation of multiple building permit applications within a twelve (12) month period to determine whether the development is exempt from this section.
- (e) Projects developed under the provisions of sections 33-116 of the Escondido Zoning Code shall be exempt from the provisions of this section. Easement(s) may be required for future public facilities, utilities, and/or access.

**Sec. 23-47. Undergrounding required.**

- (a) All development projects within the City of Escondido which are either new subdivisions or subject to section 23-119 or 23-120 shall be required to underground all utility distribution facilities, including cable television and other communication facilities.
- (b) The developer shall make the necessary arrangements with each of the serving utilities, including those providing cable television, telephone, and other utility services, for the installation of such facilities. All transformers, terminal boxes, meter cabinets, pedestals, concealed ducts, and any other related facilities appurtenant to such underground utilities shall also be placed underground except in circumstances permitting above ground installations pursuant to conditions established by the director of community development.
- (c) Projects developed under the provisions of sections 33-116 of the Escondido Zoning Code shall be exempt from the provisions of this section. Easement(s) may be required for future public facilities, utilities, and/or access.

**32.204.02. REQUIREMENTS**

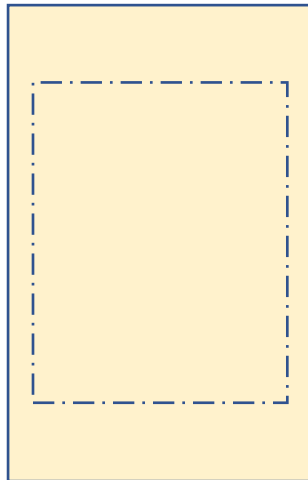
Before approval of a Final or Parcel Map for a subdivision, the subdivider shall:

- A. Grade and improve or agree to grade and improve all land dedicated or to be dedicated for streets or easements, bicycle ways and all private streets and private easements laid out on a Final Map or Parcel Map in such manner and with such improvements as are necessary in accordance with the Escondido City standards;

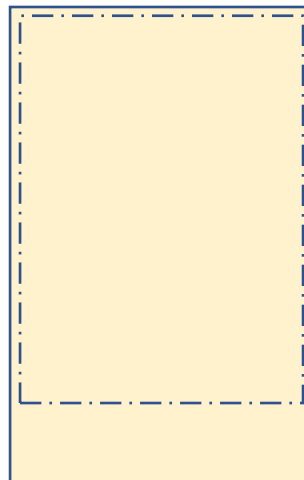
- B.** Install or agree to install sewers or sewage disposal systems in accordance with the Private Sewage Disposal Systems ordinance;
- C.** Provide proof satisfactory to the City Engineer that there exists an adequate potable water supply available to each lot or parcel and that the sub-divider will install or agree to install water supply facilities to the satisfaction of the City Engineer provided that the City Engineer may require such other system or size of water supply pipe as recommended by the water facility serving the subdivision;
- D.** Install or agree to install as required by the City Engineer, fire hydrants and connections, which hydrants and connections shall be of a type approved by the Escondido Fire Chief; and
- E.** Construct or agree to construct all off-site improvements required by the City Engineer.
- F.** Subdivisions created under the provisions of section 33-116 of the Escondido Zoning Code shall be exempt from the provisions of this section. Easement(s) may be required for future public facilities, utilities, and/or access.

### Building Envelope

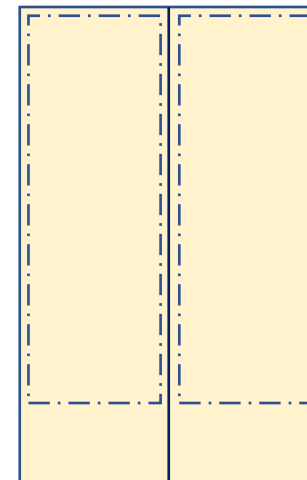
No SB 9



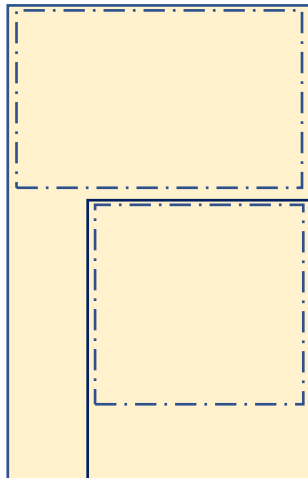
SB 9, No Lot Split



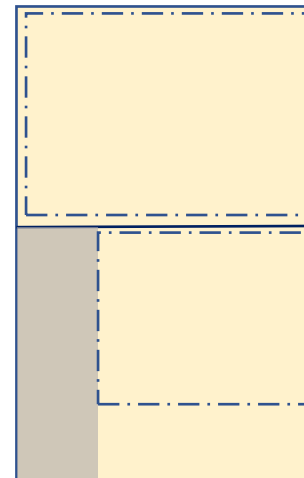
SB 9, Lot Split



SB 9, Lot Split with Panhandle



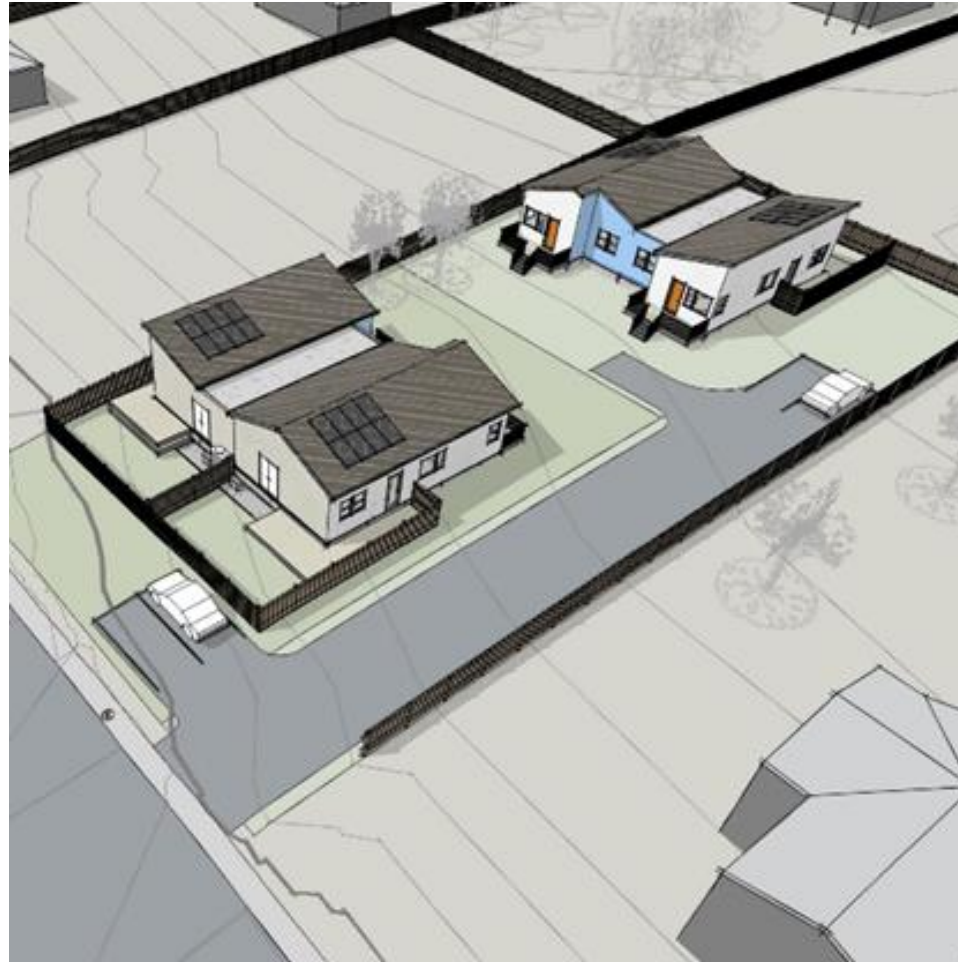
SB 9, Lot Split with Access Easement





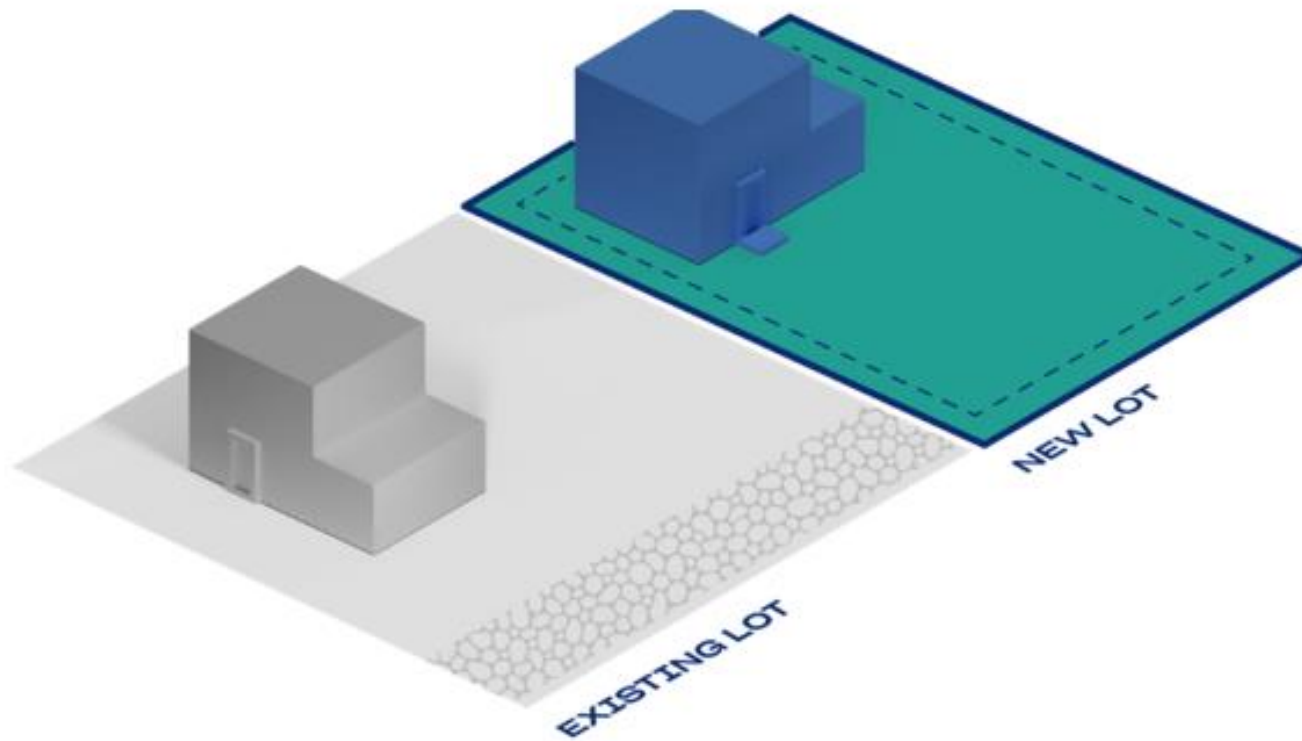
Potential Two-Family Dwelling Development, No Urban Lot Split

(Four Units Total)



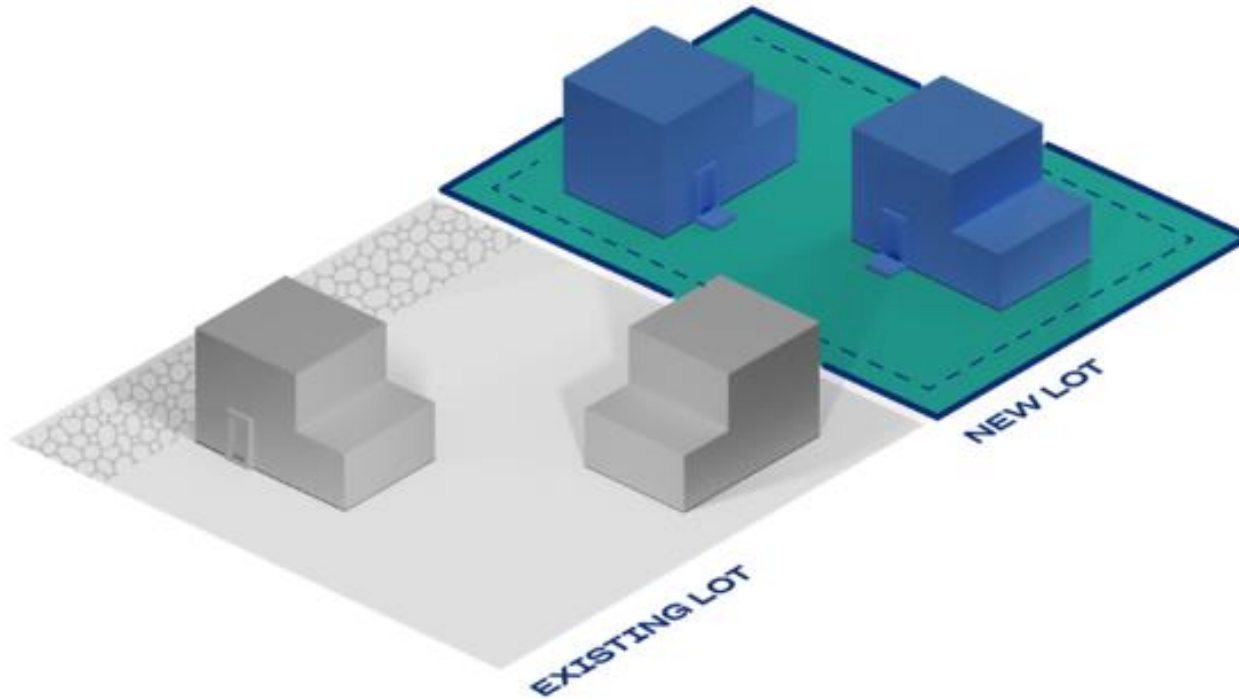
Urban Lot Split with Existing Single-Family Residence

(Two Units Total)



# Urban Lot Split and Two-Family Development

(Four Units Total)




Potential Development Pattern



**Key:**

New property line: - - - -

New unit: 

## ORDINANCE NO. 2022-19R

## AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING AMENDMENTS TO THE ESCONDIDO MUNICIPAL AND ZONING CODES FOR THE IMPLEMENTATION OF SENATE BILL 9.

WHEREAS, the City of Escondido Planning and Engineering Divisions and City Attorney's Office have reviewed the Government Code sections created by the adoption of Senate Bill 9 ("SB 9"), and developed objective development standards to efficiently implement the requirements in the City of Escondido; and

WHEREAS, to create the local provisions, Planning Division staff identified the need to amend Articles 1 (General Provisions and Definitions), 6 (Residential Zones), and 61 (Administration and Enforcement) of the Escondido Zoning Code, and Sections 23-119 (Public dedication of rights-of-way required), 23-120 (Public improvements required), 23-47 (Undergrounding required), and 32.204.02 (requirements) of the Escondido Municipal Code; and

WHEREAS, the Planning Commission of the City of Escondido, on July 12, 2022, held a public hearing to consider the Zoning Code Amendments and unanimously recommended approval of the items as provided in Exhibit "B"; and

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA") and the CEQA Guidelines (Title 14 of California Code of Regulations, Section 15000 et. seq.), the City is the Lead Agency for the Project, as the public agency with the principal responsibility for approving the proposed Amendments; and

WHEREAS, on August 24, 2022, and September 14, 2022, the City Council of the City of Escondido did hold duly noticed public hearings as prescribed by law. At said hearings, the City Council received and considered the reports and recommendations of the Planning Commission and City staff, and gave all

persons full opportunity to be heard and to present evidence and testimony respecting said matter.

Evidence was submitted to and considered by the City Council, including, without limitation:

- a. Written information, and other material, submitted as part of the Amendments;
- b. Oral testimony from City staff, interested parties, and the public;
- c. The staff reports, dated August 24, 2022, and September 14, 2022, with their attachments as well as City staff's recommendation on the Amendments, which is incorporated herein as though fully set forth herein; and
- d. Additional information submitted during the public hearing.

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. That the above recitations are true.

SECTION 2. That the proposed Zoning Code Amendments are exempt from further review pursuant to the CEQA and the State CEQA Guidelines pursuant to Sections 65852.21(j) and 66411.7(n), in that the proposed amendments are associated with adoption of local SB 9 requirements.

SECTION 3. That the Project satisfies the requirements of state Planning and Zoning Law.

SECTION 4. That the proposed amendments to the Escondido Municipal and Zoning Codes are consistent with the Escondido General Plan and applicable Elements were reviewed as part of the amendment drafting process to ensure consistency.

SECTION 5. That, after consideration of all evidence presented, and studies and investigations made by the City Council and on its behalf, the City Council makes the substantive Findings of Fact and determinations attached hereto as Exhibit "A," relating to the information that has been considered.

SECTION 6. That, considering the Findings of Fact and applicable law, the City Council hereby approves said amendments, attached as Exhibit "B" and hereto and incorporated herein by this reference as though fully set forth herein.

SECTION 7. SEPARABILITY. If any section, subsection, sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 8. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 9. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the County and circulated in the City of Escondido.

## FACTORS TO BE CONSIDERED / FINDINGS OF FACT

### PL22-0363

#### Zoning Code Amendment Determinations:

1. The public health, safety, and welfare will not be adversely affected by the proposed change in that the amendment under consideration is directly linked to the recent State legislation (SB 9), and adopts local objective requirements and procedures for efficiently processing two family dwelling developments and urban lot splits.
2. The proposed modifications are for all parcels zoned estate residential (R-E) and single-family residential (R-1) on the City of Escondido Zoning Map, as well as parcels in specific plans intended primarily for single-family residential development. The approval of these requirements are consistent with State law and allows for implementation of local objective development standards.
3. The uses that would be permitted by the proposed Zoning Code Amendment will not be detrimental to surrounding properties because on January 1, 2022, the provisions for SB 9 became active across the State and already apply to every single-family residential parcel in the City of Escondido. Adoption of local requirements allows the City to establish objective development standards to ensure compatibility with existing residential neighborhoods.
4. The proposed change is consistent with the adopted General Plan as the City of Escondido must continue to provide more opportunities for housing to meet the Regional Housing Needs Allocation of 9,607 units that have been assigned to Escondido. In addition, State law supersedes our local limitations regarding single-family residential zoning districts, and adopting local objective standards allows the ability to maintain neighborhood compatibility to the extent possible.
5. By reference, the proposed changes, pursuant to SB 9, will apply to parcels in specific plans designated primarily for single-family residential use.



1. THE FOLLOWING SECTIONS SHALL BE ADDED TO THE ESCONDIDO ZONING CODE:

**Sec. 33-115. Two-family dwellings in single-family residential zones and specific plans**

- (a) Purpose. The purpose of section 33-115 is to appropriately regulate qualifying Senate Bill 9 two-family dwelling unit developments within single-family residential zones in accordance with California Government Code section 65852.21.
- (b) For the purposes of this section and section 33-116 only, the term *two-family dwelling* shall mean two attached or detached units on single-family zoned properties, and on properties in specific plans intended for single-family residential use.
- (c) Permit required. Two family dwellings shall require processing of a major Plot Plan application as described in division 8 of article 61 of this chapter.
  - (1) The director of development services or their designee (Director) shall review complete applications for compliance with the requirements of this section and the underlying development standards in the zoning district or specific plan in which it is located, and any other applicable objective development standards stated in the Municipal Code. Notwithstanding language in any specific plan to the contrary, provisions of this section shall supersede where any conflict exists. The Director shall ministerially approve complete applications found to be in compliance with these standards.
  - (2) The Director may deny a complete application if it fails to comply with the requirements of this section, the underlying development standards in the zoning district or specific plan in which it is located, and any other applicable objective development standards stated in the Municipal Code. In addition to the foregoing, the Director may deny an application if such denial is based upon a preponderance of evidence and the written finding of the building official that the proposed two-family dwelling project would have a specific, adverse impact, as defined in Government Code section 65589.5, subdivision (d)(2), upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. Notwithstanding the foregoing, an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards.
- (d) Appeals of the Director's decision shall be governed by section 33-1303.
  - (1) If the development of a two-family dwelling project requires another entitlement pursuant to the Escondido Zoning Code, the two-family dwelling project shall not be approved until that entitlement process is completed and approved. If

the entitlement is not approved, the two-family dwelling project cannot be approved unless it is redesigned to eliminate the need for the denied entitlement.

(e) Location.

(1) Except as specified below, two-family dwellings shall be permitted in estate residential (R-E) and single-family residential (R-1) zones, and on properties in specific plans intended primarily for single-family residential use.

(2) Two-family dwellings shall not be permitted in the following locations:

- (A) On properties that allow as the primary use multi-family residential, commercial, industrial, agricultural, or mixed uses, regardless of the allowance of single-family residential uses.
- (B) On properties described in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Government Code section 65913.4.
- (C) Within a historic district or upon property included on the State Historic Resources Inventory, as defined in section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic resource or district pursuant to a city or county ordinance.
- (D) On parcels requiring demolition or alteration of any of the following types of housing:
  - i. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.
  - ii. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.
  - iii. Housing that has been occupied by a tenant in the last three years.
- (E) On parcels which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with section 7060) of Division 7 of Title 1 of the Government Code to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(F) On parcels with legal nonconforming uses or structures unless development of the two-family dwelling brings the property into conformance.

(f) Objective Development Standards: The development standards set forth below shall apply to all two-family dwellings. Any development standard not explicitly identified below shall be subject to the underlying zoning designation or specific plan, and all applicable provisions of this code, unless superseded by Government Code sections 65852.21, 66411.7, and 66452.6.

(1) Unit Size:

(A) The minimum unit size of any unit created as part of a two-family dwelling shall be 400 square feet.

(B) Except as described below, no new unit constructed as part of a two-family dwelling may exceed 800 square feet.

i. New units may be up to 1,200 square feet if they meet all of the following requirements:

a. The parcel on which the two-family dwelling is located is in the R-E or R-1 zone and has a lot size of at least one and a half (1 ½) times the minimum size otherwise permitted in the zone.

b. No accessory dwelling unit or junior ADU exist on the parcel.

c. A deed restriction is recorded prohibiting the construction of an ADU or junior ADU on the parcel.

d. Existing and new dwelling units shall each have two covered parking spaces.

e. An attached or detached garage or covered parking space(s) associated with the 1,200 square foot unit does not exceed 450 square feet.

f. Existing and new dwelling units shall meet the minimum setbacks in the underlying zone.

g. Addition of the new unit does not result in the parcel being out of compliance with the maximum floor area ratio and lot coverage for the underlying zone.

- ii. New units may be up to 1,500 square feet if they meet all of the following requirements:
    - a. The parcel on which the two-family dwelling is located is in the R-E zone and has a lot size of one and one half (1 ½) times the minimum size otherwise permitted in the zone, or is in the R-1 zone and has a minimum lot size of 20,000 square feet.
    - b. The unit satisfies all requirements identified in subsections b through g of section 33-115(f)(1)(B)i.
  - iii. New units may be up to 2,000 square feet if they meet all of the following requirements:
    - a. The parcel on which the two-family dwelling is located is in the R-E or R-1 zone and has a lot size of at least one acre.
    - b. The unit satisfies all requirements identified in subsections b through g of section 33-115(f)(1)(B)i.
- (C) Any future subdivision of a parcel with a two-family dwelling project shall not cause the parcel to be out of compliance with the provisions of this subsection.

(2) Setbacks and building separation:

- (A) Minimum side and rear yard setbacks for a two-family dwelling shall be no less than four feet.
- (B) Section 33-104(c), projections into setbacks, shall not apply to any projects utilizing sections 33-115 or 33-116.
- (C) For two family dwellings constructed on properties which have frontage on streets which have not been dedicated to their ultimate width, setbacks shall be measured from the ultimate right-of-way.
- (D) Setback requirements noted above shall not apply to a legally existing detached accessory structure that is utilized as one of the two units associated with the two-family dwelling or for a new structure constructed in the same location as a legally existing detached accessory structure.
- (E) Detached dwelling units and associated covered parking shall be a minimum of 10 feet from each other unless all structures are single-story

and not more than 16 feet in height, in which case the minimum separation shall be five feet.

- (F) Notwithstanding subsection (E) above, all dwellings with less than 10 feet of separation shall meet the fire resistive construction requirements contained in the California Residential and Fire codes.

(3) Maximum Height/Stories:

- (A) If located within the rear or side yard setback of the underlying zoning district, the two-family dwelling shall be limited to 16 feet and one-story.
- (B) If compliant with the setbacks for the underlying zoning district, the two-family dwelling shall comply with the height limitations of the underlying zoning district.

(4) Parking Requirements:

- (A) At least one off-street parking space shall be provided for each new unit constructed under the provisions of this section. Said parking spaces shall be covered, and shall not be in tandem with parking spaces for any other unit on the property.
- (B) The required parking shall be located onsite with the two-family dwelling the parking is associated with.
- (C) Parking spaces shall be designed pursuant to section 33-769. Compact spaces are not permitted.
- (D) The foregoing parking standards shall not be required in either of the following circumstances:
  - i. The two-family dwelling is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of section 21155 of the Public Resources Code, or a major transit stop as defined in section 21064.3 of the Public Resources Code. The applicant shall be responsible for demonstrating applicability of this section; or
  - ii. There is a car share vehicle located within one block of the two-family dwelling.

(5) Access and easements

- (A) Vehicular access from the public right of way shall meet the following requirements:
  - i. Driveways that provide access to two homes shall have a minimum paved width of 20 feet.
  - ii. Driveways that provide access to three homes, or that provide access to parking facilities with nine or more parking spaces, shall have a minimum width of 24 feet, unless the parking facility is served by 2 one-way driveways, in which case each driveway shall be at least 12 feet wide.
  - iii. All driveways shall have a height clearance of at least 13 feet 6 inches, and shall be paved with cement, asphaltic concrete, or other all-weather construction material(s) and to the City Design Standards for Driveway Structural Design.
  - iv. Access improvements shall be provided in compliance with the City's adopted standard drawings.
  
- (B) Access to lots shall be in conformance with Article 39 of the Escondido Zoning Code. Dead end access shall be no longer than 150-feet in length unless a Fire Department approved turn-around is provided. Fire Department access shall be a minimum of 20 feet in unobstructed width.
  
- (C) Emergency access and easements for the provision of public facilities, utilities, and/or access shall be provided in compliance with applicable sections of the municipal code.
  
- (6) The primary entrance for any new dwelling unit constructed as part of a two-family dwelling shall not be oriented to the side or rear property line unless the structure meets the side or rear setback established by the underlying zoning district.
  
- (7) Each unit in a two-family dwelling shall be placed on a permanent foundation and permanently connected to the public sewer system or an onsite wastewater treatment system approved by the County of San Diego Health Department.
  
- (8) Each unit in a two-family dwelling shall include sufficient permanent provision for living, sleeping, eating, cooking, and sanitations, including but not limited to washer/dryer hookups and full kitchen facilities.
  
- (9) Both units in a two-family dwelling shall share the same water and sewer utility connections and meter, and shall be subject to connection fees or capacity charges, or both.

(g) Additional Requirements:

- (1) Construction of a two-family dwelling project shall not require the demolition of more than 25 percent of the exterior structural walls of an existing dwelling unless the site has not been occupied by a tenant in the last three years.
- (2) Any unit created pursuant to this section shall, if rented, be rented for a term longer than 30 days.
- (3) A deed restriction prepared by the City shall be recorded against the subject property prior to issuance of any building permit(s) for a two-family dwelling. The deed restriction shall run with the land and shall stipulate compliance with the applicable provisions of this section.
- (4) New dwelling units constructed as part of a two-family dwelling shall meet the requirements of the California Building, Residential, and Fire codes, as such codes have been adopted and amended by Chapters 6 and 11 of the Escondido Municipal Code.
- (5) Both units in a two-family dwelling project shall utilize the same colors and materials. This requirement applies whether both units are constructed at the same time or if one unit is added to a property that is currently developed with an existing unit.
- (6) Solar panels shall be required on newly constructed units within a two-family dwelling project in compliance with the California Energy Code.
- (7) Accessory Dwelling Units:
  - (A) For the purposes of this subsection, *Unit* refers to either a primary dwelling unit, an accessory dwelling unit (ADU), or a junior ADU.
  - (B) Inclusive of the two-family dwelling requirements described in this section, any existing parcel may be permitted to construct up to four total units.
  - (C) Any parcel created pursuant to section 33-116 shall be permitted to have no more than two total units.
  - (D) ADUs and Junior ADUs shall be governed by the provisions of Article 70.

**Sec. 33-116. Urban lot split**

- (a) Purpose. The purpose of section 33-116 is to appropriately regulate qualifying Senate Bill 9 urban lot split developments within single-family residential zones in accordance with California Government Code section 66411.7.
- (b) For the purposes of this section, *two-family dwelling* shall have the same meaning as that identified in section 33-115.
- (c) Urban lot splits, as defined in section 33-8, shall be approved ministerially without discretionary review.
- (d) Urban lot splits are not permitted on the following parcels:
  - (1) Those described in section 33-115(e)(2);
  - (2) Parcels that were created by a prior urban lot split;
  - (3) Parcels adjacent to those which the owner or someone acting in concert with the owner has previously subdivided through an urban lot split process.
  - (4) Parcels where subdivision would result in either of the new parcels being out of compliance with the maximum unit sizes identified in subsection 33-115(f)(1).
  - (5) Parcels containing more than two units, as that term is described in subsection 33-115(g)(7)(A).
- (e) All provisions of the Subdivision Map Act and Escondido Municipal Code shall apply unless expressly modified in this section.
  - (1) No dedication of right-of-way or construction of offsite improvements shall be required as a condition of parcel map approval.
  - (2) If the urban lot split is proposed on a public street that has not been dedicated to its ultimate width, public access and utility easements shall be recorded as a condition of parcel map approval.
- (f) Development Standards. Parcels shall be subject to all development standards of the zone in which the property is located, except as modified below:
  - (1) Lot size:
    - (A) Each newly created lot shall be at least 40% of the lot area of the parcel being divided.
    - (B) Each newly created parcel shall be no smaller than 1,200 square feet.



- (2) Setbacks, unit size, and parking requirements shall be the same as those in section 33-115(f).
- (g) A parcel created by an urban lot split shall be permitted to have a total of two units. This can be achieved through either a two-family dwelling, a single-family dwelling with an ADU, or a single-family dwelling with a junior ADU.
  - (h) Parcels created by an urban lot split shall not be required, as a condition of ministerial approval, to correct nonconforming zoning conditions.
  - (i) An application for an urban lot split shall not be rejected solely because it proposes adjacent or connected structures, provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.
  - (j) Access to lots shall be in conformance with Article 39 of the Escondido Zoning Code. Dead end access shall be no longer than 150-feet in length unless a Fire Department approved turn-around is provided. Fire Department access shall be a minimum of 20 feet in unobstructed width.
  - (k) Each dwelling unit and parcel shall have access to, provide access to, or adjoin the public right of way. Accessibility shall be in conformance with the Building Code and Americans with Disability Act, and shall not preclude construction of future public improvements
  - (l) Easements for the provision of public facilities, utilities, access, and/or emergency access shall be provided as a condition of approval of an urban lot split.
  - (m) Unless specifically exempted pursuant to Government Code sections 66411.7(g)(2) and (3), an applicant for an urban lot split shall sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.
  - (n) Units on parcels created subject to this section shall, if rented, be rented for a term longer than 30 days.
  - (o) Applications for urban lot splits shall be processed in the same manner as those for tentative parcel maps, and shall be subject to the applicable requirements contained in Chapter 32 of the Escondido Municipal Code.
  - (p) Notes shall be included on the parcel map which reference compliance with sections 33-115 and 33-116 of the Escondido Zoning Code, and any other provisions of said code related to urban lot splits.
  - (q) Fees for urban lot split applications shall be the same as those assessed for other tentative parcel map and parcel map applications.

(r) Denial of permit:

(1) The City may deny a request for an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the request would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of section 65589.5 the California Government Code, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(s) Appeals:

(1) Appeals of the director's decision shall be governed by section 33-1303.

2. *THE FOLLOWING DEFINITION SHALL BE ADDED TO **SEC. 33-8. DEFINITIONS OF THE ESCONDIDO ZONING CODE (IN ALPHABETICAL ORDER):***

*Urban lot split* means the subdivision of any lot in a single-family residential zone or parcels designated for primarily single-family development in a specific plan into two lots.

3. **SEC. 33-90. PURPOSE OF THE ESCONDIDO ZONING CODE SHALL BE REVISED TO READ AS FOLLOWS:**

**Sec. 33-90. Purpose.**

(a) Residential zones are established to provide for residential districts of various population densities so that the various types of residential developments may be separated from each other as necessary to assure compatibility of uses within family living areas, including the necessary appurtenant and accessory facilities associated with such areas.

(b) The following classes of residential use zones are established:

(1) The agriculture residential (R-A) zone is established to provide an agricultural setting in which agricultural pursuits can be encouraged and supported within the city. The R-A zone is designed to include single-family detached dwellings and to protect agricultural uses from encroachment by urban uses until residential, commercial or industrial uses in such areas become necessary or desired.

(2) The estate residential (R-E) zone is established to provide a rural setting for family life in single-family detached dwellings. Provisions are made for the maintenance of limited agricultural pursuits as well as those uses necessary and incidental to single-family living.

(3) The single-family residential (R-1) zone is established to provide a suburban setting suitable for family life in single-family, detached dwellings.

- (4) The mobilehome residential (R-T) zone is established to provide a mobilehome park setting for family life in single-family detached mobilehomes. No land shall be classified into this zone where such classification would create an R-T zone area of less than four hundred thousand (400,000) square feet.
  - (5) The light multiple residential (R-2) zone is established to provide a multifamily setting for family life in low-height, low density dwelling units in close proximity to single-family residential neighborhoods.
  - (6) The medium multiple residential (R-3) zone is established to provide a multifamily setting for family life in low-height, medium density dwelling units in close proximity to other multifamily neighborhoods.
  - (7) The high multiple residential (R-4) zone is established to provide a multifamily setting for family life in mid-height, high density dwelling units in close proximity to other multifamily neighborhoods and near the city's center.
  - (8) The very high multiple residential (R-5) zone is established to provide a multifamily setting for family life in higher-height, very high density dwelling units in close proximity to other multifamily neighborhoods and near the city's center.
- (c) Subsection 33-90(a) notwithstanding, this section also serves to implement provisions of sections 65852.21 and 66411.7 of the Government Code.

**4. TABLE 33-94 OF THE ESCONDIDO ZONING CODE SHALL BE REVISED TO APPEAR AS FOLLOWS:**

**Table 33-94**

Permitted/Conditional Uses & Structures	R-A	R-E	R-1	R-T	R-2	R-3	R-4	R-5
Residential and Lodging								
Single-family dwellings detached	P	P	P		P	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>
Mobilehome on parcel alone, pursuant to section 33-111	P	P	P	P				
Two-family dwelling units and urban lot splits		P <sup>2</sup>	P <sup>2</sup>					
Two-family, three-family, and multiple-family dwellings					P	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>

**Notes:**

1 No vacant or underdeveloped lot or parcel of land in any R-3, R-4, and R-5 zone shall be improved or developed at a density below seventy (70) percent of the maximum permitted density. Exceptions to the minimum density requirement may be granted in writing as part of the plan approval required by section 33-106 provided the development will not preclude the city from meeting its housing needs as described in the housing element of the Escondido general plan. Minimum density requirements shall not apply to property owners seeking to enhance or enlarge existing dwelling units or construct other accessory structures on a site.

2 Pursuant to sections 33-115 and 33-116.

5. **SEC. 33-95. PERMITTED ACCESSORY USES AND STRUCTURES OF THE ESCONDIDO ZONING CODE SHALL BE REVISED TO READ AS FOLLOWS** (Note: Tables 33-95 and 33-95a are not shown below, however they shall not be deleted from the Escondido Zoning Code. Table 33-95 shall follow subsection (a)(1) and Table 33-95a shall follow section (b)(4)):

**Sec. 33-95. Permitted accessory uses and structures.**

(a) Accessory uses and structures are permitted in residential zones, provided they are incidental to, and do not substantially alter the character of the permitted principal use or structure. Such permitted accessory uses and structures include, but are not limited to, those listed in Table 33-95.

(1) When provided by these regulations, it shall be the responsibility of the director to determine if a proposed accessory use is necessarily and customarily associated with, and is appropriate, incidental, and subordinate to, the principal use, based on the director's evaluation of the resemblance of the proposed accessory use to those uses specifically identified as accessory to the principal uses and the relationship between the proposed accessory use and the principal use.

(b) The permitted types and quantities of animals allowed in residential zones is listed in Table 33-95a. Other household pets are allowed pursuant to section 33-1116 of Article 57 of this chapter.

(1) At no time shall the keeping of such animals and pets constitute a nuisance or other detriment to the health, safety, or general welfare of the community.

(2) All animal keeping is subject to the animal control and humane treatment standards in Chapter 4 of the Municipal Code (Animal Control) and other regulations found in County and State codes, including, but not limited to, State Health and Safety Code.

(3) No more than the quantities of animals specifically listed in Table 33-95(a) or section 33-1116 shall be kept on any premises, except that offspring may be kept onsite for up to four (4) months from birth.

(4) The number of animals allowed on properties that have been divided pursuant to section 33-116 shall be one half of that otherwise allowed in the underlying zoning district.

6. **SEC. 33-97. PROPERTY DEVELOPMENT STANDARDS OF THE ESCONDIDO ZONING CODE SHALL BE REVISED TO READ AS FOLLOWS:**

**Sec. 33-97. Property development standards.**

- (a) In addition to the property development standards set forth in this chapter, the development standards set forth in this article shall apply to land and structures in residential zones.
- (b) Properties developed pursuant to sections 33-115 or 33-116 shall be subject to the development standards contained in those sections. For any development standards not addressed in those sections, the standards contained elsewhere in this chapter shall apply.

7. **TABLE 33-98a OF THE ESCONDIDO ZONING CODE SHALL BE REVISED TO APPEAR AS FOLLOWS:**

**Table 33-98a**

Zoning Suffix	Minimum Lot Area (square feet)	Average Lot Width (feet)	Minimum Street Lot Frontage	Population Density
R-T <sup>2</sup>	4,500*	55*	35 feet on a line parallel to the centerline of the street or on a cul-de-sac improved to city standards <sup>1</sup> .	Not more than one single-family dwelling may be placed on a lot or parcel of land in this zone. <sup>3</sup>
R-1-6	6,000	60		
R-1-7	7,000	65		
R-1-8	8,000	70	Frontage on a street end that does not have a cul-de-sac improved to city standards shall not be counted in meeting this requirement except for panhandle lots.	
R-1-9	9,000	75		
R-1-10	10,000	80		
R-1-12	12,000	85		
R-1-15	15,000	90		
R-1-18	18,000	95	Panhandle lots pursuant to Article 56.	
R-1-20	20,000	100		
R-1-25	25,000	110		

Zoning Suffix	Minimum Lot Area (square feet)	Average Lot Width (feet)	Minimum Street Lot Frontage	Population Density
			*Mobilehome parks pursuant to Article 45 allow different lot requirements. Title 25 provisions apply where applicable.	
R-E-20	20,000	100	20 feet or be connected to a public street by a permanent access easement <sup>1</sup> .  Panhandle lots pursuant to Article 56.	
R-E-25	25,000	110		
R-E-30	30,000	125		
R-E-40	40,000	150		
R-E-50	50,000			
R-E-60	60,000			
R-E-70	70,000			
R-E-80	80,000			
R-E-90	90,000			
R-E-100	100,000			
R-E-110	110,000			
R-E-130	130,000			
R-E-150	150,000			
R-E-170	170,000			
R-E-190	190,000			
R-E-210	210,000			
R-A-5	217,800	150	60 feet or be connected to a public street by a permanent access easement. <sup>1</sup>	
R-A-10	435,600		Panhandle lots pursuant to Article 56.	

**Notes:**

1. Exception: Access to lots or parcels may be provided by private road easement conforming to the following standards:
  - (a) The minimum easement widths shall be 20 to 24 feet as determined by the city engineer and fire marshal; subject to the Escondido Design Standards and Standard Drawings;
  - (b) Pavement section widths, grades and design shall be approved by the city engineer;
  - (c) A cul-de-sac or turnaround shall be provided at the terminus to the satisfaction of the planning, engineering and fire departments.
2. Except for land that was being used for mobile homes prior to the effective date of the ordinance codified in this article, no land shall be classified into this zone where such classification would create an R-T zone area of less than 400,000 square feet.
3. Properties developed pursuant to section 33-115 and/or 33-116 shall be allowed one two-family dwelling project/Urban Lot Split.

**8. SEC. 33-106. PLAN APPROVAL REQUIRED OF THE ESCONDIDO ZONING CODE SHALL BE REVISED TO READ AS FOLLOWS:**

**Sec. 33-106. Plan approval required.**

- (a) Building plan review and building permits are required for the construction or modification of single-family detached dwellings, mobilehomes, and some accessory structures in residential and R-T zones. Application shall be made to the building division for plan review, which is subject to planning division confirmation of zoning compliance. Two-family dwellings and urban lot splits in single-family residential zones shall be processed pursuant to section 33-115 and 33-116 of this article, respectively.
- (b) An appropriate development application for the construction or modification of more than one dwellings on any lot in R-2, R-3, R-4 and R-5 zones, multiple-family dwellings, some accessory structures, and nonresidential development in all residential zones is required pursuant to Article 61 of this chapter.

**9. SEC. 33-107. BUILDING REQUIREMENTS, GENERALL OF THE ESCONDIDO ZONING CODE SHALL BE REVISED TO READ AS FOLLOWS:**

**Sec. 33-107. Building requirements, generally.**

Table 33-107 lists building requirements in residential zones (excluding mobilehome parks approved pursuant to Article 45).

**Table 33-107**

<b>Building Requirements</b>	<b>R-A</b>	<b>R-E</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>R-4</b>	<b>R-5</b>	<b>R-T*</b>
Building height (feet), except as otherwise provided in this chapter	35	35	35	35 <sup>1</sup>	35 <sup>1</sup>	75	75	35
Maximum building stories				2 <sup>1</sup>	3 <sup>1</sup>	4 <sup>1</sup>	4 <sup>1</sup>	
Minimum distance between residence and accessory buildings (feet)	10 <sup>5</sup>	10 <sup>5</sup>	10 <sup>5</sup>	10 <sup>5</sup>	10 <sup>5</sup>	10 <sup>5</sup>	10 <sup>5</sup>	10 <sup>5</sup>
Dwelling unit minimum floor area (square feet) <sup>2</sup>	850	1,000 <sup>6</sup>	850 <sup>6</sup>	500	400	400	400	700
Maximum percent lot coverage by primary and accessory structures	20%	30%	40%	50%	none	none	none	60%
Maximum floor area ratio (FAR) <sup>3</sup>	0.3	0.4 <sup>4</sup>	0.5	0.6	0.7	0.8	0.9	none
Minimum square feet allowed for residential and parking regardless of the FAR	1,500	1,500	1,500	2,500	3,500	4,500	5,000	700

**Notes:**

1. Buildings or structures in excess of one (1) story and located adjacent to single-family zoned land, shall provide a setback equal to the abutting setback required by the single-family zone standards, plus five (5) additional feet for each story over two (2) on the property line(s) abutting the single-family zone(s) as noted in sections 33-100 and 33-101. Additionally, building features such as windows, doors, balconies, etc., bulk and scale shall not adversely affect the adjacent single-family property.
  2. Area is exclusive of porches, garages, carports, entries, terraces, patios or basements.
  3. FAR is the numerical value obtained by dividing the total gross floor area of all buildings on the site by the total area of the lot or premises.
  4. Except that the maximum FAR for the RE-20 zone shall be 0.5; and for the RE-170 and RE-210 zones the maximum FAR shall be 0.3.
  5. Pursuant to section 33-103(c), if the residence (or main building) and detached accessory building are both one (1) story in height, then the minimum separation requirement may be reduced to five (5) feet, unless a greater distance is required by local building and fire code requirements for fire separation.
  6. Dwelling unit minimum floor area does not apply to units created subject to section 33-115.
- \* Requirements apply unless superseded by Title 25.



**10. SEC. 33-1314. DEFINITION AND PURPOSE OF THE ESCONDIDO ZONING CODE SHALL BE REVISED TO READ AS FOLLOWS:**

**Sec. 33-1314. Definition and purpose.**

(a) *Plot plan* means a zoning instrument used primarily to review the location and site development of certain permitted land uses. The plot plan review process is required when any of the following are proposed in a multi-family, commercial, or industrial zone:

(1) A new building, structure, or addition;

(2) A new permitted use of land or existing structure that may require additional off-street parking;

(3) A modification of an existing development affecting the building area, parking (when a reduction in parking spaces is proposed), outdoor uses, or on-site circulation. Changes to parking areas that do not result in a reduction in parking spaces are exempt from plot plan review, but require design review, as provided in section 33-1355(b)(2);

(4) As may otherwise be required by this chapter.

Plot plan review is not required for residential development created by a planned development or residential subdivision of single-family lots.

(b) *Minor plot plan* may include, but shall not be limited to, a change in use with no additional floor area, minor building additions, outdoor storage as an accessory use in the industrial zones, or other site plan changes affecting site circulation and parking, as determined by the director.

(c) *Major plot plan* may include, but shall not be limited to, new construction, reconstruction and additions of facilities permitted in the underlying zone, or other projects that exceed thresholds for a minor plot plan, as determined by the director. All two-family dwelling projects proposed pursuant to section 33-115 shall be subject to the approval of a major Plot Plan.

**11. SEC. 23-119. PUBLIC DEDICATION OF RIGHTS-OF-WAY REQUIRED OF THE ESCONDIDO MUNICIPAL CODE SHALL BE REVISED TO READ AS FOLLOWS:**

**Sec. 23-119. Public dedication of rights-of-way required.**

(a) Subject to the "individualized determination" of section 23-121, any applicant who constructs any new building or dwelling in the city shall grant necessary public dedication or have provided a grant of easement or other appropriate conveyance, as approved by the city attorney. Accessory structures with a valuation less than

twenty-three thousand eight hundred twenty-eight dollars (\$23,828.00), as determined by building permit valuation, and accessory structures to single-family residences shall be exempt from this section. Rights-of-way shall also be provided for any improvements to existing facilities including rights-of-way for storm drains or other required public facilities. All rights-of-way shall be accompanied by a title examination report and be free of all liens and encumbrances.

- (b) The public dedications required by subsection (a) of this section shall also apply to any person who enlarges or expands any building in the city if the cost of such work exceeds the sum of twenty-three thousand eight hundred twenty-eight dollars (\$23,828.00) as determined by building permit valuation. By resolution of city council, said amount may be increased annually consistent with the International Code Council valuation schedule for the appropriate construction type.
- (c) The required public dedications shall be granted prior to issuance of the building permit for the subject property.
- (d) In determining the building permit valuation, the building official shall include the cumulative building permit valuation of multiple building permit applications within a twelve (12) month period to determine whether the development is exempt from this section.
- (e) Projects developed under the provisions of sections 33-116 of the Escondido Zoning Code shall be exempt from the provisions of this section. Easement(s) may be required for future public facilities, utilities, and/or access.

**12. SEC. 23-120. PUBLIC IMPROVEMENTS REQUIRED OF THE ESCONDIDO MUNICIPAL CODE SHALL BE REVISED TO READ AS FOLLOWS:**

**Sec. 23-120. Public improvements required.**

- (a) Subject to the "individualized determination" of section 23-121, any applicant who constructs any building or dwelling in the city shall construct all necessary public improvements in accordance with city specifications upon the property and along all street frontages adjoining the property upon which such building is constructed unless adequate improvements already exist. Accessory structures with a valuation less than twenty-three thousand eight hundred twenty-eight dollars (\$23,828.00), as determined by building permit valuation, and accessory structures to single-family residences shall be exempt from this section. In each instance, the city engineer shall determine whether the necessary improvements exist and are adequate. Each building permit application shall be so endorsed at the time it is issued. All new and redevelopment projects are subject to undergrounding of overhead utilities.

- (b) The improvements required by subsection (a) of this section shall also apply to any person who enlarges or expands any building or dwelling in the city if the cost of such work exceeds twenty-three thousand eight hundred twenty-eight dollars (\$23,828.00), as determined by building permit valuation.
- (c) By resolution of city council, such amount may be increased annually consistent with the International Code Council valuation scheduled for the appropriate construction type. Tenant and façade improvements to any building that do not result in enlargement or expansion of the building area are exempt from public improvements and undergrounding of overhead utilities.
- (d) In determining the building permit valuation, the building official shall examine the cumulative building permit valuation of multiple building permit applications within a twelve (12) month period to determine whether the development is exempt from this section.
- (e) Projects developed under the provisions of sections 33-116 of the Escondido Zoning Code shall be exempt from the provisions of this section. Easement(s) may be required for future public facilities, utilities, and/or access.

**13. SEC. 23-47. UNDERGROUNDING REQUIRED OF THE ESCONDIDO MUNICIPAL CODE SHALL BE REVISED TO READ AS FOLLOWS:**

**Sec. 23-47. Undergrounding required.**

- (a) All development projects within the City of Escondido which are either new subdivisions or subject to section 23-119 or 23-120 shall be required to underground all utility distribution facilities, including cable television and other communication facilities.
- (b) The developer shall make the necessary arrangements with each of the serving utilities, including those providing cable television, telephone, and other utility services, for the installation of such facilities. All transformers, terminal boxes, meter cabinets, pedestals, concealed ducts, and any other related facilities appurtenant to such underground utilities shall also be placed underground except in circumstances permitting above ground installations pursuant to conditions established by the director of community development.
- (c) Projects developed under the provisions of sections 33-116 of the Escondido Zoning Code shall be exempt from the provisions of this section. Easement(s) may be required for future public facilities, utilities, and/or access.

14. **SEC. 32-204.02. REQUIREMENTS OF THE ESCONDIDO MUNICIPAL CODE SHALL BE REVISED TO READ AS FOLLOWS:**

**32.204.02. REQUIREMENTS**

Before approval of a Final or Parcel Map for a subdivision, the subdivider shall:

- A. Grade and improve or agree to grade and improve all land dedicated or to be dedicated for streets or easements, bicycle ways and all private streets and private easements laid out on a Final Map or Parcel Map in such manner and with such improvements as are necessary in accordance with the Escondido City standards;
- B. Install or agree to install sewers or sewage disposal systems in accordance with the Private Sewage Disposal Systems ordinance;
- C. Provide proof satisfactory to the City Engineer that there exists an adequate potable water supply available to each lot or parcel and that the sub-divider will install or agree to install water supply facilities to the satisfaction of the City Engineer provided that the City Engineer may require such other system or size of water supply pipe as recommended by the water facility serving the subdivision;
- D. Install or agree to install as required by the City Engineer, fire hydrants and connections, which hydrants and connections shall be of a type approved by the Escondido Fire Chief; and
- E. Construct or agree to construct all off-site improvements required by the City Engineer.
- F. Subdivisions created under the provisions of section 33-116 of the Escondido Zoning Code shall be exempt from the provisions of this section. Easement(s) may be required for future public facilities, utilities, and/or access.



# STAFF REPORT

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September 14, 2022  
File Number 0610-55

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## **SUBJECT**

### **APPOINTMENT TO THE SAN DIEGO COUNTY WATER AUTHORITY BOARD OF DIRECTORS**

## **DEPARTMENT**

City Clerk's Office

## **RECOMMENDATION**

Request the City Council appoint a representative to serve on the San Diego County Water Authority Board of Directors.

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

Presenter: Zack Beck, City Clerk

## **PREVIOUS ACTION**

On May 20, 2020, the City Council appointed Councilmember Consuelo Martinez to serve on the San Diego County Water Authority Board of Directors.

## **BACKGROUND**

Councilmember Martinez was appointed to the San Diego County Water Authority Board of Directors to fill the remaining two years of the late Councilmember John Masson's term. Councilmember Martinez's term is set to expire on October 18, 2022 (Attachment 1).

Under the terms of the County Water Authority Act, members of the Board of Directors hold office for a term of six years until their successors are appointed and qualified. The new term of the City of Escondido's representative will end on October 18, 2028.

## **ATTACHMENTS**

- a. Attachment 1 – San Diego County Water Authority Letter



August 11, 2022

MEMBER AGENCIES

Carlsbad  
Municipal Water District

City of Del Mar

City of Escondido

City of National City

City of Oceanside

City of Poway

City of San Diego

Fallbrook  
Public Utility District

Helix Water District

Lakeside Water District

Olivenhain  
Municipal Water District

Otay Water District

Padre Dam  
Municipal Water District

Camp Pendleton  
Marine Corps Base

Rainbow  
Municipal Water District

Ramona  
Municipal Water District

Rincon del Diablo  
Municipal Water District

San Dieguito Water District

Santa Fe Irrigation District

South Bay Irrigation District

Vallecitos Water District

Valley Center  
Municipal Water District

Vista Irrigation District

Yuima  
Municipal Water District

OTHER  
REPRESENTATIVE

County of San Diego

The Honorable Paul McNamara  
Mayor of the City of Escondido  
200 North Broadway  
Escondido, CA 92025

**Re: SDCWA Term of Office for Consuelo Martinez**

Dear Mayor McNamara,

The San Diego County Water Authority records indicate the term of office for Consuelo Martinez, as your representative on the Water Authority's Board, will expire on October 18, 2022. Under the terms of the County Water Authority Act, members of the Board of Directors hold office for a term of six years or until their successors are appointed and qualified. The new term of your representative's appointment to the Water Authority Board would end on October 18, 2028.

Please make the necessary arrangements for this appointment and notify us of your appointment.

Thank you for your assistance with this matter and contact me at (858) 522-6614 if you have any questions.

Sincerely,

Melinda Nelson  
Clerk of the Board

C: Consuelo Martinez, SDCWA Board Member  
Zack Beck, City Clerk, City of Escondido  
Sandy Kerl, General Manager, SDCWA  
Mark Hattam, General Counsel, SDCWA  
SDCWA Board Officers



# STAFF REPORT

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September 14, 2022  
File Number 0600-10; A-3430

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## SUBJECT

### REIDY CREEK GOLF COURSE MANAGEMENT AND CONCESSION AGREEMENTS

## DEPARTMENT

Communications and Community Services

## RECOMMENDATION

Request the City Council adopt Resolution No. 2022-124, authorizing the Mayor to execute a Golf Course Management Agreement and a Lease and Concession Agreement with Escondido Golf, LLC, Inc. for the management and operation of Reidy Creek Golf Course.

Staff Recommendation: Approval (Communications and Community Services: Joanna Axelrod)

Presenter: Vince McCaw, Real Property Manager  
Escondido Golf, LLC representative: Tom Bugbee

## FISCAL ANALYSIS

JC Management, LLC has managed the Reidy Creek Golf Course since it opened in 2002. Under the terms of the Agreement, JC Management was responsible for the ongoing operation, management, maintenance, repair, and upkeep of the golf course and received an annual fixed base management fee. The fee in FY 2020/21 was \$86,066 and they also received 0.75% of gross revenues, which was \$7,492 in FY 2020/21. The management fee increased by 3% annually.

The fee for the new management company, Escondido Golf, LLC, will decrease to \$75,000 per year and increase by only 2.5% annually. In addition, they are eligible to receive an incentive fee of 10% of the net profit after debt service. The City will receive 10% of the food and beverage revenue under the Lease and Concession Agreement.

## PREVIOUS ACTION

On March 1, 2001, City Council approved a ten-year Golf Course Consulting and Management Agreement with JC Management LLC to manage the Reidy Creek Golf Course and also a Lease and Concession Agreement to provide food and beverage services to the golf course. The Agreement was renegotiated and on June 27, 2012, City Council approved a second ten-year Management Agreement and concurrently a Lease and Concession Agreement with JC Resorts, LLC.



# CITY of ESCONDIDO

## STAFF REPORT

### BACKGROUND

Reidy Creek is an 18-hole executive municipal golf course that opened in 2002 and was developed in conjunction with the 222-lot Brookside residential development approved by the City Council in July of 2000. The course is constructed on approximately 65 acres of which 25 acres was owned by the City and 40 acres was transferred to the City by New Urban West, the Brookside developer. Amenities for public use include a 2,582-yard course that offers 18 holes of golf, disc golf, and foot golf; a pro shop with golf and disc golf merchandise; and the newly renovated Clubhouse and Creekside Tavern that also serves as a venue for meetings and special events.

A 26-acre portion of the Property serves as a silt detention basin and flood control facility for large storms when runoff exceeds the carrying capacity of the Reidy Creek channel running through the site. The Course creates an approximate 100-foot-wide naturally contoured drainage channel with a 40-foot-wide natural bottom. Flows from Reidy Creek that exceed system capacity from north of the site are diverted and detained west of North Broadway on holes 11 through 17 of the golf course.

In addition to the financial operations of Reidy Creek, the City is also responsible for the debt service of tax-exempt Lease Revenue Bonds that were issued in April 2001 for the construction of the golf course. The debt issued was intended to be paid back or subsidized by income earned at the property. Since the property has not achieved those levels of income, the General Fund is obligated to make the debt service payments which average about \$361,000 a year. The current outstanding principal and interest on the bonds is \$3,303,494 which will be paid in full October 2030.

In May 2022, the City requested a statement of qualifications from experienced golf course management firms and received six responses. The firms were evaluated and all six were invited to respond to a request for proposals to enter into a Golf Course Management Agreement and a Lease and Concession Agreement for operation and maintenance of the Reidy Creek Golf Course. Five proposals were received and evaluated by a six-member committee comprised of staff from Finance, Community Services, Real Property, and Public Works Department. City staff also received input from an outside consultant, Keith Cubba, National Director of Colliers' Golf Course Advisory Services. The two top firms were invited to oral interviews in July 2022, and Escondido Golf, LLC was selected as the most qualified to provide the requested services based on their financial operating model; experience managing a portfolio of 40 properties – the majority of which are CA-based, publicly-owned courses; their strong marketing, outreach, and engagement plan; and their commitment to making Reidy Creek Golf Course a community asset

Staff considered comments from Council regarding concerns with the previous management agreement and made efforts to address those concerns. The previous agreements were for terms of ten years each, and it was indicated that a shorter term would be preferred. The new agreements are for a five-year term with an option to extend for four additional years. The expiration of the agreements, with the option, will coincide with payment of the bonds.





# CITY *of* ESCONDIDO

## STAFF REPORT

Another area of concern in the previous agreement was the incentive payment. The previous agreement included an incentive payment of 0.75% of gross revenues. This payment was based on gross revenues and was provided regardless of the profitability of the course. The new agreement includes an incentive payment that is payable to the management company, which is 10% of the net profit after debt service.

Staff recommends entering into a Management Agreement and a Lease and Concession Agreement with Escondido Golf, LLC. The Management Agreement provides that Escondido Golf, LLC will be responsible for all operations and maintenance of the golf course facility and will be paid a fee for these services. The Lease and Concession Agreement allows Escondido Golf, LLC to provide certain food and beverage for the golf course and to provide 10% of the revenue to the City. The term of both agreements is five years and may be renewed for one additional four-year period.

### RESOLUTIONS

- a. Resolution No. 2022-124
- b. Resolution No. 2022-124 Exhibit "A"
- c. Resolution No. 2022-124 Exhibit "B"

## RESOLUTION NO. 2022-124

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, A GOLF COURSE MANAGEMENT AGREEMENT AND A LEASE AND CONCESSION AGREEMENT WITH ESCONDIDO GOLF, LLC FOR THE MANAGEMENT AND OPERATION OF REIDY CREEK GOLF COURSE

WHEREAS, the City entered into a Golf Course Consulting and Management Agreement for the operation and maintenance of the Reidy Creek Golf Course (“Golf Course”) with JC Management, LLC on July 1, 2012; and

WHEREAS, the City concurrently with the Golf Course Consulting and Management Agreement, entered into a Lease and Concession Agreement to provide food and beverage services to the Golf Course with JC Resorts LLC on July 1, 2012; and

WHEREAS, the term of those agreements expired on July 1, 2022 and are continuing on a month-to-month basis; and

WHEREAS, it is in the best interest of the City to enter into a Golf Course Management Agreement with Escondido Golf, LLC, to operate and manage the golf course; and

WHEREAS, it is in the best interest of the City to enter into a Lease and Concession Agreement with Escondido Golf, LLC to provide food and beverage services to the Golf Course.

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

1. That the above recitations are true.

2. That the City Council authorizes the Mayor to execute, on behalf of the City, a Golf Course Management Agreement and a Lease and Concession Agreement with Escondido Golf, LLC. A copy of the Golf Course Management Agreement is attached as Exhibit "A" and incorporated by this reference, subject to final approval as to form by the City Attorney's Office. A copy of the Lease and Concession Agreement is attached as Exhibit "B" and incorporated by this reference, subject to final approval as to form by the City Attorney's Office.

**GOLF COURSE  
MANAGEMENT AGREEMENT**

**By and Between**

**CITY OF ESCONDIDO**  
**a California municipal corporation**  
**("Owner")**

**and**

**ESCONDIDO GOLF, LLC**  
**a California Limited Liability**  
**Company("Manager")**  
**DATED: \_\_\_\_\_**

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**LIST OF EXHIBITS**

Exhibit "A"                      Reidy Creek Golf Course Property Description

Exhibit "B"                      Reidy Creek Golf Course Equipment

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## GOLF COURSE CONSULTING AND MANAGEMENT AGREEMENT

**THIS GOLF COURSE MANAGEMENT AGREEMENT** (the "**Agreement**") is dated as of \_\_\_\_\_, 2022 by and between the **CITY OF ESCONDIDO**, a California municipal corporation (hereinafter referred to as the "**Owner**"), and ESCONDIDO GOLF, LLC, a California Limited Liability Company (hereinafter referred to as "**Manager**"). Owner and Manager are sometimes hereinafter referred to as the "**parties**."

### RECITALS:

A. Owner is the owner of approximately 65 acres designated for an 18-hole (executive) municipal golf course, maintenance building and yard, clubhouse and storage area commonly referred to as the Reidy Creek Golf Course (the "**Golf Course**") located in San Diego County, City of Escondido, and more particularly described in Exhibit "A" attached hereto and incorporated herewith.

B. Manager is qualified in the development, supervision, operation and management of golf course properties and Manager is qualified to supervise, operate and manage the Golf Course.

C. Owner desires to retain Manager to manage and operate the Golf Course on behalf of Owner and Manager has agreed to manage and operate the Golf Course upon the terms and subject to the conditions hereinafter set forth.

D. This Agreement is for Special Services that Manager is qualified to perform due to specialized training and experience. Owner does not have the workforce capable of providing the services included in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Manager agree as follows:

### **ARTICLE I.** **DEFINITIONS**

**1.1. Defined Terms.** When used in this Agreement, including any exhibits or schedules attached hereto, the following terms shall have the meanings ascribed to them in this paragraph 1.1 unless the context indicates a contrary intent:

**"Annual Capital Funding Reserve"** shall be established by setting aside 5% of the gross profit for the year in a reserve account for future capital improvements. The use of these funds will be at the discretion of Owner after input from Manager.

**"Approved Annual Business Plan"** shall mean a plan covering the operation and maintenance of the Golf Course for the applicable Budget Period, prepared by Manager and

approved by Owner in accordance with paragraph 9.1(b) of this Agreement, as such plan may be amended from time to time.

**“Bonds”** shall mean the \$6,300,000 aggregate principal amount of Escondido Joint Powers Financing Authority 2001 Lease Revenue Bonds (Reidy Creek Project) authorized by and at any time Outstanding under the Indenture.

**“Bond Debt Service”** shall mean, during any period of computation, the amount obtained for such period by totaling the following amount: (a) the principal and interest amount of the Escondido Joint Powers Financing Authority Lease Revenue Refunding Bonds, Series 2013A (which refunded the Authority’s 2001 Lease Revenue Bonds that financed the construction of Reidy Creek Golf Course) coming due and payable by their terms in such period; (b) the associated bond expense (Custodial Bank Fees).

**“Budget Period”** shall mean a period of time consisting of a Fiscal Year.

**“Capital Expense Funding Requirement”** shall mean the amount of funds to be set aside by Owner to pay for capital expense items to maintain the Golf Course in accordance with paragraph 2.2 of this Agreement. Owner and Manager shall review Capital Expense Funding Requirements for each Budget Period and no less than quarterly to determine the amount of funds, if any, needed to maintain the Golf Course. Owner shall deposit into the Operating Account the Capital Expense Funding Requirement within thirty (30) days of notice by Manager.

**“Corporate Personnel”** shall mean certain employees of Manager that perform services at or with respect to multiple properties, including properties other than the Golf Course and including from locations other than the Golf Course, and that in such event such employees shall be treated as Golf Course Personnel Expenses to the extent that their services are reasonably attributable to the Golf Course; provided, however, that any allocated costs incurred by Manager in performance of its obligations hereunder shall be prorated based upon a reasonable nexus and benefit among all properties which benefit from such expenditure. Corporate Personnel shall include centralized accounting, risk management, information technology, human resources, and marketing.

**“Equipment and Supplies”** shall mean all equipment and supplies, including furniture, fixtures and equipment (FF&E), together with all replacements thereof and additions thereto, used or useful in the operation of the Golf Course.

**“Event of Default”** shall mean the occurrence of any of the events described in paragraphs 13.1 or 13.2 of this Agreement, together with the expiration of any cure period applicable to such event.

**“First Term Year”** shall mean the time period commencing on the Management Commencement Date and concluding on the first anniversary of the first day of the month in which the Management Commencement Date occurs.

**“Fiscal Year”** shall mean a year beginning on July 1 of one calendar year and ending on June 30 of the following year.



**“Golf Course Personnel”** shall mean all individuals performing services for the Golf Course, whether employees of Manager or its Affiliates.

**“Golf Course Personnel Expenses”** shall mean all costs and expenses relating to the employment of any Golf Course Personnel, including reasonable costs in the course of, and necessary for the performance of, obligations hereunder, including, without limitation, all direct and allocated wages, salaries, benefits, taxes, and similar expenses relating to Golf Course Personnel and Corporate Personnel.

**“Gross Profit”** shall mean Gross Revenue less Operating Expenses.

**“Gross Revenue”** shall mean gross receipts of every kind and nature from the use and operation of all or any portion of the Golf Course whatsoever, whether for cash, credit or barter, including, without limitation: green fees; rental fees for golf carts, golf clubs and bags, and other rental items; golf bag storage charges; reservation fees; fees for golf handicap and service; rental and concession payments; revenue generated from space rentals and from meetings, banquets, parties, receptions, tournaments, and other group gatherings; revenues from golf schools; rental income from communication site lease agreements; amounts received as compensation for lessons and clinics; receipts from special events; receipts from vending machines; proceeds of any business interruption insurance (net of Manager’s reasonable cost of settling such claim with the insurance carrier); and proceeds of any condemnation award made with respect to any temporary taking of any Equipment and Supplies; provided, however, Gross Revenues shall not include amounts received on food and beverage sales (it being understood that such sales are the subject of a Lease and Concession Agreement of even date herewith), condemnation awards or receipts from sales of Equipment and Supplies under threat of condemnation other than any award made in a temporary taking and in the nature of an award for lost income; proceeds of property insurance (other than business interruption insurance); rebates, refunds and discounts (but not credit and card discounts paid to a credit card system) to customers given in the ordinary course of obtaining such revenues; excise, sales, use and similar taxes collected directly from customers as a part of the price of any goods or services and which are accounted for by Manager to any governmental agency or authority; tips and gratuities paid to Manager or any of its employees; or income or interest derived from cash, securities and other property acquired and held for investment by Manager. Sales upon credit and any other sales or provision of service with respect to which payment is not immediately received shall be treated on an accrual basis and shall be included in the gross receipts for the period during which the goods or services to which such sale relates are delivered or performed.

**“Hazardous Materials”** shall mean any substance or material containing one or more of any of the following: hazardous material, hazardous waste, hazardous substance, regulated substance, petroleum, pollutant, contaminant, or asbestos, as such terms are defined as of the Management Commencement Date or thereafter defined in any applicable laws, or otherwise generally understood, in such concentrations or amounts as may require clean-up or removal, or which may present a significant risk of harm to guests, invitees, or Golf Course Personnel.

**“Improvement”** shall mean each improvement constructed by Owner on the Golf Course.

**“Indenture”** shall mean the Indenture of Trust dated as of April 1, 2001, between the Escondido Joint Powers Financing Authority (of which Owner is a member) and the Trustee

relating to the Bonds, as originally executed or as it may from time to time be supplemented, modified or amended by supplemental Indenture.

**“Legal Requirements”** shall mean any and all laws, statutes, ordinances, codes, orders, rules, regulations, permits, licenses, authorizations, entitlements, official orders and requirements of, and conditions imposed by, all federal, state and local governmental regulatory agencies and authorities which are as of the date hereof or hereafter become applicable to the Golf Course or the operation thereof, including, without limitation, any of the foregoing relating in any way to Hazardous Materials or environmental matters.

**“Management Commencement Date”** shall mean \_\_\_\_\_, 2022.

**“Management Fee”** shall mean the Fixed Fee and Incentive Fee set forth in paragraph 6.1 of the Agreement

**“Net Profit”** shall mean Gross Profit less annual Bond Debt Service Costs less Annual Capital Funding Reserve requirement.

**“Operating Contracts”** shall mean all contracts now or hereafter entered into for the maintenance, management, and operation of the Golf Course, including, without limitation, all such contracts for utilities to be provided for the Golf Course and all such contracts for Equipment and Supplies.

**“Operating Expenses”** shall mean, for any period of measurement, all costs and expenses which relate to the maintenance and operation of the Golf Course and/or any services or concessions operated in connection therewith, which costs and expenses shall include, without limitation, ordinary and extraordinary maintenance and repair costs, advertising and promotion expenses, administrative and general office expenses, costs of inventories, Equipment and Supplies, costs of goods and services provided or performed in connection with the operation of the Golf Course, such as water, sewer and other utilities, office and other supplies, commissions, credit card discounts and commissions, music and entertainment, fuel, licenses and permits, refuse removal, vermin control and similar services, Golf Course Personnel Expenses, any maintenance or monitoring systems or requirements in effect from time to time with respect to the Golf Course, the monthly Management Fee, equipment lease financing expense, the cost of any insurance provided in accordance with the terms of this Agreement and any other then unpaid amounts payable to Manager or others with respect to any of the foregoing. The parties acknowledge and agree that Manager operates and may from time to time in the future operate additional golf courses and resort properties besides the Golf Course, and that Manager shall have the right in the exercise of its reasonable business judgment to determine to procure certain services and goods, and incur certain expenses in connection therewith, in the aggregate with some or all of such additional golf courses and properties. In such event, the calculation of **“Operating Expenses”** with respect to the Golf Course shall include (a) with respect to any such aggregate expenses incurred pursuant to Centralized Purchasing, as contemplated by paragraph 3.5 hereof, only the amounts chargeable to the Golf Course pursuant to said paragraph 3.5, and (b) with respect to any other such aggregate expenses (including without limitation salaries and similar expenses of employees spending less than all of their time on matters related to the Golf Course), only such portion of such aggregated expenses as Manager reasonably concludes are allocable to the Golf Course. **“Operating Expenses”** shall not include, however, (i) any depreciation of any Improvements or Equipment

and Supplies, (ii) any income, property or similar taxes payable by Owner or Manager, whether related to the Golf Course or otherwise, (iii) Bond Debt Service; (iv) the cost of capitalized fixed assets purchased for the Golf Course (the threshold for capitalization of specific assets shall be \$5,000) pursuant to the Capital Expense Funding Requirement.

**“Operating Expenses Reserve”** shall mean, for each month, an amount equal to all Operating Expenses anticipated to be expended during the immediately following calendar month (including the monthly Management Fee and such Operating Expenses as are indicated by the Approved Annual Business Plan).

**“Outstanding”** when used as of any particular time with reference to Bonds or any additional Bonds authorized by the Indenture, shall mean (subject to the provisions of Section 11.09 of the Indenture) all Bonds or additional Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under the Indenture.

**“Owner Board”** shall mean the Board of Directors of Owner, or such other appropriate governing body of Owner.

**“Person”** shall mean an individual, partnership, corporation, limited liability company, association, government or any department or agency thereof, trustee, trust, or any other entity or organization.

**“Term”** shall mean the Management Commencement Date through the last day of the month preceding the fifth anniversary of the Management Commencement Date. This Agreement may be renewed for one additional four-year period at the City’s sole discretion.

**“Term Year”** shall mean (a) the First Term Year, or (b) in the case of each subsequent Term Year after the First Term Year, each full year after the first anniversary of the first day of the month on which the Management Commencement Date occurs.

**“Trustee”** shall mean BNY Western Trust Company, a banking corporation organized and existing under the laws of the State of California, or its successors, as provided in the Indenture.

**“Unavoidable Delay”** shall mean any delay due to such causes as strikes; lockouts; acts of God; inability to obtain labor, materials, equipment or supplies; governmental restrictions; moratoria; initiatives; referenda; a war or enemy action or invasion; terrorist act and/or threats of terrorism; civil commotion; insurrection; a riot; mob violence; malicious mischief or sabotage; an unusual failure of transportation; fire or any other casualty; unusually adverse weather conditions; a condemnation; any restraining order or any law, order or regulation of any governmental, quasi-governmental, judicial or military authority; or other similar causes or circumstances beyond the control of Manager, any of which has the effect of delaying, hindering or preventing Manager’s performance of its obligations hereunder, provided (i) Manager shall have notified Owner of such event by notice given not later than fifteen (15) days after Manager has knowledge of the occurrence of such event, and (ii) Manager shall use reasonable efforts to minimize the effects thereof.

**1.2. Index of Other Defined Terms.** In addition to those terms defined above, the following terms shall have the respective meanings given thereto in the paragraphs indicated below.

<u>Defined Terms</u>	<u>Paragraph</u>
Agreement	Preamble
Annual Operating Report	9.3(b)(ii)
Business Plan Disapproval Notice	9.1(b)
Centralized Purchasing	3.5
Data	3.7
Fixed Fee	6.1(a)
Golf Course	Recital "A"
Incentive Fee	6.1(b)
Liabilities	12.2
Liability Escrow	12.1(l)
Manager	Preamble
Manager Advances	8.4
Manager Legal Requirements	15.1(a)
Manager Marks	3.6
Manager Representatives	12.2
Monthly Disbursement Date	8.3(a)
Monthly Operating Report	9.3(b)(i)
Notice of Operating Account Deficiency	8.2
Owner	Preamble
Owner Legal Requirements	15.1(b)
Owner's Representatives	12.3
Parties	Preamble
Preliminary Annual Business Plan	9.1(a)
Projected Monthly Operating Expenses	8.2

Termination Fee	13.5
Transfer	14.1
WARN Act	13.4(e)
Year End Financials	9.3(b)(ii)

**1.3. Accounting Terms.** For purposes of this Agreement, all accounting terms not otherwise defined herein or in any Exhibit shall have the meanings ascribed to them in conformity with generally accepted accounting practices and principles consistently applied.

## **ARTICLE II.** **RETENTION OF MANAGER**

**2.1. Agreement to Consult and Manage.** Owner hereby appoints and retains Manager, and Manager hereby accepts such appointment and retention, as the exclusive manager of the Golf Course during the Term with full power and authority to carry out all responsibilities of Manager upon the terms and subject to the conditions hereinafter set forth.

**2.2. Standards of Performance; Relationship Between Owner and Manager.** Manager accepts the relationship of trust and confidence established between Manager and Owner by the terms of this Agreement. Manager shall manage, operate and maintain the Golf Course as an executive municipal daily fee golf course. Manager covenants with Owner to furnish its best skill and judgment in performing its obligations hereunder, and shall at all times provide such supervision, management, operating and maintenance services in a manner which maintains the good name and business reputation of Owner. Manager shall perform its duties and obligations under this Agreement in an efficient, expeditious, prudent and economical manner, consistent with the commercial interests of Owner as reasonably understood by Manager, in accordance with standard industry practices with respect to the management and operation of similarly situated golf courses in comparable residential developments of the type described in this paragraph. Notwithstanding the foregoing, Manager's obligations under this Agreement are subject to (a) Owner's approval of the Annual Business Plans reasonably appropriate for the operations contemplated hereby, (b) the availability of funds in the Operating Account sufficient to cover the Operating Expenses, including the Operating Expenses Reserve associated herewith, (c) funds provided by Owner to meet the Capital Expense Funding Requirement for each Budget Period; and (d) payment of all amounts due to Manager hereunder.

## **ARTICLE III.** **EMPLOYEES; ACQUISITION AND OWNERSHIP** **OF EQUIPMENT AND SUPPLIES**

### **3.1. Employees of Manager.**

(a) **Golf Course Personnel.** Manager shall employ, on its behalf and not as employees of Owner, at all times a sufficient number of capable employees to enable it to fulfill Manager's obligations hereunder, properly, adequately, safely and economically and in accordance with the standards set forth in this Agreement. All matters pertaining to the employment, training, supervision, compensation, promotion and discharge of such employees shall be the sole

responsibility of Manager; provided, however, that if Owner determines that the continued employment of any employee of Manager at the Golf Course is not in the best interest of Owner or the Golf Course, Owner shall so notify Manager in writing. Upon receipt of such notice, Manager shall take appropriate steps, consistent with applicable law, to cause such employee to cease his or her affiliation with the Golf Course.

(b) **Non-Solicitation**. Without Manager's express written consent, neither Owner nor Owner's Representatives shall directly or indirectly, knowingly solicit (on behalf of itself or any third party), hire or enter into any contract for services with any person who, at the time of such action is, or at any time during a period of eighteen (18) months immediately preceding such action, was one of Manager's or its Affiliate's supervisory or managerial employees. If Owner or Owner's Representatives do solicit (on behalf of itself or any third party), hire or enter into a contract for services such person contrary to the above, it shall pay Manager, as liquidated damages and not as a penalty, an amount equal to twice the annual salary earned by said individual at the time of termination of such employee's employment with Manager.

**3.2. Ownership of Golf Course**. Manager is entering into this Agreement as an independent contractor to provide the services set forth in this Agreement. By entering into this Agreement, Manager acknowledges that it is acquiring no rights whatsoever in the Golf Course, or any portion thereof (including the Improvements and any trade names, trademarks, logos, emblems and similar identifying matters) or the Equipment and Supplies, except a nonexclusive and revocable license to enter upon the Golf Course and use the Equipment and Supplies, if and to the extent reasonably necessary to carry out its obligations pursuant to this Agreement. Manager further agrees that it will not assert, in any legal action or otherwise, any additional right or interest in the Golf Course, or any portion thereof (including the Improvements and any trade names, trademarks, logos, emblems and similar identifying matters) or the Equipment and Supplies, and will not record any lis pendens or any similar notice of lien against the Golf Course, or any portion thereof (including the Improvements and any trade names, trademarks, logos, emblems, and similar identifying matters) under any circumstances. In no event shall Manager alter or improve any portion of the Golf Course, except as otherwise expressly permitted under this Agreement (including, without limitation, Article XI hereof).

**3.3. Operating Contracts**. Manager shall, subject to the Approved Annual Business Plan, execute all Operating Contracts necessary or appropriate for the maintenance, management and operation of the Golf Course in accordance with this Agreement. All such Operating Contracts shall be executed in the name of Manager on its own behalf. Manager promptly shall notify Owner in writing of Manager's execution of any material Operating Contract, and, if requested by Owner, promptly shall deliver to Owner a true, correct and complete copy thereof. Manager's execution of any Operating Contract shall be subject to any and all restrictions set forth in Article V hereof. All Operating Contracts shall provide that, notwithstanding any termination of this Agreement by Owner and subsequent management of the Golf Course by Owner or a third party, the counter- party thereto shall, at Owner's request, continue its performance thereunder under the terms and conditions of such Operating Contract. If Manager is then managing other golf courses similar to the Golf Course, Manager shall use its commercially reasonable efforts to utilize the same individuals or entities under the Operating Contracts as are performing similar services or providing similar supplies for Manager in connection with such other golf courses, if such a procedure would result in cost savings to Owner.

**3.4. Acquisition of Equipment and Supplies.** Manager shall, at Owner's expense and in accordance with the Approved Annual Business Plan, as applicable, purchase and keep the Golf Course adequately furnished with all necessary Equipment and Supplies. The cost of such Equipment and Supplies shall be charged to Owner at net cost and Owner shall be credited with all rebates, refunds, allowances and other discounts allowed to the purchaser, whether such purchaser is Manager or a third party. For purposes of clarification, both Owner and Manager agree that all Equipment and Supplies acquired pursuant to this paragraph 3.4 are exclusively the property of Owner.

**3.5. Centralized Purchasing.** Manager, at its discretion, may adopt a centralized purchasing system whereby services or Equipment and Supplies are procured and/or purchased for participating golf courses from suppliers designated by Manager or from or through any of Manager's Affiliates ("**Centralized Purchasing**"). Manager may cause the Golf Course to participate in such Centralized Purchasing and Manager or an Affiliate of Manager shall receive pro-rata reimbursement for any additional overhead expense attributable to Centralized Purchasing. At the request of Owner, Manager shall furnish to Owner a price list of all services or Equipment and Supplies proposed or to be purchased by Manager through its Centralized Purchasing. Notwithstanding the foregoing, the cost to the Golf Course of any purchase accomplished through the Centralized Purchasing, (including the aforementioned fee) taking into account the quality and payment terms of the items purchased, shall be no greater than the cost of which such services and items could be obtained by Golf Course from unaffiliated third parties, (without payment of the aforementioned expense reimbursement). If such maximum amount is determined to have been exceeded, the excess shall be rebated immediately by Manager to Owner. All such purchases shall be made by Manager as agent for and at the sole risk of Owner. Manager makes no representations or warranty with respect to such services and items so purchased and shall not be responsible for defects in any property acquired, but shall enforce third party warranties regarding such services and items.

**3.6. Intellectual Property.** Any and all data which Manager collects, develops or produces during the Term, whether alone or jointly, with Owner or others, which relate to the operation of the Golf Course (the "Data"), shall be joint property belonging to Manager and Owner. As joint owners of the Data, Manager and Owner shall be free to deal with and dispose of, in whole or in part, its ownership interest in the Data without the consent of the other party, and without accounting to the other party so long as it can do so without exposing the other party to any liability. In no event, however, shall either party be entitled to grant any exclusive license or other exclusive right in any aspect of the Data or in any intellectual property right associated with any Data to any person or entity, unless the granting party has obtained the non-granting party's prior written consent for such grant, which consent may be withheld by the non-granting party in its sole discretion.

**ARTICLE IV.**  
**RIGHTS AND RESPONSIBILITIES OF MANAGER AND OWNER**

**4.1. Manager Obligations During the Term.** Subject to any requirements, restrictions or limitations set forth elsewhere in this Agreement (including, without limitation, the requirements set forth in paragraph 2.2), Manager shall perform or cause to be performed all tasks reasonably necessary or appropriate in connection with the ongoing operation, management,

maintenance, repair and upkeep of the Golf Course. In performing such tasks Manager shall, at a minimum, do the following:

(a) Interview, select and retain consultants and other professionals as may be reasonably necessary or appropriate for the maintenance and operation of the Golf Course as set forth in the Approved Annual Business Plan, as applicable.

(b) Perform all ministerial acts and duties reasonably relating to (i) the payment in accordance with the Approved Annual Business Plan, as applicable, of all indebtedness, taxes and assessments on personal property, and other undisputed obligations due or to become due with respect to the Golf Course that accrue on or after the Management Commencement Date, (ii) the preparation, submission and processing of all claims regarding the Golf Course (other than claims under any insurance to be maintained by Owner hereunder, with respect to which Manager will reasonably cooperate with Owner in its preparation, submission and processing of claims), (iii) the prosecution of any appeal of any tax or assessment on personal property for the Golf Course, and (iv) the giving and receipt of notices, reports and other communications arising out of, connected with or incidental to the management, maintenance or preservation of the Golf Course.

(c) Diligently pursue the collection of all sums due and owing to Owner or Manager from all purchasers of goods and/or services relating to the Golf Course.

(d) Complete an inventory of all equipment and provide that inventory to Owner, so that Owner can enter into its vehicle management database system. Subject to the Approved Annual Business Plan, as applicable, coordinate with Owner for the purchase of required Golf Course Equipment and Supplies. Manager shall ensure that Owner is provided an updated inventory periodically, or as requested by Owner.

(e) Subject to the Approved Annual Business Plan, as applicable, pay, when due, all costs and expenses of every kind associated with the management, maintenance and operation of the Golf Course, as provided for herein.

(f) Comply in all respects with the Approved Annual Business Plan, as applicable (except to the extent provided under paragraphs 8.3 and 9.2).

(g) Subject to the Approved Annual Business Plan, as applicable, repair or replace, as reasonably necessary, all Equipment and Supplies. Manager shall maintain all equipment in compliance with applicable regulations, including any required inspections. Maintenance and repair of City owned golf course equipment (Exhibit B) shall be performed by Owner. Consumables shall be the responsibility of the Manager, which includes but not limited to blade sharpening, blade replacement and wear items related to grounds and facility/property maintenance.



#### 4.2. **Management Period.**

(a) **Manager.** In addition to any obligations under paragraph 4.1, during the Management Period, and subject to any requirements, restrictions or limitations set forth elsewhere in this Agreement (including, without limitation, the requirements set forth in paragraph 2.2), Manager shall, at a minimum, do the following:

(i) Fully comply, and cause the operations of the Golf Course to fully comply, with all Legal Requirements; provided, however, that the foregoing shall not apply to any Legal Requirements governing construction and construction quality, compliance with which, as set forth in paragraph 4.2(b), shall be the sole responsibility of the Owner.

(ii) Apply for, obtain and maintain in full force and effect, at Owner's expense, all permits, licenses designated by Owner or necessary or appropriate for the management, maintenance and operation of the Golf Course. All such permits and licenses shall be the sole and exclusive property of Owner other than any permit or license personal to the party providing services.

(iii) Immediately advise Owner of any discovery by Manager of any Hazardous Materials in, on or about the Golf Course, promptly following such discovery jointly determine with Owner the actions which should be taken to ensure that the presence of such Hazardous Materials in, on or about the Golf Course will not constitute a violation of any Legal Requirement, and upon approval by Owner of any actions recommended by Manager, promptly take, or cause to be taken, such actions.

(iv) Fully cooperate with and provide any necessary or appropriate documents, materials and information to, any financial institution or other lender designated by Owner.

(v) Make recommendations to Owner from time to time concerning improvements and modifications to the Golf Course.

(vi) Obtain and maintain in full force and effect all insurance reasonably required to be maintained by Manager pursuant to Article XII hereof.

(vii) Comply with all agreements governing or affecting the Golf Course that Manager has been provided with, including, without limitation, mortgages, deeds of trust, regulatory agreements, declarations of covenants, conditions and restrictions, and similar documents, copies of which shall be provided to Manager upon execution of this Agreement.

(viii) Prepare and allow inspection by Owner of the plans, books, records and other materials specified in Article IX, below.

(ix) Maintain in full force and effect all Operating Contracts (other than such Operating Contracts as may be replaced by a new Operating Contract) reasonably necessary or appropriate for the ongoing management, maintenance and operation of the Golf Course in accordance with this Agreement.

(x) Negotiate, prepare, review and, subject to the restrictions set forth in Article V, execute all agreements reasonably necessary or appropriate for the management, maintenance and operation of the Golf Course.

(xi) Obtain all warranties provided by, and lien waivers from, laborers, materialmen and contractors in connection with any Improvements made pursuant to Article XI.

(b) **Owner**. During the Management Period, and subject to any requirements, restrictions or limitations set forth elsewhere in this Agreement (including, without limitation, the requirements set forth in paragraph 2.2), Owner:

(i) May design, construct and install Improvements on the Golf Course, provided, however, Owner shall provide Manager no less than sixty (60) days notice prior to commencement of construction of the Improvements, with a copy of the plans for the proposed Improvements. Within fifteen (15) days of receipt thereof, Manager shall review the plans for the Improvements and shall approve or disapprove the same, which approval shall not be unreasonably withheld. If Owner wishes to proceed with the Improvements notwithstanding the disapproval of Manager, the parties shall revise the Approved Annual Business Plan, as applicable, to reflect any negative impact that the construction and/or implementation of the Improvements will have on Golf Course operations. All Improvements constructed by Owner or at the direction of Owner shall be constructed in a workmanlike manner in accordance with standard construction industry practices.

(ii) Shall provide Manager with notice and copies of all agreements governing or affecting the Golf Course, including, without limitation, mortgages, deeds of trust, regulatory agreements, declarations of covenants, conditions and restrictions, and similar documents.

(iii) Shall not modify or amend any agreement governing or affecting the Golf Course in such a manner that imposes additional burdens on the Manager or results in the reduction of Gross Revenues, as defined herein, without the written consent of Manager in its sole discretion.

## **ARTICLE V.**

### **RESTRICTED ACTIVITIES OF MANAGER**

**5.1.** Without the prior written consent of Owner, which consent may be granted or withheld in Owner's sole discretion, Manager shall not do, or cause or permit to be done, any of the following during the Term of this Agreement:

(a) Borrow or lend money, or enter into any other agreement, in the name of Owner.

(b) Assign, transfer, pledge, compromise or release any of the claims of or debts of \$5,000 or more due Owner, except upon payment in full.

(c) Arbitrate or consent to the arbitration or settlement of any claim of or against Owner or any other dispute or controversy involving Owner.

(d) Make, execute or deliver in the name of Owner, or with respect to any of the assets of Owner, any assignment for the benefit of creditors or any bond, confession of judgment, chattel mortgage, security instrument, deed, guarantee, indemnity bond or surety bond.

(e) Lease, sell, transfer, assign, convey, pledge, encumber, mortgage, hypothecate or otherwise dispose of property of the Golf Course, or, except as contemplated in the Approved Annual Business Plan, as applicable, lease, sell, transfer, assign, convey, pledge, encumber, mortgage, hypothecate or otherwise dispose of any Equipment and Supplies or enter into any contract for any such purpose.

(f) In the name of or on behalf of Owner, endorse any note, or become a surety, guarantor, or accommodation party to any obligation.

(g) Knowingly violate any Legal Requirement.

(h) Commence or maintain in the name of or on behalf of Owner any action or proceeding, whether judicial, administrative or otherwise.

(i) Engage in, or permit, suffer or allow the occurrence of, any storage, holding, release, emission, discharge, generation, abatement, disposition, handling, or transportation of any Hazardous Materials. Notwithstanding the foregoing, Manager need not secure the prior written consent of Owner before utilizing, in connection with the reasonable and necessary operation and maintenance of the Golf Course, fertilizers, and pesticides, provided such substances are utilized in compliance with all applicable laws and regulations and the procedures approved by Owner as required in subparagraph (j) below.

(j) Except for fertilizers and pesticides reasonably necessary for operation and maintenance of the Golf Course, and except for any other substances and materials reasonably necessary for the operation and maintenance of the Golf Course (all of which substances and materials shall be used, installed, kept and maintained in compliance with all applicable Legal Requirements), place or cause to be placed in, on, or around the Golf Course any Hazardous Materials. In the event Manager discovers or obtains actual knowledge of the existence of any Hazardous Materials in, on or around the Golf Course other than permitted to be so located in compliance with this Agreement, Manager shall promptly notify Owner. Manager shall not be responsible for any Hazardous Materials (i) present on the Golf Course prior to the date hereof, unless deposited thereon by Manager (ii) placed on the Golf Course in accordance with the terms of this Agreement, (iii) which becomes present on the Golf Course after the date hereof as a result of some event or condition over which Manager had no control, or (iv) which becomes present on the Golf Course after termination of this Agreement and all extensions hereof; provided, however, Manager shall promptly notify Owner of any notice received by Manager from any governmental authority of any actual or threatened violation of any applicable laws, regulation or ordinances governing the use, storage or disposal of any Hazardous Materials and shall cooperate reasonably with Owner in responding to such notice and correcting or contesting any alleged violation. Manager hereby agrees to indemnify,

defend (with attorneys approved by Owner, which approval shall not be unreasonably withheld) and hold Owner free and harmless from any cost, expense, penalty or other liability incurred by Owner as a result of any breach by Manager of its obligations under this paragraph. Owner hereby agrees to indemnify, defend (with attorneys approved by Manager, which approval shall not be unreasonably withheld) and hold Manager free and harmless from any cost, expense, penalty or other liability incurred by Manager as a result of or in connection with or arising from Hazardous Materials other than that caused by Manager's breach of this Article V.

## **ARTICLE VI.** **COMPENSATION TO MANAGER**

**6.1 Management Fee.** Commencing on the Management Commencement Date, Owner shall pay Manager for services rendered under this Agreement a Management Fee for each month of the operating Term (and proportionally for any fraction of a month) comprised of the following:

(a) A Fixed Fee to be paid during the following time periods:

(i) First Term Year. Commencing on Management Commencement Date \_\_\_\_\_ and continuing through \_\_\_\_\_, the sum of \$75,000 to be paid in equal monthly installments of \$6,250.

This Fixed Fee is to increase by the lessor of 2.5% or CPI annually in subsequent years for the duration of the Agreement.

(b) In addition to the Fixed Fee, an "**Incentive Fee**" equal to ten percent (10%) of Net Profit (Gross Profit less Bond Debt Service, less the annual Capital Funding Reserve), shall be paid annually and covered and calculated in the manner set forth in paragraph 6.2 below.

(c) In addition to the Fixed Fee and the Incentive Fee, an Accounting Fee of \$1,250 shall be paid monthly. This Accounting Fee is to increase by 2.5% annually for the duration of the Agreement.

### **6.2. Payments of Management Fee.**

(a) Manager shall be paid the Fixed Fee for each month on the first day of such month (except with respect to the Fixed Fee paid pursuant to Paragraph 6.1(a)(i) for the first partial month, which fee for such partial month shall be paid within five (5) days of the Management Commencement Date).

(b) The Incentive Fee will be calculated annually by taking 10% of the Net Profit, which is equal to Gross Profit of Reidy Creek Golf Course less the annual Bond Debt Service, less the annual Capital Funding Reserve requirement for Reidy Creek Golf Course and paid by the 30<sup>th</sup> of the month following the last month of the fiscal year. The Incentive Fee shall

not exceed the percentage of the Total Fee (Fixed Fee and Incentive Fee combined) allowable under IRS revenue procedures.

**ARTICLE VII.**  
**INTENTIONALLY DELETED**

**ARTICLE VIII.**  
**BANK ACCOUNTS, DEPOSITS AND WITHDRAWALS**

**8.1. Operating Account.** On or before the Management Commencement Date, Manager shall establish one or more bank accounts for the Golf Course, which accounts (collectively, the “**Operating Account**”) shall be used by Manager for the deposit on a daily basis of all Gross Revenues collected from the operation of the Golf Course. Manager and Manager’s designee(s), whose names shall be disclosed to Owner, shall be sole signatory on the Operating Account. Manager shall not allow any funds withdrawn from the Operating Account to be commingled with any other funds or bank accounts of Manager.

**8.2. Deposits Into Operating Account.** From and after the Management Commencement Date, Manager shall deposit into the Operating Account all Gross Revenues received with respect to the Golf Course promptly following receipt thereof. If at any time Manager determines that the funds on deposit in, or projected to be on deposit in, the Operating Account (taking into account reasonably anticipated Gross Revenues) will be insufficient to pay, as and when due, Operating Expenses reasonably anticipated to be incurred in accordance with the Approved Annual Business Plan during the immediately succeeding thirty (30) calendar days, Manager shall have the right to provide written notice (a “**Notice of Operating Account Deficiency**”) to Owner of the amount of such anticipated deficiency. The Notice of Operating Account Deficiency shall set forth the anticipated amount of the deficiency. Within five (5) days following receipt of a Notice of Operating Account Deficiency, Owner shall deliver to Manager for deposit into the Operating Account an amount equal to the anticipated deficiency specified on the Notice of Operating Account Deficiency.

**8.3. Withdrawals from Operating Account.** Manager shall use the funds in the Operating Account as follows:

(a) **Monthly Withdrawals.** On the first business day of each calendar month from and after the Management Commencement Date, (each “**Monthly Disbursement Date**”) Manager shall use the funds in the Operating Account in the following order of priority:

(i) First, to the payment of any outstanding or accrued Management Fees and to reimburse Manager for any outstanding Manager Advances;

(ii) Next, Manager shall retain in the Operating Account an amount sufficient to pay for (A) all unpaid Operating Expenses (other than Management Fees previously paid pursuant to paragraph 8.3(a)(i)), (B) all Operating Expenses anticipated to be expended during such calendar month, as indicated by the Approved Annual Business Plan;

(iii) Next, to the extent that there are funds remaining on deposit in the Operating Account in excess of the amounts necessary for the application of the foregoing clauses (i) through (ii), Manager shall retain in the Operating Account an additional amount equal to the Operating Expenses Reserve; and

(iv) Next, to the extent that there are funds remaining on deposit in the Operating Account in excess of the amounts necessary for the application of the foregoing clauses (i) through (iii), Manager shall disburse the balance of such funds to Owner.

Manager shall have the right to withdraw funds retained in the Operating Account pursuant to the foregoing clauses (ii) and (iii) as and when necessary in order to pay any accrued and unpaid Operating Expenses to the extent that the same are consistent with the Approved Annual Business Plan; provided, however, Manager, in the performance of its duties under this Agreement may not deviate by more than ten percent (10%) from any budget department set forth in the Approved Annual Business Plan.

(b) **Withdrawals to Pay Expenses.** In addition, Manager shall use funds from time to time on deposit in the Operating Account to pay accrued and unpaid Operating Expenses.

**8.4. Manager Advances For Operating Expenses.** The parties acknowledge that Manager shall have the right, but not the obligation, to advance its own funds (collectively, the "**Manager Advances**") to pay Operating Expenses consistent at all times with paragraph 8.3. Any Manager Advances shall be reimbursed pursuant to paragraph 8.3.

**8.5. No Other Withdrawals From Operating Account.** Except for disbursements and withdrawals made in accordance with paragraphs 6.1, 6.2, 6.3, 8.3, 8.4, 8.7, 13.4(c) and 13.5 hereof and expenditures made in connection with an emergency as contemplated by paragraph 9.2 hereof, Manager shall not have the right to withdraw or disburse funds from the Operating Account unless such withdrawal or disbursement first has been approved in writing by Owner.

**8.6. Separate Accounts of Manager.** Notwithstanding the provisions of paragraphs 8.1 and 8.7, Manager shall establish a separate account for the payment of all payroll expenses of the Golf Course Personnel (which account may be a general payroll account established by Manager for the payroll expenses of all employees of Manager). Manager may withdraw funds from the Operating Account from time to time for deposit into such separate payroll account; provided, however, that (a) in no event shall the amount so withdrawn from the Operating Account exceed the actual amount necessary to pay the Golf Course Personnel, (b) in no event shall any such withdrawal from the Operating Account occur more than two (2) business days prior to the date upon which such funds are to be paid out of the separate payroll account to the Golf Course Personnel, and (c) any sums so withdrawn immediately shall be deposited into such separate payroll account.

**8.7. Change of Banks.** If so directed by Owner in writing, Manager shall change a depository bank or any depository arrangements effected pursuant to this Agreement.

**8.8. Adjustment of Capital Expense Funding Requirement.** In the event that Manager determines in its reasonable judgment that the Capital Expense Funding Requirement is

insufficient to provide for anticipated capital and other expenses for any Budget Period, the parties shall negotiate in good faith an increase to the Capital Expense Funding Requirement.

**ARTICLE IX.**  
**FINANCIAL AND REPORTING MATTERS**

**9.1. Annual Business Plan.**

(a) Submission of Preliminary Annual Business Plan. No later than ninety (90) days prior to the commencement of each Budget Period, Manager shall submit to Owner for Owner's written approval, which approval shall not be unreasonably withheld, a proposed budget and business plan (the "**Preliminary Annual Business Plan**") for the Golf Course for the next Budget Period. The Preliminary Annual Business Plan shall include such operating and capital budgets, fee schedules and plans as Owner may from time to time direct for the Budget Period.

(b) Approval of Preliminary Annual Business Plan. Each Preliminary Annual Business Plan is subject to the written approval of Owner, not to be unreasonably withheld. Subject at all times to paragraphs 9.1(f), Owner shall have twenty-five (25) days from its receipt of the Preliminary Annual Business Plan and other materials required under paragraph 9.1(b) in which to approve or disapprove the Preliminary Annual Business Plan, which approval not be unreasonably withheld. If Owner does not disapprove the Preliminary Annual Business Plan in writing within twenty-five (25) days after receipt of the Preliminary Annual Business Plan, the same shall be deemed approved. If required by Owner, Manager shall make a presentation to Owner summarizing the major expenditures and changes in the Preliminary Annual Business Plan as compared to the prior Budget Period. If Owner disapproves the Preliminary Annual Business Plan, Owner shall give Manager written notice (the "**Business Plan Disapproval Notice**") of such setting forth Owner's reasons for such disapproval. As soon as reasonably practical after Manager's receipt of the Business Plan Disapproval Notice, but in no event more than fifteen (15) days thereafter, Manager shall submit to Owner, for its written approval, a revised Preliminary Annual Business Plan which shall resolve all matters previously reasonably disapproved by Owner. The Preliminary Annual Business Plan, as approved by Owner or modified as set forth herein, shall be referred to in this Agreement as the "**Approved Annual Business Plan**." Owner shall consent to reasonable changes or amendments to the Approved Annual Business Plan. If the Approved Annual Business Plan is modified with the approval of Owner during any Budget Period, the most current modified plan shall be deemed the Approved Annual Business Plan under this Agreement.

(c) Six Month Review of Annual Business Plan. Within six months following the approval of the Annual Business Plan, Manager and Owner shall jointly review the Annual Business Plan, and work in good faith to make any revisions necessary.

(c) In the event the Management Commencement Date does not correspond with the start of the Fiscal Year, the first and last business plans shall be prepared for the partial Fiscal Years.

(d) Owner Acknowledgment and Consent to Changes in the Approved Annual Business Plan. Owner acknowledges, notwithstanding Manager’s experience and expertise in relation to the operation and management of facilities similar to the Golf Course, projections contained in each Approved Annual Business Plan are estimates only and further are subject to and may be affected by changes in financial, economic and other conditions and circumstances beyond Manager’s control. The Approved Annual Business Plan should not be relied upon as a guarantee of performance. Owner shall consent to reasonable changes or amendments to the Approved Annual Business Plan.

**9.2. Emergency Expenditures.** Whenever, by reason of circumstances beyond the control of Manager, emergency expenditures up to Five Thousand Dollars (\$5,000) are in the opinion of Manager required to be made for the lawful or safe operation of the Golf Course, Manager may make such expenditures, notwithstanding that such expenditures are not provided for in the Approved Annual Business Plan. Manager, in all events, shall take reasonable steps to secure Owner’s prior consent and shall advise Owner as soon as possible of the nature of the emergency, the proposed remedy and the cost thereof.

**9.3. Books and Reports.**

(a) **Book of Account.** Throughout the Management Period, Manager shall maintain in accordance with generally accepted accounting principles, consistently applied, full and separate books and records for the Golf Course with entries supported by documentation sufficient to allow Owner to ascertain the accuracy of such books and records. Manager shall maintain and safeguard such books and records at Manager’s office at the Rancho Bernardo Inn, or at such other location as may be agreed upon in writing. Manager shall provide copies of such books and records to Owner at other locations upon receipt by Manager of a request therefor from Owner. Manager shall ensure such control over accounting and financial transactions as is necessary to protect Owner’s assets from theft, error or fraudulent activity by Manager’s employees.

(b) **Reports.**

(i) Manager shall prepare and submit to Owner, on or before the twentieth (20th) of each calendar month during the Management Period and the twentieth (20th) day of the calendar month immediately following any month in which this Agreement is terminated, a “**Monthly Operating Report**”, which Monthly Operating Report shall be in such form and contain such operating information as Owner may reasonably require and shall include a report of a statement of income and expenses (including the Management Fee) for the Golf Course for the preceding month and a balance sheet for the Golf Course, each prepared on an accrual basis, and, if requested by Owner, an analysis of variances from the Approved Annual Business Plan, as applicable.

(ii) Manager shall prepare and submit to Owner no later than ninety (90) days after the end of each Fiscal Year an “**Annual Operating Report**” for the immediately preceding Fiscal Year (or in the case of a partial Fiscal Year at the beginning or end of the Management Period, an Annual Operating Report for such partial Fiscal Year), which Annual Operating Report shall be in such form and contain such information as Owner may reasonably



require, including, without limitation, the information described in paragraph 9.3(b)(i) above (collectively, the “**Year End Financials**”).

(c) **Supporting Documentation.** As additional supporting documentation for the monthly financial statements and Year End Financials required under paragraph (b) above, unless otherwise directed by Owner, Manager shall make available at Manager’s principal office at the Rancho Bernardo Inn, the following: (i) all bank statements and bank deposit slips; (ii) detailed cash receipts and disbursement records; (iii) detailed trial balances for receivables and payables and billed and unbilled revenue items; (iv) paid invoices; (v) supporting documentation for payroll, payroll taxes and employee benefits; (vi) appropriate details of accrued expenses and property records; (vii) daily or weekly reports maintained by Manager in connection with its ongoing operation and management of the Golf Course; and (viii) information necessary for preparation of Owner’s tax returns, including a description of and a statement of accounts expended in connection with repairs, capital improvements, taxes and professional fees.

**9.4. Owner’s Right to Audit.** All books, records and supporting documentation maintained by Manager pursuant to this Article IX shall be the sole and exclusive property of Owner, and shall be made available to Owner at Owner’s request at reasonable times during normal business hours, and, in addition, in connection with independent financial audits of Owner, as well as audits by any governmental authority. Owner, or persons appointed by Owner, may, during ordinary business hours, examine all books, records and files maintained for Owner by Manager. Owner may perform any audit or investigation relating to Manager’s activities at any office of Manager if such audit or investigation relates to Manager’s activities for Owner. Without limiting the provisions of paragraph 9.4 hereof, should Owner or Owner’s employees or representatives discover any errors in record keeping, Manager shall correct such discrepancies promptly upon discovery and make necessary adjustments. Manager shall inform Owner in writing of the action taken to correct any audit discrepancies.

## **ARTICLE X.** **REPRESENTATIONS AND WARRANTIES**

**10.1. Owner’s Representations and Warranties.** As a material inducement for Manager to enter into this Agreement, Owner represents and warrants to Manager that as of the Management Commencement Date:

(a) Owner is duly organized, validly existing, and in good standing under the laws of its state of organization, is duly qualified to do business in the state in which the Golf Course is located, and has full power, authority, and legal right to execute, perform and timely observe all of the provisions of this Agreement to be performed or observed by Owner. This Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of Owner enforceable in accordance with the terms hereof.

(b) To the best of Owner’s knowledge, there is no claim, litigation, proceedings or governmental investigation pending against or relating to Owner, the properties or business of Owner or the transactions contemplated by this Agreement, which does or may reasonably be expected to materially and adversely affect the ability

of Owner to enter into this Agreement or to carry out its obligations hereunder, and there is no basis for any such claim, litigation, proceedings or governmental investigation, except as has been fully disclosed in writing to Manager.

(c) This Agreement constitutes a valid and binding obligation of Owner and does not and will not constitute a breach of or default under any of the organizational or governing documents of Owner or the terms, conditions, or provisions of any law, order, rule, regulation, judgment, decree, agreement, or instrument to which Owner is a party or by which it or any substantial portion of its assets (including the Golf Course) is bound or affected.

(d) No approval of any third party (including any ground lessor or the holder of any Mortgage) is required for Owner's execution and performance of this Agreement that has not been obtained prior to the execution of this Agreement.

(e) Owner, at its own expense, shall maintain in full force and effect starting on the Management Commencement Date and throughout the Management Period its legal existence and the rights required for it timely to observe and perform all of the terms and conditions of this Agreement.

(f) Owner is the sole owner of a fee interest in and to the Golf Course as defined in Recital A of this Agreement, subject to customary title exceptions. Owner has full power, authority and legal right to own a fee interest in and to such real and personal property.

**10.2. Manager's Representations and Warranties.** As a material inducement to Owner to enter into this Agreement, Manager represents and warrants to Owner that as of the Management Commencement Date:

(a) Manager is duly organized, validly existing, and in good standing under the laws of its state of organization, is duly qualified to do business in the state in which the Golf Course is located, and has full power, authority, and legal right to execute, perform and timely observe all of the provisions of this Agreement to be performed or observed by Manager. This Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of Manager enforceable in accordance with the terms hereof.

(b) There is no claim, litigation, proceedings or governmental investigation pending against or relating to Manager, the properties or business of Manager or the transactions contemplated by this Agreement, which does or may reasonably be expected to materially and adversely affect the ability of Manager to enter into this Agreement or to carry out its obligations hereunder, and there is no basis for any such claim, litigation, proceedings or governmental investigation, except as has been fully disclosed in writing to Owner.

(c) This Agreement constitutes a valid and binding obligation of Manager and does not and will not constitute a breach of or default under any of the organizational or governing documents of Manager or the terms, conditions, or provisions

of any law, order, rule, regulation, judgment, decree, agreement, or instrument to which Manager is a party or by which it or any substantial portion of its assets is bound or affected.

(d) No approval of any third party is required for Manager's execution and performance of this Agreement that has not been obtained prior to the execution of this Agreement.

(e) Manager, at its own expense, shall maintain in full force and effect starting on the Management Commencement Date and throughout the Management Period its legal existence and the rights required for it timely to observe and perform all of the terms and conditions of this Agreement.

## **ARTICLE XI. ALTERATIONS AND IMPROVEMENTS**

**11.1. Approvals; Execution of Agreements.** Unless expressly provided to the contrary in this Agreement, previously approved by Owner in writing or contemplated in the Approved Annual Business Plan, Manager shall not make any alterations of or Improvements to the Golf Course. Following any approval by Owner of any such alterations or Improvements, Manager shall negotiate, and submit to Owner for its approval (which approval shall not be unreasonably withheld), all necessary agreements relating to such alterations and Improvements. Owner may, at its option, require that such agreements be executed in the name of Owner.

**11.2. Supervision.** Throughout the Management Period, Manager shall, if and to the extent requested by Owner, coordinate and supervise all minor alterations of and Improvements to the Golf Course and in connection therewith shall take such actions as Owner may direct and all steps necessary or appropriate to cause such alterations and Improvements to be completed in a timely, efficient, economical and workmanlike manner, and in accordance with all Legal Requirements.

## **ARTICLE XII. INSURANCE, INDEMNITY AND CASUALTY**

### **12.1. Insurance Requirements of Manager**

(a) Insurance Types: Effective as of the Management Commencement Date, Manager shall obtain all insurance required to be obtained by Manager under this Agreement as follows:

(i) *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 \$10,000,000 per occurrence.

(ii) *Workers' Compensation.* Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

(iii) *Automobile Liability.* ISO Form CA 00 01 covering any auto (Code 1), or if Manager 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 Owner and approved in writing by the Owner's Risk and Safety Division.

(iv) *Property Insurance.* Property insurance against all risks of loss to any Manager improvements or betterments, at full replacement cost with no coinsurance penalty provision. The property insurance is to be endorsed to include Legal Liability Coverage (ISO Form CP 00 40 04 02 or equivalent) with a limit equal to the replacement cost of the leased property, Property insurance shall include not less than \$1,000,000 Fire Legal liability on the Premises, including improvements and betterments owned by the Owner, and shall name the Owner as a loss payee.

Manager shall also provide fire insurance on all personal property contained within or on the Premises. The policy must be written on an "all risks" basis, excluding earthquake and flood. The policy shall insure for not less than 90% of the actual cash value of the personal property, and Manager shall name the Owner as an additional insured.

(v) *Interruption of Business Insurance.* Business interruption insurance of a type and in amounts sufficient to cover loss of profits and rent, management fees, any mortgage payments, real estate taxes, hazard insurance premiums, and adequate cleaning, lighting and maintenance of the Golf Course for a period of at least 12 months, and with a waiting period of no more than seven days by which the minimum monthly rent will be paid to the Owner for a period of up to one year if the Premises is destroyed or rendered inaccessible by a risk insured against by a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements.

(vi) *Crime Insurance.* Crime Insurance, which includes Employee Theft and Theft, Disappearance and Destruction coverage parts, in an amount not less than \$500,000 per occurrence with a deductible no greater than \$100,000 that will pay on behalf of the Manager to the Owner for losses caused by the dishonest acts of the Manager or Manager's employees, agents, or designees.

(vii) *Employment Practices Liability.* Employment Practices Liability insurance in an amount not less than \$2,000,000.

(b) If Manager maintains broader coverage and/or higher limits than the minimums otherwise required by this Lease, the Owner requires and shall be entitled to the broader coverage and/or the higher limits maintained by Manager.

(c) Each insurance policy required by this Lease must be acceptable to the Owner's Attorney and shall meet the following requirements:

(i) *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 Owner.

(ii) *Additional Insured Status.* Manager's Commercial General Liability, Automobile Liability, Crime, and Business Interruption policies must name the Owner (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.

(iii) *Primary Coverage.* Manager's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the Owner, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the Owner, its officials, officers, agents, employees, or volunteers shall be in excess of Manager's insurance and shall not contribute with it.

(iv) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the Owner.

(v) *Waiver of Subrogation.* Manager hereby grants to the Owner a waiver of any right to subrogation that any insurer of Manager may acquire against the Owner by virtue of the payment of any loss under such insurance. Manager 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 Owner has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Lease shall be endorsed with a waiver of subrogation in favor of the city for all work performed by Manager, its agents, representatives, employees and volunteers.

(vi) *Self-Insurance.* Manager may, with the Owner's prior written consent, fulfill some or all of the insurance requirements contained in this Lease under a plan of self-insurance. Manager shall only be permitted to utilize such self-insurance if, in the opinion of the Owner, Manager's (i) net worth and (ii) reserves for payment of claims of liability against Manager are sufficient to adequately compensate for the lack of other insurance coverage required by this Lease. Manager's utilization of self-insurance shall not in any way limit the liabilities assumed by Manager pursuant to this Lease.

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

(viii) *Verification of Coverage.* At the time Manager executes this Lease, Manager shall provide the Owner with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting the insurance coverage required by this Lease), which shall meet all requirements under this Lease. The Owner reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Lease, at any time.

(ix) *Special Risks or Circumstances.* The Owner reserves the right, at any point during the term of this Lease, to modify the insurance requirements in this Lease, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

(x) *No Limitation of Obligations.* The insurance requirements within this Lease, including the types and limits of insurance coverage Manager must maintain, and any approval of such insurance by the Owner, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Manager pursuant to this Lease, including but not limited to any provisions within this Lease concerning indemnification.

Failure to comply with any of the insurance requirements in this Lease, including but not limited to a lapse in any required insurance coverage during the term of this Lease, shall be a material breach of this Lease. In the event that Manager fails to comply with any such insurance requirements in this Lease, in addition to any other remedies the Owner may have, the Owner may, at its sole option, (i) immediately terminate this Lease; or (ii) order Manager to immediately vacate the Premises until Manager demonstrates compliance with the insurance requirements in this Lease.

(xi) *Insurance Premiums.* Unless otherwise noted, all insurance described under this Article XII to be carried by Manager will be maintained by Manager at Owner's expense in accordance with the Approved Annual Business Plan, as applicable, with insurance carriers who are legally operating in the State of California and acceptable to Owner, which acceptance shall not be unreasonably withheld. In no event will such insurance be terminated or otherwise allowed to lapse prior to termination of this Agreement or such longer period as may be specified herein. Manager may provide the insurance described in this Article XII in whole or in part through a policy or policies covering other liabilities and projects of Manager. Owner shall not be entitled to a pro-rata refund for partial year coverage on pre-paid insurance premiums.

(xii) *Damages.* Nothing contained in these insurance requirements is to be construed as limiting the type, quality or quantity of insurance Manager should maintain or the extent of Manager's responsibility for payment of damages resulting from its operations under this Agreement.

**12.2. Indemnification by Owner.** To the extent permitted by law, during the Management Period of the Agreement, Owner shall indemnify, protect, defend (through counsel reasonably satisfactory to Manager), and hold harmless Manager and Manager's Affiliates, shareholders, partners, officers, directors, trustees, beneficiaries, members, employees, agents, and legal representatives and the successors and assigns of each of the foregoing (collectively, the "**Manager Representatives**") from, and Manager Representatives shall not be liable to Owner for, any and all liability, loss, cost, claims (whether administrative or judicial) or expense (including, without limitation, damage to Owner's property, workers compensation and/or employee claims, third party claims and reasonable attorneys' fees and expenses) resulting from or arising from or relating to the ownership, development, construction, management, operation or maintenance of the Golf Course (collectively, the "**Liabilities**"), except to the extent those Liabilities arise from (a) Manager's or a Manager's Representatives willful or criminal misconduct, gross negligence or fraud in connection with or relating to the performance by Manager of its obligations under this Agreement, except to the extent that such Manager's misconduct, gross negligence or fraud is caused by, is a result of, or is done at the direction of an Owner Indemnified Party, or (b) any acts by Manager or Manager's Representatives that are

beyond the scope of authority that Manager reasonably believes it has been granted pursuant to this Agreement.

(a) Duty to Defend. Manager will notify Owner of any action, suit, or proceeding potentially giving rise to an indemnity obligation hereunder, and Owner may, and upon Manager's request shall, at Owner's expense, defend such action, suit, or proceeding, or cause the same to be defended by counsel designated by Manager.

(b) Survival. The obligations of Owner under this paragraph 12.2 shall survive the expiration or earlier termination /of this Agreement (regardless of the basis therefor).

(c) Insurance. Notwithstanding anything to the contrary in this Section 12.2, the Manager and the Manager Representatives shall look first to the appropriate insurance coverages in effect pursuant to this Agreement prior to seeking indemnification under this Section 12.2 in the event any claim or liability occurs as a result of injury to persons or damage to property, regardless of the cause of such claim or liability; provided, however, if the insurance company denies coverage or reserves rights as to coverage, then the Manager and the Manager Representatives shall have the right to seek indemnification, without first looking to such insurance coverage.

**12.3. Indemnification by Manager**. To the extent permitted by law during the Management Period, and unless otherwise caused by the gross negligence or willful misconduct of Owner or Owner's Representatives (as defined below) or by a breach by Owner of its obligations hereunder, Manager agrees to indemnify, protect and defend (through counsel reasonably satisfactory to Owner) and hold harmless Owner and Owner's shareholders, partners, directors, trustees, beneficiaries, members, officers, employees, agents, and representatives and its and their respective successors and assigns ("**Owner's Representatives**") from, and Owner and Owner's Representatives shall not be liable for, any and all liability, loss, cost, or expense damage (including, without limitation, damage to Owner's property, third party claims and reasonable attorneys' fees and expenses) resulting from or arising from or relating to the management, operation or maintenance of the Golf Course during the Management Period of this Agreement to the extent the same shall have been established by a court of competent jurisdiction to have been caused by the (a) willful or criminal misconduct, gross negligence or fraud of Manager or any of Manager's Representatives, or (b) any acts by Manager or Manager's Representatives which are beyond the scope of authority which Manager reasonably believes it has been granted pursuant to this Agreement in connection with or relating to the performance by Manager of its obligations under this Agreement.

(a) Duty to Defend. Owner will notify Manager of any action, suit, or proceeding potentially giving rise to a claim of indemnification under this paragraph, and Manager may, and upon Owner's request shall, at Manager's expense, defend such action, suit or proceeding, or cause the same to be defended by Counsel designated by Owner.

(b) Survival. The obligations of Manager under this paragraph 12.3 shall survive the expiration or earlier termination of this Agreement (regardless of the basis therefor).

(c) Insurance. Notwithstanding anything to the contrary in this Section 12.3, the Owner and the Owner Representatives shall look first to the appropriate insurance coverages in effect pursuant to this Agreement prior to seeking indemnification under this Section 12.3 in the event any claim or liability occurs as a result of injury to persons or damage to property, regardless of the cause of such claim or liability; provided, however, if the insurance company denies coverage or reserves rights as to coverage, then the Owner and the Owner Representatives shall have the right to seek indemnification, without first looking to such insurance coverage.

**12.4. Accident Reporting**. Manager shall promptly investigate, and make a full, timely written report to Owner regarding all accidents, claims or damage in excess of Five Thousand Dollars (\$5,000) relating to the ownership, operation, management and maintenance of the Golf Course; any damage or destruction to the Golf Course and the estimated cost of repair thereof, and shall prepare any and all reports required by Owner and any insurance companies in connection therewith. All such reports shall be filed timely with Manager's insurance companies as required under the terms of the applicable insurance policy which provides coverage for such accident, damage or claim. Manager shall not settle, compromise, or otherwise dispose of any claims, demands or liabilities, whether or not covered by insurance proceeds, without the prior written consent of Owner.

### **ARTICLE XIII.** **TERMINATION**

**13.1. Events of Default by Manager**. The following shall constitute Events of Default of Manager:

(a) if there is any failure by Manager to perform any of the terms, conditions or covenants of this Agreement to be observed or performed by Manager within thirty (30) days after written notice from Owner (or such additional time as is reasonably required to correct any such default provided that Manager commences the cure during such thirty (30) day period and thereafter diligently pursues such cure);

(b) if Manager shall become insolvent or file any debtor proceedings, or should any adjudications in bankruptcy be rendered against Manager, or should Manager take or there be taken against Manager in any court pursuant to any statute either of the United States or of any State a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Manager's property, and, in the case of any involuntary proceeding, the same is not discharged within sixty (60) days thereafter, or if Manager makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement of its debts;

(c) if Manager shall permit or suffer this Agreement to be taken under any writ of attachment or execution, and the same is not discharged within thirty (30) days thereafter; or

(d) if Manager assigns this Agreement in violation of Article XIV.

**13.2. Events of Default by Owner**. The following shall constitute Events of Default of Owner:



(a) If Owner fails to keep, observe or perform any covenant, agreement, term or provision of this Agreement to be kept, observed or performed by Owner, and such default shall continue for a period of thirty (30) days after written notice thereof by Manager to Owner (or such additional time as is reasonably required to correct any such default provided that Owner commences the cure during such thirty (30) day period and thereafter diligently pursues such cure);

(b) If Owner fails to fund a monetary deficiency pursuant to paragraph 8.2 or pay to the Manager any sum or money when due and payable;

(c) Sale of all or a portion of the Golf Course; or

(d) If Owner shall become insolvent or file any debtor proceedings, or should any adjudications in bankruptcy be rendered against Owner, or should Owner take or there be taken against Owner in any court pursuant to any statute either of the United States or of any State a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of the Golf Course, and, in the case of any involuntary proceeding, the same is not discharged within sixty (60) days thereafter, or if Owner makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement of its debts.

**13.3. Termination Upon Default.** Upon the occurrence and continuation of an Event of Default, the non-defaulting party may, at its option, and in addition to any and all other rights to which it may be entitled under this Agreement or applicable law, elect to terminate this Agreement. Any such termination shall be effective as of the date therefor specified in such election; provided, however, that in no event shall such date be later than thirty (30) days following the date such election is made.

**13.4. Actions Following Termination.** In addition to any other rights and remedies afforded to a non-defaulting party following an Event of Default, should a non-defaulting party elect termination, the parties agree that the following additional provisions shall apply in order to facilitate transition in management of the Golf Course:

(a) Manager shall assign, convey, transfer and set over unto Owner, pursuant to an assignment in form and content satisfactory to Owner, all of Manager's right, title, and interest in and to all Operating Contracts then in effect and in Manager's name with respect to the Golf Course, and Manager shall transfer to Owner possession of all Equipment and Supplies.

(b) Manager shall, for a period of two (2) months following such termination, assist and cooperate with Owner to the extent necessary to ensure an orderly and efficient transfer of the operations of the Golf Course by Manager to Owner or Owner's designee. The covenant of Manager contained herein shall survive and remain in full force and effect following any such termination of this Agreement.

(c) Notwithstanding the foregoing, if at the time of termination Manager has not already been paid in full, Manager shall withdraw from the Operating Account funds necessary to cover all outstanding balances owing from Owner to Manager, plus interest, and all outstanding fees (including unpaid Management Fees) and out of pocket costs, including establishment of a Liability Escrow for any open or threatened claims; provided, however, that in the event of a termination due to a default of Manager, Manager shall not have the right to withdraw further

funds to pay fees thereafter accruing. If amounts in the Operating Account are insufficient to pay all outstanding amounts owed to Manager by Owner, such amounts shall be promptly paid directly by Owner to Manager.

(d) For purposes of clarification, the provisions of this Article XIII regarding termination are not intended to limit any other rights or remedies afforded to a party under applicable law as a consequence of an Event of Default in respect of the other party. For example, should an Event of Default occur in respect of Manager (*e.g.*, failure by Manager to perform its obligations hereunder, after notice and opportunity to cure), Owner shall have a right, in addition to termination, to obtain an award for any damages suffered as a consequence of such Event of Default. Notwithstanding the foregoing, the maximum damages to which Manager may be held liable on account of Events of Default hereunder shall not exceed 100% of the aggregate Management Fees paid to Manager for the immediately preceding Budget Period; provided, however, the foregoing limitation shall not apply to, limit, or affect (i) Manager's indemnity obligations under paragraph 12.3 above, or (ii) any claims related to or based upon Manager's willful, criminal or fraudulent misconduct.

(e) Owner acknowledges that Manager or its Affiliate may have an obligation under federal, state, or local law to give advance notice to Golf Course Personnel of any termination of their employment, and that failure to comply with any such notification obligation could give rise to civil liabilities. Therefore, notwithstanding anything to the contrary contained in this Agreement, (i) the date of termination of this Agreement, other than upon expiration of the Management Period, shall be extended so that the date of termination after notice of termination is given to or by Manager shall be on a date which is not earlier than ten (10) days plus the number of days, if any, Manager is required to give its employees advance notification of termination of employment by Manager as required by the Worker Adjustment and Retraining Act, 29 U.S.C., § 2101 et. seq., as hereafter amended ("WARN Act"), or any similar federal or state statute; (ii) Owner shall indemnify, hold harmless and defend Manager and its Affiliates from and against any such liabilities based on Owner's actions (including terminating this Agreement) which give rise to such a notification obligation on the part of Manager or any of its Affiliates, if Owner fails to extend the date of termination as required by, and in accordance with, subparagraph (i) of this paragraph 13.4(e); and (iii) Manager shall continue to employ such Golf Course Personnel as are necessary and for so long as is necessary to not cause a "mass layoff," "plant closing," or other violation relating to the termination of Golf Course Personnel under the WARN Act. Owner shall have no responsibility under, nor any liability to Manager and its Affiliates with respect to, the WARN Act, or any similar federal or state statute, provided Owner has complied with its obligations under this paragraph 13.4(e).

**ARTICLE XIV.**  
**TRANSFER AND ASSIGNMENTS**

**14.1. Restrictions on Manager.** Manager shall not sell, convey, assign, transfer, hypothecate, pledge, or otherwise dispose of (or agree to do any of the foregoing) all or any part of its interest, if any, in this Agreement, or any contractual rights or obligations related hereto (including any rights to receive payments) ("Transfer"), without the prior written consent of Owner, which consent may be granted or withheld in Owner's sole judgment. Any assignment by Manager without Owner's consent shall be of no force or effect. A sale or conveyance of more

than 51% of the interests in the profit and losses of Manager shall be considered a Transfer under this Article.

**14.2. Restrictions on Owner.** Owner may sell, encumber, subordinate, assign, lease, sublease, or otherwise deal with the Golf Course as the sole and absolute owner thereof, all without any duty to consult with or otherwise obtain the consent of Manager, provided that any such transferee shall take its interest subject to the rights of Manager under this Agreement.

## **ARTICLE XV. LEGAL REQUIREMENTS**

### **15.1. Legal Requirements.**

(a) **Manager Legal Requirements.** Throughout the Management Period, Manager shall comply with and observe, without exception, all Legal Requirements applicable to the Golf Course or any of the rights, duties, or obligations of Manager under this Agreement, including all Legal Requirements that are applicable as a result of Manager serving in its capacity as the manager of the Golf Course ("**Manager Legal Requirements**"). All sums required to be paid to ensure compliance with this paragraph 15.1(a) on account of Manager Legal Requirements shall be paid at no cost or expense to Owner.

(b) **Owner Legal Requirements.** Throughout the Management Period, Owner shall comply with and observe, without exception, all Legal Requirements applicable to the Golf Course or any of the rights, duties, or obligations of Owner under this Agreement, including all Legal Requirements that are applicable as a result of Owner serving in its capacity as the Owner of the Golf Course ("**Owner Legal Requirements**"). All sums required to be paid to ensure compliance with this paragraph 15.1(b) on account of Owner Legal Requirements (such as licenses and authorizations to do business in the State of California) shall be paid at no cost or expense to Manager.

**15.2. Manager's Right to Contest Legal Requirements.** Manager shall recommend to Owner from time to time whether any Legal Requirements should be contested. If requested by Owner, Manager shall contest with reasonable diligence any Legal Requirement designated by Owner. Additionally, and notwithstanding paragraph 5.1(h), Manager shall have the right to contest by appropriate proceedings conducted in good faith and with reasonable diligence the validity or application of any Legal Requirement, whether a Manager Legal Requirement or an Owner Legal Requirement. If compliance with any such Legal Requirement may legally be delayed pending the prosecuting of any such proceeding, Manager may, with the prior written consent of Owner, contest as aforesaid and delay as aforesaid, provided that such contest or delay does not subject Owner to criminal liability, damages or expenses and provided that Manager furnishes Owner security, reasonably satisfactory to Owner, against any loss or injury by reason of such contest or delay. The costs of contesting any Owner Legal Requirement shall be borne by Owner and the costs of contesting any Manager Legal Requirement shall be borne by Manager.

**15.3. Environmental Matters.** Owner and Manager shall each disclose to the other the presence of any Hazardous Materials known or discovered by Owner or Manager (as the case may be) that may require action in order to comply with (or avoid a violation of) applicable Legal Requirements or that may create or contribute to any claims, damages, losses, or expenses not

typically insured against by the insurance coverages specified in Article XII. If any such Hazardous Materials require removal, abatement, or any other special procedures, such special procedures shall be performed at Owner's expense in compliance with all Legal Requirements. In any case, Manager shall cooperate with Owner and/or any insurance risk manager to analyze what insurance coverages may be available, and at what cost, against the presence of such Hazardous Materials, in order to protect the interests of both Manager and Owner.

**ARTICLE XVI.**  
**CERTAIN TRANSACTIONS**

**16.1.** Manager or Owner, any Affiliate of Manager or Owner, or both, or any shareholder, officer, member, director, employee or any person owning a legal or beneficial interest therein, may own, lease, develop, operate or manage or participate (directly or indirectly) in the ownership, leasing, development, operation or management of any golf course, resort facilities, or other business or venture of any nature and description independently or with others, which may be located in the same market area or vicinity.

(a) **Owner's Understanding.** Owner hereby represents that in entering into this Agreement, Owner has not relied on any statement as to the possibility of future success or as to any similar matter which may have been prepared by Manager or by any of its Affiliates and understands that no guarantee is made or implied by Manager or by any of its Affiliates as to the future earnings or financial success of the Golf Course.

(b) **Manager's Understanding.** Manager hereby represents that in entering into this Agreement, Manager has not relied on any statement from Owner or any representative or partner of Owner and has conducted such due diligence and investigations as it deems appropriate before entering into this Agreement.

**ARTICLE XVII.**  
**MISCELLANEOUS**

**17.1. Waiver.** The waiver by either Owner or Manager of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term or condition of this Agreement shall be deemed to have been waived by Owner or Manager, unless such waiver is in writing signed by the party against whom such waiver is asserted.

**17.2. Entire Agreement.** This Agreement sets forth all the covenants, promises, agreements, conditions and understandings between Owner and Manager, oral or written, relating to the subject matter of this Agreement. Neither Owner nor Manager has made any representations or promises not expressly contained herein. No subsequent alterations, amendment, change or addition to this Agreement shall be binding upon Owner and Manager unless reduced to a writing and signed by them.

**17.3. Unavoidable Delay.** In the event that either party hereto shall be delayed, or hindered in, or temporarily prevented from, the performance of any act required hereunder by reason of an Unavoidable Delay, then performance of such act shall be excused for the period of

said delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. In the event that either party shall be indefinitely prevented from the performance of any act required hereunder by reason of an Unavoidable Delay then performance of such act shall be excused. Notwithstanding the foregoing, no Unavoidable Delay shall excuse the timely payment of money when due hereunder except as otherwise expressly provided in this Agreement.

**17.4. Notices.** Notices to be given under the terms of this Agreement shall be delivered in a timely fashion (and in any event within any time limits established elsewhere in this Agreement) and shall be in writing and sent by certified or registered mail, postage prepaid, return receipt requested, and addressed as follows:

If to Owner: City of Escondido  
201 North Broadway  
Escondido, CA 92025  
Attn: Joanna Axelrod, Deputy City Manager  
[jaxelrod@escondido.org](mailto:jaxelrod@escondido.org)

If to Manager: Escondido Golf LLC  
c/o CourseCo, Inc.  
5341 Old Redwood Hwy, STE 202  
Petaluma, CA 94954  
Attn: Michael Sharp, President/CEO  
[msharp@courseco.com](mailto:msharp@courseco.com)

or at such other address as from time to time designated by the party receiving the notice in accordance with this paragraph 17.4. The date of service of such notice shall be the date such notices are delivered to the party to whom the notice is given.

Statements and other communications to be given under the terms of this Agreement shall be delivered in a timely fashion (and in any event within any time limits established elsewhere in this Agreement) via mail or email to the contact listed above.

**17.5. Captions and Paragraph Numbers.** The captions, paragraph numbers, article numbers and index appearing in this Agreement are inserted only as a matter of convenience, and in no way define, limit, construe or describe the scope or intent of such section or article, nor in any way affect this Agreement.

**17.6. Construction of Language.** The language in all parts of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against either Owner or Manager.

**17.7. Interest.** Interest shall accrue on any sums owed by either party hereto to the other party starting from the first date of delinquency and continuing until the full amount, including such interest, is paid. Such interest shall accrue at a rate equal to the lesser of (a) the maximum rate of interest allowed by applicable law, or (b) the rate of interest announced by Wells Fargo (or

successor thereto) as of such date of delinquency, as its “**prime**” or “**reference**” rate, plus two percent (2%).

**17.8. Successors.** Except as herein otherwise provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of Owner and Manager. Nothing stated in the foregoing sentence shall limit the provisions of Article XIV of this Agreement.

**17.9. Persons Indemnified.** All agreements by either Manager or Owner to indemnify or hold the other harmless contained in this Agreement shall inure to the benefit not only of the respective indemnitee but also to that of its and their subsidiaries and Affiliates, and shall also inure to the benefit of the directors, officers, employees and agents of any of the foregoing.

**17.10. Applicable Law and Jurisdiction.** This Agreement and all provisions thereof, irrespective of the place of execution or performance, shall be construed and enforced in accordance with the laws of the State of California. The sole and exclusive venue for any legal action under this Agreement or in any way related to the Golf Course shall be the Superior Court of California in and for the County of San Diego, and Owner and Manager agree to submit to the jurisdiction of such court.

**17.11. Cumulative Rights.** The rights and remedies conferred upon both Owner and Manager in this Agreement and by law are cumulative.

**17.12. Savings Clause.** If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder or substantially increase the burden on any party hereto, shall be held to be invalid or unenforceable to any extent, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

**17.13. Attorneys’ Fees and Expenses.** In the event of any dispute or litigation concerning the enforcement, validity or interpretation of this Agreement, or any part hereof, the losing party shall pay all costs, charges, fees and expenses (including reasonable attorneys’ fees and costs) paid or incurred by the prevailing party, regardless of whether any action or proceeding is initiated relative to such dispute and regardless of whether any such litigation is prosecuted to judgment. For the purpose of this Agreement, the terms “**attorneys’ fees**” or “**attorneys’ fees and costs**” shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photostating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The terms “**attorneys’ fees**” or “**attorneys’ fees and costs**” shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred, and shall include all such fees and expenses incurred or anticipated to be incurred in collecting or enforcing any judgment in connection therewith.

**17.14. Injunctive Relief.** In the event of a breach or threatened breach by either party of any of the covenants or provisions of this Agreement, the other party shall, in addition to any

remedies expressly mentioned in this Agreement, have the right of injunction and the right to invoke any remedy at law or in equity.

**17.15. Further Assurances.** Manager and Owner each agree to execute and deliver from time to time, promptly following any reasonable request therefor by the other party, any and all instruments, agreements and documents and promptly shall take such other actions as may be necessary or appropriate in the reasonable determination of the other party, to carry out the transaction described in this Agreement.

**17.16. Trade Names, Royalties and Patents.** All trade names, trademarks, logos, emblems and similar identifying matters related to or used in connection with the Golf Course shall be the sole and exclusive property of Owner, and all matters relating to their use shall be subject to Owner's approval in its sole judgment. If any design, device, material or process covered by letters patent, copyright or trademark is used by Manager in connection with the Golf Course, it shall provide for such use by legal agreement with the owner of the patent, copyright or trademark or a duly authorized licensee of such owner.

**17.17. No Third-Party Beneficiaries.** This Agreement is not intended and shall not be deemed or construed to convey any rights, powers or privileges on any person, firm, partnership, corporation, or other entity not a party hereto.

**17.18. Incorporation of Exhibits.** The Exhibits attached hereto shall be construed with and as integral parts of this Agreement to be the same extent as if the same had been set forth verbatim herein.

**17.19. Approvals.** In any provision of the Agreement where Owner's or Manager's approval or consent is required, Owner or Manager, as applicable, shall, except to the extent specifically stated to the contrary in such provision, have the right to withhold or refuse its approval or consent in Owner's or Manager's, as applicable, sole and absolute discretion.

**17.20. Counterparts.** This Agreement may be executed in any number of counterparts, and each of such counterparts for all purposes shall be deemed to be an original, and all of such counterparts should constitute one and the same agreement.

**17.21. Nondiscrimination in Employment.** Manager will use reasonable and diligent efforts not to discriminate against any employee or applicant for employment because of race, creed, color, age, sex or national origin. Manager will use reasonable and diligent efforts to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Manager shall not discriminate with respect to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

**17.22. Time.** Time is of the essence of this Agreement and each provision hereof of which time is an element.

**17.23. Independent Contractor.** Owner and Manager acknowledge and agree that Manager will act as an independent contractor in the performance of its duties and responsibilities

set forth in this Agreement. No provisions hereunder shall be intended to create a partnership or joint venture between Owner and Manager with respect to the Golf Course or otherwise, and neither party shall have the power to bind or obligate the other party, except as expressly set forth in this Agreement.

**17.24. Confidentiality.** Manager shall hold confidential any information which Manager receives in connection with the performance of its obligations hereunder and which concerns Owner or its operations or business and shall not disclose all or any portion of such information to any third party, except for such disclosures as are necessary to perform Manager's obligations hereunder or are required by law or by any proposed lender or mortgagee of the Golf Course.

**17.25. Limitation on Fiduciary Duties.** To the extent any fiduciary duties that may exist as a result of the relationship of the parties are inconsistent with, or would have the effect of expanding, modifying, limiting or restricting any of the express terms of this agreement, (a) the express terms of this agreement shall control; (b) this agreement shall be interpreted in accordance with general principles of contract interpretation without regard to the common law principles of agency; and (c) any liability of the parties shall be based solely on principles of contract law and the express terms of this agreement. the parties further acknowledge and agree that for the purposes of determining the nature and scope of manager's fiduciary duties under this agreement, the terms of this agreement, and the duties and obligations set forth herein, are intended to satisfy all fiduciary duties that may exist as a result of the relationship between the parties, including all duties of loyalty, good faith, fair dealing and full disclosure, and any other duty deemed to exist under the common law principles of agency or otherwise (other than the duty of good faith and fair dealing implied under general contract principles, independent of the common law principles of agency). in addition, notwithstanding anything to the contrary in this agreement, to the fullest extent permitted under applicable law, the parties hereby unconditionally and irrevocably waive and disclaim any power or right such party may have to claim any punitive, exemplary, statutory or treble damages or consequential or incidental damages for any breach of fiduciary duties.

**17.26. Trial by Jury.** Each party waives, to the fullest extent permitted by law, trial by jury of all claims arising out of or relating to this agreement.

(SIGNATURE PAGE FOLLOWS)



**IN WITNESS WHEREOF**, Owner and Manager have executed this Agreement as of the date first above written.

**“Owner”**

**CITY OF ESCONDIDO**  
a California municipal corporation

By: \_\_\_\_\_  
Paul McNamara, Mayor

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

**“Manager”**

**ESCONDIDO GOLF, LLC**  
a California Limited Liability Company

By: CourseCo, Inc.  
A California Corporation

By: \_\_\_\_\_  
Michael Sharp, President/CEO

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

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

BY: \_\_\_\_\_

Item 12.

**Exhibit "A"**  
**GOLF COURSE**

ALL THAT REAL PROPERTY IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

ALL OF ASSESSOR'S PARCEL NUMBER 187-310-11 LYING NORTHERLY OF JESMOND DENE ROAD, AND LOT "R" ON ESCONDIDO TRACT NO. 819, MAP THEREOF NO. 14185, FILED FOR RECORD WITH THE SAN DIEGO COUNTY RECORDER ON APRIL 5, 2001 AS DOCUMENT NO. 2001-0207056.

**Exhibit "B"**  
**Reidy Creek Golf Course Equipment**

<b>Asset ID</b>	<b>Description</b>	<b>Asset Type</b>	<b>Serial ID</b>	<b>Profile ID</b>	<b>Fleet Notes</b>
10704	Well for Irrigation	Facility		PLIMP	
10691	Turfcoat Rotary Mower & Blower	Equipment		PM&E	<i>Out of Service, on site for parts</i>
10698	Truck with Vicon Spreader	Equipment		PM&E	<i>Both on site, in service - Bad condition</i>
10697	Truck with Topdresser	Equipment		PM&E	<i>Topdresser on site, truck missing</i>
10690	Triplex Triking	Equipment		PM&E	<i>Missing</i>
10689	Triplex Triking	Equipment		PM&E	<i>Missing</i>
10695	Spraytek Sprayer & Lift Option	Equipment		PM&E	<i>Missing</i>
10692	Sand Scorpion Bunker Rake	Equipment		PM&E	<i>On site, operable (but has many issues)</i>
11677	Reidy Crk Cart Wash Bldg	Facility		PBLDG	
10731	Reidy Creek Golf Course Land	Property		PLAND	
10702	Reidy Creek Golf Course	Property		GOLF	
10733	Reidy Creek Golf - Parking Lot	Facility		PLIMP	
10732	Reidy Creek Golf - Clubhouse	Facility		PBLDG	
13352	Reidy Creek Clubhouse Renovati	Other		GBLDG	
12791	Reconditioned Greens Roller	Equipment		GM&E	<i>On site, operable - Fair condition, needs attention</i>
10703	Maint. Bldg & Storage Bldg	Facility		PBLDG	
10694	Kubota 4-Wheel Drive Tractor	Equipment		PM&E	<i>On site, ROPS removed - Bad condition, unsafe</i>

12074	John Deere ProGator Vehc 2020	Equipment	TC2020B035241	GM&E	<i>On site, operable - Fair condition, needs attention</i>
12076	John Deere Mower 2500A Triplex	Equipment	TC250AD040328	GM&E	<i>Missing</i>
11442	Jacobsen GreenKing IV	Equipment	6228804832	GM&E	<i>Missing</i>

12525	Jacobsen Eclipse 322 Lawnmower	Equipment	6280103582	GM&E	<i>On site, operable - Good condition</i>
10676	Ideal 65 Automatic Bedknife Gr	Equipment		RM&E	<i>Missing</i>
10666	IBS Software & Hardware	Equipment		RM&E	
10646	IBS POS System Computer	Equipment		RM&E	
10677	Golf Shop Cabinetry	Equipment		RM&E	
10693	Gnossen Mid-Size Vacuum	Equipment		PM&E	<i>Missing</i>
10673	Fuel Tanks	Equipment		RM&E	<i>Operable, up to date on inspections per JC Golf</i>
10686	Diesel Greens Mower	Equipment		PM&E	<i>Missing</i>
12075	AD Williams Green Sprayer	Equipment	AD-200-SI-G-200	GM&E	<i>On site, operable - Fair condition, needs attention</i>
12208	2013 John Deere 2030A ProGator	Equipment	1TC203ATEDT070617	GM&E	<i>On site, operable - ok condition</i>
11834	2004 Toro 4500-D Fairway Mower	Equipment	30856-240001306	GM&E	<i>Missing</i>
<b><i>Additional Equipment on Site - City Owned per JC Golf</i></b>					
	John Deere 2500 A Mower				<i>On site, inoperable - used for parts</i>
	John Deere 2500 A Mower				<i>On site, inoperable - used for parts</i>

	John Deere 2500 E Mower				<i>On site, inoperable - used for parts</i>
	Club Car Cart				<i>On site, inoperable - used for parts</i>
	EZGO Cart				<i>On site, inoperable - used for parts</i>
	EZGO Cart				<i>On site, inoperable - used for parts</i>
	TORO 3500D mower				<i>On site, inoperable - used for parts</i>
	Jacobsen Greens Mower GPlex2				<i>On site, inoperable - used for parts</i>
	Jacobsen Greens Mower GPlex2				<i>On site, inoperable - used for parts</i>
	Jacobsen Greens Mower EPlex2				<i>On site, inoperable - used for parts</i>
	Qty 10 - (Tan) Yamaha Golf Carts				On site, operable, good condition - approx 3 years old
	Qty 26 - (Charcoal)				On site, operable, good condition - approx 1 year old
	Yamaha Golf Carts				

## **LEASE AND CONCESSION AGREEMENT**

**THIS LEASE AND CONCESSION AGREEMENT** is entered into as of \_\_\_\_\_, 2022 (the "**Lease**") by and between **THE CITY OF ESCONDIDO**, a California municipal corporation, (hereinafter referred to as "**Landlord**") and ESCONDIDO GOLF, LLC, a California Limited Liability Company (hereinafter referred to as the "**Tenant**"). Landlord and Tenant are sometimes hereinafter collectively referred to herein as the "parties."

### **RECITALS:**

The parties make the following recitals as to the facts surrounding the making and entering into of this Lease:

- A. Landlord is the owner of approximately 65 acres comprising the Reidy Creek Golf Course and Clubhouse (hereinafter referred to as "**Golf Course**") located in San Diego County, City of Escondido, as more particularly described in **Exhibit "A"** attached hereto and incorporated herewith.
- B. Concurrent with the execution of this Lease, Landlord and Tenant, entered into a Golf Course Management Agreement (the "**Management Agreement**") wherein Landlord retained Tenant to manage and operate the Golf Course.
- C. Tenant has such knowledge, experience and resources to professionally provide the food and beverage services required under this Lease.
- D. Landlord desires that Tenant provide certain food and beverage services for the Golf Course and Tenant desires to lease from Landlord, the snack bar facility located at the Golf Course (hereinafter referred to as the "**Premises**"), as more particularly described in **Exhibit "B"** attached hereto and incorporated herewith.

**NOW, THEREFORE**, in consideration of their mutual promises, the parties hereby agree as follows:

### **AGREEMENT:**

1. **Defined Terms.** When used in this Lease, including any exhibits or schedules attached hereto, the following terms shall have the meaning ascribed to them in this paragraph 1, unless the context indicates a contrary intent:

"**Event of Default**" shall mean the occurrence of any of the events described in paragraphs 19(a) and 19(b) of the Lease and paragraphs 13.1 and 13.2 of the Management Agreement, together with the expiration of any cure period applicable to such event as referenced in the Lease and Management Agreement. An Event of Default under the Management Agreement shall also trigger an Event of Default under the Lease.

**“Food & Beverage Equipment”** shall mean all equipment and supplies, including furnishings, fixtures, equipment, machinery, appliances and other articles of personal property on the Premises.

**“Food & Beverage Personnel”** shall mean all individuals performing services for the Premises, whether employees of Tenant or its Affiliates.

**"Gross Food and Beverage Revenues"** shall mean gross receipts of every kind and nature generated by food and beverage sales, including snack bar and beverage cart(s) revenue, all food and beverage revenue generated by catered events at the Premises and Golf Course and all revenues from catering service providers.

**“Person”** shall mean an individual, partnership, corporation, limited liability company, association, government or any department or agency thereof, trustee, trust or any other entity or organization.

**"Unavoidable Delay"** shall mean any delay due to such causes as strikes; lockouts; acts of God; inability to obtain labor, materials, equipment or supplies; governmental restrictions; moratoria; initiatives; referenda; a war or enemy action or invasion; civil commotion; insurrection; a riot; mob violence; malicious mischief or sabotage; an unusual failure of transportation; fire or any other casualty; unusually adverse weather conditions; a condemnation; any restraining order or any law, order or regulation of any governmental, quasi-governmental, judicial or military authority; or other similar causes beyond the control of Tenant, any of which has the effect of delaying, hindering or preventing Tenant's performance of its obligations hereunder, provided (i) Tenant shall have notified Landlord of such event by notice given not later than fifteen (15) days after Tenant has knowledge of the occurrence of such event, and (ii) Tenant shall use reasonable efforts to minimize the effects thereof.

2. **Demise of Premises.** In consideration of the rent and the covenants and conditions set forth herein, Landlord leases to Tenant and Tenant leases from Landlord the Premises located on the Golf Course and set forth on Exhibit “B” attached hereto and incorporated herewith.

3. **Grant of Concession Agreement.** Landlord grants to Tenant an exclusive concession to sell food and beverages on the Golf Course. Such concession includes the exclusive right to use the Premises and to utilize one or more carts to sell food and beverage to golfers while on the Golf Course.

4. **Term.** The Term of the Lease shall run concurrent with the Term referenced in the Management Agreement.

5. **Percentage Rent.** Tenant shall pay to Landlord rent for the Premises equal to ten percent (10%) of Gross Food and Beverage Revenues (the **“Percentage Rent”**) payable one month in arrears, and due and payable on or before the twentieth (20) day of each calendar month during the Term of this Lease.



6. **Method of Payment and Calculation.** On or before the twentieth (20) day of each calendar month during the Term and the twentieth (20) day of the calendar month immediately following any month in which the Lease is terminated, Tenant shall prepare and submit to Landlord a written revenue statement setting forth the Gross Food and Beverage Revenues (the "**Revenue Statement**") for the preceding month. Concurrently with the delivery of the Revenue Statement to Landlord, Tenant shall pay in full to Landlord the applicable Percentage Rent based upon the Gross Food and Beverage Revenues for the month as shown in the Revenue Statement.

7. **Food and Beverage Equipment.** Tenant shall maintain, repair and/or replace all Food and Beverage Equipment, as needed. Upon termination of the Lease, Landlord shall purchase any Food and Beverage Equipment from Tenant that Tenant paid for and was not previously reimbursed for. Landlord's purchase from Tenant shall be based upon fair market value of the Equipment.

8. **Food and Beverage Inventory.** Upon termination of the Lease, Landlord shall purchase the food and beverage inventory from Tenant at Tenant's cost.

9. **Building Improvements.** Landlord shall make all necessary building improvements to the Premises in order to obtain and maintain a Health Department Permit to operate the Premises as a food and beverage operation. All costs associated therewith shall be borne by Landlord.

10. **Liquor License.** Tenant shall be responsible for obtaining and maintaining a liquor license for the Premises and Golf Course.

11. **Taxes and Assessments.**

(a) **Payment of Taxes and Assessments.** Tenant shall pay all real and personal property taxes, general and special assessments, and other charges of every description levied on or assessed against the Premises, improvements located on the Premises, personal property located on or in the Premises and the leasehold estate or any subleasehold estate, to the full extent of the installments falling due during the term of this Lease. Tenant shall make all such payments directly to the charging governmental authority at least fifteen (15) days prior to the fine, interest and/or penalty becoming due or imposed by operation of law for their non-payment.

(b) **Property Taxes.** Tenant recognizes and understands that this Lease may create a possessory interest, subject to property taxation, and that Tenant may be subject to the payment of such property taxes levied upon such interest.

12. **Use.** The Premises shall be operated by Tenant as a snack bar and related ancillary use. Tenant shall not commit or suffer to be committed any waste upon the Premises nor shall Tenant use the Premises or permit any use thereof which in any manner will cause or constitute a nuisance or unreasonable annoyance to owners or occupants of adjacent property.

13. **Maintenance.** Tenant, at its full cost and expense, shall maintain the Premises and any improvements on the Premises in accordance with standard industry practices consistent with a clubhouse and snack bar facility of similarly situated mid-market daily fee public golf courses. Tenant shall operate the Premises in a manner which maintains the good name and business reputation of Landlord.

14. **Books and Reports**

(a) **Book of Account.** Throughout the Term, Tenant shall maintain in accordance with generally accepted accounting principles, consistently applied, full and separate books and records for the Premises with entries supported by documentation sufficient to allow Landlord to ascertain the accuracy of such books and records. Tenant shall maintain and safeguard such books and records at Tenant's office. Tenant shall provide copies of such books and records to Landlord at other locations upon receipt by Tenant of a request therefor from Landlord. Tenant shall ensure such control over accounting and financial transactions as is necessary to protect Landlord's assets from theft, error or fraudulent activity by Tenant's employees.

(b) **Reports.**

(1) Tenant shall prepare and submit to Landlord, on or before the twentieth (20th) of each calendar month during the Term and the twentieth (20th) day of the calendar month immediately following any month in which this Lease is terminated, a Revenue Statement as set forth in paragraph 6 above, for the preceding month. Concurrently with the delivery of the Revenue Statement to Landlord, Tenant shall pay in full to Landlord the applicable Percentage Rent based upon the Gross Food and Beverage Revenues for the month as shown in the Revenue Statement. In addition, upon written request by Landlord, Tenant shall provide a Monthly Operating Report, which Monthly Operating Report shall be in such form and contain such information as Landlord may reasonably require and shall include a statement of income for the Premises for the preceding month.

(2) Tenant shall prepare and submit to Landlord no later than ninety (90) days after the end of each Fiscal Year (or any portion of any such Fiscal Year in the case of a partial Fiscal Year at the beginning or end of the Term) an "**Annual Operating Report**" for the immediately preceding Fiscal Year, which Annual Operating Report shall be in such form and contain such information as Landlord may require, including, without limitation, the information described in paragraph 14(b)(1) above (collectively, the "**Year End Financials**").

(c) **Sales Records.** Tenant shall keep full and accurate books of account, records, cash receipts and other pertinent data showings its Gross Food and Beverage Revenues (the "**Financial Sales Records**"). Tenant shall install and maintain accurate receipt-printing cash registers and shall record on the cash registers all transactions which are included in calculating the Gross Food and Beverage Revenues. Tenant shall furnish to Landlord, upon request, copies of its annual California sales and use tax return at the time the same is filed with the State of California. All Financial Sales Records shall be preserved for a period of at least three (3) years after the end of a Lease Year.

(d) **Supporting Documentation.** As additional supporting documentation for the monthly financial statements and Year End Financials required under paragraph (b) above, unless otherwise directed by Landlord, Tenant shall make available the following:

- (1) all bank statements and bank deposit slips;
- (2) detailed cash receipts;
- (3) detailed balances for receivables and payables and billed and unbilled revenue items;
- (4) daily or weekly reports maintained by Tenant in connection with its ongoing operation and management of the Premises;
- (5) information necessary for preparation of Landlord's State, Federal, or Revenue Bond continuing disclosure reporting requirements, including a description of and a statement of accounts expended in connection with repairs, capital improvements, taxes and professional fees; and
- (6) annual value of inventory.

15. **Landlord's Right to Audit.** All books, records and supporting documentation maintained by Tenant pursuant to this paragraph 15 shall be the sole and exclusive property of Landlord, and shall be made available to Landlord at Landlord's request at reasonable times during normal business hours, and, in addition, in connection with independent financial audits of Landlord, as well as audits by any governmental authority, including, but not limited to, the Internal Revenue Service, the Franchise Tax Board and the San Diego County Assessor's Office. Landlord, or persons appointed by Landlord, may, during ordinary business hours, examine all books, records and files maintained for Landlord by Tenant. Landlord may perform any audit or investigation relating to Tenant's activities at any office of Tenant if such audit or investigation relates to Tenant's activities for Landlord. Should Landlord or Landlord's employees or representatives discover any errors in record keeping, Tenant shall correct such discrepancies promptly upon discovery and make necessary adjustments. Tenant shall inform Landlord in writing of the action taken to correct any audit discrepancies.

16. **Insurance, Indemnity and Casualty.**

(a) **Insurance Types:** Effective as of the Management Commencement Date, Tenant shall obtain all insurance required to be obtained by Tenant under this Agreement as follows:

(i) ***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 \$10,000,000 per occurrence.

(ii) *Workers' Compensation.* Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

(iii) *Automobile Liability.* ISO Form CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage, unless waived by the LANDLORD and approved in writing by the LANDLORD's Risk and Safety Division.

(iv) *Property Insurance.* Property insurance against all risks of loss to any Tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision. The property insurance is to be endorsed to include Legal Liability Coverage (ISO Form CP 00 40 04 02 or equivalent) with a limit equal to the replacement cost of the leased property, Property insurance shall include not less than \$1,000,000 Fire Legal liability on the Premises, including improvements and betterments owned by the Landlord, and shall name the Landlord as a loss payee.

Tenant shall also provide fire insurance on all personal property contained within or on the Premises. The policy must be written on an "all risks" basis, excluding earthquake and flood. The contract shall insure for not less than 90% of the actual cash value of the personal property, and Tenant shall name the Landlord as an additional insured.

(v) *Interruption of Business Insurance.* Business interruption insurance of a type and in amounts sufficient to cover loss of profits and rent, management fees, any mortgage payments, real estate taxes, hazard insurance premiums, and adequate cleaning, lighting and maintenance of the Golf Course for a period of at least 12 months, and with a waiting period of no more than seven days by which the minimum monthly rent will be paid to the Landlord for a period of up to one year if the Premises is destroyed or rendered inaccessible by a risk insured against by a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements.

(vi) *Crime Insurance.* Crime Insurance, which includes Employee Theft and Theft, Disappearance and Destruction coverage parts, in an amount not less than \$500,000 per occurrence with a deductible no greater than \$100,000 that will pay on behalf of the Tenant to the Landlord for losses caused by the dishonest acts of the Tenant or Tenant's employees, agents, or designees.

(vii) *Employment Practices Liability.* Employment Practices Liability insurance in an amount not less than \$2,000,000.

(b) If Tenant maintains broader coverage and/or higher limits than the minimums otherwise required by this Lease, the LANDLORD requires and shall be entitled to the broader coverage and/or the higher limits maintained by Tenant.

(c) Each insurance policy required by this Lease must be acceptable to the Landlord Attorney and shall meet the following requirements:

(i) *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 Landlord.

(ii) *Additional Insured Status.* Tenant's Commercial General Liability, Automobile Liability, Crime, and Business Interruption policies must name the Landlord (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.

(iii) *Primary Coverage.* Tenant's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the Landlord, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the Landlord, its officials, officers, agents, employees, or volunteers shall be in excess of Tenant's insurance and shall not contribute with it.

(iv) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the Landlord.

(v) *Waiver of Subrogation.* Tenant hereby grants to the Landlord a waiver of any right to subrogation that any insurer of Tenant may acquire against the Landlord by virtue of the payment of any loss under such insurance. Tenant 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 Landlord has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Lease shall be endorsed with a waiver of subrogation in favor of the Landlord for all work performed by Tenant, its agents, representatives, employees and volunteers.

(vi) *Self-Insurance.* Tenant may, with the Landlord's prior written consent, fulfill some or all of the insurance requirements contained in this Lease under a plan of self-insurance. Tenant shall only be permitted to utilize such self-insurance if, in the opinion of the Landlord, Tenant's (i) net worth and (ii) reserves for payment of claims of liability against Tenant are sufficient to adequately compensate for the lack of other insurance coverage required by this Lease. Tenant's utilization of self- insurance shall not in any way limit the liabilities assumed by Tenant pursuant to this Lease.

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

(viii) *Verification of Coverage.* At the time Tenant executes this Lease, Tenant shall provide the Landlord with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting the insurance coverage required by this Lease), which shall meet all requirements under this Lease. The Landlord reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Lease, at any time.

(ix) *Special Risks or Circumstances.* The Landlord reserves the right, at any point during the term of this Lease, to modify the insurance requirements in this Lease, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

(x) *No Limitation of Obligations.* The insurance requirements within this Lease, including the types and limits of insurance coverage Tenant must maintain, and any approval of such insurance by the Landlord, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Tenant pursuant to this Lease, including but not limited to any provisions within this Lease concerning indemnification.

Failure to comply with any of the insurance requirements in this Lease, including but not limited to a lapse in any required insurance coverage during the term of this Lease, shall be a material breach of this Lease. In the event that Tenant fails to comply with any such insurance requirements in this Lease, in addition to any other remedies the Landlord may have, the Landlord may, at its sole option, (i) immediately terminate this Lease; or (ii) order Tenant to immediately vacate the Premises until Tenant demonstrates compliance with the insurance requirements in this Lease.

(xi) *Insurance Premiums.* Unless otherwise noted, all insurance described under this Article XII to be carried by Tenant will be maintained by Tenant at Owner's expense in accordance with the Approved Annual Business Plan, as applicable, with insurance carriers who are legally operating in the State of California and acceptable to Owner, which acceptance shall not be unreasonably withheld. In no event will such insurance be terminated or otherwise allowed to lapse prior to termination of this Agreement or such longer period as may be specified herein. Tenant may provide the insurance described in this Article XII in whole or in part through a policy or policies covering other liabilities and projects of Tenant. Owner shall not be entitled to a pro-rata refund for partial year coverage on pre-paid insurance premiums.

(xii) *Damages.* Nothing contained in these insurance requirements is to be construed as limiting the type, quality or quantity of insurance Tenant should maintain or the extent of Tenant's responsibility for payment of damages resulting from its operations under this Agreement.

(j) **Indemnification by Landlord.** Landlord shall indemnify, defend, protect and hold Tenant and Tenant's Affiliates, shareholders, members, officers, directors, employees, agents, and legal representatives harmless from all liability, loss, damage, cost, or expense (including, without limitation, reasonable attorneys' fees and expenses, whether incurred at the trial, pretrial, or appellate level) arising from or relating to the ownership, development, construction, management, operation or maintenance of the Premises from and after the Term of this Lease (collectively "**Liabilities**"), except those liabilities arising from Tenant's or Tenant's employees' willful or criminal misconduct, gross negligence or fraud. Tenant will notify Landlord of such action, suit, or proceeding, and Landlord may, and upon Tenant's request shall, at Landlord's expense, defend such action, suit, or proceeding, or cause the same to be defended by counsel designated by Tenant.

(k) **Indemnification by Tenant.** Tenant shall indemnify, defend, protect and hold Landlord and Landlord's partners, employees, agents and legal representatives harmless from all liability, loss, damage, cost, or expense (including, without limitation, reasonable attorneys' fees, whether incurred at the trial, pretrial, or appellate level) arising from or related to Tenant's or Tenant's employees' willful or criminal misconduct, gross negligence or fraud. Landlord will notify Tenant of such action, suit, or proceeding, and Tenant may, and upon Landlord's request shall, at Tenant's expense, defend such action, suit or proceeding, or cause the same to be defended by counsel designated by Landlord.

(l) **Accident Reporting.** Tenant shall promptly investigate, and make a full, timely written report to Landlord regarding all accidents, claims or damage in excess of \$5,000 relating to the ownership, operation, management and maintenance of the Premises; any damage or destruction to the Premises and the estimated cost of repair thereof, and shall prepare any and all reports required by Landlord and any insurance companies in connection therewith. All such reports shall be filed timely with Tenant's insurance companies as required under the terms of the applicable insurance policy which provides coverage for such accident, damage or claim. Tenant shall not settle, compromise, or otherwise dispose of any claims, demands or liabilities, whether or not covered by insurance proceeds, without the prior written consent of Landlord.

17. **Restoration.** In case of any damage to or destruction of the Premises or improvements, or any part thereof, which is covered by the insurance required in paragraph 16, Tenant, at its expense, shall promptly commence and complete the restoration, replacement or rebuilding of the Premises and improvements as nearly as possible to its value, condition and character immediately prior to such damage or destruction. In the event of any damage to or destruction of the Premises or the improvements caused by an event which is not covered by the required insurance, Tenant shall either make such restoration or terminate this Lease; provided, however, that (i) Tenant obtains the consent of a mortgagee, (ii) Tenant is not then in default hereunder, and (iii) Tenant removes the damaged or destroyed property and leaves the Premises in a safe condition.

18. **Transfer and Assignment.**

(a) **Restrictions on Tenant.** Tenant shall not sell, convey, assign, transfer, hypothecate, pledge, or otherwise dispose of (or agree to do any of the foregoing) all or any part of its interest, if any, in this Lease, or any contractual rights or obligations related hereto (including any rights to receive payments) ("**Transfer**"), without the prior written consent of Landlord, which consent may be granted or withheld in Landlord's sole judgment. Any assignment by Tenant without Landlord's consent shall be considered an Event of Default and the assignment shall be of no force or effect. A sale or conveyance of 51% of the interest in the profit or losses of Tenant shall be considered a Transfer under this paragraph.

(b) **Restrictions on Landlord.** Landlord may sell, encumber, subordinate, assign, lease, sublease, or otherwise deal with the Premises as the sole and absolute owner thereof, all without any duty to consult with or otherwise obtain the consent of Tenant, provided that any such transferee shall take its interest subject to the rights of Tenant under this Lease.

19. **Default.**

(a) **Default by Tenant.** If there is any failure by Tenant to perform any of the terms, conditions or covenants of this Lease to be observed or performed by Tenant within thirty (30) days after written notice from Landlord (or such additional time as is reasonably required to correct any such default), or if Tenant shall become insolvent or file any debtor proceedings, or should any adjudications in bankruptcy be rendered against Tenant, or should Tenant take or there be taken against Tenant in any court pursuant to any statute either of the United States or of any State a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property, and if any of the foregoing proceedings are not discharged within sixty (60) days thereafter, or if Tenant makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement of its debts, or if Tenant shall permit or suffer this Lease to be taken under any writ of attachment or execution, and the same is not discharged within thirty (30) days thereafter, or, if Tenant assigns this Lease in violation of paragraph 18, then an Event of Default with respect to Tenant shall be deemed to have occurred under this Lease.

(b) **Default by Landlord.** If Landlord fails to keep, observe or perform any covenant, agreement, term or provision of this Lease to be kept, observed or performed by Landlord, and such default shall continue for a period of thirty (30) days after written notice thereof by Tenant to Landlord (or such additional time as is reasonably required to correct any such default), then an Event of Default with respect to Landlord shall be deemed to have occurred under this Lease.

(c) **Termination Upon Default.** Upon the occurrence of an Event of Default, the nondefaulting party may, at its option, and in addition to any and all other rights to which it may be entitled under this Lease or applicable law, elect to terminate this Lease. Any such termination shall be effective as of the date therefor specified in such election; provided, however, that in no event shall such date be later than thirty (30) days following the date such election is made.

(d) **Actions Following Termination.**



(1) Immediately following any termination of this Lease for any reason whatsoever, Tenant shall assign, convey, transfer and set over unto Landlord, pursuant to an assignment in form and content satisfactory to Landlord, all of Tenant's right, title, and interest in and to all operating contracts then in effect and in Tenant's name with respect to the Premises which are designated by Landlord to Tenant. In addition, upon receipt of payment by Landlord, Tenant shall transfer to Landlord possession all Food and Beverage Equipment and food and beverage inventory as set forth in paragraphs 7 and 8 of this Lease.

(2) Upon any termination of this Lease for any reason whatsoever, Tenant shall, for a period of two (2) months following such termination, assist and cooperate with Landlord to the extent necessary to ensure an orderly and efficient transfer of the operations of the Premises by Tenant to Landlord or Landlord's designee. The covenant of Tenant contained herein shall survive and remain in full force and effect following any such termination of this Lease.

(3) Landlord acknowledges that Tenant or its Affiliate may have an obligation under federal, state, or local law to give advance notice to Food & Beverage Personnel of any termination of their employment, and that failure to comply with any such notification obligation could give rise to civil liabilities. Therefore, notwithstanding anything to the contrary contained in this Lease, (i) the date of termination of this Lease, other than upon expiration of the Term, shall be extended so that the date of termination after notice of termination is given to or by Tenant shall be on a date which is not earlier than ten (10) days plus the number of days, if any, Tenant is required to give its employees advance notification of termination of employment by Tenant as required by the Worker Adjustment and Retraining Act, 29 U.S.C., § 2101 et. seq., as hereafter amended ("**WARN Act**"), or any similar federal or state statute; (ii) Landlord shall indemnify, hold harmless and defend Tenant and its Affiliates from and against any such liabilities based on Landlord's actions (including terminating this Lease) which give rise to such a notification obligation on the part of Tenant or any of its Affiliates, if Landlord fails to extend the date of termination as required by, and in accordance with, subparagraph (3) of this paragraph 19(d); and (iii) Tenant shall continue to employ such Food & Beverage Personnel as are necessary and for so long as is necessary to not cause a "mass layoff," "plant closing," or other violation relating to the termination of Food & Beverage Personnel under the WARN Act. Landlord shall have no responsibility under, nor any liability to Tenant and its Affiliates with respect to, the WARN Act, or any similar federal or state statute, provided Landlord has complied with its obligations under this paragraph 19(d)(3).

20. **Miscellaneous Provisions.** The following terms, covenants and conditions are all made a part of this Lease:

(a) **Waiver.** The waiver by either Landlord or Tenant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord or Tenant, unless such waiver is in writing signed by the party against whom such waiver is asserted.

(b) **Entire Agreement.** This Lease sets forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant, oral or written, relating to the subject matter of this Lease. Landlord has made no representations or promises not expressly contained herein. No subsequent alterations, amendment, change or addition to this Lease shall be binding upon Landlord and Tenant unless reduced to a writing and signed by them.

(c) **Force Majeure.** In the event that either party hereto shall be delayed, or hindered in, or temporarily prevented from, the performance of any act required hereunder by reason of an Unavoidable Delay, then performance of such act shall be excused for the period of said delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. In the event that either party shall be indefinitely prevented from the performance of any act required hereunder by reason of an Unavoidable Delay then performance of such act shall be excused. Notwithstanding the foregoing, no Unavoidable Delay shall excuse the timely payment of money when due hereunder except as otherwise expressly provided in this Lease.

(d) **Notices.** Notices, statements and other communications to be given under the terms of this Lease shall be delivered in a timely fashion (and in any event within any time limits established elsewhere in this Lease) and shall be in writing and sent by certified or registered mail, postage prepaid, return receipt requested, or by, means and addressed as follows:

If to Landlord:                   City of Escondido  
  201 North Broadway  
  Escondido, California 92025  
  Attn: Joanna Axelrod, Deputy City Manager  
  [jaxelrod@escondido.org](mailto:jaxelrod@escondido.org)

If to Tenant:                      Escondido Golf, LLC  
  c/o CourseCo, Inc.  
  5341 Old Redwood Hwy, STE 202  
  Petaluma, CA 94954  
  Attn: Michael Sharp, President/CEO  
  msharp@courseco.com

or at such other address as from time to time designated by the party receiving the notice in accordance with this paragraph 20(d). The date of service of such notice shall be the date such notices are delivered to the party to whom the notice is given.

Statements and other communications to be given under the terms of this Agreement shall be delivered in a timely fashion (and in any event within any time limits established elsewhere in this Agreement) via email to the contact listed above.

(e) **Captions and Paragraph Numbers.** The captions and paragraph numbers appearing in this Lease are inserted only as a matter of convenience, and in no way define, limit, construe or describe the scope or intent of such section, nor in any way affect this Lease.

(f) **Construction of Language.** The language in all parts of this Lease shall be construed simply, according to its fair meaning, and not strictly for or against either Landlord or Tenant.

(g) **Successors.** Except as herein otherwise provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of Landlord and Tenant. Nothing stated in the foregoing sentence shall limit the provisions of paragraph 18 of this Lease.

(h) **Persons Indemnified.** All agreements by either Tenant or Landlord to indemnify or hold the other harmless contained in this Lease shall inure to the benefit not only of the respective indemnitee but also to that of its and their subsidiaries and Affiliate, and shall also inure to the benefit of the members, directors, officers, employees and agents of any of the foregoing.

(i) **Applicable Law.** This Lease and all provisions thereof, irrespective of the place of execution or performance, shall be construed and enforced in accordance with the laws of the State of California. The sole and exclusive venue for any legal action under this Lease or in any way related to the Premises shall be the Superior Court of California in and for the County of San Diego, and Landlord and Tenant agree to submit to the jurisdiction of such court.

(j) **Cumulative Rights.** The rights and remedies conferred upon both Landlord and Tenant in this Lease and by law are cumulative.

(k) **Savings Clause.** If any provision of this Lease, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder or substantially increase the burden on any party hereto, shall be held to be invalid or unenforceable to any extent, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Lease.

(l) **Attorneys' Fees and Expenses.** In the event of any dispute or litigation concerning the enforcement, validity or interpretation of this Lease, or any part hereof, the losing party shall pay all costs, charges, fees and expenses (including reasonable attorneys' fees and costs) paid or incurred by the prevailing party, regardless of whether any action or proceeding is initiated relative to such dispute and regardless of whether any such litigation is prosecuted to judgment. For the purpose of this Lease, the terms "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photostating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and

whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred, and shall include all such fees and expenses incurred or anticipated to be incurred in collecting or enforcing any judgment in connection therewith.

(m) **Injunctive Relief.** In the event of a breach or threatened breach by either party of any of the covenants or provisions of this Lease, the other party shall, in addition to any remedies expressly mentioned in this Lease, have the right of injunction and the right to invoke any remedy at law or in equity.

(n) **Further Assurances.** Tenant and Landlord each agree to execute and deliver from time to time, promptly following any reasonable request therefor by the other party, any and all instruments, agreements and documents and promptly shall take such other actions as may be necessary or appropriate in the reasonable determination of the other party, to carry out the transaction described in this Lease.

(o) **Trade Names, Royalties and Patents.** All trade names, trademarks, logos, emblems and similar identifying matters related to or used in connection with the Premises shall be the sole and exclusive property of Landlord, and all matters relating to their use shall be subject to Landlord's approval in its sole judgment. If any design, device, material or process covered by letters patent, copyright or trademark is used by Tenant in connection with the Premises, it shall provide for such use by legal agreement with the Landlord of the patent, copyright or trademark or a duly authorized licensee of such Landlord.

(p) **No Third-Party Beneficiaries.** This Lease is not intended and shall not be deemed or construed to convey any rights, powers or privileges on any person, firm, partnership, corporation, or other entity not a party hereto.

(q) **Incorporation of Exhibits.** The Exhibits attached hereto shall be construed with and as integral parts of this Lease to be the same extent as if the same had been set forth verbatim herein.

(r) **Approval by Landlord.** In any provision of the Lease where Landlord's approval or consent is required, Landlord shall, except to the extent specifically stated to the contrary in such provision, have the right to withhold or refuse its approval or consent in Landlord's sole and absolute discretion.

(s) **Counterparts.** This Lease may be executed in any number of counterparts, and each of such counterparts for all purposes shall be deemed to be an original, and all of such counterparts should constitute one and the same agreement.

(t) **Nondiscrimination in Employment.** Tenant will not discriminate against any employee or applicant for employment because of race, creed, color, age, sex or national origin. Tenant will use reasonable and diligent efforts to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Tenant shall not discriminate with respect to the following: employment,

promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(u) **Time**. Time is of the essence of this Lease and each provision hereof of which time is an element.

(v) **Confidentiality**. Tenant shall hold confidential any information which Tenant receives in connection with the performance of its obligations hereunder and which concerns Landlord or its operations or business and shall not disclose all or any portion of such information to any third party, except for such disclosures as are necessary to perform Tenant's obligations hereunder or are required by law or by any proposed lender or mortgagee of the Premises.

(w) **Compliance with Immigration Reform and Control Act**. Tenant is aware of the provisions of the Immigration Reform and Control Act of 1986 (8 USC § 1101 - 1525) and agrees to comply with these requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors and consultants employed in relation to this Lease.

(SIGNATURE PAGE FOLLOWS)

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease effective as of the date first written above.

**"Landlord"**

**CITY OF ESCONDIDO**  
a California municipal corporation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Paul McNamara, Mayor

**"Tenant"**

**ESCONDIDO GOLF, LLC**  
a California Limited Liability Company

By: CourseCo, Inc.  
A California Corporation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Michael Sharp, President/CEO

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

BY: \_\_\_\_\_

**Exhibit "A"**  
**THE GOLF COURSE**

ALL THAT REAL PROPERTY IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

ALL OF ASSESSOR'S PARCEL NUMBER 187-310-11 LYING NORTHERLY OF JESMOND DENE ROAD, AND LOT "R" ON ESCONDIDO TRACT NO. 819, MAP THEREOF NO. 14185, FILED FOR RECORD WITH THE SAN DIEGO COUNTY RECORDER ON APRIL 5, 2001 AS DOCUMENT NO. 2001-0207056.

**Exhibit "B"**  
**THE PREMISES**

[to be attached]





# CITY of ESCONDIDO

FUTURE AGENDA

9/21/2022

PROCLAMATION - POLLUTION PREVENTION WEEK, SEPTEMBER 19-25

**CONSENT CALENDAR** - (A. FIRESTINE) - AWARD OF THE KIT CARSON PARKING LOT LIGHTING PROJECT - It is requested that the City Council adopt Resolution No. 2022-121 authorizing the Mayor to execute a Public Improvement Agreement with the lowest responsive and responsible bidder for the Kit Carson Parking Lot Lighting Project.

**CONSENT CALENDAR** - (M.MCGUINNESS) - CITY CONFLICT OF INTEREST CODE UPDATE - Request the City Council Adopt Resolution No. 2022-137, amending the Conflict of Interest Code for the City of Escondido pursuant to the Political Reform Act to update the list of designated public employees and public officials who are required to file a statement of economic interest and the disclosure categories.

**CURRENT BUSINESS** - (J. GARCIA) - CONSIDERATION OF PARTICIPATING IN THE NATIONAL LEAGUE OF CITIES

9/28/2022

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

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

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

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

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

10/5/2022 - NO MEETING