



# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

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**WEDNESDAY, SEPTEMBER 28, 2022**

**4:30 PM - Closed Session (Parkview Conference Room)**

**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**



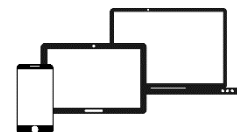
201 N. Broadway

##### **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 28, 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 28, 2022

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### CLOSED SESSION

4:30 PM

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### CALL TO ORDER

1. 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.

### CLOSED SESSION

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

a. Case Name: Building Industry Association of San Diego County v. City of Escondido

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

### ADJOURNMENT



# CITY *of* ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, SEPTEMBER 28, 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

#### PROCLAMATIONS

National Fire Prevention Week, October 9-15, 2022

#### CLOSED SESSION REPORT

#### ORAL COMMUNICATIONS

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

#### CONSENT CALENDAR

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

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





# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, SEPTEMBER 28, 2022

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

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

366781 – 366905 dated September 14, 2022.

Staff Recommendation: Approval (Finance Department: Christina Holmes)

**3. APPROVAL OF MINUTES: Regular Meeting of September 14, 2022**

**4. APPROVAL OF CALPERS INDUSTRIAL DISABILITY RETIREMENT FOR FIRE CAPTAIN JUSTIN P. MILLER**

Request the City Council to adopt Resolution No. 2022-138, approving the California Public Employees' Retirement System ("CalPERS") Industrial Disability Retirement for Fire Captain Justin P. Miller.

Staff Recommendation: Approval (Human Resources Department: Jessica Perpetua)

Presenter: Jessica Perpetua, Director of Human Resources

a) Resolution No. 2022-138

**5. 2023 HOLIDAY SCHEDULE**

Request the City Council adopt Resolution No. 2022-127 to designate the dates that City offices will be closed in the calendar year 2023 for holiday observances.

Staff Recommendation: Approval (Human Resources Department: Jessica Perpetua)

Presenter: Jessica Perpetua, Director of Human Resources

a) Resolution No. 2022-127

### **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.)

**6. 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)**

Approved on September 14, 2022 with a vote of 5/0.

a) Ordinance No. 2022-18 (Second Reading and Adoption)



# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, SEPTEMBER 28, 2022

### PUBLIC HEARINGS

**7. APPEAL OF A CONDITION OF APPROVAL APPLIED TO A MAJOR PLOT PLAN REQUIRING FUNDING OF ONGOING MUNICIPAL SERVICES REQUIRED BY THE PROJECT**

Request the City Council consider an appeal of a condition of approval requiring funding of ongoing municipal services required for a 54-unit apartment project located at 1401 S. Escondido Boulevard and either a) adopt Resolution No. 2022-139, denying an appeal and upholding a condition of approval; or b) adopt Resolution No 2022-140, granting the appeal and waiving the condition of approval.

Staff Recommendation: Denial of appeal (Development Services Department: Andrew Firestine)

Planning Commission Recommendation: Granting of appeal (Vote: 4-2-0)

Presenter: Adam Finestone, City Planner

a) Resolution No. 2022-139

b) Resolution No. 2022-140

**8. APPEAL OF A CONDITION OF APPROVAL APPLIED TO A MAJOR PLOT PLAN REQUIRING FUNDING OF ONGOING MUNICIPAL SERVICES REQUIRED BY THE PROJECT**

Request the City Council consider an appeal of a condition of approval requiring funding of ongoing municipal services required for a 48-unit apartment project located at 1600 S. Escondido Boulevard and either a) adopt Resolution No. 2022-141, denying an appeal and upholding a condition of approval; or b) adopt Resolution No 2022-142, granting the appeal and waiving the condition of approval.

Staff Recommendation: Denial of appeal (Development Services Department: Andrew Firestine)

Planning Commission Recommendation: Granting of appeal (Vote: 4-2-0)

Presenter: Adam Finestone, City Planner

a) Resolution No. 2022-141

b) Resolution No. 2022-142



# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, SEPTEMBER 28, 2022

### CURRENT BUSINESS

**9. APPROVAL OF A RIGHT-OF-WAY ENCROACHMENT AGREEMENT WITH SIFI NETWORKS ESCONDIDO, LLC**

Request the City Council approve to adopt Resolution No. 2022-143, awarding the Right-Of-Way Encroachment Agreement to SiFi Networks, Escondido LLC ("SiFi") to allow for the installation of a citywide fiber communications system ("Project"), and authorizing the Mayor to execute the Agreement.

Staff Recommendation: Approval (Economic Development: Jennifer Schoeneck; Information Systems Department: Robert Van De Hey; Engineering Services: Julie Procopio)

Presenters: Jennifer Schoeneck, Deputy Director of Economic Development, Rob Van De Hey, Chief Information Officer, and Julie Procopio, City Engineer

a) Resolution No. 2022-143

**10. LEGAL UPDATE ON SAFE SIDEWALK VENDING ACT (AB 946) AND CONSIDERATION OF LOCAL REGULATIONS**

Request the City Council receive and file a report and give direction to staff on future actions, if any.

Staff Recommendation: Provide Direction (City Attorney: Michael R. McGuinness)

Presenter: Michael R. McGuinness, City Attorney

### 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)

### 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 AGENDA

WEDNESDAY, SEPTEMBER 28, 2022

### ORAL COMMUNICATIONS

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### ADJOURNMENT

### UPCOMING MEETING SCHEDULE

Wednesday, October 12, 2022 4:00 & 5:00 PM Regular Meeting, *Council Chambers*

Wednesday, October 19, 2022 4:00 & 5:00 PM Regular Meeting, *Council Chambers*

### SUCCESSOR AGENCY

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



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

**APPEAL OF PLOT PLAN APPROVAL FOR 1401 S.  
ESCONDIDO BOULEVARD (PL21-0304)**

**APPEAL OF PLOT PLAN APPROVAL FOR 1600 S.  
ESCONDIDO BOULEVARD (PL22-0032)**

## **NOTICE OF PUBLIC HEARING**

The Escondido City Council will hold a public hearing in the City Council Chambers, Escondido City Hall, 201 N. Broadway, Escondido, California at 5 p.m. on Wednesday, September 28, 2022, to consider the item listed below:

### **APPEAL OF PLOT PLAN APPROVAL – PL21-0304:**

**REQUEST:** Appeal of an administrative decision to approve a Major Plot Plan, including a density bonus, for a 54-unit apartment project in the Escondido Boulevard District of the South Centre City Specific Plan. Six of the units will be deed-restricted for very-low income households, entitling the applicant to a 50% increase in allowable density in accordance with density bonus law. The appeal has been made by the project proponent and is specifically related to a condition of approval that requires new residential developments to offset their fiscal impacts to ongoing municipal services.

Planning Commission decision can be located at: <https://www.escondido.org/091322PCvote>.

**PROPERTY SIZE AND LOCATION:** 1.17 acre parcel located on the west side of South Escondido Boulevard, north of West 15th Avenue, addressed at 1401 S. Escondido Boulevard (Assessor Parcel Numbers 236-172-14-00 and 236-172-15-00).

**ENVIRONMENTAL STATUS:** A Categorical Exemption was issued for the project in accordance with California Environmental Quality Act (CEQA) section 15332, "In-fill Development Projects."

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 Planning Commission at, or prior to, the public hearing.

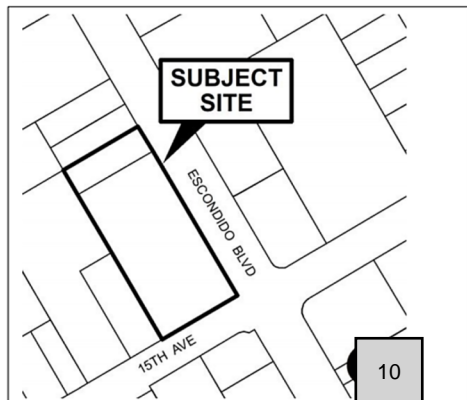
**PUBLIC COMMENT:** To submit comments in writing, please do so at the following link: <https://escondido-ca.municodemeetings.com/bc-citycouncil/webform/public-comment>. All comments received from the public will be made a part of the record of the meeting.

The City of Escondido remains committed to complying with the Americans with Disabilities Act (ADA). Qualified individuals with disabilities who wish to participate in City programs, services, or activities and who need accommodations are invited to present their requests to the City by filing out a Request for Accommodations Form or an Inclusion Support Request Form for Minors, or by calling 760-839-4643, preferably at least 72 hours in advance of the event or activity. Forms can be found on the City's website at: <https://www.escondido.org/americans-with-disabilities-act>.

The staff report will be available at the Escondido Planning Division, 201 N. Broadway, Escondido, CA 92025, and on the City's website at <http://www.escondido.org/PC-agendas.aspx> after Thursday, September 22, 2022. For additional information, please contact Adam Finestone, City Planner, at 760-839-4671, or via email at [afinestone@escondido.org](mailto:afinestone@escondido.org), and refer to Case No. PL21-0304.

DocuSigned by:

*Jack Beck*  
ZACK BECK, City Clerk  
City of Escondido  
September 15, 2022



## **NOTICE OF PUBLIC HEARING**

The Escondido City Council will hold a public hearing in the City Council Chambers, Escondido City Hall, 201 N. Broadway, Escondido, California at 5 p.m. on Wednesday, September 28, 2022, to consider the item listed below:

### **APPEAL OF PLOT PLAN – PL22-0032:**

**REQUEST:** Appeal of an administrative decision to approve a Major Plot Plan, including a density bonus, for a 48-unit apartment project in the Escondido Boulevard District of the South Centre City Specific Plan. The project includes the development of two, three-story buildings that contain 24 units per building. Five units will be deed restricted for very-low income households, entitling the applicant to a 50% increase in allowable density in accordance with density bonus law. The appeal has been made by the project proponent and is specifically related to a condition of approval that requires new residential developments to offset their fiscal impacts to ongoing municipal services. The Planning Commission acts in an advisory role to the City Council on this appeal.

Planning Commission decision can be located at: <https://www.escondido.org/091322PCvote>.

**PROPERTY SIZE AND LOCATION:** 1.02 acre parcel located on the east side of South Escondido Boulevard, north of Felicita Avenue, addressed at 1600 S. Escondido Boulevard (Assessor Parcel Number 236-460-16-00).

**ENVIRONMENTAL STATUS:** A Categorical Exemption was issued for the project in accordance with California Environmental Quality Act (CEQA) section 15332, "In-fill Development Projects."

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 Planning Commission at, or prior to, the public hearing.

**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.

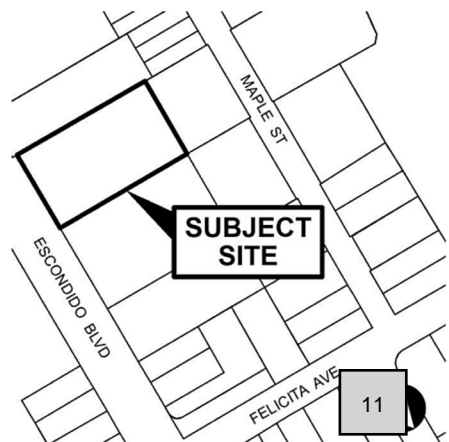
The City of Escondido remains committed to complying with the Americans with Disabilities Act (ADA). Qualified individuals with disabilities who wish to participate in City programs, services, or activities and who need accommodations are invited to present their requests to the City by filing out a Request for Accommodations Form or an Inclusion Support Request Form for Minors, or by calling 760-839-4643, preferably at least 72 hours in advance of the event or activity. Forms can be found on the City's website at: <https://www.escondido.org/americans-with-disabilities-act>.

The staff report will be available at the Escondido Planning Division, 201 N. Broadway, Escondido, CA 92025, and on the City's website at <http://www.escondido.org/PC-agendas.aspx> after Thursday, September 22, 2022. For additional information, please contact Jay Paul, Senior Planner, at 760-839-4537, or via email at [jpaul@escondido.org](mailto:jpaul@escondido.org), and refer to Case No. PL22-0032.

DocuSigned by:

*Zack Beck*

ZACK BECK, City Clerk  
City of Escondido  
September 15, 2022







# STAFF REPORT

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September 28, 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 366781 – 366905 dated September 14, 2022.

Staff Recommendation: Approval (Finance Department: Christina Holmes)

## **FISCAL ANALYSIS**

The total amount of the warrants for the period of September 8 – September 14, 2022, is \$5,640,460.30.

## **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

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### REGULAR SESSION

5:00 PM Regular Session

September 14, 2022

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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

Gary Odaffer – Expressed concerns regarding traffic on Rock Springs Road.

### CONSENT CALENDAR

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

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

**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**



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

### 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"). (File Number 0600-10; A-3427)

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. (File Number 0600-10; A-3428)

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

Presenter: Jonathan Schauble, Principal Engineer

a) Resolution No. 2022-122

### 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"). (File Number 0600-10; A-3429)

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



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

### 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. (File Number 0480-70)

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. (File Number 0480-70)

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 MINUTES

**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. (File Number 0690-40)

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. 2022-18, 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)

Presenter: Sean Nicholas, Principal Planner

a) Ordinance No. 2022-18 (First Reading and Introduction)

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



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

### 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. (File Number 0610-55)

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

Presenter: Zack Beck, City Clerk

Motion to appoint Councilmember Martinez to the San Diego County Water Authority Board of Directors: McNamara; Second: Martinez; Approved: 5-0

#### **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. (File Number 0600-10; A-3430, A-3431)

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

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

### FUTURE AGENDA

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

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

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

### COUNCILMEMBERS SUBCOMMITTEE REPORTS AND OTHER REPORTS



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

### 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 5:55 p.m.

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MAYOR

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CITY CLERK



# STAFF REPORT

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September 28, 2022  
File Number 0170-57

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## SUBJECT

### APPROVAL OF CALPERS INDUSTRIAL DISABILITY RETIREMENT FOR FIRE CAPTAIN JUSTIN P. MILLER

## DEPARTMENT

Human Resources

## RECOMMENDATION

Request that the City Council adopt Resolution No. 2022-138, approving the California Public Employees' Retirement System ("CalPERS") Industrial Disability Retirement for Fire Captain Justin P. Miller.

Staff Recommendation: Approval (Human Resources: Jessica Perpetua)

Presenter: Jessica Perpetua

## FISCAL ANALYSIS

None.

## PREVIOUS ACTION

None.

## BACKGROUND

Mr. Miller filed for Industrial Disability Retirement on June 27, 2022, as a 46 year old Fire Captain. He has been employed by the City of Escondido for 20 years. The basis for Mr. Miller's Industrial Disability Retirement application is confirmed by medical reports from Dr. Richard Greenfield. Mr. Miller's condition is orthopedic in nature (right elbow). Accordingly, Mr. Miller is incapacitated within the meaning of the Public Employee's Retirement Law for performance of his usual and customary duties in the position of Fire Captain.

Under state law, CalPERS requires the City Council to adopt a resolution stating that competent medical evidence supports the granting of an Industrial Disability Retirement. Based on medical evidence, staff recommends the City Council adopt Resolution No. 2022-138, approving the CalPERS Industrial Disability Retirement for Captain Justin P. Miller to be effective September 29, 2022.

## RESOLUTIONS

- a. Resolution No. 2022-138

## RESOLUTION NO. 2022-138

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
ESCONDIDO, CALIFORNIA, APPROVING THE CALPERS  
INDUSTRIAL DISABILITY RETIREMENT FOR FIRE  
CAPTAIN JUSTIN P. MILLER

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

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

WHEREAS, Justin P. Miller (“Employee”) filed an application with CalPERS on June 27, 2022, for an Industrial Disability Retirement due to an orthopedic injury of the right elbow; and

WHEREAS, the Employee is employed by the City in the position of Fire Captain; and

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

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

1. That the above recitations are true.
2. That the City Council does hereby find and determine that the Employee is incapacitated within the meaning of the California Public Employees’ Retirement Law for performance of his duties in the position of Fire Captain.
3. That the City Council certifies Resolution No. 2022-138 in accordance with Government Code Section § 21156, that this determination was made on the basis of competent medical opinion, and was not used as a substitute for the disciplinary process.



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

5. That neither Employee or the City of Escondido has applied to the Worker's Compensation Appeals Board for a determination pursuant to Government Code Section § 21166 whether such disability is industrial.

6. That the Employee's retirement date will be effective September 29, 2022, and his last day on paid status is September 28, 2022.

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

8. That the City will make monthly Advanced Disability Pension Payments of \$5,295.35, beginning October 1, 2022, until CalPERS begins making retirement payments. The City will also make a one-time advance disability payment of \$353.02, for the remaining twenty days of September 2022. CalPERS will send the reimbursement check to: City of Escondido Workers' Compensation Department 201 N. Broadway Escondido, CA 92025.

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

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

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



# STAFF REPORT

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September 28, 2022  
File Number 0700-80

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## **SUBJECT**

### **2023 HOLIDAY SCHEDULE**

## **DEPARTMENT**

Human Resources

## **RECOMMENDATION**

Request the City Council adopt Resolution No. 2022-127 to designate the dates that City offices will be closed in the calendar year 2023 for holiday observances.

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

Presenter: Jessica Perpetua, Director of Human Resources

## **FISCAL ANALYSIS**

None.

## **PREVIOUS ACTION**

Each year the City Council adopts a resolution, as required by State law, to designate the days that City offices will be closed for holiday observances.

## **BACKGROUND**

Holidays are considered to be an employee benefit and are, therefore, a part of the negotiation process with our various bargaining units. There are ten recognized holidays each year.

## **RESOLUTIONS**

- a. Resolution No. 2022-127
- b. Resolution No. 2022-127 Exhibit "A"

## RESOLUTION NO. 2022-127

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
ESCONDIDO, CALIFORNIA, DESIGNATING HOLIDAYS ON  
WHICH CITY OFFICES SHALL BE CLOSED FOR THE  
CALENDAR YEAR 2023

WHEREAS, Section 6700 of the California Government Code designates days that are holidays in the State of California ("State"); and

WHEREAS, Section 6702 of the California Government Code provides that City of Escondido ("City") offices shall be closed on designated State holidays unless otherwise provided by the City; and

WHEREAS, the City Council desires and deems it to be in the best public interest to designate those holidays on which City offices will be closed.

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 public offices of the City shall be closed on the following dates set forth in Exhibit "A", which is attached to this Resolution and incorporated by this reference.

## City Recognized Holidays Year 2023

New Year's Day	Sunday, January 1, 2023 <i>Observed on Monday, January 2, 2023</i>
Martin Luther King Day	Monday, January 16, 2023
Presidents' Day	Monday, February 20, 2023
Memorial Day	Monday, May 29, 2023
Independence Day	Tuesday, July 4, 2023
Labor Day	Monday, September 4, 2023
Veterans' Day	Saturday, November 11, 2023 <i>Observed on Friday, November 10, 2023</i>
Thanksgiving Day	Thursday, November 23, 2023
Day after Thanksgiving	Friday, November 24, 2023
Christmas Day	Monday, December 25, 2023

### **In addition to the above, the following facilities also have these modified hours:**

#### **Library**

- Friday, September 15: closed for staff training
- Wednesday, November 22: close @ 5:00 p.m.
- Saturday, December 23: close @ 5:00 p.m.
- Saturday, December 30: close @ 5:00 p.m.

#### **East Valley Community Center**

- Sunday, January 1: closed
- Sunday, April 9: closed
- Tuesday, October 31: close @ 5:00 p.m.
- Friday, November 10: open 10:00 a.m. – 3:00 p.m.
- Saturday, November 11: closed
- Wednesday, November 22: close @ 3:00 p.m.
- Saturday, December 23 - Monday, January 1: closed for floor and carpet maintenance

#### **Escondido Sports Center**

- Sunday, January 1: closed
- Monday, January 2: open 3:00 p.m. – 7:00 p.m.
- Monday, January 16: open 3:00 p.m. – 7:00 p.m.
- Monday, February 20: open 3:00 p.m. – 7:00 p.m.

- *Sunday, April 9: closed*
- *Tuesday, October 31: open 3:00 p.m. – 7:00 p.m.*
- *Saturday, November 11: open 8:00 a.m. – 10:00 p.m.*
- *Wednesday, November 22: open 3:00 p.m. – 7:00 p.m.*
- *Friday, November 24: open 3:00 p.m. – 7:00 p.m.*
- *Sunday, December 24: closed*
- *Sunday, December 31: closed*

**Park Avenue Community Center**

- *Sunday, January 1: closed*
- *Sunday, April 9: closed*
- *Wednesday, November 22: close @ 3:00 p.m.*
- *Friday, December 22: close @ 3:00 p.m.*
- *Saturday, December 23: closed*
- *Sunday, December 24: closed*
- *Friday, December 29 @ 3:00 p.m.*
- *Saturday, December 30: closed*
- *Sunday, December 31: closed*

## ORDINANCE NO. 2022-18

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

A COMPLETE COPY OF THIS  
ORDINANCE IS ON FILE IN  
THE OFFICE OF THE CITY  
CLERK FOR YOUR REVIEW.



# STAFF REPORT

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September 28, 2022

File Number 0610-75

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## SUBJECT

**APPEAL OF A CONDITION OF APPROVAL APPLIED TO A MAJOR PLOT PLAN REQUIRING FUNDING OF ONGOING MUNICIPAL SERVICES REQUIRED BY THE PROJECT**

## DEPARTMENT

Development Services Department, Planning Division

## RECOMMENDATION

It is requested that the City Council consider an appeal of a condition of approval requiring funding of ongoing municipal services required for a 54-unit apartment project located at 1401 S. Escondido Boulevard and either a) adopt Resolution No. 2022-139, denying an appeal and upholding a condition of approval; or b) adopt Resolution No. 2022-140, granting the appeal and waiving the condition of approval.

Staff Recommendation: Denial of appeal (Development Services Department: Andrew Firestine)

Planning Commission Recommendation: Granting of appeal (Vote: 4-2-0)

Presenter: Adam Finestone, City Planner

## BACKGROUND

An administrative approval for a Plot Plan, inclusive of a density bonus, was issued on August 24, 2022, for a 54-unit apartment complex located at 1401 S. Escondido Blvd. (included as Attachment "1" to this staff report). The project includes six units that will be deed-restricted for very-low income households. The applicant appealed the inclusion of the condition of approval which requires the developer to fund ongoing operational costs of providing municipal services required for the project. The appeal, a copy of which is included as Attachment "2" to this report, is based on the premise that density bonus projects are entitled to certain incentives and waivers, in addition to an increase in allowable density, in order to make a project financially feasible. (All other aspects of the project have been approved and not subject to the appeal.)

## FISCAL ANALYSIS

As a part of the City of Escondido's ongoing effort to address projected budget shortfalls, the City conducted a Fiscal Impact Analysis ("FIA") for new residential development in 2019. The FIA determined the per capita cost of providing municipal services for new residential development involving Police, Fire, Public Works, Community Services, and General Services (support departments) exceeds the anticipated



# CITY of ESCONDIDO

## STAFF REPORT

revenue received, including property taxes, property tax in lieu of vehicle license fees, intergovernmental, property transfer tax, fines, forfeitures, permits, licenses, and sales tax generated by new residents. Based on these findings, the current structural budget deficit is anticipated to increase with each new residential development project approved. Below is a summary of the FIA findings by development type for a typical 5-acre site at the time the analysis was conducted:

	Single Family	Small Lot Single Family	Townhomes	Apartment/Condos
Project Size (5-acre site)	25 units	75 units	125 units	200 units
Avg. Density	5 units/acre	15 units/acre	25 units/acre	40 units/acre
Revenue Generate	\$52,900	\$128,800	\$157,900	\$204,700
Cost to Provide Municipal Services	\$66,300	\$184,500	\$248,500	\$361,200
Annual Unfunded Cost	\$13,400	\$55,700	\$90,600	\$156,500
Unfunded Cost/Unit	\$536	\$743	\$725	\$783

City policy currently requires all residential development to offset its impact on the general fund by providing an ongoing funding source to pay for public services demanded by the project. The following is a brief history of the creation, purpose, and implementation of that policy:

On June 12, 2019, the City Council directed staff to investigate all options to address the structural budget deficit to ensure the budget deficit does not grow as the City develops, including evaluating the feasibility of a Citywide Services Community Facilities District ("CFD") as a streamlined means for projects to offset their ongoing impact to the general fund.

On April 8, 2020, the City Council indicated its intent to require new residential development to offset the ongoing costs of providing public services.

On May 13, 2020, the City Council held a duly noticed public hearing and adopted Resolution No. 2020-44 (Resolution of Formation) establishing CFD 2020-1, the Citywide Services CFD.





# CITY of ESCONDIDO

## STAFF REPORT

On September 16, 2020, the City Council adopted Resolution No. 2020-115 annexing five projects with 66 units into CFD 2020-1 creating the second (2) zone of the Services CFD (Zone 2020-2).

On September 23, 2020, the City Council restated its intent to require new residential development to offset the ongoing costs of providing public services, specifically noting that the requirement be applied to any project approved after May 13, 2020.

On October 21, 2020, the City Council adopted Resolution No. 2020-147 annexing a 42-unit project located at 2608 S. Escondido Blvd. into CFD 2020-1 and creating the third (3) zone of the Services CFD (Zone 2020-03).

On November 18, 2020, the City Council adopted Resolution No. 2020-160 annexing two (2) projects containing 21 units into CFD 2020-1 creating the fourth zone of the Services CFD (Zone 2020-04).

On July 21, 2021, the City Council adopted Resolution No. 2021-77 approving the special tax rate for CFD 2020-1 (Public Services) for fiscal year 2021/22.

On September 15, 2021, the City Council adopted Resolution No. 2021-130 annexing three (3) projects containing 65 units into CFD 2020-1 creating the fifth (5) zone of the Services CFD (Zone 2020-5).

On March 2, 2022, the City Council adopted Resolution No. 2022-14 annexing two (2) projects containing 44 units into CFD 2020-1 creating the sixth (6) zone of the Services CFD (Zone 2020-6).

On July 20, 2022, the City Council adopted Resolution No. 2022-87 approving the special tax rate for CFD 2020-1 (Public Services) for fiscal year 2022/23.

Council policy requires that all new residential development off-site their impacts to ongoing municipal services. This requirement is identified as Condition of Approval A.11 in the Letter of Conditional Approval dated August 24, 2022, and included as Attachment "a" to this staff report. Specifically, the condition states:

*Costs of Municipal Services. In accordance with the General Plan, the Developer shall fund all on-going operational costs of providing municipal services required for the Project, the amount of such funding shall be in accordance with the special tax levy adopted annually by the City Council based on the project density, unless another amount is approved by the City Council at the time of Project approval. Such funding shall occur through either an agreement to form or annex into a Community Facilities District ("CFD") or the establishment of another lawful funding mechanism reasonably acceptable to the City ("Public Services Funding Agreement"). Projects that elect to annex into the Services CFD shall submit consent forms prior to the first permit issuance if they have not done so already. The provisions of the Public Services Funding Agreement shall specify any terms and limitations necessary to implement the CFD or other funding mechanism to offset the impacts to public services associated with the project. The City Manager, or City Manager's designee, shall be authorized*



# CITY of ESCONDIDO

## STAFF REPORT

*to approve and execute the Public Services Funding Agreement, and the Public Services Funding Agreement shall be finalized prior to the City's issuance of any permit for the Project.* The condition cited above is consistent with existing City Council policy requiring all residential development to offset its impact on the general fund by providing an ongoing funding source to pay for public services demanded by the project.

The condition provides an option for the applicant to either form or annex into the CFD or the establishment of another lawful funding mechanism reasonably acceptable to the City ("Public Services Funding Agreement"). Should the applicant choose to form or annex into a CFD, the estimated fee based on the density of the project, which is adjusted annually, is identified in the table below:

CFD levy per unit 40+ du/ac (year)	# of Units	Total annual levy	Cost per unit monthly
\$840	54	\$45,360	\$70

### PLANNING COMMISSION RECOMMENDATION:

Appeals of administrative decisions of the Director of Development Services require public hearings before the Planning Commission. However, because the Planning Commission does not have the authority to waive City Council policies and fees, they serve in an advisory role to the City Council on this matter. It should be noted that the Planning Commission considered an appeal of the same condition of approval for another project immediately after this one, and the discussion below reflects the combined deliberations of both appeals.

The Planning Commission considered the request at its September 13, 2022, meeting and recommended the City Council grant the appeal to waive the condition of approval that requires new residential development to offset its fiscal impacts to ongoing municipal services (vote 4-2-0; Commissioners Paul and Weiler voted no; one commissioner absent). A copy of the Planning Commission staff report is included with this report as Attachment "3." The majority of the Commissioners supported the appeal, emphasizing that the waiver should be applied on a case-by-case basis for projects that include affordable housing units as part of a density bonus request; they did not recommend that the requirement to offset fiscal impacts be waived for all projects.

Although Commissioners Paul and Weiler voted no, they noted their support for the project and affordable housing. Commissioners Paul and Weiler indicated their recommendation was not based on the Commission's role regarding implementing Council policy nor on the overall merits of the requested waiver. Rather, because the Commission was not involved in the establishment of the policy requiring funding of ongoing municipal services and thus did not have sufficient knowledge and information on the topic, they did not believe it was appropriate for them to make the recommendation to waive the requirement.



# CITY of ESCONDIDO

## STAFF REPORT

During deliberation, Commissioner Paul moved to grant the appeal only for the six units that would be deed-restricted as affordable units, however the motion failed to gain a second. Also during deliberation, the Commission discussed potential support for the City Council to reconsider and evaluate the overall policy requiring funding of ongoing public services due to potential impediments it has on the ability to construct infill and affordable multi-family housing projects.

### ANALYSIS

Density bonus law (Government Code section 65915 et. seq.) and Article 67 of the Escondido Zoning Code (Density Bonus and Residential Incentives) are intended to encourage the development of affordable housing. This is accomplished through the allowance for an increase in residential density above what would typically be allowed for a property, and through the provision of incentives and waivers from development standards that make construction of the project infeasible.

Allowable increases in density are based on a sliding scale that involves the percentage of affordable units being provided, and the level of affordability of those units. Current zoning for the subject property would allow a total of 36 units; however, by deed restricting 15% of those units (amounting to six units) for very-low income households, the project is eligible for a 50% increase in allowable density, resulting in a total allowance of 54 units.

The percentage of affordable units and level of affordability also entitles the applicant to three incentives and waivers. The incentives for this project include a reduction in required open space (from 300 square feet per unit to 60 square feet per unit) and an increase in height (from 45 feet to 49 feet). The applicant has also requested, as an incentive to facilitate the construction of the project, the elimination of the requirement to fund ongoing operational costs of providing municipal services required for the project.

Government Code section 95915(l) states that density bonus law "...does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements." Similarly, section 33-1414(a)(2)(E) of the City of Escondido Municipal Code states that "the city council may, but is not required to, provide direct financial incentives, including direct financial aid in the form of a loan or grant, the provision of publicly owned land, or the waiver of fees or dedication requirements." Staff has applied the condition of approval in question based on existing City Council Policy. Neither City policy nor the Government Code give staff the authority to waive the condition, however the City Council does have the authority to do so.



# CITY *of* ESCONDIDO

## STAFF REPORT

### ENVIRONMENTAL REVIEW

The California Environmental Quality Act ("CEQA") Guidelines list classes of projects that have been determined to not have a significant effect on the environment and as a result are exempt from review under CEQA. The Project site is located within a developed urban area of the City and previously developed with a commercial building. The proposed project qualifies for a categorical exemption from CEQA pursuant to CEQA Guidelines section 15332, "Infill Development Project." A CEQA Notice of Exemption was issued for the Project and posted with the County Clerk's Office in accordance with CEQA.

### CONCLUSION

The Director of Development Services applied a standard condition of approval requiring the project to fund all on-going operational costs of providing municipal services based on existing City Council policy. Based on that policy, staff recommends the appeal be denied and that the condition be maintained as part of the project approval.

Staff acknowledges that both the Government Code and Escondido Zoning Code allow the City to waive the condition at the discretion of the City Council, and the Planning Commission recommended that the City Council do so. As such, staff has also included a resolution granting the appeal and waiving the condition, should the Council wish to exercise this option.

### RESOLUTIONS

- a. Resolution No. 2022-139
- b. Resolution No. 2022-139 – Exhibit "A" Legal Description
- c. Resolution No. 2022-139 – Exhibit "B" Findings of Fact
- d. Resolution No. 2022-140
- e. Resolution No. 2022-140 – Exhibit "A" Legal Description
- f. Resolution No. 2022-140 – Exhibit "B" Findings of Fact

### ATTACHMENTS

- a. Attachment "1" – Plot Plan Conditional Letter of Approval dated August 24, 2022
- b. Attachment "2" – Appeal of Plot Plan Condition of Approval
- c. Attachment "3" – Planning Commission Staff Report dated September 13, 2022



**Andrew Firestine, AICP**  
**Director of Development Services**  
**Planning Division**  
**201 North Broadway, Escondido, CA 92025**  
**Phone: 760-839-4556 Fax: 760-839-4313**

August 23, 2022

Greg Drakos  
 1783 Crest Drive  
 Encinitas, CA 92024

**Subject:** Plot Plan for a 54-Unit Density Bonus Project (PL21-0304)  
**Location:** 1401 South Escondido Blvd (236-172-14-00 and 236-172-15-00)  
**Applicant:** Greg Drakos

Dear Mr. Drakos:

This letter serves to inform you that the City of Escondido has completed its review, and does hereby conditionally approve Planning Case No. PL21-0304, which is a Major Plot Plan for a 54-unit density bonus project, including six units that will be deed restricted for very-low income located at 1401 S. Escondido Blvd. The subject property is zoned S-P (Specific Plan) and is located in the Escondido Boulevard District of South Centre City Specific Plan. The property has a Mixed-Use Overlay designation, and allows multi-family development at a density of up to 30 dwelling units per acre. The General Plan land use designation for the property is SPA 15: South Centre City Specific Plan.

This approval is subject to the Conditions of Approval attached as Exhibit "A" hereto. Compliance with the Conditions of Approval must be demonstrated on subsequently submitted plans for the project (building plans, grading/improvement plans, landscape plans, etc.). Said plans shall be in substantial conformance with those attached as Exhibit "C" hereto and on file with the Planning Division, except as modified by the Conditions of Approval in Exhibit "B."

Please note that the Plot Plan was reviewed for consistency with current City ordinances and policies and in no way vests any rights to the developer to construct to these standards in the future if the City ordinances and policies change. Additionally, please be aware that the Plot Plan was reviewed based on the assumption that the legal description for the subject property furnished by you, the applicant, and attached as Exhibit "D" hereto, is accurate, and that all easements, covenants, conditions, and other encumbrances and restrictions relating to the property have been completely and accurately depicted, described, and disclosed. Neither the City of Escondido nor any of its officers or employees assumes responsibility for the accuracy of said information.

#### PLAN PROCESSING REQUIREMENTS:

One revised electronic copy of the Plot Plan reflecting the Conditions of Approval shall be submitted for review by the Planning Division. Said Plot Plan must be certified by the Planning Division prior to submittal of other plans (e.g., building, grading, landscape) for the Project.

Pursuant to Government Code section 66020(d)(1), NOTICE IS HEREBY GIVEN that the project is subject to certain fees described in the City's Development Fee Inventory on file in both the Community Development and Engineering Services Departments. Said fees shall be paid prior to or concurrent with the issuance of building permits, in accordance with the prevailing fee schedule in effect at the time of building permit issuance. The project may also be subject to dedications, reservations, and exactions as specified in the conditions of approval. NOTICE IS FURTHER GIVEN that the 90-day

PL21-0304

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period to protest the imposition of any fee, dedication, reservation, or other exaction described in this letter begins on the date of this letter and any such protest must be in a manner that complies with Government Code section 66020.

#### ENVIRONMENTAL DETERMINATION

This project has been determined to be exempt from further environmental review, pursuant to California Environmental Quality Act (CEQA) Guidelines section 15332 (Class 32, In-Fill Development). A Notice of Exemption has been prepared for the Project, a copy of which is attached to this letter as Exhibit "E." Approval of the subject project includes approval of the CEQA exemption.

The City of Escondido hereby notifies the applicant that the San Diego County Clerk's Office requires a documentary handling fee of \$50 in order to file a Notice of Exemption for the Project. The applicant shall remit to the City of Escondido Planning Division a check payable to the "San Diego County Clerk" in the amount of \$50 within two working days of the date of this letter. Per CEQA Guidelines section 15062, the filing of a Notice of Exemption and the posting with the San Diego County Clerk starts a 35-day statute of limitations period on legal challenges to the agency's determination that the project is exempt from CEQA. Failure to submit the required fee within the specified time noted above will result in the Notice of Exemption not being filed with the County Clerk, and a 180-day statute of limitations period will apply.

#### CONCLUSION

The owner, or his/her authorized agent, shall sign the Acknowledgement and Acceptance of Conditions of Approval form enclosed with this letter, and submit such form within 10 days of receipt of this letter. Approval of this Plot Plan, including the Conditions of Approval applied to it, may be appealed as prescribed in Section 33-1303 of the Escondido Zoning Code. If no appeal is filed, the approval shall become final on the 11th day following the date of this letter.

This Plot Plan approval will expire two years from the date of this letter. If no building permit is obtained during this period, the approval shall be considered null and void. A one-year extension of the conditional approval may be granted, after consideration of the Director of Development Services, upon written request and submittal of the required fee prior to the expiration date.

Please be advised that if you seek judicial review of the final decision in this matter pursuant to Code of Civil Procedure section 1094.5, the time within which judicial review must be sought is governed by California Code of Civil Procedure section 1094.6.

Please feel free to contact me at (760)-839-4546, or via email at [snicholas@escondido.org](mailto:snicholas@escondido.org), if you have any questions.

Sincerely,



Sean Nicholas, AICP  
Principal Planner

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Exhibits:

- A. Findings of Fact
- B. Conditions of Approval
- C. Project Plans
- D. Legal Description
- E. CEQA Notice of Exemption

cc: Adam Finestone, City Planner

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## EXHIBIT "A"

### FINDINGS OF FACT

#### **Environmental Determinations:**

1. Pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et. seq.) ("CEQA"), and its implementing regulations (14 C.C.R. § 15000 et seq.) ("CEQA Guidelines"), the City of Escondido ("City") is the Lead Agency for the project ("Project"), as the public agency with the principal responsibility for approving the Project.
2. The proposed project qualifies for an exemption from the California Environmental Quality Act (CEQA) under Section 15332, Class 32 In-fill Development Project.
3. The City Planner, or their designee, has independently considered the full administrative record before it, which includes but is not limited to materials and evidence submitted by the applicant and other interested parties, and input provided by other City departments and public agencies. No substantial evidence has been submitted that would support a finding that any above-described exemption is not applicable to the Project. The Project will not have a significant effect on the environment, and all of the requirements of CEQA have been met.

#### **Plot Plan Findings**

The City Planner, or their designee, has reviewed the record, including applicable CEQA findings, and makes the following findings for a Plot Plan Permit:

1. The proposed multi-family residential project is an allowed use within the Escondido Boulevard District of the South Centre City Specific Plan (SPA 15). The Project is consistent with the objectives of the General Plan, complies with applicable zoning regulations, Specific Planning Area provisions, and improvement standards adopted by the City.
2. The Plot Plan is granted subject to such conditions as deemed necessary to meet the standards of the use and zone in which it is located and to comply with applicable design standards.
3. The Plot Plan is granted subject to such additional conditions as deemed necessary and desirable to preserve the public health, safety and general welfare.



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## EXHIBIT "B"

### PLANNING CASE NO. PL21-0304

#### CONDITIONS OF APPROVAL

This Project is conditionally approved as set forth on the application received by the City of Escondido on June 28, 2021, and the Project drawings consisting of Site Plans, Floor Plans, Sections, Architectural Elevations, Civil Sheets/Grading, Landscape Plans and Colored Elevations; all designated as approved on August 23, 2022, and shall not be altered without express authorization by the Development Services Department.

For the purpose of these conditions, the term "Applicant" shall also include the Project proponent, owner, permittee, and the Applicant's successors in interest, as may be applicable.

#### A. General:

1. **Acceptance of Permit.** If the Applicant fails to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the Applicant shall be deemed to constitute all of the following on behalf of the Applicant:
  - a. Acceptance of the Permit by the Applicant; and
  - b. Agreement by the Applicant to be bound by, to comply with, and to do all things required of or by the Applicant pursuant to all of the terms, provisions, and conditions of this Project Permit or other approval and the provisions of the Escondido Municipal Code or Zoning Code applicable to such Permit.
2. **Permit Expiration.** If the Permit was filed as or concurrent with a Tentative Map or Planned Development application, the Permit shall expire 24 months from the effective date of approval, unless additional time is granted pursuant to the Map Act or to the Escondido Municipal Code. If not filed as concurrent with a Tentative Map or Planned Development application, the Permit shall automatically expire after one year from the date of this approval, or the expiration date of any extension granted in accordance with the Escondido Municipal Code and Zoning Code.

The Permit shall be deemed expired if a building permit has not been obtained or work has been discontinued in the reliance of that building permit. If no building permits are required, the City may require a noticed hearing to be scheduled before the authorized

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agency to determine if there has been demonstrated a good faith intent to proceed, pursuant to and in accordance with the provision of this Permit.

- 3. Certification.** The Director of Development Services, or his/her designee, is authorized and directed to make, or require the Applicant to make, all corrections and modifications to the Project drawings and any other relevant document comprising the Project in its entirety, as necessary to make them internally consistent and in conformity with the final action on the Project. This includes amending the Project drawings as necessary to incorporate revisions made by the decision-making body and/or reflecting any modifications identified in these conditions of approval. A final Approved Plan set, shall be submitted to the Planning Division for certification electronically. Said plans must be certified by the Planning Division prior to submittal of any post-entitlement permit, including grading, public improvement, landscape, or building plans for the Project.

**4. Conformance to Approved Plans.**

- a.** The operation and use of the subject property shall be consistent with the Project Description and Details of Request, designated with the Approved Plan set.
- b.** Nothing in this Permit shall authorize the Applicant to intensify the authorized activity beyond that which is specifically described in this Permit.
- c.** Once a permit has been issued, the Applicant may request Permit modifications. "Minor" modifications may be granted if found by the Director of Development Services to be in substantial conformity with the Approved Plan set, including all exhibits and Permit conditions attached hereto. Modifications beyond the scope described in the Approved Plan set may require submittal of an amendment to the Permit and approval by the authorized agency.

- 5. Limitations on Use.** Prior to any use of the Project site pursuant to this Permit, all Conditions of Approval contained herein shall be completed or secured to the satisfaction of the Development Services Department.

**6. Certificate of Occupancy.**

- a.** No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required, and any such change in occupancy must comply with all other applicable local and state laws.

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- b. Prior to final occupancy, a Planning Final Inspection shall be completed to ensure that the property is in full compliance with the Permit terms and conditions. The findings of the inspection shall be documented on a form and content satisfactory to the Director of Community Development.

**7. Availability of Permit Conditions.**

- a. Prior to building permit issuance, the Applicant shall cause a covenant regarding real property to be recorded that sets forth the terms and conditions of this Permit approval and shall be of a form and content satisfactory to the Director of Development Services.
- b. The Applicant shall make a copy of the terms conditions of this Permit readily available to any member of the public or City staff upon request. Said terms and conditions shall be printed on any construction plans that are submitted to the Building Division for plan check processing.

- 8. Right to Entry.** The holder of this Permit shall make the premises available for inspection by City staff during construction or operating hours and allow the investigations of property necessary to ensure that minimum codes, regulations, local ordinances and safety requirements are properly followed. The Applicant shall provide such business records, licenses, and other materials necessary upon request to provide evidence of compliance with the conditions of approval, as well as federal, state, or laws.

- 9. Compliance with Federal, State, and Local Laws.** Nothing in this Permit shall relieve the Applicant from complying with conditions, performance standards, and regulations generally imposed upon activities similar in nature to the activity authorized by this permit. (Permits from other agencies may be required as specified in the Permit's Details of Request.) This Permit does not relieve the Applicant of the obligation to comply with all applicable statutes, regulations, and procedures in effect at the time that any engineering permits or building permits are issued unless specifically waived herein.

No part of this Permit's approval shall be construed to permit a violation of any part of the Escondido Municipal or Zoning Code. **During** Project construction and after Project completion, the Applicant shall ensure the subject land use activities covered by this Permit is conducted in full compliance with all local and state laws.

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**10. Fees.** The appropriate development fees and Citywide Facility fees shall be paid in accordance with the prevailing fee schedule in effect at the time of building permit issuance, to the satisfaction of the Director of Development Services. Through plan check processing, the Applicant shall pay development fees at the established rate. Such fees may include, but not be limited to: Permit and Plan Checking Fees, Water and Sewer Service Fees, School Fees, Traffic Mitigation Fees, Flood Control Mitigation Fees, Park Mitigation Fees, Fire Mitigation/Cost Recovery Fees, and other fees listed in the Fee Schedule, which may be amended. Arrangements to pay these fees shall be made prior to building permit issuance to the satisfaction of the Development Services Department.

Approval of this development project is conditioned upon payment of all applicable development fees and connection fees in the manner provided in Chapter 6 of the Escondido Municipal Code.

**11. Costs of Municipal Services.** Costs of Municipal Services. In accordance with the General Plan, the Developer shall fund all on-going operational costs of providing municipal services required for the Project, the amount of such funding shall be in accordance with the special tax levy adopted annually by the City Council based on the project density, unless another amount is approved by the City Council at the time of Project approval. Such funding shall occur through either an agreement to form or annex into a Community Facilities District ("CFD") or the establishment of another lawful funding mechanism reasonably acceptable to the City ("Public Services Funding Agreement"). Projects that elect to annex into the Services CFD shall submit consent forms prior to the first permit issuance if they have not done so already. The provisions of the Public Services Funding Agreement shall specify any terms and limitations necessary to implement the CFD or other funding mechanism to offset the impacts to public services associated with the project. The City Manager, or City Manager's designee, shall be authorized to approve and execute the Public Services Funding Agreement, and the Public Services Funding Agreement shall be finalized prior to the City's issuance of any permit for the Project.

**12. Public Art Partnership Program.** All requirements of the Public Art Partnership Program as applicable, Ordinance No. 86-70 shall be satisfied prior to any building permit issuance. The ordinance requires that a public art fee be added at the time of the building permit issuance for the purpose of participating in the City Public Art Program.

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### 13. Clerk Recording.

- a. **Exemption.** If the environmental determination prepared for the Project is a categorical exemption, the City of Escondido hereby notifies the Applicant that the County Clerk's Office requires a documentary handling fee of \$50 in order to file a Notice of Exemption. In order to file the Notice of Exemption with the County Clerk, in conformance with California Environmental Quality Act (CEQA) Guidelines section 15062, the Applicant should remit to the City of Escondido Planning Division, within two working days of the final approval of the Project (the final approval being the date of this letter) a certified check payable to the "County Clerk" in the amount of \$50. The filing of a Notice of Exemption and the posting with the County Clerk starts a 35-day statute of limitations period on legal challenges to the agency's decision that the Project is exempt from CEQA. Failure to submit the required fee within the specified time noted above will result in the Notice of Exemption not being filed with the County Clerk, and a 180-day statute of limitations period will apply.
- b. For more information on filing fees, please refer to the County Clerk's Office and/or the California Code of Regulations, Title 14, Section 753.5.

**14. Legal Description Adequacy.** The legal description attached to the application has been provided by the Applicant and neither the City of Escondido nor any of its employees assume responsibility for the accuracy of said legal description.

**15. Application Accuracy.** The information contained in the application and all attached materials are assumed to be correct, true, and complete. The City of Escondido is relying on the accuracy of this information and Project-related representations in order to process this application. Any permits issued by the City may be rescinded if it is determined that the information and materials submitted are not true and correct. The Applicant may be liable for any costs associated with rescission of such permits.

**16. Enforcement.** If any of the terms, covenants, or conditions contained herein shall fail to occur or if they are, by their terms, to be implemented and maintained over time, the City of Escondido shall have the right to deny or withhold subsequent permit approvals or permit inspections that are derived from the application entitlements herein granted; issue stop work orders; pursue abatement orders, penalties, or other administrative remedies as set forth in state and local laws; or institute and prosecute litigation to compel compliance with such terms, covenants, or conditions or seek damages for their violation. The Applicant shall be notified in advance prior to any of the above actions being taken

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by the City and shall be given the opportunity to remedy any deficiencies identified by the City.

**17. Indemnification, Hold Harmless, Duty to Defend.**

- a.** The Applicant shall indemnify, hold harmless, and defend (with counsel reasonably acceptable to the City) the City, its Councilmembers, Planning Commissioners, boards, commissions, departments, officials, officers, agents, employees, and volunteers (collectively, "Indemnified Parties") 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, at law or in 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 (i) any business, work, conduct, act, omission, or negligence of the Applicant or the owner of the Property (including the Applicant's or the owner of the Property's contractors, subcontractors, licensees, sublessees, invitees, agents, consultants, employees, or volunteers), or such activity of any other person that is permitted by the Applicant or owner of the Property, occurring in, on, about, or adjacent to the Property; (ii) any use of the Property, or any accident, injury, death, or damage to any person or property occurring in, on, or about the Property; or (iii) any default in the performance of any obligation of the Applicant or the owner of the Property to be performed pursuant to any condition of approval for the Project or agreement related to the Project, or any such claim, action, or proceeding brought thereon. Provided, however, that the Applicant shall have no obligation to indemnify, hold harmless, or defend the City as to any Claims that arise from the sole negligence or willful misconduct of the City. In the event any such Claims are brought against the City, the Applicant, upon receiving notice from the City, shall defend the same at its sole expense by counsel reasonably acceptable to the City and shall indemnify the City for any and all administrative and litigation costs incurred by the City itself, the costs for staff time expended, and reasonable attorney's fees (including the full reimbursement of any such fees incurred by the City's outside counsel, who may be selected by the City at its sole and absolute discretion and who may defend the City against any Claims in the manner the City deems to be in the best interests of the City).
- b.** The Applicant further and separately agrees to and shall indemnify, hold harmless, and defend the City (including all Indemnified Parties) from and against any and

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all Claims brought by any third party to challenge the Project or its approval by the City, including but not limited to any Claims related to the Project's environmental determinations or environmental review documents, or any other action taken by the City regarding environmental clearance for the Project or any of the Project approvals. Such indemnification shall include the Applicant's payment for any and all administrative and litigation costs and expenses incurred by the City in defending against any such Claims, including payment for all administrative and litigation costs incurred by the City itself, the costs for staff time expended, and reasonable attorney's fees (including the full reimbursement of any such fees incurred by the City's outside counsel, who may be selected by the City at its sole and absolute discretion and who may defend the City against any Claims in the manner the City deems to be in the best interests of the City and the Project).

- c. The City, in its sole discretion and upon providing notice to the Applicant, may require the Applicant to deposit with the City an amount estimated to cover costs, expenses, and fees (including attorney's fees) required to be paid by the Applicant in relation to any Claims referenced herein, which shall be placed into a deposit account from which the City may draw as such costs, expenses, and fees are incurred. Within 14 days after receiving written notice from the City, the Applicant shall replenish the deposit account in the amount the City determines is necessary in the context of the further defense of such Claims. To the extent such deposit is required by the City, the amount of such deposit and related terms and obligations shall be expressed in a written Deposit Account Agreement, subject to the City Attorney's approval as to form. The City, in its sole and reasonable discretion, shall determine the amount of any initial deposits or subsequent deposits of funds, and the Applicant may provide documentation or information for the City to consider in making its determinations. Nothing within this subsection shall be construed as to relieve the Applicant's obligations to indemnify, hold harmless, or defend the City as otherwise stated herein.

## **B. Construction, Maintenance, and Operation Obligations:**

1. **Code Requirements.** All construction shall comply with the applicable requirements of the Escondido Municipal Code, Escondido Zoning Code, California Building Code; and the requirements of the Planning Division, Engineering Services Department, Director of Community Development, Building Official, City Engineer, and the Fire Chief in carrying out the administration of said codes. Approval of this Permit request shall not waive compliance with any City regulations in effect at the time of Building Permit issuance unless specifically waived herein.

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As a condition of receiving the land use approvals specified herein, Applicant shall maintain the property subject to the approvals in compliance with all applicable city codes governing the condition or appearance of property. In addition to compliance with such basic standards, the property subject to these approvals shall also be maintained free of trash, plant debris, weeds, and concrete (other than existing foundations and permanent structures). Any signs placed on the property advertising such property for sale or rent shall be in accordance with applicable laws, and be kept clean, in like-new condition, and free from fading and graffiti at all times. This condition shall be applicable from the date the land use is approved. The failure to comply with this condition shall subject the approvals specified herein to revocation for failure to comply.

2. **Agency License and Permitting.** In order to make certain on- or off-site improvements associated with the Approved Plan set, the Permit request may require review and clearance from other agencies. Nothing in these Conditions of Approval shall be construed as to waive compliance with other government agency regulations or to obtain permits from other agencies to make certain on- or off-site improvements prior to Final Map recordation, grading permit issuance, building permit issuance, or certificate of occupancy as required. This review may result in conditions determined by the reviewing agency.

At all times during the effective period of this Permit, the Applicant and any affiliated responsible party shall obtain and maintain in valid force and effect, each and every license and permit required by a governmental agency for the construction, maintenance, and operation of the authorized activity.

3. **Utilities.** All new utilities and utility runs shall be underground, or fee payment in-lieu subject to the satisfaction of the City Engineer.
4. **Signage.** All proposed signage associated with the Project must comply with Article 66 (Sign Ordinance) of the Escondido Zoning Code. Separate sign permits will be required for Project signage. All non-conforming signs shall be removed. The Applicant shall submit with any sign permit graphic/list of all signs to be removed and retained, along with any new signage proposed.
5. **Noise.** All Project generated noise shall conform to the City's Noise Ordinance (Ordinance 90-08).



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6. **Lighting.** All exterior lighting shall conform to the requirements of Article 35 (Outdoor Lighting Ordinance) of the Escondido Zoning Code.
7. **General Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping. The Applicant shall paint and re-paint all building exteriors, accessory equipment, and utility boxes servicing the Project, as necessary to maintain clean, safe, and efficient appearances.
8. **Anti-Graffiti.** The Applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including all areas of the job site for when the Project is under construction.
9. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, and garbage.
10. **Roof, Wall, and Ground Level Equipment.** All mechanical equipment shall be screened and concealed from view in accordance with Section 33-1085 of the Escondido Zoning Code.
11. **Trash Enclosures.** All appropriate trash enclosures or other approved trash systems shall be approved by the Planning and Engineering Division. The property owner or management company shall be responsible for ensuring that enclosures are easily assessable for garbage and recyclables collection; and that the area is managed in a clean, safe, and efficient manner. Trash enclosure covers shall be closed when not in use. Trash enclosures shall be regularly emptied. There shall be the prompt removal of visible signs of overflow of garbage, smells emanating from enclosure, graffiti, pests, and vermin.
12. **Staging Construction Areas.** All staging areas shall be conducted on the subject property, subject to approval of the Engineering Department. Off-site staging areas, if any, shall be approved through the issuance of an off-site staging area permit/agreement.
13. **Disturbance Coordinator.** The Applicant shall designate and provide a point-of-contact whose responsibilities shall include overseeing the implementation of Project, compliance with Permit terms and conditions, and responding to neighborhood concerns.

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**14. Construction Waste Reduction, Disposal, and Recycling.** Applicant shall recycle or salvage for reuse a minimum of 65% of the non-hazardous construction and demolition waste for residential projects or portions thereof in accordance with either Section 4.408.2, 4.408.3, or 4.408.4 of the California Green Building Standards Code; and/or for non-residential projects or portions thereof in accordance with either Section 5.408.1.1, 5.408.1.2, or 5.408.1.3 of the California Green Building Standards Code. In order to ensure compliance with the waste diversion goals for all residential and non-residential construction projects, the Applicant must submit appropriate documentation as described in Section 4.408.5 of the California Green Building Standards Code for residential projects or portions thereof, or Section 5.408.1.4 for non-residential projects or portions thereof, demonstrating compliance with the California Green Building Standards Code sections cited above.

**15. Construction Equipment Emissions.** Applicant shall incorporate measures that reduce construction and operational emissions. Prior to the City's issuance of the demolition and grading permits for the Project, the Applicant shall demonstrate to the satisfaction of the Planning Division that its construction contractor will use a construction fleet wherein all 50-horsepower or greater diesel-powered equipment is powered with California Air Resources Board ("CARB") certified Tier 4 Interim engines or equipment outfitted with CARB-verified diesel particulate filters. An exemption from this requirement may be granted if (i) the Applicant provides documentation demonstrating that equipment with Tier 4 Interim engines are not reasonably available, and (ii) functionally equivalent diesel PM emission totals can be achieved for the Project from other combinations of construction equipment. Before an exemption may be granted, the Applicant's construction contractor shall demonstrate to the satisfaction of the Director of Community Development that (i) at least two construction fleet owners/operators in San Diego County were contacted and those owners/operators confirmed Tier 4 Interim equipment could not be located within San Diego County during the desired construction schedule, and (ii) the proposed replacement equipment has been evaluated using the California Emissions Estimator Model ("CalEEMod") or other industry standard emission estimation method, and documentation provided to the Planning Division confirms that necessary project-generated functional equivalencies in the diesel PM emissions level are achieved.

**16. Phasing.** A phasing plan shall be submitted for all projects which include more than one building. The phasing plan shall identify the order in which all on- and off-site improvements will be installed, including triggers for improvements resulting from mitigation measures placed on the project through the environmental review process or required for General Plan conformance. The plan shall also identify the order in which structures will be built and occupied, the location of construction fencing at each phase of

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construction, and any other means necessary to prevent conflicts between construction traffic and users of the occupied buildings. The phasing plan shall be approved by the City Planner, Building Official, City Engineer and Fire Marshal prior to the issuance of a grading permit for the project. The phasing plan shall not be modified without written consent from the City of Escondido.

**C. Parking and Loading/Unloading.**

1. A minimum of 73 parking spaces shall be provided at all times. Said parking spaces provided by the Applicant, and any additional parking spaces provided above the required, minimum amount, shall be dimensioned per City standards and be maintained in a clean, well-marked condition. The striping shall be drawn on the plans or a note shall be included indicating double-striping per City standards.
2. Parking for disabled persons shall be provided (including "Van Accessible" spaces) in full compliance with the State Building Code.
3. In accordance with the California Green Building Standard Code, at least eight (8%) percent of the total number of required spaces shall be designated for clean air vehicles (CAV), and shall be shown on the revised site plan to the satisfaction of the Planning and Building divisions.
4. No contractor or employee may store, or permit to be stored, a commercial or construction vehicle/truck; or personal vehicle, truck, or other personal property on public-right-of-way or other public property without permission of the City Engineer.
5. A parking and garage management plan shall be submitted to the City for review. Said plan shall address parking lot access, space assignment(s), gate hours, general maintenance, signage and striping, delivery and other short-term parking allowances/requirements, guest parking, utility access and trash/recycling staging, and any other issues which affect the use and maintenance of the parking garage.

**D. Landscaping:** The property owner or management company assumes all responsibility for maintaining all on-site landscaping; any landscaping in the public right-of-way adjacent to the property, including potted plants; and any retaining and freestanding walls in a manner that satisfies the conditions contained herein.

1. Landscaped areas shall be maintained in a flourishing manner. Appropriate irrigation shall be provided for all landscape areas and be maintained in a fully operational condition.
2. All existing planting and planter areas, including areas within the public right-of-way, shall be repaired and landscaping brought into compliance with current standards. All dead

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plant material shall be removed and replaced by the property owner or management company.

3. If at the time of planning final inspection that it is determined that sufficient screening is not provided, the Applicant shall be required to provide additional landscaping improvements to the satisfaction of the Planning Division.
4. The landscaped areas shall be free of all foreign matter, weeds and plant material not approved as part of the landscape plan.
5. Failure to maintain landscaping and the site in general may result in the setting of a public hearing to revoke or modify the Permit approval.
6. **Landscaping Plans.** Applicant shall install all required improvements including screening walls, retaining walls, storm improvements, and landscaping in substantial conformance to the planting and irrigation schedule as shown on the final Approved Plan set.
  - a. A final landscape and irrigation plan shall be submitted to the Engineering Services Department for review and approval, if meeting any of the criteria listed under Section 33-1323 of the Zoning Code. Five copies of detailed landscape and irrigation plans shall be submitted to the Engineering Services Department with the second submittal of the grading plan. The initial submittal of the landscape plans shall include the required plan check fees, paid in accordance with the prevailing fee schedule in effect at the time of submittal. Details of Project fencing and walls, including materials and colors, shall be provided on the landscape plans. (Building permits may also be required.) The landscape and irrigation plans shall be reviewed and approved by the Planning Division and Engineering Services Department prior to issuance of grading permits, and shall be equivalent or superior to the conceptual landscape plans included as part of the Approved Plan set, to the satisfaction of the Planning Division. The required landscape and irrigation plans(s) shall comply with the provisions, requirements and standards outlined in Article 62 (Landscape Standards) of the Escondido Zoning Code, except where stricter requirements are imposed by the State of California.
  - b. Screening walls, retaining walls, storm improvements, and landscaping (i.e. planting and irrigation) is to be provided prior to final occupancy.
  - c. The installation of the landscaping and irrigation shall be inspected by the Project landscape architect upon completion. He/she shall complete a Certificate of Landscape Compliance certifying that the installation is in substantial compliance

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with the approved landscape and irrigation plans and City standards. The Applicant shall submit the Certificate of Compliance to the Planning Division and request a final inspection.

- d. Any new freestanding walls and/or retaining walls shall incorporate decorative materials or finishes, and shall be indicated on the landscaping plans. (Building permits may also be required.) All freestanding walls visible from points beyond the Project site shall be treated with a protective sealant coating to facilitate graffiti removal. The sealant shall be a type satisfactory to the Director of Development Services.
- e. New or retrofitted trash enclosures shall accommodate vertical climbing plants, vines with support trellis panels, clinging non-deciduous or fast growing shrubbery that will screen the enclosures wall surface. The Director of Development Services shall find that the proposed landscaping design, material, or method provides approximate equivalence to the specific requirements of this condition or is otherwise satisfactory and complies with the intent of these provisions.

**E. Housing and Neighborhood Services Conditions:**

1. The Project shall provide a minimum of six (6) dwelling units for very-low income households (those earning less than 50 percent of the Area Median Income for the San Diego-Carlsbad-San Marcos MSA). Prior to issuance of a building permit, the developer shall sign a binding affordable housing agreement with the City, which will set forth the conditions and guidelines to be met in the implementation of Density Bonus Law requirements and any other applicable requirements (Within the affordable housing agreement, the developer will be responsible for annual recertification of household income qualifications and compliance with rent limits). The agreement will also establish specific compliance standards and remedies available to the City upon failure by the developer to restrict units to target households for the prescribed time period (55 years for all target units as described in Government Code section 65915(c)). Income qualified households will be monitored by the City of Escondido Housing and Neighborhood Services Division for the duration of the affordability period. Monitoring fees will be applied per the affordable housing agreement.
2. All affordability agreements shall run with the land and be binding on the applicant and its heirs, transferees, assigns, successors, administrators, executors, and other representatives, and recorded on the applicable property for the requisite period of time.

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**F. Engineering Conditions:****GENERAL**

1. The Developer shall provide the City Engineer with a current Preliminary Title Report covering subject property.
2. The location of all existing on-site and adjacent utilities shall be determined by the Developer's engineer. If a conflict occurs with the proposed project or improvements, these utilities shall be relocated subject to approval of the owner of the utility/facility prior to approval of Grading plans and issuance of Building Permits.
3. Improvement plans prepared by a Civil Engineer, required for all public street, utility, and storm drain improvements, and Grading/Private Improvement plans prepared by Civil Engineer, required for all grading, drainage and private onsite improvement design, shall be submitted for review through the virtual plan review portal as a single package containing all items on the Engineering Initial Submittal Checklists. Landscaping Plans shall be prepared by a Landscape Architect.
4. The Developer shall post securities in accordance with the City prepared Bond and Fee Letter based on a final Engineer's Estimate of Grading and Improvements Cost prepared by the project engineer. The Developer is required to provide a Cash Clean Up deposit for all grading, landscaping, private Improvements and onsite drainage improvements prior to approval of Grading Plans and issuance of Grading Permit. This Cash Clean Up Deposit amount shall be 10% of the total cost of the project private improvements, drainage and landscaping. The Developer is required to provide Performance (100% of total public improvement cost estimate), Labor and Material (50% of total public improvement cost estimate) and Guarantee and Warranty (10 % of total public improvement cost estimate) bonds for all public improvements prior to approval of the Improvement Plans and issuance of Building Permits. All improvements shall be completed prior to issuance of a Certificate of Occupancy.
5. As surety for the construction of required off-site and/or on-site improvements, bonds and agreements in a form acceptable to the City Attorney shall be posted by the Developer with the City of Escondido prior to the approval of any building permit.
6. If site conditions change adjacent to the proposed development prior to completion of the project, the Developer will be responsible to modify his/her improvements to accommodate these changes. The determination and extent of the modification shall be to the satisfaction of the City Engineer.
7. All public improvements shall be constructed in a manner that does not damage existing public improvements. Any damage shall be corrected by the Developer to the satisfaction of the City Engineer.

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8. The Developer's engineer shall submit to the Planning Department 3 copies of the Plot Plan as conditionally approved. These copies shall be signed by the Planning Department verifying that they are an accurate reproduction of the approved Plot Plan and one of these copies must be included with the first Final Engineering submittal for plan check to the Engineering Department.

## **STREET IMPROVEMENTS AND TRAFFIC**

1. All driveways shall be alley-type in accordance with Escondido Standard Drawing No. G-5-E, with a minimum throat width of 24'. The driveway apron off Escondido Blvd. is allowed to have a reduced return radius of 12 feet on the south side to accommodate the existing SDG&E equipment. All other driveway apron returns shall be the standard 20' radius.
2. The existing substandard radius curb return at the northwest corner of 15<sup>th</sup> Avenue and Escondido Blvd. (SE cor. of project frontage) shall be reconstructed to the City Standard minimum radius of 30 feet together with a new pedestrian ramp. This curb return reconstruction shall include the relocation and/or adjustment to grade of various utility and traffic signal equipment including 2 waterline air valves, a 1A traffic signal pole, pull boxes, etc.
3. The Developer will be required to modify the existing traffic signal poles & equipment, signing, and striping as needed to accommodate the curb return reconstruction in Condition 2 above. The Developer shall submit separate traffic signal and signing and striping modification improvement plans prepared by a Traffic Engineer for review and approval by the City Engineer. These traffic signal modifications shall be per current City, Caltrans, and MUTCD Standards and shall include video detection and APS as needed. The Developer's Traffic Engineer will also be responsible for any required signal timing and coordinating traffic signal modification work with the Developer's Contractor(s) and Equipment Suppliers and City staff.
4. The developer will be responsible for removal of all existing and the furnish and installation of all new signing and striping in compliance with the current CA MUTCD standards and to the satisfaction of the City Engineer.
5. The Developer shall repaint all pavement striping and markings adjacent to the project that have been damaged and prematurely faded due to project construction traffic to the satisfaction of the City Engineer.
6. All unused driveways shall be removed and replaced with full height curb and gutter and sidewalk in accordance with City standards.
7. A new LED street light shall be installed per Escondido Standard Drawing E-1-E on the west side of the new project entrance off 15<sup>th</sup> Avenue.

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8. The existing street light on Escondido Blvd. shall be relocated to the south side of the project's proposed new Escondido Blvd. driveway and it shall be retrofitted with an LED light head in accordance with Escondido Standard Drawing No. E-1-E.
9. Adequate horizontal sight distance shall be provided at all street intersections and driveway entrances. Increased parkway widths, open space easements, and restrictions on landscaping may be required at the discretion of the City Engineer.
10. The Developer shall remove and replace all damaged sidewalk, curb and gutter, along all project frontages to the satisfaction of the City Engineer prior to issuance of a Certificate of Occupancy.
11. The Developer may be responsible for an overlay of portions of Escondido Blvd. and 15th Avenue due to utility trenches necessary to serve this project. The determination of the extent of any required overlay shall be to the satisfaction of the City Engineer.
12. Pedestrian access routes meeting current ADA requirements shall be provided into the project to the satisfaction of the City Engineer and City Building Official.
13. All gated entrances shall be approved by the City Engineer, Building Official, and the Fire Marshal.
14. The Developer will be required to provide a detailed detour and traffic control plan, for all construction and staging activities within the Escondido Blvd. right-of-way to the satisfaction of the City Engineer. This plan shall include any proposed sidewalk closures and provide for alternate pedestrian access around the project site. This plan shall be approved prior to the issuance of an Encroachment Permit for construction or other project activities within the public right-of-way.

## GRADING

1. A site grading and erosion control plan prepared by a registered Civil Engineer shall be approved by the Engineering Department prior to issuance of building permits. The first submittal of the grading plan shall be accompanied by a copy of the preliminary soils and geotechnical report. The Soils Engineer will be required to indicate in the soils report that he/she has reviewed the grading design and found it to be in conformance with his/her recommendations.
2. All private access drives and parking areas shall be paved with a minimum of 3" asphalt concrete over 6" of aggregate base or 7" Portland cement concrete over 6" aggregate base. All paved areas exceeding 15% slope or less than 1.0% shall be paved with Portland cement concrete.
3. Any proposed retaining walls not a part of the building foundations or stem walls shall be shown on and permitted as part of the site grading plan. Profiles and structural details shall be shown on the site grading plan and the Soils Engineer shall state on the plans that the



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proposed retaining wall design is in conformance with the recommendations and specifications as outlined in the Geotechnical report. Structural calculations shall be submitted for review by a Consulting Engineer for all walls not covered by Regional or City Standard Drawings. The Developer will be required to pay for all required third party structural engineering review of these structural calculations and details. Stem walls, foundation structures, or deepened footings that are to be constructed as part of a building structure will be permitted as part of the Building Department plan review and Building Permit process.

4. All retaining walls and screen walls, stairs and raised landings shall be constructed completely within the Project property and shall not encroach into the public R/W.
5. The Developer will be required to obtain permission from adjoining property owners for any off-site grading or other work necessary to construct the project and/or the required improvements, or the Developer shall modify the project design so the construction in question is contained within the project's property lines.
6. Erosion control, including riprap, interim slope planting, sandbags, or other erosion control measures shall be provided to control sediment and silt from the project. The Developer shall be responsible for maintaining all erosion control facilities throughout the project.
7. The Developer shall be responsible for the recycling of all excavated materials designated as Industrial Recyclables (soil, asphalt, sand, concrete, land clearing brush and rock) at a recycling center or other location(s) approved by the City Engineer.
8. All blasting operations performed in connection with the improvement of the project shall conform to the City of Escondido Blasting Operations Ordinance.
9. All existing foundations, structures, trees not otherwise designated "to remain" on the Plot plan, shall be removed or demolished from the site.
10. All driveway grades shall conform to current Escondido Design Standards and Escondido Standard Drawings.

#### **DRAINAGE**

1. Final on-site and off-site storm drain improvements shall be determined to the satisfaction of the City Engineer and shall be based on a Final Drainage Study to be prepared by the Engineer of Work. The drainage study shall be in conformance with the City of Escondido Design Standards.
2. All on-site storm drains are private. The responsibility for maintenance of these storm drains shall be that of the Property Owner.
3. The project shall limit drainage flows to their pre-construction rates. Details and calculations for any detention vaults shall be submitted and approved as part of the grading plan check.

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4. A Final Storm Water Quality Management Plan (SWQMP) in compliance with the City's latest adopted Storm Water Design Manual shall be prepared for all newly created or replaced onsite impervious areas, impervious frontage, and required offsite improvements. The SWQMP shall be submitted for approval with the final improvement and grading plans. The SWQMP shall include calculations for treatment, hydromodification, pump, and storage volumes. The SWQMP shall include detailed maintenance requirements and responsibilities for all onsite conveyance, treatment, detention, and pump facilities. The SWQMP shall demonstrate how any proposed proprietary best management practices like modular wetlands meet bio-filtration treatment requirements in accordance with the City's Storm Water Design Manual.
5. Trash enclosures shall be covered and be constructed to comply with storm water quality management requirements to the satisfaction of the City Engineer.
6. The Developer will be required to have the current owner of the property sign, notarize, and record a Storm Water Control Facility Maintenance Agreement.
7. All onsite and offsite storm water treatment and retention facilities and their drains including modular wetlands, underground storage and pumps, any permeable paver areas shall be considered private. The responsibility for maintenance and repair of all project constructed/installed post construction storm water treatment facilities both onsite and in the adjacent public right-of-way shall be that of the Property Owner.

## **WATER SUPPLY**

1. Fire hydrants together with an adequate water supply shall be installed at locations approved by the Fire Marshall. Fire hydrants shall connect to a minimum 8-inch water main.
2. The final locations and sizing of all required water mains, water services, fire hydrants, detector check assemblies, and other water appurtenances shall be designed and installed to the satisfaction of the Utilities Engineer and Fire Marshal.
3. Fire suppression and sprinkler systems beyond the Detector Check Valves are private and shall be designed and constructed per current Building, Plumbing, and Fire Code Standards, and per the requirements of the City Fire Marshal and City Building Official and shall be approved by a separate submittal to the Building Department. Although private and approved by separate plans and permit, all fire suppression lines shall be shown for reference and review on the various final engineering plan sets.
4. All on-site water lines and backflow prevention devices beyond the City water meter or DDCA shall be considered a private water system. The Property Owner shall be responsible for all maintenance of these water lines and appurtenances.

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5. A 1-inch minimum water service, 1-inch water meter, and backflow prevention device shall be required for domestic water supply per City of Escondido Design Standards and Standard Drawings. Water meters and backflow prevention devices shall not be installed within a driveway apron or on private drive areas.
6. No trees or deep-rooted bushes shall be planted within 10-feet of any water mains or services.
7. There shall be no permanent private structures located within the City's Public Utility Easements.
8. Backflow prevention assemblies are private and should be located on private property. Backflows shall be located directly behind the public meter.
9. Any water services to be replaced, reconnected or relocated as a part of this project shall be replaced in entirety from the public water main to the public water meter to the satisfaction of the Utilities Engineer and Water Distribution Department.
10. Any fire hydrants to be replaced, reconnected or relocated as a part of this project shall be replaced in entirety from the public water main to the fire hydrant per the satisfaction of the Utilities Engineer and Water Distribution.
11. The Developer shall disconnect at the public main, all water services and fire hydrants laterals to be abandoned, to the satisfaction of the Utilities Engineer and Water Distribution Department.

**SEWER**

1. A private 6-inch minimum PVC sewer lateral with a standard clean-out within 18-inches of the Public Utility Easement or ROW shall be constructed for the project and shown on the Improvement and Grading plans. Sewer laterals less than 8-inches in diameter shall connect to the sewer main with a wye or Inserta-Tee.
2. All sewer laterals shall be constructed per current City of Escondido Design Standards and Standard Drawings and per the current Uniform Plumbing Code.
3. No trees or deep-rooted bushes shall be planted within 15-feet of any sewer main or within 10-feet of any sewer lateral. Sewer laterals shall be 5-feet horizontally clear from other utilities.
4. All sewer laterals shall be considered a private sewer system. The Property Owner shall be responsible for all maintenance of sewer laterals to the public sewer main.
5. The Developer shall cap and plug at the public sewer main all sewer lines and laterals to be abandoned, to the satisfaction of the Utilities Engineer and the City Inspector.

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6. The location of all sewer laterals shall be shown on the grading and improvement plans.

### **LANDSCAPING**

1. Site landscaping and irrigation plan for the project and for all right-of-way areas along the project frontages shall be prepared by a Licensed Landscape Architect and submitted to the Engineering Department with the second submittal of the grading plans for review and approval by Engineering and Planning Departments. The initial submittal of the landscape plans shall include the required plan check fees.

### **EASEMENTS AND DEDICATIONS**

1. The developer shall dedicate to the public a 20-foot radius corner rounding at the northwest corner of 15<sup>th</sup> Ave. and Escondido Blvd.
2. All private and public easements affecting subject property both proposed and existing to remain shall be shown, delineated, dimensioned, and clearly labeled on the Final Map and all plan sets.
3. The Developer shall grant to the public two (2) feet of public utility easement beyond the public right-of-way along the project's entire 15<sup>th</sup> Avenue frontage.
4. The Developer shall grant to the public additional areas of public utility easement as needed in various locations for the placement of water meters, DDCAs, and air valves to the satisfaction of the City Engineer and Utilities Engineer.
5. The Developer is responsible for making the arrangements to quitclaim all easements of record which conflict with the proposed project prior to issuance of Building Permits. If an easement of record contains an existing utility that must remain in service, proof of arrangements to quitclaim the easement once new utilities are constructed must be submitted to the City Engineer prior to approval of the Grading plans. Building permits will not be issued for structures in which construction will conflict with existing easements or utilities, nor will any securities be released until the existing easements are quitclaimed.

Material necessary for processing a dedication or easement shall include: a current grant deed or title report, a legal description and plat of the dedication or easement signed and sealed by a person authorized to practice land surveying (document size) and traverse closure tapes. The City will prepare all final documents.

### **SURVEYING AND MONUMENTATION**

1. All property corners shall be monumented by a person authorized to practice land surveying and a Record of Survey Map (or Corner Record if appropriate) shall be recorded.

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**REPAYMENTS AND FEES**

1. A cash security shall be posted to pay any costs incurred by the City to clean-up eroded soils and debris, repair damage to public or private property and improvements, install Best Management Practices devices and materials, and stabilize and/or close-up a non-responsive or abandoned project. Any moneys used by the City for cleanup or damage will be drawn from this security and the grading permit will be revoked by written notice to the Developer until the required cash security is replaced. The cleanup cash security shall be released upon final acceptance of the grading and improvements for this project. The amount of the cash security shall be 10% of the total estimated cost of the grading, retaining walls, walls, drainage facilities, landscaping and irrigation, and best management practices items of work up to a maximum of \$50,000, unless a higher amount is deemed necessary by the City Engineer.
2. The Developer shall be required to pay all development fees of the City then in effect at the time, and in such amounts as may prevail when Building Permits are issued.

**UTILITY UNDERGROUNDING AND RELOCATION**


1. Any existing overhead utilities within the project boundary or along fronting streets shall be relocated underground as required by the City's Undergrounding Ordinance.
2. The Developer shall sign a written agreement stating that they have made all such arrangements as may be necessary to coordinate and provide utility construction, relocation and undergrounding. All new utilities shall be constructed underground.

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**Exhibit "C"**  
**Approved Plans**

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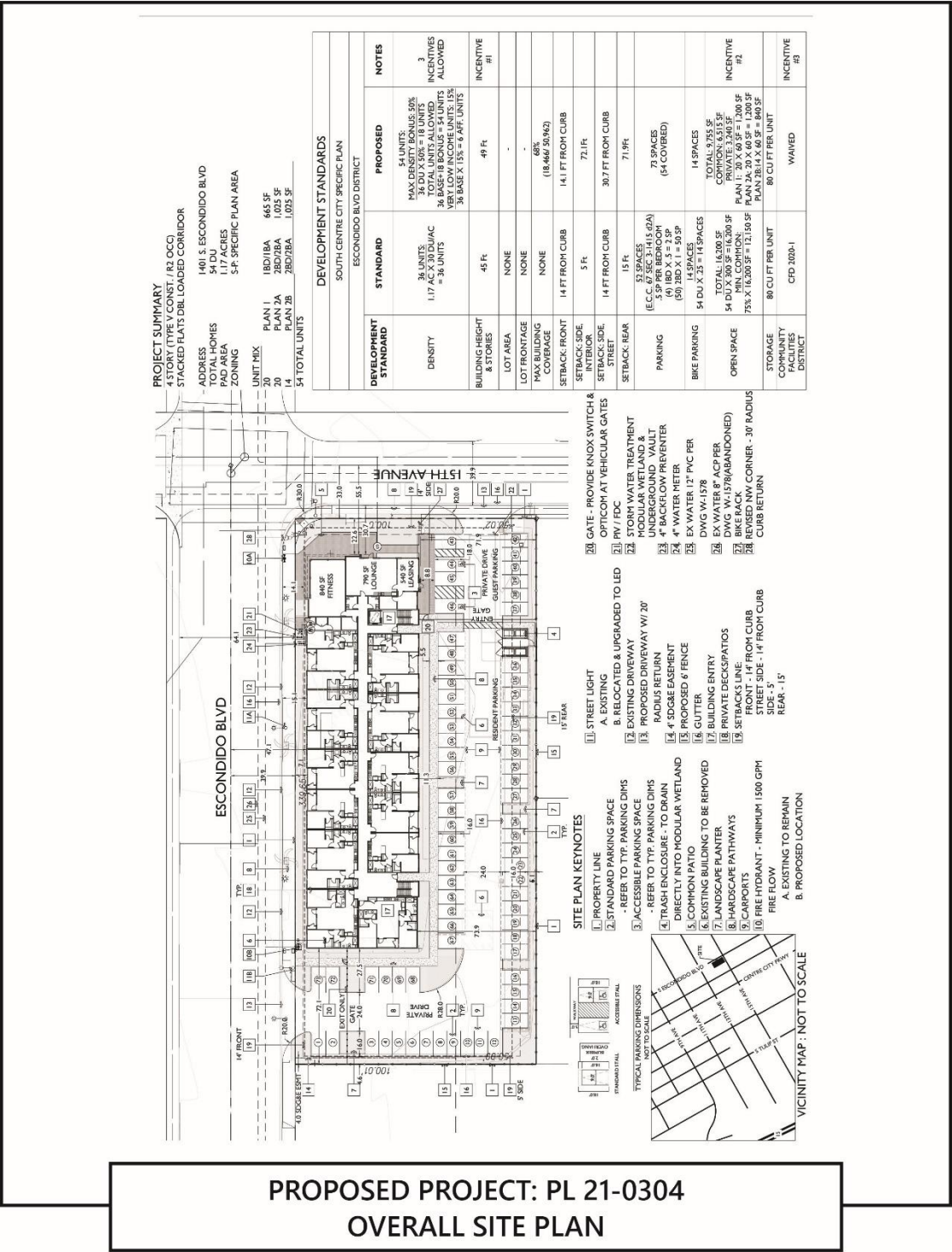
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**TITLE PAGE**



**SHEET INDEX**

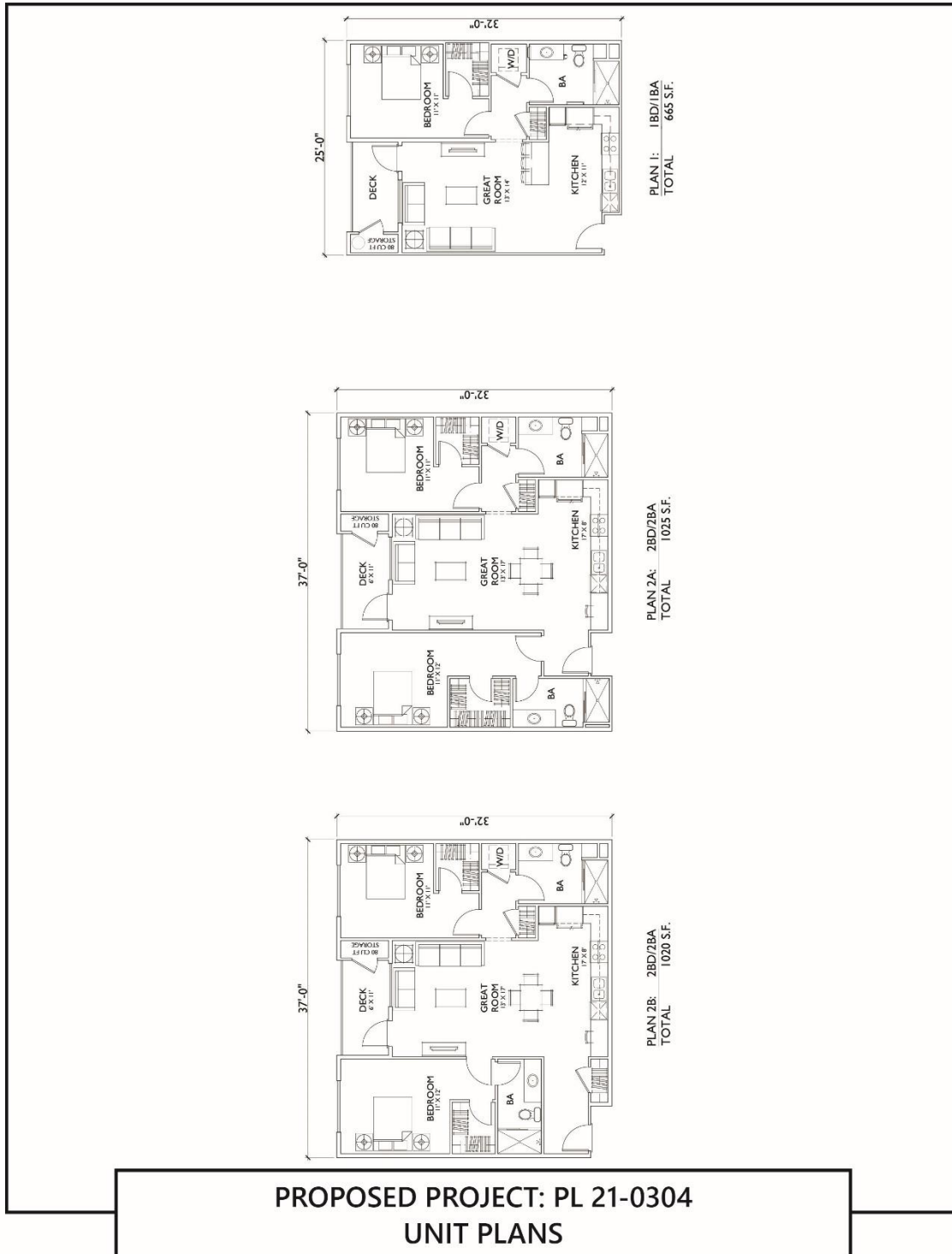
A-SP	SITE PLAN
A-1	UNIT PLANS
A-2	BUILDING PLANS
A-3	ELEVATIONS
A-4	PERSPECTIVES
A-5	TRASH / CARPORT
A-6	SITE PHOTOS
A-7	
A-8	
1 OF 2	GRADING & UTILITY PLAN
2 OF 2	INW CURB RETURN
L1	LANDSCAPE PLAN
L2	EXISTING TREE PLAN

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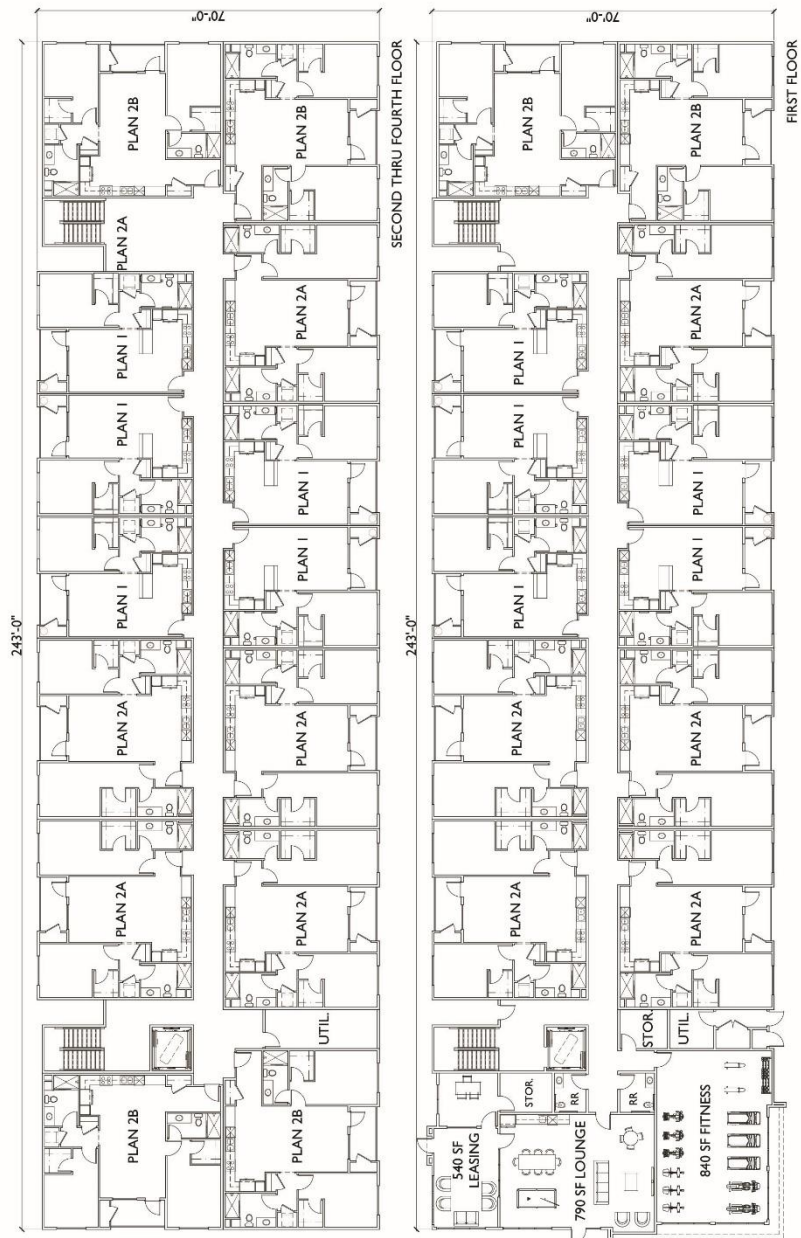




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PROPOSED PROJECT: PL 21-0304  
BUILD PLAN

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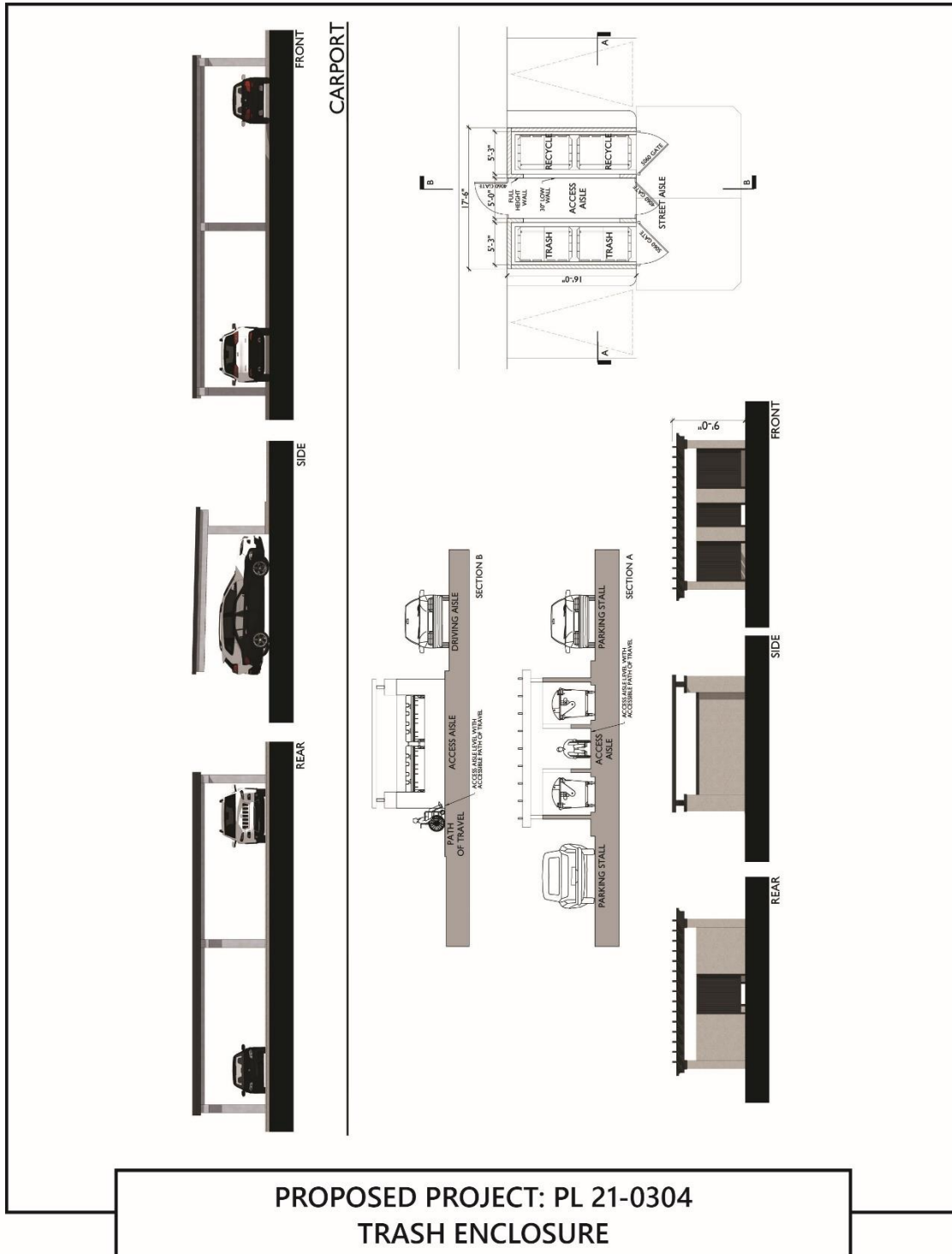
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**PROPOSED PROJECT: PL 21-0304  
PERSPECTIVES**



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4. ESCONDIDO BLVD



5. ESCONDIDO BLVD AND 15TH AVE



6. 15TH AVE



KEY MAP: NOT TO SCALE

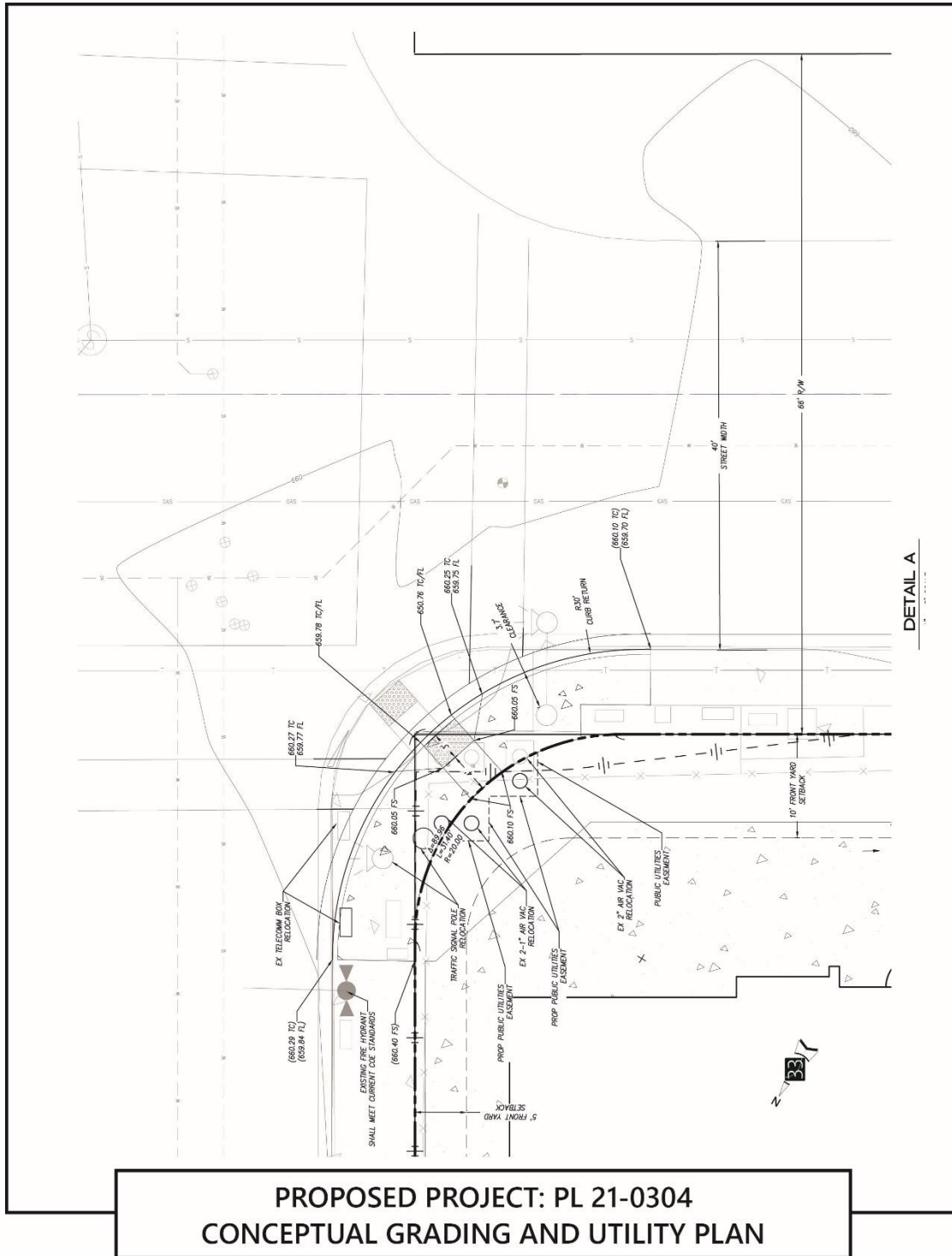
PROPOSED PROJECT: PL 21-0304  
SITE PHOTOS

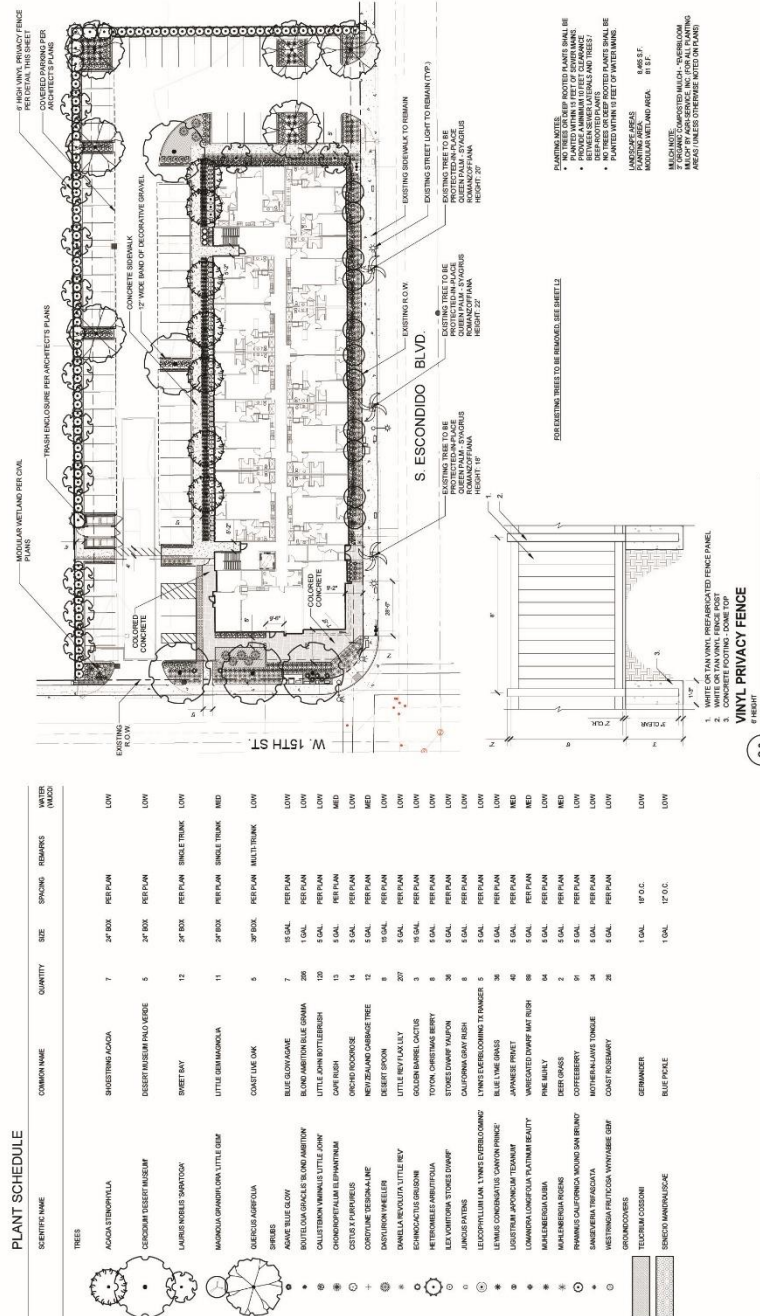


PROPOSED PROJECT: PL 21-0304  
CONCEPTUAL GRADING AND UTILITY PLAN



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**PROPOSED PROJECT: PL 21-0304**  
**EXISTING TREE PLAN**

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**PL21-0304, Exhibit "D"**  
**Legal Description**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ESCONDIDO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 8 AND THE EASTERLY ONE-HALF (1/2) OF LOT 7 IN BLOCK 219 OF ESCONDIDO, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS PER [MAP THEREOF NO. 336](#), FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, JULY 10, 1886.

[APN: 236-172-14-00](#) AND 236-172-15-00

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**Exhibit "E"**  
CITY OF ESCONDIDO  
PLANNING DIVISION  
201 NORTH BROADWAY  
ESCONDIDO, CA 92025-2798  
760-839-4671

## Notice of Exemption

To: Assessor/Recorder/County Clerk  
Attn: Fish and Wildlife Notices  
1600 Pacific Hwy, Room 260  
San Diego, CA 92101  
MS: A-33

From: City of Escondido  
Planning Division  
201 North Broadway  
Escondido, CA 92025

**Project Title/Case No:** PL21-0304

**Project Location - Specific:**

1401 South Escondido Blvd (APNs 236-172-14-00 and 236-172-15-00)

**Project Location - City:** Escondido **Project Location - County:** San Diego

**Description of Project:**

A Major Plot Plan Approval for a 54-unit density bonus project, including six units that will be deed restricted for very-low income.

**Name of Public Agency Approving Project:** City of Escondido

**Name of Person or Agency Carrying Out Project:**

Name: Greg Drakos

Address: 1783 Crest Drive, Encinitas, CA, 92024

Telephone: 858-525-2195

☒ Private entity ☐ School district ☐ Local public Agency ☐ State agency ☐ Other special district

**Exempt Status:**

The project is categorically exempt pursuant to CEQA Guidelines section 15332, In-Fill Development (Class 32).



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### Reasons why project is exempt:

The project is consistent with the applicable general plan designation, zoning designation, and applicable policies and provides additional affordable housing through the use of the Density Bonus provisions. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. The project site has no value as habitat for endangered, rare, or threatened species. The project will not create significant effects relating to traffic, noise, air quality, or water quality. The site is adequately serviced with all applicable utilities and public services. There is also no unusual circumstances that occur on-site.

**Lead Agency Contact Person:** Sean Nicholas      **Area Code/Telephone/Extension:**  
760-839-4546

Signature: \_\_\_\_\_  
Sean Nicholas  
Principal Planner

Date

☐ Signed by Lead Agency

Date received for filing at OPR:

☐ Signed by Applicant

**Law Offices of Andrea Contreras**  
 LAND USE | REAL ESTATE | ENVIRONMENTAL

August 23, 2022

Chair Barba and Members of the Planning Commission  
 City of Escondido  
 201 North Broadway  
 Escondido, CA 92025-2798  
 Attn: Zack Beck, City Clerk (by email only: [zbeck@escondido.org](mailto:zbeck@escondido.org))

Re: Appeal of Condition 11 of Plot Plan No.: PL21-0304

Dear Chair Barba and Planning Commissioners:

I represent Cross Real Estate Investors, LLC ("Cross"), the prospective owner and developer of fifty-four (54) workforce<sup>1</sup> and affordable housing units at 1401 & 1405 S. Escondido Avenue (the "Project"). The Project will create forty-eight (48) workforce units and six (6) affordable housing units on a site with prior residential and commercial uses. On August 23, 2022, the City conditionally approved a Plot Plan for the Project. The purpose of this letter is to appeal Plot Plan Condition 11, which reads as follows:

Condition of Approval 11: **Costs of Municipal Services**. In accordance with the General Plan, the Developer shall fund all on-going operational costs of providing municipal services required for the Project, the amount of such funding shall be in accordance with the special tax levy adopted annually by the City Council based on the project density, unless another amount is approved by the City Council at the time of Project approval. Such funding shall occur through either an agreement to form or annex into a Community Facilities District ("CFD") or the establishment of another lawful funding mechanism reasonably acceptable to the City ("Public Services Funding Agreement"). Projects that elect to annex into the Services CFD shall submit consent forms prior to the first permit issuance if they have not done so already. The provisions of the Public Services Funding Agreement shall specify any terms and limitations necessary to implement the CFD or other funding mechanism to offset the impacts to public services associated with the project. The City Manager, or City Manager's designee, shall be authorized to approve and execute the Public Services Funding Agreement, and the Public Services Funding Agreement shall be finalized prior to the City's issuance of any permit for the Project.

Cross requests the planning commission grant the appeal and strike Condition 11. The Condition essentially requires annexation into CFD No. 2020-1, also known as the City's "Service CFD". Based on the current uncertainty regarding the legality of CFD No. 2020-1, the Condition should be struck. In the alternative, Cross requests the condition be waived in accordance with state Density Bonus laws.

**Community Facilities District No. 2020-1 is Legally Unsound**

On February 26, 2021, the Building Industry Association of San Diego County filed a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief against the City of Escondido and

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<sup>1</sup> Workforce housing refers to those dwelling units that are naturally affordable to a working population and does not include luxury amenities that would otherwise drive up the price, as with Class "A" projects.



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the City Council of Escondido ("Petition") challenging the legality of Council Resolution No. 2020-44 ("Resolution"), which establishes the requirement of future annexation into the CFD.<sup>2</sup> The Petition alleges the CFD was improperly formed, the Resolution and the CFD violate California state law and the California Constitution, and that the City Council acted without proper authority, among many other allegations. The lawsuit is underway, and no trial date has been set.

Cross submits the City should not be implementing the CFD and Resolution until the lawsuit is decided. It is arbitrary and capricious to subject Cross to a requirement that is legally questionable, if not unconstitutional.

Cross has also learned the Council approved a sales tax increase ballot measure that will be on the November 2022 election ballot. The measure is popular and expected to pass.<sup>3</sup> The purpose of the sales tax increase is to provide a significant infusion into the budget and alleviate the need for development fees over and above the current impact fees, which are already a barrier to affordable and workforce housing.

### The City Should Waive the Condition for this Project Under Density Bonus Law

Cross initially submitted a plot plan application for this Project to the City in June of 2021. Since then, construction and other project costs have increased by more than 35%. Due to the affordable housing aspect of the Project, application of the special assessment required by CFD 2020-1 will make the Project economically infeasible. We request the City waive the requirement for this Project as an incentive under California's density bonus law.

#### *Density Bonus Incentive*

Due to the provision of affordable units, Cross is entitled to certain incentives under both state and local density bonus law. Cross requests the City grant the concession of waiving annexation into CFD 2020-1 for the Project.

California Government Code section 65915 provides as follows:

(d)(1) An applicant for a density bonus [as requested in accordance with subdivision] (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county **shall grant the concession or incentive** requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

<sup>2</sup> *Building Industry of San Diego County v. City of Escondido, et al.*, Superior Court for the County of San Diego, Case No. 37-2021-00008423.

<sup>3</sup> <https://www.sandiegouniontribune.com/communities/north-county/escondido/story/2022-07-17/escondido-sales-tax>

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(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(Emphasis added).

Government Code section 65915(k) directs that an incentive or concession “does not limit . . . the provision of direct financial incentives for the housing development” and further notes an applicant may request incentives such as waiving fees or costs.

Escondido Municipal Code (“EMC”) section 33-414(D) allows the City to grant regulatory incentives or concessions proposed by the developer that result in identifiable, financially sufficient, and actual cost reductions that contribute to the economic feasibility of a project. EMC section 33-414(E) allows the City to provide direct financial incentives in the form of a waiver of fees or dedication requirements.

The Project is entitled to three incentives under the state Density Bonus law. The breakdown of the application of density bonus and incentives is as follows:

DENSITY BONUS - 2021 (AB 2345)	
CALCULATION	
Maximum Permitted Density	30 Units
Property Size	1.17 Acres
Allowable Units at Max Density	36
Affordable Units	15% 6
Density Bonus Units	50% 18
Base Units	36
Density Bonus Units	18
Total Units	54
Market Rate Units	48
Affordable Units	6
Total Units	54
% Affordable	13.0%
Incentives	3

A court recently determined the City must have supporting evidence to determine the requested “concession or incentive does not result in identifiable and actual cost reductions” in order to deny the request. *Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549. The law recognizes a presumption the concession or incentive will result in an identifiable and actual cost reduction. “By requiring the city to grant incentives

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unless it makes particular findings, the statute places the burden of proof on the city to overcome the presumption that incentives will result in cost reductions.” *Id.* at 556.

This project will provide much-needed infill affordable and workforce housing. In today’s economic climate, with rising interest rates, construction and long-term financing are more difficult to obtain than in recent years. To require an additional \$783 per dwelling unit per year simply makes the project unfinanceable and infeasible. There is no evidence waiver of CFD No. 2020-1 will not result in identifiable and actual cost reductions. There is no evidence waiver of CFD No. 2020-1 will result in a specific adverse impact to public health or safety, or that the concession is contrary to state or federal law. Therefore, Cross respectfully asks the Planning Commission to grant its request to waive annexation into CFD No. 2020-1 as a concession to its affordable project under the state and local density bonus laws.

The CFD No. 2020-1 was established to establish financing for the provision of public services for a new single-family, large-scale master planned community subdivision at the edge of the City limits. There had never been any other development there, and extending necessary public services came with a cost. That cost was covered by CFD No. 2020-1. The City went on to require all new residential projects be included in the CFD. This project is an infill project that is replacing existing development. At least some of the cost contemplated by CFD No. 2020-1 is already provided for in the current budget.

Requiring the annexation into the CFD raises uncertainty for this project. The City will have to evaluate the amount of the tax to be levied against the development. Gov. Code section 53339.3(d) states the special tax cannot be higher than the established tax in the existing CFD, “except that a higher or lower tax may be levied within the territory proposed to be annexed or to be annexed in the future to the extent that the actual cost of providing the services in that territory is higher or lower than the cost of providing those services in the existing district.”

We do not know the cost of those services and the annexation process will not take place until some future time. This uncertainty is untenable for a project like this.

The City has waived the annexation into the CFD in the past—most significantly to the much larger market-rate housing development on the former Palomar Hospital site. This affordable housing project should not bear the financial burdens of market-rate housing.

For the foregoing reasons, Cross respectfully requests the Planning Commission strike the condition requiring annexation into CFD No. 2020-1, or in the alternative, recommend the City Council waive the annexation requirement for this affordable housing project.

Sincerely,



Andrea Contreras

Cc: Andrew Firestine, Director of Development Services (by email only: [afirestine@escondido.org](mailto:afirestine@escondido.org))  
Sean Nicholas, Principal Planner (by email only: [snicholas@escondido.org](mailto:snicholas@escondido.org))

## PLANNING COMMISSION

**Agenda Item No.: G.1**  
**Date: September 13, 2022**

**PROJECT NUMBER / NAME:** PL21-0304 / 1401 S. Escondido Blvd. Apartments

**REQUEST:** An appeal of a Condition of Approval applied to a Major Plot Plan requiring funding of ongoing municipal services required by the project

**LOCATION:** 1401 S. Escondido Blvd.

**APN / APNS:** 236-172-14-00 and 236-172-15-00

**GENERAL PLAN / ZONING:** Specific Plan Area (SPA 15) / Specific Plan (S-P; South Centre City Specific Plan)

**APPLICANT:** Cross Real Estate Investors, LLC.

**PRIMARY REPRESENTATIVE:**  
Greg Drakos

**DISCRETIONARY ACTIONS REQUESTED:** Appeal of a Plot Plan approval.

**PREVIOUS ACTIONS:** The Plot Plan was administratively approved by the Director of Development Services on August 24, 2022.

**PROJECT PLANNER:** Sean Nicholas, Principal Planner

**CEQA RECOMMENDATION:** The development was determined to be categorically exempt pursuant to California Environmental Quality Act (CEQA) Guidelines section 15332 (In-fill Development Projects).

**STAFF RECOMMENDATION:** Recommend the City Council deny the appeal and uphold the Director's decision.

**REQUESTED ACTION:** Adopt Resolution No. 2022-07.

**CITY COUNCIL HEARING REQUIRED:** ☒ YES ☐ NO

**REPORT APPROVALS:**

☐ Andrew Firestine, Director of Development Services  
☐ Adam Finestone, City Planner

Project Name: PL21-0304  
 Planning Commission Meeting  
 Date: September 13, 2022

## A. **BACKGROUND:**

An administrative approval for a Plot Plan, inclusive of a density bonus, was issued on August 24, 2022, for a 54-unit apartment complex located at 1401 S. Escondido Blvd. The project includes six units that will be deed-restricted for very-low income households. The applicant appealed the inclusion of a condition of approval applied to the project which requires the developer to fund ongoing operational costs of providing municipal services required for the project. The appeal is based on the premise that density bonus projects are entitled to certain incentives and waivers, in addition to an increase in allowable density, in order to make a project financially feasible.

All other aspects of the project have been approved and not subject to the appeal.

## B. **ANALYSIS:**

Density bonus law (Government Code section 65915 et. seq.) and Article 67 of the Escondido Zoning Code (Density Bonus and Residential Incentives) are intended to encourage the development of affordable housing. This is accomplished through the allowance for an increase in residential density above what would typically be allowed for a property, and through the provision of incentives and waivers from development standards that make construction of the project infeasible.

Allowable increases in density are based on a sliding scale that involves both the percentage of affordable units being provided, and the level of affordability of those units. Current zoning for the subject property would allow a total of 36 units; however, by deed restricting 15% of those units (amounting to six units) for very-low income households, the project is eligible for a 50% increase in allowable density, resulting a total allowance of 54 units.

The percentage of affordable units and level of affordability also entitles the applicant to three incentives and waivers. The incentives for this project include an increase in the maximum height allowance (from 45 feet and three stories to 49 feet and four stories), and a reduction in the amount of required open space (from 300 square feet per unit to 60 square feet per unit). The applicant has also requested an incentive to facilitate the construction of the project by eliminating the requirement to fund ongoing operational costs of providing municipal services required for the project. This requirement is identified as Condition of Approval A.11 in the Letter of Conditional Approval dated August 24, 2022, and included as Attachment 1 to this staff report. Specifically, the condition states:

***Costs of Municipal Services.*** *In accordance with the General Plan, the Developer shall fund all on-going operational costs of providing municipal services required for the Project, the amount of such funding shall be in accordance with the special tax levy adopted annually by the City Council based on the project density, unless another amount is approved by the City Council at the time of Project approval. Such funding shall occur through either an agreement to form or annex into a Community Facilities District ("CFD") or the establishment of another lawful funding mechanism reasonably acceptable to the City ("Public Services Funding Agreement"). Projects that elect to annex into the Services*

Project Name: PL21-0304  
 Planning Commission Meeting  
 Date: September 13, 2022

*CFD shall submit consent forms prior to the first permit issuance if they have not done so already. The provisions of the Public Services Funding Agreement shall specify any terms and limitations necessary to implement the CFD or other funding mechanism to offset the impacts to public services associated with the project. The City Manager, or City Manager's designee, shall be authorized to approve and execute the Public Services Funding Agreement, and the Public Services Funding Agreement shall be finalized prior to the City's issuance of any permit for the Project.*

Government Code section 95915(l) states that density bonus law "...does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements." Similarly, section 33-1414(a)(2)(E) of the City of Escondido Municipal Code states that "the city council may, but is not required to, provide direct financial incentives, including direct financial aid in the form of a loan or grant, the provision of publicly owned land, or the waiver of fees or dedication requirements." Staff has consistently interpreted this to mean that the City is not required under density bonus law to waive fees or provide other direct financial incentives for a housing development and that staff does not have the authority to do so under the City of Escondido Municipal Code or the current City Council adopted policy concerning the funding of municipal services by new development.

### ***Costs of Municipal Services***

The condition cited above is consistent with existing City Council policy requiring all residential development to offset its impact on the general fund by providing an ongoing funding source to pay for public services demanded by the project. The following is a brief history of the creation, purpose, and implementation of that policy:

- On June 12, 2019, the City Council directed staff to investigate all options to address the structural budget deficit to ensure the budget deficit does not grow as the City develops, including evaluating the feasibility of a Citywide Services CFD as a streamlined means for projects to offset their ongoing impact to the general fund.
- On April 8, 2020, the City Council indicated its intent to require new residential development to offset the ongoing costs of providing public services.
- On May 13, 2020, the City Council held a duly noticed public hearing and adopted Resolution No. 2020-44 (Resolution of Formation) establishing CFD 2020-1, the Citywide Services CFD.
- On September 16, 2020, the City Council adopted Resolution No. 2020-115 annexing five projects with 66 units into CFD 2020-1 creating the second (2) zone of the Services CFD (Zone 2020-2).

Project Name: PL21-0304  
 Planning Commission Meeting  
 Date: September 13, 2022

- On September 23, 2020, the City Council restated its intent to require new residential development to offset the ongoing costs of providing public services, specifically noting that the requirement be applied to any project approved after May 13, 2020.
- On October 21, 2020, the City Council adopted Resolution No. 2020-147 annexing a 42-unit project located at 2608 S. Escondido Blvd. into CFD 2020-1 and creating the third (3) zone of the Services CFD (Zone 2020-03).
- On November 18, 2020, the City Council adopted Resolution No. 2020-160 annexing two (2) projects containing 21 units into CFD 2020-1 creating the fourth zone of the Services CFD (Zone 2020-04).
- On July 21, 2021, the City Council adopted Resolution No. 2021-77 approving the special tax rate for CFD 2020-1 (Public Services).

### ***Planning Commission Review***

Pursuant to Zoning Code Section 33-1304, decisions of the director may be appealed to the Planning Commission. However, because the requirement to fund all on-going operational costs of providing municipal services is a policy established by City Council, the Planning Commission does not have decision-making authority on the appeal. At its public hearing related to the Palomar Heights project on September 22, 2020, the Planning Commission specifically discussed this issue, at which time staff indicated that the Commission did not have the authority to waive Council policy. As such, the Planning Commission is acting in an advisory role to City Council on this appeal.

### **C. CONCLUSION AND RECOMMENDATION:**

The Director of Development Services applied Condition of Approval A.11 to the project approval, requiring the project to fund all on-going operational costs of providing municipal services. Because the condition is consistent with current City Council policy, and because neither the Government Code nor the City of Escondido Municipal Code require the City to provide direct financial assistance to a density bonus project, staff does not support the removal of said condition. As such, and because the Planning Commission is serving in an advisory role to City Council on this appeal, staff recommends that the Planning Commission adopt Resolution No. 2022-07, recommending City Council deny the appeal and uphold the Director's decision to approve the project subject to all conditions of approval contained in the Conditional Letter of Approval attached to this staff report.

### **ATTACHMENTS:**

- ~~1. Plot Plan Conditional Letter of Approval dated August 24, 2022~~
- ~~2. Appeal of condition of approval~~
- ~~3. Planning Commission Resolution No. 2022-07~~

## RESOLUTION NO. 2022-139

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
ESCONDIDO, CALIFORNIA, DENYING THE APPEAL OF THE  
STANDARD CONDITION OF APPROVAL AND REQUIRING  
PAYMENT FOR ONGOING MUNICIPAL SERVICES

WHEREAS, Cross Real Estate Investors, LLC. (“Applicant”), filed a land use development application, Planning Case No. PL21-0304 (“Application”), constituting a request for a Plot Plan for a 54-unit apartment complex including six deed-restricted very-low income units (“Project”) on a 1.17 net acre site located at 1401 S. Escondido Blvd. (Assessor’s Parcel Numbers 236-172-14-00 and 236-172-15-00), in the South Centre City Specific Plan; and

WHEREAS, the subject property is all that real property described in Exhibit “A” which is attached hereto and made a part hereof by this reference as though full set forth herein (“Property”); and

WHEREAS, the Application was submitted to, and processed by, the Planning Division of the Development Services Department in accordance with the rules and regulations of the Escondido Zoning Code and the applicable procedures and time limits specified by the Permit Streamlining Act (Government Code section 65920 et seq.) and the California Environmental Quality Act (Public Resources Code section 21000 et seq.) (“CEQA”); and

WHEREAS, pursuant to CEQA and 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 Project, and it was determined that the Project as a whole is categorically exempt from further review pursuant to CEQA Guidelines section 15332 (Class 32) – Infill Development Projects; and



WHEREAS, the Planning Division studied the Application, performed necessary investigations, and the Director of Development Services approved the Plot Plan for the Project as depicted in the administrative approval and subject to all conditions of approval included in the administrative approval; and

WHEREAS, the Applicant submitted an appeal of one condition of approval associated with the payment of costs associated with providing ongoing municipal services; and

WHEREAS, no other aspect of the Plot Plan approval has been appealed, and all other components of the Project have been approved and are not subject to the appeal; and

WHEREAS, on September 13, 2022, the Planning Commission held a duly noticed public hearing as prescribe by law, at which time the Planning Commission received and considered the report and recommendation of the Planning Division and gave all persons full opportunity to be heard and to present evidence and testimony, regarding the appeal. Evidence was submitted to and considered by the Planning Commission, including, without limitation:

- a. Written information and other material submitted by the Applicant;
- b. Oral testimony from City staff, interested parties and the public;
- c. The staff report, dated September 13, 2022, with its attachments as well as City staff recommendation on the appeal;
- d. Additional information submitted during the public hearing; and

WHEREAS, following the public hearing, the Planning Commission adopted Resolution No. 2022-07, recommending that the City Council grant the appeal; and

WHEREAS, on September 28, 2022, the City Council held a duly noticed public hearing as prescribed by law. Evidence was submitted to and considered by the City Council, including without limitation:

- a) written testimony from City staff, interested parties, and the public;
- b) oral testimony from City staff, interested parties and the public;
- c) the City Council staff report, dated September 28, 2022, with its attachments as well as City staff recommendation on the appeal, which is incorporated herein by this reference as though fully set forth herein;
- d) the Planning Commission's recommendation; and
- e) additional information submitted during the public hearing.

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 Findings of Fact attached hereto as Exhibit "B" are hereby made by this City Council, and represent the City Council's careful consideration of the record. The findings of this City Council contained in Exhibit "B" shall be the final and determinative Findings of Fact related to this appeal.
3. That upon consideration of the Findings, the staff report dated September 28, 2022 (a copy of which is on file in the Office of the City Clerk), public testimony presented at the meeting, and all

other oral and written evidence regarding the appeal, the City Council hereby denies the appeal of the standard condition of approval requiring payment for ongoing municipal services for the Project.

## **Exhibit "A"**

### **Legal Description**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ESCONDIDO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 8 AND THE EASTERLY ONE-HALF (1/2) OF LOT 7 IN BLOCK 219 OF ESCONDIDO, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS PER [MAP THEREOF NO. 336](#), FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, JULY 10, 1886.

[APN: 236-172-14-00](#) AND 236-172-15-00

## **EXHIBIT "B"**

### **FINDINGS OF FACT**

The City Council has reviewed the record, and makes the following findings for denying the appeal of the condition of approval that requires ongoing payment for municipal services:

1. On September 23, 2020, following multiple public hearings, the City Council adopted a policy requiring all new residential development approved after May 13, 2020, to pay for their ongoing costs of providing municipal services.
2. Removal of the condition of approval is contrary to the City Council adopted policy requiring future residential projects to fund all on-going operational costs of providing municipal services.

## RESOLUTION NO. 2022-140

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
ESCONDIDO, CALIFORNIA, GRANTING THE APPEAL OF  
THE STANDARD CONDITION OF APPROVAL AND  
WAIVING THE REQUIREMENT FOR PAYMENT FOR  
ONGOING MUNICIPAL SERVICES

WHEREAS, Cross Real Estate Investors, LLC. (“Applicant”), filed a land use development application, Planning Case No. PL21-0304 (“Application”), constituting a request for a Plot Plan for a 54-unit apartment complex including six deed-restricted very-low income units (“Project”) on a 1.17 net acre site located at 1401 S. Escondido Blvd. (Assessor’s Parcel Numbers 236-172-14-00 and 236-172-15-00), in the South Centre City Specific Plan; and

WHEREAS, the subject property is all that real property described in Exhibit “A” which is attached hereto and made a part hereof by this reference as though full set forth herein (“Property”); and

WHEREAS, the Application was submitted to, and processed by, the Planning Division of the Development Services Department in accordance with the rules and regulations of the Escondido Zoning Code and the applicable procedures and time limits specified by the Permit Streamlining Act (Government Code section 65920 et seq.) and the California Environmental Quality Act (Public Resources Code section 21000 et seq.) (“CEQA”); and

WHEREAS, pursuant to CEQA and 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 Project, and it was determined that the Project as a whole is categorically exempt from further review pursuant to CEQA Guidelines section 15332 (Class 32) – Infill Development Projects; and

WHEREAS, the Planning Division studied the Application, performed necessary investigations, and the Director of Development Services approved the Plot Plan for the Project as depicted in the administrative approval and subject to all conditions of approval included in the administrative approval; and

WHEREAS, the Applicant submitted an appeal of one condition of approval associated with the payment of costs associated with providing ongoing municipal services; and

WHEREAS, no other aspect of the Plot Plan approval has been appealed, and all other components of the Project have been approved and are not subject to the appeal; and

WHEREAS, on September 13, 2022, the Planning Commission held a duly noticed public hearing as prescribe by law, at which time the Planning Commission received and considered the report and recommendation of the Planning Division and gave all persons full opportunity to be heard and to present evidence and testimony, regarding the appeal. Evidence was submitted to and considered by the Planning Commission, including, without limitation:

- a. Written information and other material submitted by the Applicant;
- b. Oral testimony from City staff, interested parties and the public;
- c. The staff report, dated September 13, 2022, with its attachments as well as City staff recommendation on the appeal;
- d. Additional information submitted during the public hearing; and

WHEREAS, following the public hearing, the Planning Commission adopted Resolution No. 2022-07, recommending that the City Council grant the appeal; and

WHEREAS, on September 28, 2022, the City Council held a duly noticed public hearing as prescribed by law. Evidence was submitted to and considered by the City Council, including without limitation:

- a) written testimony from City staff, interested parties, and the public;
- b) oral testimony from City staff, interested parties and the public;
- c) the City Council staff report, dated September 28, 2022, with its attachments as well as City staff recommendation on the appeal, which is incorporated herein by this reference as though fully set forth herein;
- d) the Planning Commission's recommendation; and
- d) additional information submitted during the public hearing.

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 Findings of Fact attached hereto as Exhibit "B" are hereby made by this City Council, and represent the City Council's careful consideration of the record. The findings of this City Council contained in Exhibit "B" shall be the final and determinative Findings of Fact related to this appeal.
3. That upon consideration of the Findings, the staff report dated September 28, 2022 (a copy of which is on file in the Office of the City Clerk), public testimony presented at the meeting, and all other oral and written evidence regarding the appeal, the City Council hereby grants the appeal of the



standard condition of approval and waives the requirement for payment for ongoing municipal services for the Project.

## **Exhibit "A"**

### **Legal Description**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ESCONDIDO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 8 AND THE EASTERLY ONE-HALF (1/2) OF LOT 7 IN BLOCK 219 OF ESCONDIDO, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS PER [MAP THEREOF NO. 336](#), FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, JULY 10, 1886.

[APN: 236-172-14-00](#) AND 236-172-15-00

## **EXHIBIT "B"**

### **FINDINGS OF FACT**

The City Council has reviewed the record, and makes the following findings for approving the appeal of the condition of approval that requires ongoing payment for municipal services:

1. On September 23, 2020, following multiple public hearings, the City Council adopted a policy requiring all new residential development approved after May 13, 2020, to pay for their ongoing costs of providing municipal services. However, the City's required regional housing needs assessment (RHNA) identified a goal of an additional 9,607 housing units, 1864 of which need to provide housing to very-low income individuals or families. The six deed-restricted units for very-low income households included in this project will help contribute to that goal. Additional ongoing costs would negatively impact the ability to provide these deed restricted units.
2. Removal of the condition of approval would support the City Council adopted Housing Element policies promoting the development of very-low income deed-restricted housing units to meet the City's RHNA goals, and removing the funding requirement would support the development of very-low income deed-restricted units.



# STAFF REPORT

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September 28, 2022  
File Number 0610-75

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## SUBJECT

**APPEAL OF A CONDITION OF APPROVAL APPLIED TO A MAJOR PLOT PLAN REQUIRING FUNDING OF ONGOING MUNICIPAL SERVICES REQUIRED BY THE PROJECT**

## DEPARTMENT

Development Services Department, Planning Division

## RECOMMENDATION

It is requested that the City Council consider an appeal of a condition of approval requiring funding of ongoing municipal services required for a 48-unit apartment project located at 1600 S. Escondido Boulevard and either a) adopt Resolution No. 2022-141, denying an appeal and upholding a condition of approval; or b) adopt Resolution No. 2022-142, granting the appeal and waiving the condition of approval.

Staff Recommendation: Denial of appeal (Development Services Department: Andrew Firestone)

Planning Commission Recommendation: Granting of appeal (Vote: 4-2-0)

Presenter: Adam Finestone, City Planner

## BACKGROUND

An administrative approval for a Plot Plan, inclusive of a density bonus, was issued on July 28, 2022, for a 48-unit apartment complex located at 1600 S. Escondido Blvd. (included as Attachment "1" to this staff report). The project includes five units that will be deed-restricted for very-low income households. The applicant appealed the inclusion of the condition of approval which requires the developer to fund ongoing operational costs of providing municipal services required for the project. The appeal, a copy of which is included as Attachment "2" to this report, is based on the premise that density bonus projects are entitled to certain incentives and waivers, in addition to an increase in allowable density, in order to make a project financially feasible. (All other aspects of the project have been approved and not subject to the appeal.)

## FISCAL ANALYSIS

As a part of the City of Escondido's ongoing effort to address projected budget shortfalls, the City conducted a Fiscal Impact Analysis ("FIA") for new residential development in 2019. The FIA determined the per capita cost of providing municipal services for new residential development involving Police, Fire, Public Works, Community Services, and General Services (support departments) exceeds the anticipated



# CITY of ESCONDIDO

## STAFF REPORT

revenue received, including property taxes, property tax in lieu of vehicle license fees, intergovernmental, property transfer tax, fines, forfeitures, permits, licenses, and sales tax generated by new residents. Based on these findings, the current structural budget deficit is anticipated to increase with each new residential development project approved. Below is a summary of the FIA findings by development type for a typical 5-acre site at the time the analysis was conducted:

	Single Family	Small Lot Single Family	Townhomes	Apartment/Condos
Project Size (5-acre site)	25 units	75 units	125 units	200 units
Avg. Density	5 units/acre	15 units/acre	25 units/acre	40 units/acre
Revenue Generate	\$52,900	\$128,800	\$157,900	\$204,700
Cost to Provide Municipal Services	\$66,300	\$184,500	\$248,500	\$361,200
Annual Unfunded Cost	\$13,400	\$55,700	\$90,600	\$156,500
Unfunded Cost/Unit	\$536	\$743	\$725	\$783

City policy currently requires all residential development to offset its impact on the general fund by providing an ongoing funding source to pay for public services demanded by the project. The following is a brief history of the creation, purpose, and implementation of that policy:

On June 12, 2019, the City Council directed staff to investigate all options to address the structural budget deficit to ensure the budget deficit does not grow as the City develops, including evaluating the feasibility of a Citywide Services Community Facilities District ("CFD") as a streamlined means for projects to offset their ongoing impact to the general fund.

On April 8, 2020, the City Council indicated its intent to require new residential development to offset the ongoing costs of providing public services.

On May 13, 2020, the City Council held a duly noticed public hearing and adopted Resolution No. 2020-44 (Resolution of Formation) establishing CFD 2020-1, the Citywide Services CFD.



# CITY of ESCONDIDO

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On September 16, 2020, the City Council adopted Resolution No. 2020-115 annexing five projects with 66 units into CFD 2020-1 creating the second (2) zone of the Services CFD (Zone 2020-2).

On September 23, 2020, the City Council restated its intent to require new residential development to offset the ongoing costs of providing public services, specifically noting that the requirement be applied to any project approved after May 13, 2020.

On October 21, 2020, the City Council adopted Resolution No. 2020-147 annexing a 42-unit project located at 2608 S. Escondido Blvd. into CFD 2020-1 and creating the third (3) zone of the Services CFD (Zone 2020-03).

On November 18, 2020, the City Council adopted Resolution No. 2020-160 annexing two (2) projects containing 21 units into CFD 2020-1 creating the fourth zone of the Services CFD (Zone 2020-04).

On July 21, 2021, the City Council adopted Resolution No. 2021-77 approving the special tax rate for CFD 2020-1 (Public Services) for fiscal year 2021/22.

On September 15, 2021, the City Council adopted Resolution No. 2021-130 annexing three (3) projects containing 65 units into CFD 2020-1 creating the fifth (5) zone of the Services CFD (Zone 2020-5).

On March 2, 2022, the City Council adopted Resolution No. 2022-14 annexing two (2) projects containing 44 units into CFD 2020-1 creating the sixth (6) zone of the Services CFD (Zone 2020-6).

On July 20, 2022, the City Council adopted Resolution No. 2022-87 approving the special tax rate for CFD 2020-1 (Public Services) for fiscal year 2022/23.

Council policy requires that all new residential development off-site their impacts to ongoing municipal services. This requirement is identified as Condition of Approval A.11 in the Letter of Conditional Approval dated July 28, 2022, and included as Attachment "1" to this staff report. Specifically, the condition states:

*Community Facility District or Funding Mechanism. The Applicant shall fund all on-going operational costs of providing municipal services required for the Project, the amount of such funding to be determined by the City Council at the time of Project approval. Such funding shall occur through either an agreement to form or annex into a Community Facilities District ("CFD") or the establishment of another lawful funding mechanism reasonably acceptable to the City ("Public Services Funding Agreement"). The provisions of the Public Services Funding Agreement shall specify any terms and limitations necessary to implement the CFD or other funding mechanism to offset the impacts to public services associated with the project. The City Manager, or City Manager's designee, shall be authorized to approve and execute the Public Services Funding Agreement, and the Public Services Funding Agreement shall be finalized prior to the City's issuance of any permit for the Project.*



# CITY of ESCONDIDO

## STAFF REPORT

The condition cited above is consistent with existing City Council policy requiring all residential development to offset its impact on the general fund by providing an ongoing funding source to pay for public services demanded by the project. The Condition provides an option for the applicant to either form or annex into the CFD or the establishment of another lawful funding mechanism reasonably acceptable to the City ("Public Services Funding Agreement"). Should the applicant choose to form or annex into a CFD, the estimated fee based on the density of the project, which is adjusted annually, is identified in the table below:

CFD levy per unit 40+ du/ac (year)	# of Units	Total annual levy	Cost per unit monthly
\$840	48	\$40,320	\$70

### PLANNING COMMISSION RECOMMENDATION:

Appeals of administrative decisions of the Director of Development Services require public hearings before the Planning Commission. However, because the Planning Commission does not have the authority to waive City Council policies and fees, they serve in an advisory role to the City Council on this matter. It should be noted that the Planning Commission considered an appeal of the same condition of approval for another project immediately prior to this one, and the discussion below reflects the combined deliberations of both appeals.

The Planning Commission considered the request at its September 13, 2022, meeting and recommended the City Council grant the appeal to waive the condition of approval that requires new residential development to offset its fiscal impacts to ongoing municipal services (vote 4-2-0; Commissioners Paul and Weiler voted no; one commissioner absent). A copy of the Planning Commission staff report is included with this report as Attachment "3." The majority of the Commissioners supported the appeal, emphasizing that the waiver should be applied on a case-by-case basis for projects that include affordable housing units as part of a density bonus request; they did not recommend that the requirement to offset fiscal impacts be waived for all projects.

Although Commissioners Paul and Weiler voted no, they noted their support for the project and affordable housing. Commissioners Paul and Weiler indicated their recommendation was not based on the Commission's role regarding implementing Council policy nor on the overall merits of the requested waiver. Rather, because the Commission was not involved in the establishment of the policy requiring funding of ongoing municipal services and thus did not have sufficient knowledge and information on the topic, they did not believe it was appropriate for them to make the recommendation to waive the requirement.

During deliberation, Commissioner Paul moved to grant the appeal only for the five units that would be deed-restricted as affordable units, however the motion failed to gain a second. Also during deliberation,



# CITY of ESCONDIDO

## STAFF REPORT

the Commission discussed potential support for the City Council to reconsider and evaluate the overall policy requiring funding of ongoing public services due to potential impediments it has on the ability to construct infill and affordable multi-family housing projects.

### ANALYSIS

Density bonus law (Government Code section 65915 et. seq.) and Article 67 of the Escondido Zoning Code (Density Bonus and Residential Incentives) are intended to encourage the development of affordable housing. This is accomplished through the allowance for an increase in residential density above what would typically be allowed for a property, and through the provision of incentives and waivers from development standards that make construction of the project infeasible.

Allowable increases in density are based on a sliding scale that involves the percentage of affordable units being provided, and the level of affordability of those units. Current zoning for the subject property would allow a total of 31 units; however, by deed restricting 15% of those units (amounting to five units) for very-low income households, the project is eligible for a 50% increase in allowable density, resulting in a total allowance of 48 units.

The percentage of affordable units and level of affordability also entitles the applicant to three incentives and waivers. The incentives for this project include a reduction in open space, parking design requirements, and design standards. The applicant has also requested, as an incentive to facilitate the construction of the project, the elimination of the requirement to fund ongoing operational costs of providing municipal services required for the project.

Government Code section 95915(l) states that density bonus law "...does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements." Similarly, section 33-1414(a)(2)(E) of the City of Escondido Municipal Code states that "the city council may, but is not required to, provide direct financial incentives, including direct financial aid in the form of a loan or grant, the provision of publicly owned land, or the waiver of fees or dedication requirements." Staff has applied the condition of approval in question based on existing City Council Policy. Neither City policy nor the Government Code give staff the authority to waive the condition, however the City Council does have the authority to do so.





# CITY of ESCONDIDO

## STAFF REPORT

### ENVIRONMENTAL REVIEW

The California Environmental Quality Act ("CEQA") Guidelines list classes of projects that have been determined to not have a significant effect on the environment and as a result are exempt from review under CEQA. The Project site is located within a developed urban area of the City and previously developed with a commercial building. The proposed project qualifies for a categorical exemption from CEQA pursuant to CEQA Guidelines section 15332, "Infill Development Project." A CEQA Notice of Exemption was issued for the Project and posted with the County Clerk's Office in accordance with CEQA.

### CONCLUSION

The Director of Development Services applied a standard condition of approval requiring the project to fund all on-going operational costs of providing municipal services based on existing City Council policy. Based on that policy, staff recommends the appeal be denied and that the condition be maintained as part of the project approval.

Staff acknowledges that both the Government Code and Escondido Zoning Code allow the City to waive the condition at the discretion of the City Council, and the Planning Commission recommended that the City Council do so. As such, staff has also included a resolution granting the appeal and waiving the condition, should the Council wish to exercise this option.

### RESOLUTIONS

- a. Resolution No. 2022-141
- b. Resolution No. 2022-141 – Exhibit "A" Legal Description
- c. Resolution No. 2022-141 – Exhibit "B" Findings of Fact
- d. Resolution No. 2022-142
- e. Resolution No. 2022-142 – Exhibit "A" Legal Description
- f. Resolution No. 2022-142 – Exhibit "B" Findings of Fact

### ATTACHMENTS

- a. Attachment "1" – Plot Plan Conditional Letter of Approval dated July 28, 2022
- b. Attachment "2" – Appeal of Plot Plan Condition of Approval
- c. Attachment "3" – Planning Commission Staff Report dated September 13, 2022



Adam Finestone, AICP  
City Planner  
Planning Division  
201 North Broadway, Escondido, CA 92025  
Phone: 760-839-4671 Fax: 760-839-4313

July 28, 2022

Scott Maas  
FieldXStudio  
2033 San Elijo Ave., #643  
Cardiff by the Sea, CA 92007

Subject: Plot Plan and Density Bonus for 48 apartment units (City Project No. PL22-0032)  
Location: 1600 S. Escondido Boulevard (APN 236-460-16-00)

Dear Mr. Maas:

This letter serves to inform you that the City of Escondido has completed its review, and does hereby conditionally approve Planning Case No. PL22-0032, which is a Major Plot Plan and Density Bonus to develop 48 apartment units (two, 3-story buildings) and 58 surface parking spaces located at 1600 S. Escondido Boulevard ("Project") based on the Findings of Fact contained in Exhibit "A" attached hereto. The Project includes a 50 percent density bonus to include 17 density bonus units (five very low-income units) for a total of 48 units per the provisions of the State of California Density Bonus Law and Article 67 of the Escondido Zoning Code. The Density Bonus also includes approval of certain concession/incentives. The Project will include 18 one-bedroom and 30 two-bedroom units. The existing commercial office building will be demolished. The subject property is located within the South Centre City Specific Plan (SPA 15) and Escondido Boulevard District that allows multi-family residential development.

This approval is subject to the Conditions of Approval attached as Exhibit "B" hereto. Compliance with the Conditions of Approval must be demonstrated on subsequently submitted plans for the project (building plans, grading/improvement plans, landscape plans, etc.). Said plans shall be in substantial conformance with those attached as Exhibit "C" hereto and on file with the Planning Division, except as modified by the Conditions of Approval in Exhibit "B."

Please note that the Plot Plan was reviewed for consistency with current City ordinances and policies and in no way vests any rights to the developer to construct to these standards in the future if the City ordinances and policies change. Additionally, please be aware that the Plot Plan was reviewed based on the assumption that the legal description for the subject property furnished by you, the applicant, and attached as Exhibit "D" hereto, is accurate, and that all easements, covenants, conditions, and other encumbrances and restrictions relating to the property have been completely and accurately depicted, described, and disclosed. Neither the City of Escondido nor any of its officers or employees assumes responsibility for the accuracy of said information.

**PLAN PROCESSING REQUIREMENTS:**

One revised hard-copy and one electronic copy of the Plot Plan reflecting conformance with the Conditions of Approval shall be submitted for review by the Planning Division. Said Plot Plan must be certified by the Planning Division prior to submittal of other plans (e.g., building, grading, landscape) for the Project.

PL22-0032  
July 28, 2022  
Page 2

Pursuant to Government Code section 66020(d)(1), NOTICE IS HEREBY GIVEN that the project is subject to certain fees described in the City's Development Fee Inventory on file in both the Planning Division and Engineering Services Division (Development Services Department). Said fees shall be paid prior to or concurrent with the issuance of building permits, in accordance with the prevailing fee schedule in effect at the time of building permit issuance. The project may also be subject to dedications, reservations, and exactions as specified in the conditions of approval. NOTICE IS FURTHER GIVEN that the 90-day period to protest the imposition of any fee, dedication, reservation, or other exaction described in this letter begins on the date of this letter and any such protest must be in a manner that complies with Government Code section 66020.

#### ENVIRONMENTAL DETERMINATION

This project has been determined to be exempt from further environmental review, pursuant to California Environmental Quality Act (CEQA) Guidelines section 15332 (In-fill Development Projects). A Notice of Exemption has been prepared for the Project, a copy of which is attached to this letter as Exhibit "E." Approval of the subject project includes approval of the CEQA exemption.

The City of Escondido hereby notifies the applicant that the San Diego County Clerk's Office requires a documentary handling fee of \$50 in order to file a Notice of Exemption for the Project. The applicant shall remit to the City of Escondido Planning Division a check payable to the "San Diego County Clerk" in the amount of \$50 within two working days of the date of this letter. Per CEQA Guidelines section 15062, the filing of a Notice of Exemption and the posting with the San Diego County Clerk starts a 35-day statute of limitations period on legal challenges to the agency's determination that the project is exempt from CEQA. Failure to submit the required fee within the specified time noted above will result in the Notice of Exemption not being filed with the County Clerk, and a 180-day statute of limitations period will apply.

#### CONCLUSION

The owner, or authorized agent, shall sign the Acknowledgement and Acceptance of Conditions of Approval form included with this letter and return it within 10 days of receipt of this letter. Approval of this Plot Plan, including the Conditions of Approval applied to it, may be appealed as prescribed in Section 33-1303 of the Escondido Zoning Code. If no appeal is filed, the approval shall become final on the 11th day following the date of this letter.

This Plot Plan approval will expire two years from the date of this letter. If no building permit is obtained during this period, the approval shall be considered null and void. A one-year extension of the conditional approval may be granted, after consideration of the Director of Development Services, upon written request and submittal of the required fee prior to the expiration date.

Please be advised that if you seek judicial review of the final decision in this matter pursuant to Code of Civil Procedure section 1094.5, the time within which judicial review must be sought is governed by California Code of Civil Procedure section 1094.6.

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Please feel free to contact me at (760)-839-4537, or via email at [Jpaul@escondido.org](mailto:Jpaul@escondido.org) , if you have any questions.

Sincerely,

*JPaul*

Jay Paul  
Senior Planner

Exhibits:

- A. Findings of Fact
- B. Conditions of Approval
- C. Project Plans
- D. Legal Description
- E. CEQA Notice of Exemption

cc: Adam Finestone, City Planner

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## **EXHIBIT A**

### **FINDINGS OF FACT**

#### **Environmental Determinations:**

1. Pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et. seq.) ("CEQA"), and its implementing regulations (14 C.C.R. § 15000 et seq.) ("CEQA Guidelines"), the City of Escondido ("City") is the Lead Agency for the project ("Project"), as the public agency with the principal responsibility for approving the Project.
2. The proposed project qualifies for an exemption from the California Environmental Quality Act (CEQA) under Section 15332, Class 32 In-fill Development Project.
3. The City Planner, or their designee, has independently considered the full administrative record before it, which includes but is not limited to materials and evidence submitted by the applicant and other interested parties, and input provided by other City departments and public agencies. No substantial evidence has been submitted that would support a finding that any above-described exemption is not applicable to the Project. The Project will not have a significant effect on the environment, and all of the requirements of CEQA have been met.

#### **Plot Plan Findings**

The City Planner, or their designee, has reviewed the record, including applicable CEQA findings, and makes the following findings for a Plot Plan Permit:

1. The proposed multi-family residential project is an allowed use within the Escondido Boulevard District of the South Centre City Specific Plan (SPA 15). The Project is consistent with the objectives of the General Plan, complies with applicable zoning regulations, Specific Planning Area provisions, and improvement standards adopted by the City.
2. The Plot Plan is granted subject to such conditions as deemed necessary to meet the standards of the use and zone in which it is located and to comply with applicable design standards.
3. The Plot Plan is granted subject to such additional conditions as deemed necessary and desirable to preserve the public health, safety and general welfare.

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## **EXHIBIT B**

### **CONDITIONS OF APPROVAL**

This project is conditionally approved as set forth on the application received by the City of Escondido on January 19, 2022, and the Project drawings consisting of Site Plans, Floor Plans, Sections, Architectural Elevations, Civil Sheets/Grading, Concept Landscape Plans and Colored Elevations and Perspectives; all designated as approved on July 28, 2022, and shall not be altered without express authorization by the Development Services Department.

For the purpose of these conditions, the term "Applicant" shall also include the Project proponent, owner, permittee, and the Applicant's successors in interest, as may be applicable.

#### **A. General:**

- 1. Acceptance of Permit.** If the Applicant fails to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the Applicant shall be deemed to constitute all of the following on behalf of the Applicant:
  - a.** Acceptance of the Permit by the Applicant; and
  - b.** Agreement by the Applicant to be bound by, to comply with, and to do all things required of or by the Applicant pursuant to all of the terms, provisions, and conditions of this Project Permit or other approval and the provisions of the Escondido Municipal Code or Zoning Code applicable to such Permit.
- 2. Permit Expiration.** The Permit shall be deemed expired if a building permit has not been obtained or work has been discontinued in the reliance of that building permit within two years of this approval. If no building permits are required, the City may require a noticed hearing to be scheduled before the authorized agency to determine if there has been demonstrated a good faith intent to proceed, pursuant to and in accordance with the provision of this Permit.
- 3. Certification.** The City Planner, or his/her designee, is authorized and directed to make, or require the Applicant to make, all corrections and modifications to the Project drawings and any other relevant document comprising the Project in its entirety, as necessary to make them internally consistent and in conformity with the final action on the Project. This includes amending the Project drawings as necessary to incorporate revisions made by the decision-making body and/or reflecting any modifications identified in these conditions of approval. One hard copy and one electronic copy of the final Approved Plan set demonstrating conformance with the Conditions of Approval, shall be submitted to the Planning Division for certification. Said plans must be certified by the Planning Division

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prior to submittal of any post-entitlement permit, including grading, public improvement, landscape, or building plans for the Project.

**4. Conformance to Approved Plans.**

- a. The operation and use of the subject property shall be consistent with the Project Description and Details of Request, designated with the Approved Plan set.
- b. Nothing in this Permit shall authorize the Applicant to intensify the authorized activity beyond that which is specifically described in this Permit.
- c. Once a permit has been issued, the Applicant may request Permit modifications. "Minor" modifications may be granted if found by the City Planner to be in substantial conformity with the Approved Plan set, including all exhibits and Permit conditions attached hereto. Modifications beyond the scope described in the Approved Plan set may require submittal of an amendment to the Permit and approval by the authorized agency.

**5. Limitations on Use.** Prior to any use of the Project site pursuant to this Permit, all Conditions of Approval contained herein shall be completed or secured to the satisfaction of the Development Services Department.

**6. Certificate of Occupancy.**

- a. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required, and any such change in occupancy must comply with all other applicable local and state laws.
- b. Prior to final occupancy, a Planning Final Inspection shall be completed to ensure that the property is in full compliance with the Permit terms and conditions. The findings of the inspection shall be documented on a form and content satisfactory to the City Planner.

**7. Availability of Permit Conditions.**

- a. Prior to grading permit issuance, the Applicant shall cause a covenant regarding real property to be recorded that sets forth the terms and conditions of this Permit approval and shall be of a form and content satisfactory to the City Planner.
- b. The Applicant shall make a copy of the terms/conditions of this Permit readily available to any member of the public or City staff upon request. Said terms and

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conditions shall be printed on any construction plans that are submitted to the Building Division for plan check processing.

- 8. Right to Entry.** The holder of this Permit shall make the premises available for inspection by City staff during construction or operating hours and allow the investigations of property necessary to ensure that minimum codes, regulations, local ordinances and safety requirements are properly followed. The Applicant shall provide such business records, licenses, and other materials necessary upon request to provide evidence of compliance with the conditions of approval, as well as federal, state, or laws.
- 9. Compliance with Federal, State, and Local Laws.** Nothing in this Permit shall relieve the Applicant from complying with conditions, performance standards, and regulations generally imposed upon activities similar in nature to the activity authorized by this permit. (Permits from other agencies may be required as specified in the Permit's Details of Request.) This Permit does not relieve the Applicant of the obligation to comply with all applicable statutes, regulations, and procedures in effect at the time that any engineering permits or building permits are issued unless specifically waived herein.

No part of this Permit's approval shall be construed to permit a violation of any part of the Escondido Municipal or Zoning Code. During Project construction and after Project completion, the Applicant shall ensure the subject land use activities covered by this Permit is conducted in full compliance with all local and state laws.

- 10. Fees.** The appropriate development fees and Citywide Facility fees shall be paid in accordance with the prevailing fee schedule in effect at the time of building permit issuance, to the satisfaction of the Director of Community Development. Through plan check processing, the Applicant shall pay development fees at the established rate. Such fees may include, but not be limited to: Permit and Plan Checking Fees, Water and Sewer Service Fees, School Fees, Traffic Mitigation Fees, Flood Control Mitigation Fees, Park Mitigation Fees, Fire Mitigation/Cost Recovery Fees, and other fees listed in the Fee Schedule, which may be amended. Arrangements to pay these fees shall be made prior to building permit issuance to the satisfaction of the Development Services Department.
- 11. Community Facility District or Funding Mechanism.** The Applicant shall fund all on-going operational costs of providing municipal services required for the Project, the amount of such funding to be determined by the City Council at the time of Project approval. Such funding shall occur through either an agreement to form or annex into a Community Facilities District ("CFD") or the establishment of another lawful funding mechanism reasonably acceptable to the City ("Public Services Funding Agreement"). The provisions of the Public Services Funding Agreement shall specify any terms and limitations necessary to implement the CFD or other funding mechanism to offset the impacts to public services associated with the project. The City Manager, or



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City Manager's designee, shall be authorized to approve and execute the Public Services Funding Agreement, and the Public Services Funding Agreement shall be finalized prior to the City's issuance of any permit for the Project.

**12. Public Art Partnership Program.** All requirements of the Public Art Partnership Program, Ordinance No. 86-70 shall be satisfied prior to any building permit issuance. The ordinance requires that a public art fee be added at the time of the building permit issuance for the purpose of participating in the City Public Art Program.

**13. Clerk Recording.**

- a. Exemption.** If the environmental determination prepared for the Project is a categorical exemption, the City of Escondido hereby notifies the Applicant that the County Clerk's Office requires a documentary handling fee of \$50 in order to file a Notice of Exemption. In order to file the Notice of Exemption with the County Clerk, in conformance with California Environmental Quality Act (CEQA) Guidelines section 15062, the Applicant should remit to the City of Escondido Planning Division, within two working days of the final approval of the Project (the final approval being the date of this letter) a certified check payable to the "County Clerk" in the amount of \$50. The filing of a Notice of Exemption and the posting with the County Clerk starts a 35-day statute of limitations period on legal challenges to the agency's decision that the Project is exempt from CEQA. Failure to submit the required fee within the specified time noted above will result in the Notice of Exemption not being filed with the County Clerk, and a 180-day statute of limitations period will apply.
- b.** For more information on filing fees, please refer to the County Clerk's Office and/or the California Code of Regulations, Title 14, Section 753.5.

**14. Legal Description Adequacy.** The legal description attached to the application has been provided by the Applicant and neither the City of Escondido nor any of its employees assume responsibility for the accuracy of said legal description.

**15. Application Accuracy.** The information contained in the application and all attached materials are assumed to be correct, true, and complete. The City of Escondido is relying on the accuracy of this information and Project-related representations in order to process this application. Any permits issued by the City may be rescinded if it is determined that the information and materials submitted are not true and correct. The Applicant may be liable for any costs associated with rescission of such permits.

**16. Enforcement.** If any of the terms, covenants, or conditions contained herein shall fail to occur or if they are, by their terms, to be implemented and maintained over time, the City

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of Escondido shall have the right to deny or withhold subsequent permit approvals or permit inspections that are derived from the application entitlements herein granted; issue stop work orders; pursue abatement orders, penalties, or other administrative remedies as set forth in state and local laws; or institute and prosecute litigation to compel compliance with such terms, covenants, or conditions or seek damages for their violation. The Applicant shall be notified in advance prior to any of the above actions being taken by the City and shall be given the opportunity to remedy any deficiencies identified by the City.

#### **17. Indemnification, Hold Harmless, Duty to Defend.**

- a. The Applicant shall indemnify, hold harmless, and defend (with counsel reasonably acceptable to the City) the City, its Councilmembers, Planning Commissioners, boards, commissions, departments, officials, officers, agents, employees, and volunteers (collectively, "Indemnified Parties") 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, at law or in 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 (i) any business, work, conduct, act, omission, or negligence of the Applicant or the owner of the Property (including the Applicant's or the owner of the Property's contractors, subcontractors, licensees, sublessees, invitees, agents, consultants, employees, or volunteers), or such activity of any other person that is permitted by the Applicant or owner of the Property, occurring in, on, about, or adjacent to the Property; (ii) any use of the Property, or any accident, injury, death, or damage to any person or property occurring in, on, or about the Property; or (iii) any default in the performance of any obligation of the Applicant or the owner of the Property to be performed pursuant to any condition of approval for the Project or agreement related to the Project, or any such claim, action, or proceeding brought thereon. Provided, however, that the Applicant shall have no obligation to indemnify, hold harmless, or defend the City as to any Claims that arise from the sole negligence or willful misconduct of the City. In the event any such Claims are brought against the City, the Applicant, upon receiving notice from the City, shall defend the same at its sole expense by counsel reasonably acceptable to the City and shall indemnify the City for any and all administrative and litigation costs incurred by the City itself, the costs for staff time expended, and reasonable attorney's fees (including the full reimbursement of any such fees incurred by the City's outside counsel, who may be selected by the City at its sole and absolute discretion and who may defend the City against any Claims in the manner the City deems to be in the best interests of the City).

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- b. The Applicant further and separately agrees to and shall indemnify, hold harmless, and defend the City (including all Indemnified Parties) from and against any and all Claims brought by any third party to challenge the Project or its approval by the City, including but not limited to any Claims related to the Project's environmental determinations or environmental review documents, or any other action taken by the City regarding environmental clearance for the Project or any of the Project approvals. Such indemnification shall include the Applicant's payment for any and all administrative and litigation costs and expenses incurred by the City in defending against any such Claims, including payment for all administrative and litigation costs incurred by the City itself, the costs for staff time expended, and reasonable attorney's fees (including the full reimbursement of any such fees incurred by the City's outside counsel, who may be selected by the City at its sole and absolute discretion and who may defend the City against any Claims in the manner the City deems to be in the best interests of the City and the Project).
- c. The City, in its sole discretion and upon providing notice to the Applicant, may require the Applicant to deposit with the City an amount estimated to cover costs, expenses, and fees (including attorney's fees) required to be paid by the Applicant in relation to any Claims referenced herein, which shall be placed into a deposit account from which the City may draw as such costs, expenses, and fees are incurred. Within 14 days after receiving written notice from the City, the Applicant shall replenish the deposit account in the amount the City determines is necessary in the context of the further defense of such Claims. To the extent such deposit is required by the City, the amount of such deposit and related terms and obligations shall be expressed in a written Deposit Account Agreement, subject to the City Attorney's approval as to form. The City, in its sole and reasonable discretion, shall determine the amount of any initial deposits or subsequent deposits of funds, and the Applicant may provide documentation or information for the City to consider in making its determinations. Nothing within this subsection shall be construed as to relieve the Applicant's obligations to indemnify, hold harmless, or defend the City as otherwise stated herein.

**B. Construction, Maintenance, and Operation Obligations:**

1. **Code Requirements.** All construction shall comply with the applicable requirements of the Escondido Municipal Code, Escondido Zoning Code, California Building Code; and the requirements of the Planning Division, Engineering Services Division, Director of Development Services, Building Official, City Engineer, and the Fire Chief in carrying out the administration of said codes. Approval of this Permit request shall not waive compliance with any City regulations in effect at the time of Building Permit issuance unless specifically waived herein.

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As a condition of receiving the land use approvals specified herein, Applicant shall maintain the property subject to the approvals in compliance with all applicable city codes governing the condition or appearance of property. In addition to compliance with such basic standards, the property subject to these approvals shall also be maintained free of trash, plant debris, weeds, and concrete (other than existing foundations and permanent structures). Any signs placed on the property advertising such property for sale or rent shall be in accordance with applicable laws, and be kept clean, in like-new condition, and free from fading and graffiti at all times. This condition shall be applicable from the date the land use is approved. The failure to comply with this condition shall subject the approvals specified herein to revocation for failure to comply.

2. **Agency License and Permitting.** In order to make certain on- or off-site improvements associated with the Approved Plan set, the Permit request may require review and clearance from other agencies. Nothing in these Conditions of Approval shall be construed as to waive compliance with other government agency regulations or to obtain permits from other agencies to make certain on- or off-site improvements prior to Final Map recordation, grading permit issuance, building permit issuance, or certificate of occupancy as required. This review may result in conditions determined by the reviewing agency.

At all times during the effective period of this Permit, the Applicant and any affiliated responsible party shall obtain and maintain in valid force and effect, each and every license and permit required by a governmental agency for the construction, maintenance, and operation of the authorized activity.

3. **Utilities.** All new utilities and utility runs shall be underground, or fee payment in-lieu subject to the satisfaction of the City Engineer.
4. **Signage.** All proposed signage associated with the Project must comply with Article 66 (Sign Ordinance) of the Escondido Zoning Code and the South Centre City Specific Plan. Separate sign permits will be required for Project signage. All non-conforming signs shall be removed. The Applicant shall submit with any sign permit graphic/list of all signs to be removed and retained, along with any new signage proposed.
5. **Noise.** All Project generated noise shall conform to the City's Noise Ordinance (Ordinance 90-08).
6. **Lighting.** All exterior lighting shall conform to the requirements of Article 35 (Outdoor Lighting Ordinance) of the Escondido Zoning Code.
7. **General Property Maintenance.** The property owner or Management Company shall maintain the property in good visual and functional condition. This shall include, but not

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be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping. The Applicant shall paint and re-paint all building exteriors, accessory equipment, and utility boxes servicing the Project, as necessary to maintain clean, safe, and efficient appearances.

8. **Anti-Graffiti.** The Applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including all areas of the job site for when the Project is under construction.
9. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, and garbage.
10. **Roof, Wall, and Ground Level Equipment.** All mechanical equipment shall be screened and concealed from view in accordance with Section 33-1085 of the Escondido Zoning Code.
11. **Trash Enclosures.** All appropriate trash enclosures or other approved trash systems shall be approved by the Planning and Engineering Division. The property owner or management company shall be responsible for ensuring that enclosures are easily assessable for garbage and recyclables collection; and that the area is managed in a clean, safe, and efficient manner. Trash enclosure covers shall be closed when not in use. Trash enclosures shall be regularly emptied. There shall be the prompt removal of visible signs of overflow of garbage, smells emanating from enclosure, graffiti, pests, and vermin.
12. **Staging Construction Areas.** All staging areas shall be conducted on the subject property, subject to approval of the Engineering Department. Off-site staging areas, if any, shall be approved through the issuance of an off-site staging area permit/agreement.
13. **Disturbance Coordinator.** The Applicant shall designate and provide a point-of-contact whose responsibilities shall include overseeing the implementation of Project, compliance with Permit terms and conditions, and responding to neighborhood concerns.
14. **Construction Waste Reduction, Disposal, and Recycling.** Applicant shall recycle or salvage for reuse a minimum of 65% of the non-hazardous construction and demolition waste for residential projects or portions thereof in accordance with either Section 4.408.2, 4.408.3, or 4.408.4 of the California Green Building Standards Code; and/or for non-residential projects or portions thereof in accordance with either Section 5.408.1.1, 5.408.1.2, or 5.408.1.3 of the California Green Building Standards Code. In order to ensure compliance with the waste diversion goals for all residential and non-residential construction projects, the Applicant must submit appropriate documentation as described

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in Section 4.408.5 of the California Green Building Standards Code for residential projects or portions thereof, or Section 5.408.1.4 for non-residential projects or portions thereof, demonstrating compliance with the California Green Building Standards Code sections cited above.

15. **Construction Equipment Emissions.** Applicant shall incorporate measures that reduce construction and operational emissions. Prior to the City's issuance of the demolition and grading permits for the Project, the Applicant shall demonstrate to the satisfaction of the Planning Division that its construction contractor will use a construction fleet wherein all 50-horsepower or greater diesel-powered equipment is powered with California Air Resources Board ("CARB") certified Tier 4 Interim engines or equipment outfitted with CARB-verified diesel particulate filters. An exemption from this requirement may be granted if (i) the Applicant provides documentation demonstrating that equipment with Tier 4 Interim engines are not reasonably available, and (ii) functionally equivalent diesel PM emission totals can be achieved for the Project from other combinations of construction equipment. Before an exemption may be granted, the Applicant's construction contractor shall demonstrate to the satisfaction of the Director of Community Development that (i) at least two construction fleet owners/operators in San Diego County were contacted and those owners/operators confirmed Tier 4 Interim equipment could not be located within San Diego County during the desired construction schedule, and (ii) the proposed replacement equipment has been evaluated using the California Emissions Estimator Model ("CalEEMod") or other industry standard emission estimation method, and documentation provided to the Planning Division confirms that necessary Project-generated functional equivalencies in the diesel PM emissions level are achieved.
16. **Phasing.** A phasing plan shall be submitted for all projects which include more than one building. The phasing plan shall identify the order in which all on- and off-site improvements will be installed, including triggers for improvements resulting from mitigation measures placed on the project through the environmental review process or required for General Plan conformance. The plan shall also identify the order in which structures will be built and occupied, the location of construction fencing at each phase of construction, and any other means necessary to prevent conflicts between construction traffic and users of the occupied buildings. The phasing plan shall be approved by the City Planner, Building Official, City Engineer and Fire Marshal prior to the issuance of a grading permit for the project. The phasing plan shall not be modified without written consent from the City of Escondido.

### C. Parking and Loading/Unloading.

1. As shown on the site plan, a minimum of 58 surface parking spaces (which includes up to 20 tandem spaces) shall be provided at all times. Covered spaces are not required for this project as allowed per Density Bonus concessions/incentives. Said parking spaces

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provided by the applicant, and any additional parking spaces provided above the required, minimum amount, shall be dimensioned per City standards and be maintained in a clean, well-marked condition. The stripping shall be drawn on the plans or a note shall be included indicating double-stripping per City standards. Each set of tandem spaces shall be specifically designated to a single unit.

2. Prior to issuance of building permits, a parking management plan shall be submitted to the Planning Division for review and approval. Said plan shall address space assignment(s), gate hours (if left open), general maintenance, signage and striping, delivery and other short-term parking allowances/requirements, guest parking, and any other issues which affect the use and maintenance of the parking areas/spaces.
  3. Parking for disabled persons shall be provided (including "Van Accessible" spaces) in full compliance with the State Building Code.
  4. In accordance with the California Green Building Standard Code, at least eight (8%) percent of the total number of required spaces shall be designated for clean air vehicles (CAV), and shall be shown on the revised site plan to the satisfaction of the Planning and Building divisions.
  5. For multi-family residential and commercial (i.e. office and retail commercial) projects, at least 10 percent of the total parking spaces provided shall be for electric vehicles, and shall be shown on the revised site plan to the satisfaction of the Planning and Building Divisions.
  6. No contractor or employee may store, or permit to be stored, a commercial or construction vehicle/truck; or personal vehicle, truck, or other personal property on public-right-of-way or other public property without permission of the City Engineer.
  7. The gated access to the Project shall be electric. All residents shall be provided with remote access for entrance to the site. An electric/magnetic loop or other appropriate device shall be installed on the interior of the site so that the gate automatically opens for exiting vehicles. The final design of the gate shall be approved by the Fire Department and include appropriate Knox and opticon devices as may be required.
- D. Landscaping:** The property owner or management company assumes all responsibility for maintaining all on-site landscaping; any landscaping in the public right-of-way adjacent to the property, including potted plants; and any retaining and freestanding walls in a manner that satisfies the conditions contained herein.
1. Landscaped areas shall be maintained in a flourishing manner. Appropriate irrigation shall be provided for all landscape areas and be maintained in a fully operational condition.

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2. All existing planting and planter areas, including areas within the public right-of-way, shall be repaired and landscaping brought into compliance with current standards. All dead plant material shall be removed and replaced by the property owner or Management Company.
3. If at the time of planning final inspection that it is determined that sufficient screening is not provided, the Applicant shall be required to provide additional landscaping improvements to the satisfaction of the Planning Division.
4. The landscaped areas shall be free of all foreign matter, weeds and plant material not approved as part of the landscape plan.
5. Failure to maintain landscaping and the site in general may result in the setting of a public hearing to revoke or modify the Permit approval.
6. **Landscaping Plans.** Applicant shall install all required improvements including screening walls, retaining walls, storm improvements, and landscaping in substantial conformance to the planting and irrigation schedule as shown on the final Approved Plan set.
  - a. A final landscape and irrigation plan shall be submitted to the Engineering Services Division for review and approval, if meeting any of the criteria listed under Section 33-1323 of the Zoning Code and the Downtown Specific Plan. Five copies of detailed landscape and irrigation plans shall be submitted to the Engineering Services Department with the second submittal of the grading plan. The initial submittal of the landscape plans shall include the required plan check fees, paid in accordance with the prevailing fee schedule in effect at the time of submittal. Details of Project fencing and walls, including materials and colors, shall be provided on the landscape plans. (Building permits may also be required.) The landscape and irrigation plans shall be reviewed and approved by the Planning Division and Engineering Services Division prior to issuance of grading permits, and shall be equivalent or superior to the conceptual landscape plans included as part of the Approved Plan set, to the satisfaction of the Planning Division. The required landscape and irrigation plans(s) shall comply with the provisions, requirements and standards outlined in Article 62 (Landscape Standards) of the Escondido Zoning Code, except where stricter requirements are imposed by the State of California.
  - b. Screening walls, retaining walls, storm improvements, and landscaping (i.e. planting and irrigation) is to be provided prior to final occupancy.
  - c. The installation of the landscaping and irrigation shall be inspected by the Project landscape architect upon completion. He/she shall complete a Certificate of



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Landscape Compliance certifying that the installation is in substantial compliance with the approved landscape and irrigation plans and City standards. The Applicant shall submit the Certificate of Compliance to the Planning Division and request a final inspection.

- d. Any new freestanding walls and/or retaining walls shall incorporate decorative materials or finishes (stucco-finished, decorative/split-face blocks, etc.), and shall be indicated on the landscaping plans. (Building permits may also be required.) All freestanding walls visible from points beyond the Project site shall be treated with a protective sealant coating to facilitate graffiti removal. The sealant shall be a type satisfactory to the City Planner.
- e. New or retrofitted trash enclosures shall accommodate vertical climbing plants, vines with support trellis panels, clinging non-deciduous or fast-growing shrubbery that will screen the enclosures' wall surface. The City Planner shall find that the proposed landscaping design, material, or method provides approximate equivalence to the specific requirements of this condition or is otherwise satisfactory and complies with the intent of these provisions.
- f. Any landscaping that is damaged or destroyed as a result of the Project shall be repaired and/or replaced, to the satisfaction of the Planning Division.
- g. Any trees removed as part of the Project shall be replaced elsewhere on the Project site, and shall be shown on the revised site plan.
- h. Appropriate screening landscaping shall be required around any transformers and shall be shown on the site plan and to the satisfaction of the Planning Division.
- i. Landscaping within the street/public right-of-way shall be installed and maintained by the adjacent property owner.

#### **E. Specific Planning Division Conditions:**

- 1. No utilities shall be released for any purpose or Certificate of Occupancy issued until all requirements of the Planning and Building Divisions, Fire Department and Engineering Services Division have been completed.
- 2. Building plans, prepared by a licensed design professional, must be submitted for the Project and must comply with the building and fire codes in effect at the time of building plan submittal.
- 3. The plans submitted for building permit shall include notes or details containing the necessary work involved in complying with these Project conditions.

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4. 5 residential units shall be deed restricted to households qualifying as very-low income rents per state policy.
5. The screening of roof-mounted, ground-mounted, or wall-mounted mechanical equipment and devices is required in accordance with Section 33-1085 of the Escondido Zoning Code.
6. The building, architecture, colors and materials, and conceptual landscaping shall be in substantial conformance with the Plot Plan exhibits attached as Exhibit "D" and on-file with the Planning Division, except as modified by these conditions of approval. Minor modifications may be approved by the City Planner. Major modification will require a modification to the Plot Plan in accordance with Article 61. The final design of the western screen wall, pedestrian entry gate/trellis, street frontage landscape design, vehicular access gate and western building elevation and stairs shall be approved by the Planning Division prior to the submittal of grading and building plans for the Project.
7. Permitted animals/pets shall be allowed in conformance with those identified in the Escondido Zoning Code for R-4 zoned properties (pursuant to Article 57), unless more restrictive standards are applied by the property owner.
8. Balconies and patios shall be kept in a neat and orderly manner. Items stored on balconies should be kept out of view or properly screened. Items shall not be hung over, across or on balconies or patios (such a towels, clothing, etc.).

#### **F. Housing and Neighborhood Services Conditions:**

1. The Project shall provide a minimum of 5 dwelling units for very-low income households (those earning less than 50 percent of the Area Median Income for the San Diego-Carlsbad-San Marcos MSA). Prior to issuance of a building permit, the developer shall sign a binding affordable housing agreement with the City, which will set forth the conditions and guidelines to be met in the implementation of Density Bonus Law requirements and any other applicable requirements (Within the affordable housing agreement, the developer will be responsible for annual recertification of household income qualifications and compliance with rent limits). The agreement will also establish specific compliance standards and remedies available to the City upon failure by the developer to restrict units to target households for the prescribed time period (55 years for all target units as described in Government Code section 65915(c)). Income qualified households will be monitored by the City of Escondido Housing and Neighborhood Services Division for the duration of the affordability period. Monitoring fees will be applied per the affordable housing agreement.
2. All affordability agreements shall run with the land and be binding on the applicant and its heirs, transferees, assigns, successors, administrators, executors, and other representatives, and recorded on the applicable property for the requisite period of time.

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**G. General Building Division Conditions:** Building plans must be submitted for the Project. These comments are preliminary only. A comprehensive plan check will be completed prior to permit issuance and additional technical code requirements may be identified and changes to the originally submitted plans may be required.

1. The applicant shall submit a complete set of construction plans to the Development Services Department for building permit plan check processing. The submittal shall include a Soils/Geotechnical Report, structural calculations, and State Energy compliance documentation (Title 24). Construction plans shall include a site plan, a foundation plan, floor and roof framing plans, floor plan(s), section details, exterior elevations, and materials specifications. Submitted plans must show compliance with the latest adopted editions of the California Building Code (The International Building Code with California Amendments, the California Mechanical, Electrical and Plumbing Codes). Commercial and Multi-residential construction must also contain details and notes to show compliance with State disabled accessibility mandates. These comments are preliminary only. A comprehensive plan check will be completed prior to permit issuance, additional technical code requirements may be identified, and changes to the originally submitted plans may be required.

**H. General Fire Division Conditions:**

1. Fire underground line, fire sprinkler, and fire alarm plans shall be a deferred submittal to the Escondido Fire Department. An approved paved access and adequate water supply shall be provided prior to any combustible being brought to the site. FDC and hydrant placement shall be approved by the Escondido Fire Department.

**I. General Engineering Division Conditions:**

1. The applicant shall provide the City Engineer with a Title Report covering subject property.
2. The location of all existing on-site and adjacent utilities and storm drain facilities shall be determined by the Developer's engineer. If a conflict occurs with the proposed Project or improvements, arrangements for relocation of the conflicting utilities/facilities shall be made with the owner of the utility/facility prior to approval of the Grading Plans. This utility/facility relocation work shall be completed prior to issuance of Building Permits.
3. Improvement plans prepared by a Civil Engineer, required for all public street, utility, and storm drain improvements, and Grading/Private Improvement plans prepared by Civil Engineer, required for all grading, drainage and private onsite improvement design, shall be submitted for review through the City's virtual plan review portal as a single package containing all items on the Engineering Initial Submittal Checklists. Landscaping Plans shall be prepared by a Landscape Architect.
4. The Developer shall post securities in accordance with the City prepared Bond and Fee Letter based on a final Engineer's Estimate of Grading and Improvements Cost prepared by the project engineer. The Developer is required to provide a Cash Clean Up deposit for all grading, landscaping, private Improvements and onsite drainage improvements prior to approval of Grading Plans and issuance of Grading Permit. This Cash Clean Up Deposit

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amount shall be 10 percent of the total cost of the Project private improvements, drainage and landscaping. The Developer is required to provide Performance (100 percent of total public improvement cost estimate), Labor and Material (50 percent of total public improvement cost estimate) and Guarantee and Warranty (10 percent of total public improvement cost estimate) bonds for all public improvements prior to approval of the Improvement Plans and issuance of Building Permits. All improvements shall be completed prior to issuance of a Certificate of Occupancy.

5. As surety for the construction of required off-site and/or on-site improvements, bonds and agreements in a form acceptable to the City Attorney shall be posted by the Developer with the City of Escondido prior to the approval of any Grading Plan, Improvement Plan, or Building Permit.
6. If site conditions change adjacent to the proposed development prior to completion of the Project, the developer will be responsible to modify the improvements to accommodate these changes. The determination and extent of the modification shall be to the satisfaction of the City Engineer.
7. All public improvements shall be constructed in a manner that does not damage existing public improvements. Any damage shall be determined by and corrected to the satisfaction of the City Engineer.

#### **Street Improvements and Traffic**

1. The project's access drive shall be constructed as an alley-type driveway apron with a minimum throat width of 24-feet and a driveway apron with a 4-foot minimum ADA path of travel maintained near the R/W line to the satisfaction of the City Engineer.
2. All on-site driveways, and parking areas will be private. Typical sections and design details shall be to the satisfaction of the City Engineer and Community Development Director.
3. All unused driveways shall be removed and replaced with full height curb and gutter and sidewalk in accordance with City standards.
4. The Developer shall be responsible for an overlay of South Escondido Blvd. due to the many utility trenches necessary to serve this project. The determination of the extent of the overlay shall be to the satisfaction of the City Engineer.
5. The Developer shall remove and replace all damaged sidewalk, curb and gutter, along all project frontages to the satisfaction of the City Engineer prior to issuance of a Certificate of Occupancy.
6. The Developer's engineer shall prepare and submit for approval by the City Engineer a complete final Signing and Striping plan for all improved and modified roadways. The Developer will be responsible for removal of all existing and the construction of all new signing and striping in compliance with the current CA MUTCD standards and to the satisfaction of the City Engineer.

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7. The Developer shall repaint all pavement striping and markings adjacent to the project that have been damaged and prematurely faded due to project construction traffic to the satisfaction of the City Engineer.
8. Adequate horizontal sight distance shall be provided at all driveways. Increased parkway widths, open space easements, and restrictions on landscaping may be required at the discretion of the City Engineer.
9. Pedestrian access routes meeting current ADA requirements shall be provided into the project to the satisfaction of the City Engineer and City Building Official.
10. All gated entrances shall be approved by the City Engineer, Building Official, and the Fire Marshal.
11. The Developer will be required to provide a detailed detour and traffic control plan, for all construction and staging activities, and any requested materials placement within existing rights-of-way to the satisfaction of the City Engineer. This plan shall include any proposed sidewalk closures and provide for alternate pedestrian access around the project site. This plan shall be approved prior to the issuance of an Encroachment Permit for construction or other project activities within the public right-of-way.
12. The Developer shall install trash capture devices on existing storm drain inlets along the project's frontage to the satisfaction of the City Engineer.
13. The installation of all utilities and facilities (green street tree wells, fire hydrant, transformers, etc.) shall be constructed at the ultimate location and to the satisfaction of the City Engineer.

### **Grading and Site Improvements**

1. A site grading and erosion control plan prepared by a registered Civil Engineer shall be approved by the Engineering Department prior to issuance of building permits. The first submittal of the grading plan shall be accompanied with a copy of the preliminary soils and geotechnical report. The Soils Engineer will be required to indicate in the soils report that he/she has reviewed the grading design and found it to be in conformance with his/her recommendations.
2. All private driveways and parking areas shall be paved with a minimum of 3-inch asphalt concrete (AC) over 6-inch of asphalt Base (AB) or 7-inch Portland Concrete Cement (PCC) over 6-inch AB. All paved areas exceeding 15 percent slope or less than 1.0 percent shall be paved with PCC.
3. Any proposed retaining walls not a part of the building foundations or stem walls shall be shown on and permitted as part of the site grading plan. Profiles and structural details shall be shown on the site grading plan and the Soils Engineer shall state on the plans that the proposed retaining wall design is in conformance with the recommendations and specifications as outlined in the Geotechnical report. Structural calculations shall be submitted for review by a Consulting Engineer for all walls not covered by Regional or City Standard Drawings. Stem walls, foundation structures, or deepened footings that are to be

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constructed as part of a building structure will be permitted as part of the Building Dept. plan review and permit process.

4. The Developer will be required to obtain permission from adjoining property owners for any off-site grading or work necessary to construct the project and/or the required improvements.
5. Erosion control, including riprap, interim slope planting, sandbags, or other erosion control measures shall be provided to control sediment and silt from the project. The Developer shall be responsible for maintaining all erosion control facilities throughout the project.
6. The Developer shall be responsible for the recycling of all excavated materials designated as Industrial Recyclables (soil, asphalt, sand, concrete, land clearing brush and rock) at a recycling center or other location(s) approved by the City Engineer.
7. A Construction General Permit is required from the State Water Resources Control Board for all storm water discharges associated with a construction activity where clearing, grading, and excavation results in a land disturbance of one or more acres.
8. All existing foundations, structures, trees not otherwise noted to remain or be relocated shall be removed or demolished from the site.
9. All driveway grades shall conform to current Escondido Design Standards and Escondido Standard Drawings.

### **Drainage**

1. Final on-site and off-site storm drain improvements shall be determined to the satisfaction of the City Engineer and shall be based on a drainage study to be prepared by the Engineer of Work. The drainage study shall be in conformance with the City of Escondido Design Standards.
2. All on-site storm drains not in public easements are private. The responsibility for maintenance of these storm drains shall be that of the property owner.
3. The Project shall limit drainage flows to their pre-construction rates. Details and calculations for the detention basin or on-site storage shall be submitted and approved as part of the grading plan check.
4. A Storm Water Quality Management Plan (SWQMP) in compliance with the City's latest adopted Storm Water Design Manual shall be prepared for all newly created or replaced onsite impervious areas, impervious frontage, and required offsite improvements. The SWQMP shall be submitted for approval with the final improvement and grading plans. The SWQMP shall include treatment calculations, post-construction storm water treatment measures, and maintenance requirements and responsibilities both for onsite treatment and also any "Green Street" facilities located in the public right-of-way. The SWQMP shall demonstrate how proposed proprietary best management practices meet bio-filtration treatment requirements in accordance with the City's Storm Water Design Manual.

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5. All site drainage with emphasis on the roadway, parking, and driveway areas shall be treated to remove expected contaminants using a high efficiency non-mechanical method of treatment. The City highly encourages the use of bio-retention areas as the primary method of storm water retention and treatment. The landscape plans will need to reflect these areas of storm water treatment.
6. The Developer will be required to have the current owner of the property sign, notarize, and record a Storm Water Control Facility Maintenance Agreement.
7. All storm water treatment and retention facilities and their drains including the bio-retention basins and planters, any permeable paver areas shall be considered private. The responsibility for maintenance of these post construction storm water treatment facilities shall be that of the property owner.
8. The Developer's engineer shall design and the Developer shall construct any permeable surfaces proposed for the Project to the specifications of the County of San Diego Green Streets manual in effect at the time the grading permits are issued. All permeable surfaces within the Project footprint that are subject to vehicular traffic shall be designed for H20 loading.
9. The project owner shall perpetually maintain all permeable surfaces in accordance to the standards established by the County of San Diego Green Streets manual in effect at the time the grading permits are issued. City shall have the right to inspect all permeable surfaces as needed to ensure they function as designed. City shall have the right to require qualified third-party testing at the property owner's expense when surface failure is suspected. Contractor qualifications are outlined in the County of SD Green Streets manual. The project owner will be required to repair or reinstall the permeable surface for all failing surfaces to County of SD Green Streets manual standards in place at the time of the grading permit. In the event of failure to maintain the permeable pavers system that result in not functioning as designed, the project owner will be responsible to replace the pervious pavers system with an alternate method of storm water treatment system or will be required to transition the project to a priority storm water development project by complying with the applicable requirements, including development of a Storm Water Quality Management Plan and the installation of structural best management practices.

### **Water Supply**

1. All water main locations and sizing shall be to the satisfaction of the City Engineer and Utilities Engineer. The developer is required at their sole expense to design and construct an 8-inch waterline extension in the driveway. The water main extension shall connect to the existing 12-inch AC water main located in S. Escondido Blvd. Construction of the water main and related appurtenances shall be in accordance with the Standards and Specifications of the City of Escondido. A minimum 20-foot public utility easement shall be provided for all proposed water mains. There shall be no permanent structures located within the public utility easement.
2. All water services, detector check assemblies, and other water appurtenances shall be designed and installed at locations required and approved by the Director of Utilities. All new

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water main locations and sizing shall be to the satisfaction of the City Engineer and, in accordance with the current City of Escondido Design Standards and Standard Drawings and to the satisfaction of the Utilities Engineer.

3. Fire hydrants and/or fire protection together with an adequate water supply shall be installed at locations approved by the Fire Marshal. On-site fire hydrants located by the Fire Marshal may require water main looping.
4. A fire suppression sprinkler system shall be designed and constructed per current City of Escondido Design Standards and Standard Drawings and per the requirements of the Fire Marshal.
5. Water meters and back flow prevention devices shall not be installed within a driveway apron or private drive areas.
6. A minimum 1-inch water meter, 1-inch water service and backflow prevention device shall be required for domestic water supply per City of Escondido Design Standards and Standard Drawings. All on-site water lines and backflow prevention devices not in public easements or the City's Right of Way shall be considered a private water system. The Property Owner will be solely responsible for all maintenance of these water lines and facilities.
7. The Developer shall disconnect at the public main, all water services and fire hydrant laterals to be abandoned, to the satisfaction of the Utilities Engineer and Water Distribution Department.
8. Any water meter and fire hydrant services to be replaced, reconnected or relocated as a part of this project shall be replaced in entirety from the public water main to the public water meter and/or fire hydrant per the satisfaction of the Utilities Engineer and Water Distribution.
9. There shall be no permanent structures located within the City's Public Utilities Easements.
10. No trees or deep-rooted plants shall be planted within 10-feet of any water service.

### **Sewer**

1. A private 6-inch minimum (PVC) sewer lateral with a standard clean-out within 18-inches of the Public Utilities Easement or right-of-way shall be constructed for the project and shown on the Improvement and Grading plans. Sewer laterals less than 8-inches in diameter shall connect to the sewer main with a wye fitting or Inserta-Tee. 8-inches in diameter sewer laterals shall be connected to the public sewer at a manhole.
2. All sewer laterals shall be constructed per current City of Escondido Design Standards and Standard Drawings and per the current Uniform Plumbing Code.
3. No trees or deep-rooted bushes shall be planted within 15-feet of any sewer main or within 10-feet of any sewer lateral. Sewer laterals shall be 5-feet horizontally clear from other utilities.



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4. All abandoned sewer laterals shall be removed or capped at the property line and so noted on the improvement plans to the satisfaction of the Utilities Engineer.
5. All sewer lateral(s) and grease traps shall be considered a private sewer system. The Property Owner will be responsible for all maintenance of the sewer lateral(s) and system to the sewer main.

### **Landscape**

1. A site landscaping and irrigation plan shall be submitted to the Engineering Department with the second submittal of the grading plan for review and approval by Engineering Services Division and Planning Division. The initial submittal of the landscape plans shall include the required plan check fees.

### **Easement and Dedications**

1. All easements, both private and public, affecting subject property shall be shown and delineated on the Grading and Improvement Plans.
2. Public waterline easements for water which are deemed necessary by the City Engineer shall be granted to the City. The initial submittal of the plat and legal shall include the required Public Waterline Easement fee in effect at the time of the submittal.
3. The Developer is responsible for making the arrangements quitclaim all easements of record which conflict with the proposed development prior to approval of the Grading plans and Building Permits. If an easement of record contains an existing utility that must remain in service, proof of arrangements to quitclaim the easement once new utilities are constructed must be submitted to the City Engineer prior to approval of the Grading plans and Building Permits. Building permits will not be issued for lots in which construction will conflict with existing easements or utilities, nor will any securities be released until the existing easements are quitclaimed.

*Material necessary for processing a dedication or easement shall include: a current grant deed or title report, a legal description and plat of the dedication or easement signed and sealed by a person authorized to practice land surveying (document size) and traverse closure tapes. The City will prepare all final public documents. The initial submittal of the plat and legal shall include the required Dedication fee in effect at the time of the submittal.*

### **Citywide Community Facilities District (CFD)**

1. In accordance with the General Plan, the applicant shall offset the cost of public services through an approved funding mechanism. The applicant has indicated their intent to meet this requirement through annexation to the Citywide Community Facilities District (CFD). The applicant shall submit a complete Annexation Application, Unanimous Approval signed by the property owner, a title report issued within the last 30-days, and processing fees to the Engineering Department prior to the first submittal of the Building Permit. The Annexation

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Application and the Unanimous Approval forms are available on the following webpage:  
<https://www.escondido.org/community-facilities-districts>

### **Fees**

1. A cash security shall be posted to pay any costs incurred by the City to clean-up eroded soils and debris, repair damage to public or private property and improvements, install new BMPs, and stabilize and/or close-up a non-responsive or abandoned project. Any moneys used by the City for cleanup or damage will be drawn from this security and the grading permit will be revoked by written notice to the developer until the required cash security is replaced. The cleanup cash security shall be released upon final acceptance of the grading and improvements for this project. The amount of the cash security shall be 10% of the total estimated cost of the grading, drainage, landscaping, and best management practices items of work with a minimum of \$5,000 up to a maximum of \$50,000, unless a higher amount is deemed necessary by the City Engineer.
2. The developer shall be required to pay all development fees of the City then in effect at the time, and in such amounts as may prevail when building permits are issued.

### **Utility and Undergrounding and Relocation**

1. The Developer shall sign a written agreement stating that he has made all such arrangements as may be necessary to coordinate and provide utility construction, relocation and undergrounding. All new utilities shall be constructed underground.

### **Surveying and Monumentation**

1. All property corners shall be monumented by a person authorized to practice land surveying and a Record of Survey (or Corner Record if appropriate) shall be recorded.

PROJECT TEAM:	PROPERTY INFO:	DEVELOPMENT SUMMARY:	DEFERRED SUBMITTALS	GENERAL NOTES:
<b>OWNER/APPLICANT:</b> SPINZONE EQUITY PARTNERS, LLC 1600 S. ESCONDIDO BLVD ESCONDIDO, CA 92025 <b>ASSessor's PARCEL NO. (APN):</b> 236-460-15-00 <b>LOT AREA:</b> 46,557 sf (1.07-acre) GROSS/NET <b>LEGAL DESCRIPTION:</b> 303 SAN ELIO AVE #43 55097 ATTN: SCOTT MAAS, ARCHITECT scott@spinzone.com (858) 337-5509 <b>PRELIMINARY:</b> 2033 SAN ELIO AVE #43 55097 ATTN: SCOTT MAAS, ARCHITECT scott@spinzone.com (858) 752-9212 <b>CIVIL ENGINEER:</b> M&E ENGINEERING 1761 MISSION CENTER CT, SUITE 100 ESCONDIDO, CA 92026 (619) 296-5555 <b>STRUCTURAL ENGINEERING:</b> 4403 MANCHESTER AVE #203 ENCINITAS, CA 92024 (760) 652-9257 <b>LANDSCAPE ARCHITECT:</b> NIER LANDSCAPE ARCHITECTURE 555 HORNBLAND SUITE #3 SAN DIEGO, CA 92105 (619) 354-0701 <b>MECHANICAL &amp; PLUMBING ENGINEER:</b> HKS ENGINEERING 1810 GILLESPIE WAY, SUITE 207 EL CAJON, CA 92020 (619) 750-2757 <b>DRY UTILITIES:</b> ENGINEERING PARTNERS INC. 1000 MARSH CREEK DRIVE, SUITE 200 SAN DIEGO, CA 92121 <b>GEOTECHNICAL ENGINEER/SEALER ENGINEERING:</b> 3888 HOME AVENUE SAN DIEGO, CA 92105 (619) 550-1741	<b>SITE ADDRESS:</b> 1600 S. ESCONDIDO BLVD ESCONDIDO, CA 92025 <b>ASSessor's PARCEL NO. (APN):</b> 236-460-15-00 <b>LOT AREA:</b> 46,557 sf (1.07-acre) GROSS/NET <b>LEGAL DESCRIPTION:</b> 303 SAN ELIO AVE #43 55097 ATTN: SCOTT MAAS, ARCHITECT scott@spinzone.com (858) 752-9212 <b>ZONE:</b> S-P <b>OVERLAY ZONES:</b> ESCONDIDO MIXED-USE OVERLAY <b>REQUIRED ENLIGHTENMENTS:</b> PLOT PLAN REVIEW DENSITY BONUS APPLICATION	<b>PROJECT DESCRIPTION:</b> CONSTRUCTION OF 48-UNIT APARTMENT BUILDING CONSISTING OF TWO 3-STORY BUILDINGS, 50' x SURFACE PARKING LOT, AND 50' x SURFACE LOT. THIS PROJECT INCLUDES AN APPLICATION FOR DENSITY BONUS. <b>EXISTING LAND USE:</b> COMMERCIAL/RETAIL <b>PROPOSED LAND USE:</b> RESIDENTIAL <b>BUILDING HEIGHTS/STORIES:</b> ALLOWABLE: 45' <b>SETBACKS:</b> FRONT: 12' FROM ULTIMATE CURB LINE OR 5' FROM 3RD STREET SIDE: 5' STEP BACK AT 3RD STORY AND ABOVE REAR: 5' STEP BACK AT 3RD STORY AND ABOVE <b>DENSITY CALCULATION:</b> 30 x 1.07 = 32.1, ROUND UP TO 33 15% VERY LOW INCOME** 15 x 3.3 = 49.5, ROUND UP TO 50 50 UNITS TOTAL ALLOWED INCLUDING 5 VERY LOW INCOME 48 UNITS PROPOSED (INCLUDING 5 VERY LOW INCOME) **REFER TO DENSITY BONUS APPLICATION **ALLOWS FOR 3 INCENTIVES REQUESTED DEVELOPMENT INCENTIVES & WAIVERS OF DEVELOPMENT STANDARDS: DEVELOPMENT INCENTIVES: 1. RESERVED 2. RESERVED 3. RESERVED 4. RESERVED <b>STANDARDS:</b> 1. REDUCE COMMON OPEN SPACE 2. REDUCE STORAGE REQUIREMENTS 3. REDUCE PARKING REQUIREMENTS TO 0.5 4. NO 3RD FLOOR STEP BACK AT REAR YARD <b>AREA CALCULATIONS:</b> EXISTING COMMERCIAL BUILDING AREA: 5,599 sf PROPOSED FLOOR AREA: 39,334 sf REFER TO SHEET A202 FOR DETAILED AREA CALCULATIONS <b>FLOOR AREA RATIO:</b> N/A <b>BUILDING LOT COVERAGE:</b> N/A <b>OCCUPANCY GROUP:</b> R-2 RESIDENTIAL <b>PROPOSED CONSTRUCTION TYPE:</b> TYPE V-A, WOOD FRAMED <b>FIRE SPRINKLER:</b> NFPA 13	<b>PARKING ANALYSIS:</b> REQUIRED PARKING SPACES: AFFORDABLE HOUSING: PER 33-1415 (MAY BE TANKER OR UNCOVERED) 1 SPACE PER UNIT ONE-BEDROOM: 15 x 1 = 15 TWO-BEDROOM: 30 x 1 = 30 TOTAL: 48 SPACES TOTAL PROVIDED: 58 SPACES (INCLUDING 10 TANKER WHICH WILL BE ASSIGNED TO 2-BEDROOM UNITS) <b>BIKE PARKING:</b> 10% x 58 = 6 SPACES BICYCLE PARKING: GREATER THAN 30 UNITS 23 x 4.8 = 112 12 BICYCLE SPACES PROVIDED <b>TRIP GENERATION:</b> PROPOSED: APARTMENT: 388 ADT EXISTING: STANDARD COMMERCIAL OFFICE: 111.8 ADT TOTAL NEW TRIP: 176.2 ADT **REFER TO TRIP GENERATION TABLE	<b>GENERAL NOTES:</b> 1. THESE PLANS AND ALL WORK SHALL COMPLY WITH THE CITY OF ESCONDIDO MUNICIPAL CODE, CALIFORNIA TITLE 24, CODE AS AMENDED AND ADOPTED BY THE CITY OF ESCONDIDO. 2. THESE PLANS SHALL COMPLY WITH THE CITY OF ESCONDIDO MUNICIPAL CODE. 3. APPLICABLE BUILDING CODE: 2019 California Building Code, Title 24, Part 1 2019 California Mechanical Code, Title 24, Part 2 2019 California Electrical Code, Title 24, Part 3 2019 California Fire Code, Title 24, Part 4 2019 California Plumbing Code, Title 24, Part 5 2019 California Energy Code, Title 24, Part 6 2019 California Fire Code, Title 24, Part 7 2019 California Fire Code, Title 24, Part 8 2019 California Fire Code, Title 24, Part 9 2019 California Fire Code, Title 24, Part 10 2019 California Fire Code, Title 24, Part 11 2019 California Fire Code, Title 24, Part 12 2019 California Fire Code, Title 24, Part 13 2019 California Fire Code, Title 24, Part 14 2019 California Fire Code, Title 24, Part 15 2019 California Fire Code, Title 24, Part 16 2019 California Fire Code, Title 24, Part 17 2019 California Fire Code, Title 24, Part 18 2019 California Fire Code, Title 24, Part 19 2019 California Fire Code, Title 24, Part 20 2019 California Fire Code, Title 24, Part 21 2019 California Fire Code, Title 24, Part 22 2019 California Fire Code, Title 24, Part 23 2019 California Fire Code, Title 24, Part 24 2019 California Fire Code, Title 24, Part 25 2019 California Fire Code, Title 24, Part 26 2019 California Fire Code, Title 24, Part 27 2019 California Fire Code, Title 24, Part 28 2019 California Fire Code, Title 24, Part 29 2019 California Fire Code, Title 24, Part 30 2019 California Fire Code, Title 24, Part 31 2019 California Fire Code, Title 24, Part 32 2019 California Fire Code, Title 24, Part 33 2019 California Fire Code, Title 24, Part 34 2019 California Fire Code, Title 24, Part 35 2019 California Fire Code, Title 24, Part 36 2019 California Fire Code, Title 24, Part 37 2019 California Fire Code, Title 24, Part 38 2019 California Fire Code, Title 24, Part 39 2019 California Fire Code, Title 24, Part 40 2019 California Fire Code, Title 24, Part 41 2019 California Fire Code, Title 24, Part 42 2019 California Fire Code, Title 24, Part 43 2019 California Fire Code, Title 24, Part 44 2019 California Fire Code, Title 24, Part 45 2019 California Fire Code, Title 24, Part 46 2019 California Fire Code, Title 24, Part 47 2019 California Fire Code, Title 24, Part 48 2019 California Fire Code, Title 24, Part 49 2019 California Fire Code, Title 24, Part 50 2019 California Fire Code, Title 24, Part 51 2019 California Fire Code, Title 24, Part 52 2019 California Fire Code, Title 24, Part 53 2019 California Fire Code, Title 24, Part 54 2019 California Fire Code, Title 24, Part 55 2019 California Fire Code, Title 24, Part 56 2019 California Fire Code, Title 24, Part 57 2019 California Fire Code, Title 24, Part 58 2019 California Fire Code, Title 24, Part 59 2019 California Fire Code, Title 24, Part 60 2019 California Fire Code, Title 24, Part 61 2019 California Fire Code, Title 24, Part 62 2019 California Fire Code, Title 24, Part 63 2019 California Fire Code, Title 24, Part 64 2019 California Fire Code, Title 24, Part 65 2019 California Fire Code, Title 24, Part 66 2019 California Fire Code, Title 24, Part 67 2019 California Fire Code, Title 24, Part 68 2019 California Fire Code, Title 24, Part 69 2019 California Fire Code, Title 24, Part 70 2019 California Fire Code, Title 24, Part 71 2019 California Fire Code, Title 24, Part 72 2019 California Fire Code, Title 24, Part 73 2019 California Fire Code, Title 24, Part 74 2019 California Fire Code, Title 24, Part 75 2019 California Fire Code, Title 24, Part 76 2019 California Fire Code, Title 24, Part 77 2019 California Fire Code, Title 24, Part 78 2019 California Fire Code, Title 24, Part 79 2019 California Fire Code, Title 24, Part 80 2019 California Fire Code, Title 24, Part 81 2019 California Fire Code, Title 24, Part 82 2019 California Fire Code, Title 24, Part 83 2019 California Fire Code, Title 24, Part 84 2019 California Fire Code, Title 24, Part 85 2019 California Fire Code, Title 24, Part 86 2019 California Fire Code, Title 24, Part 87 2019 California Fire Code, Title 24, Part 88 2019 California Fire Code, Title 24, Part 89 2019 California Fire Code, Title 24, Part 90 2019 California Fire Code, Title 24, Part 91 2019 California Fire Code, Title 24, Part 92 2019 California Fire Code, Title 24, Part 93 2019 California Fire Code, Title 24, Part 94 2019 California Fire Code, Title 24, Part 95 2019 California Fire Code, Title 24, Part 96 2019 California Fire Code, Title 24, Part 97 2019 California Fire Code, Title 24, Part 98 2019 California Fire Code, Title 24, Part 99 2019 California Fire Code, Title 24, Part 100

SCALE: 1/32"=1'-0"







**SOUTH ESCONDIDO Apartments**  
19527 RIVERVIEW, FPO BOX 10010, SAN JOSE, CA 95110  
City of Escondido Project ID: P1425-2012

**SPRINGTOWN EQUITY PARTNERS, LLC**  
19527 RIVERVIEW, FPO BOX 10010, SAN JOSE, CA 95110  
City of Escondido Project ID: P1425-2012

**ARCHITECTS:**  
JAMES H. HARRIS ARCHITECTS  
3000 UNIVERSITY AVENUE, SUITE 100  
SAN JOSE, CA 95128  
TEL: (408) 298-5544  
FAX: (408) 298-5544  
WWW.JHHARCHITECTS.COM

**STRUCTURAL ENGINEER:**  
JAMES H. HARRIS ARCHITECTS  
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SAN JOSE, CA 95128  
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**MECHANICAL ENGINEER:**  
JAMES H. HARRIS ARCHITECTS  
3000 UNIVERSITY AVENUE, SUITE 100  
SAN JOSE, CA 95128  
TEL: (408) 298-5544  
FAX: (408) 298-5544  
WWW.JHHARCHITECTS.COM

**ELECTRICAL ENGINEER:**  
JAMES H. HARRIS ARCHITECTS  
3000 UNIVERSITY AVENUE, SUITE 100  
SAN JOSE, CA 95128  
TEL: (408) 298-5544  
FAX: (408) 298-5544  
WWW.JHHARCHITECTS.COM

**LANDSCAPE ARCHITECT:**  
JAMES H. HARRIS ARCHITECTS  
3000 UNIVERSITY AVENUE, SUITE 100  
SAN JOSE, CA 95128  
TEL: (408) 298-5544  
FAX: (408) 298-5544  
WWW.JHHARCHITECTS.COM

**PLANNING ENGINEER:**  
JAMES H. HARRIS ARCHITECTS  
3000 UNIVERSITY AVENUE, SUITE 100  
SAN JOSE, CA 95128  
TEL: (408) 298-5544  
FAX: (408) 298-5544  
WWW.JHHARCHITECTS.COM

**ENVIRONMENTAL ENGINEER:**  
JAMES H. HARRIS ARCHITECTS  
3000 UNIVERSITY AVENUE, SUITE 100  
SAN JOSE, CA 95128  
TEL: (408) 298-5544  
FAX: (408) 298-5544  
WWW.JHHARCHITECTS.COM

**SOILS ENGINEER:**  
JAMES H. HARRIS ARCHITECTS  
3000 UNIVERSITY AVENUE, SUITE 100  
SAN JOSE, CA 95128  
TEL: (408) 298-5544  
FAX: (408) 298-5544  
WWW.JHHARCHITECTS.COM

**WATER ENGINEER:**  
JAMES H. HARRIS ARCHITECTS  
3000 UNIVERSITY AVENUE, SUITE 100  
SAN JOSE, CA 95128  
TEL: (408) 298-5544  
FAX: (408) 298-5544  
WWW.JHHARCHITECTS.COM

**SEWER ENGINEER:**  
JAMES H. HARRIS ARCHITECTS  
3000 UNIVERSITY AVENUE, SUITE 100  
SAN JOSE, CA 95128  
TEL: (408) 298-5544  
FAX: (408) 298-5544  
WWW.JHHARCHITECTS.COM

**TRANSPORTATION ENGINEER:**  
JAMES H. HARRIS ARCHITECTS  
3000 UNIVERSITY AVENUE, SUITE 100  
SAN JOSE, CA 95128  
TEL: (408) 298-5544  
FAX: (408) 298-5544  
WWW.JHHARCHITECTS.COM

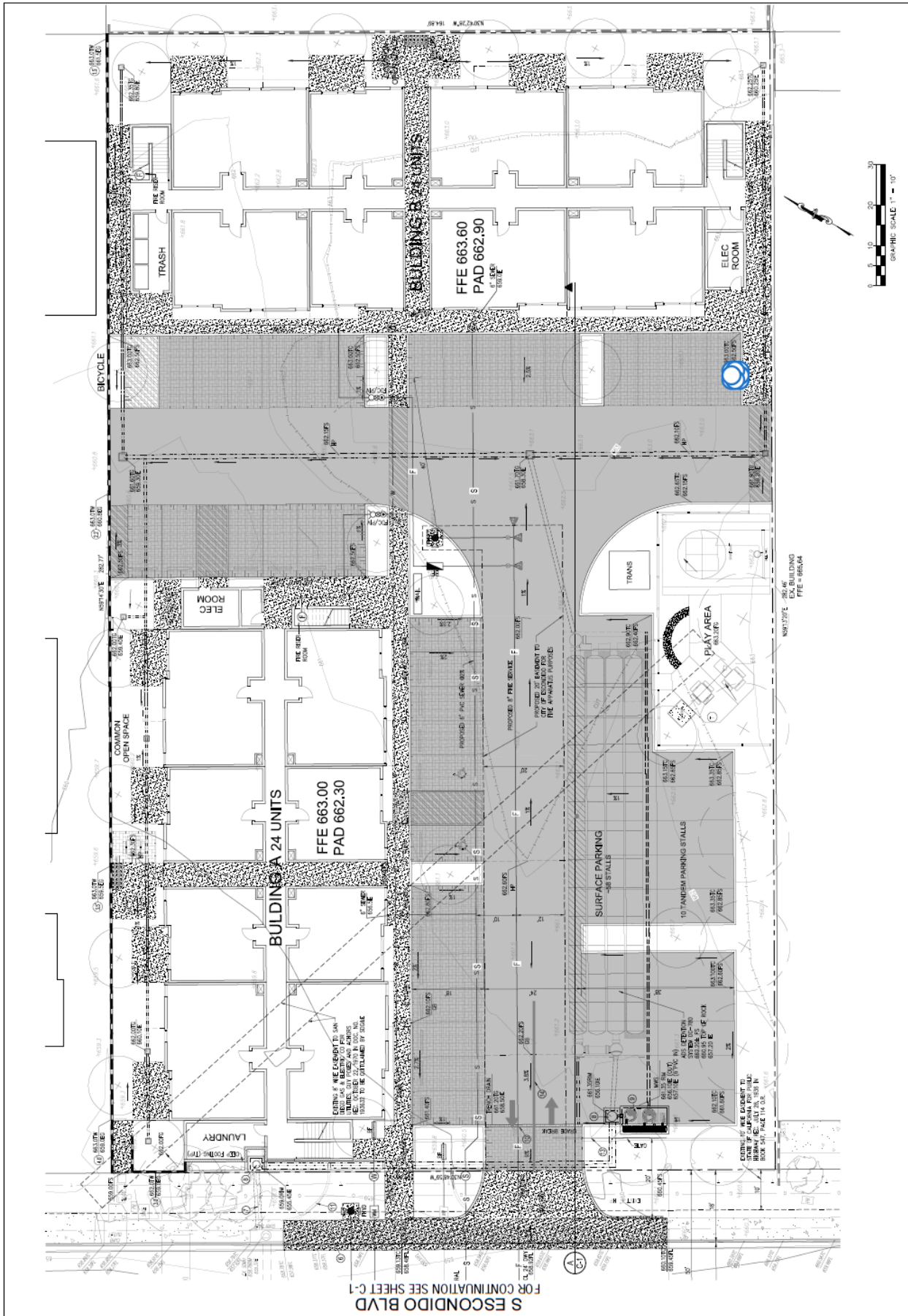
**TRAFFIC ENGINEER:**  
JAMES H. HARRIS ARCHITECTS  
3000 UNIVERSITY AVENUE, SUITE 100  
SAN JOSE, CA 95128  
TEL: (408) 298-5544  
FAX: (408) 298-5544  
WWW.JHHARCHITECTS.COM

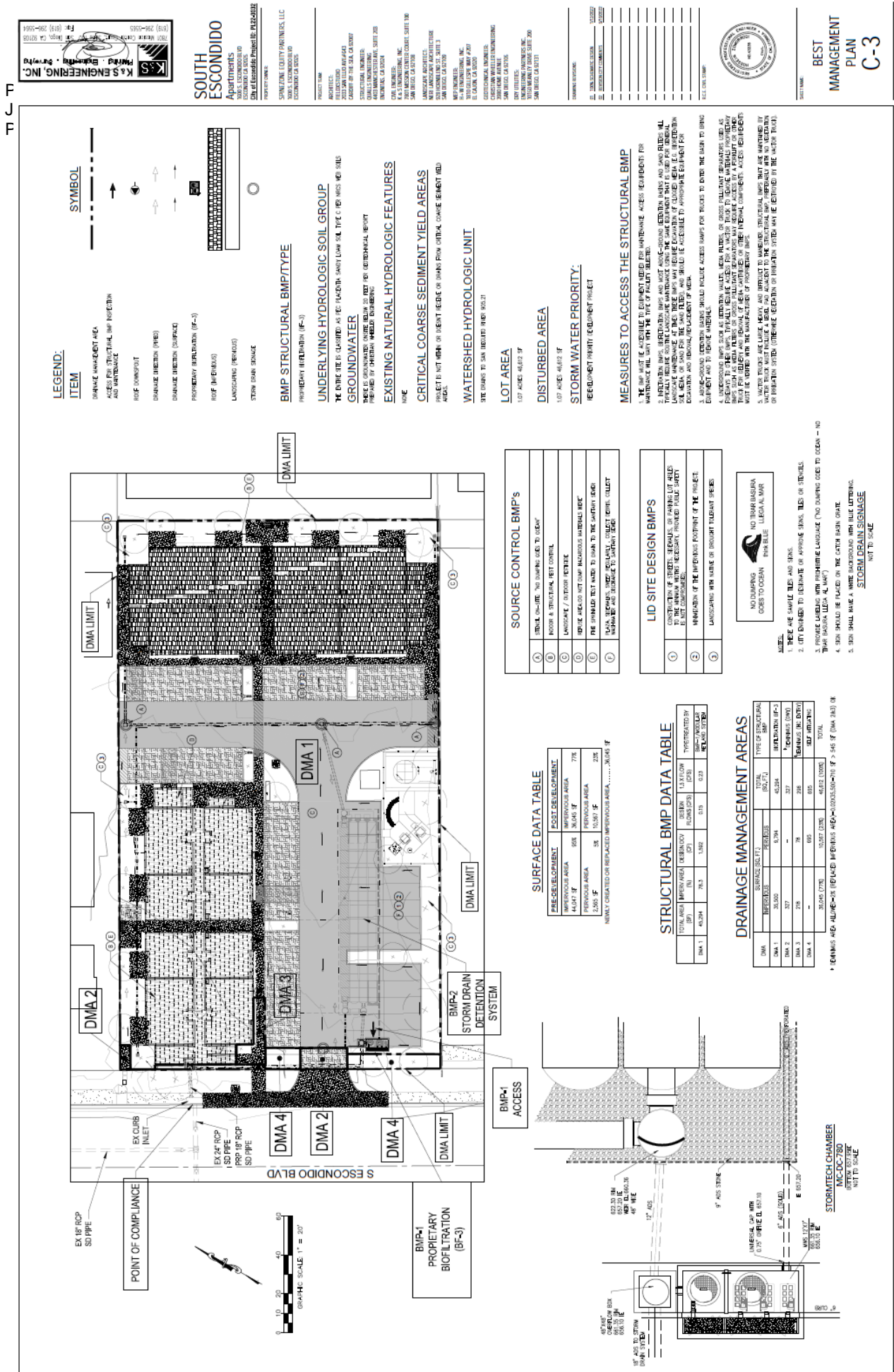
**AVIATION ENGINEER:**  
JAMES H. HARRIS ARCHITECTS  
3000 UNIVERSITY AVENUE, SUITE 100  
SAN JOSE, CA 95128  
TEL: (408) 298-5544  
FAX: (408) 298-5544  
WWW.JHHARCHITECTS.COM

**AVIATION ENGINEER:**  
JAMES H. HARRIS ARCHITECTS  
3000 UNIVERSITY AVENUE, SUITE 100  
SAN JOSE, CA 95128  
TEL: (408) 298-5544  
FAX: (408) 298-5544  
WWW.JHHARCHITECTS.COM



**CONCEPTUAL GRADING PLAN**  
**C-2**



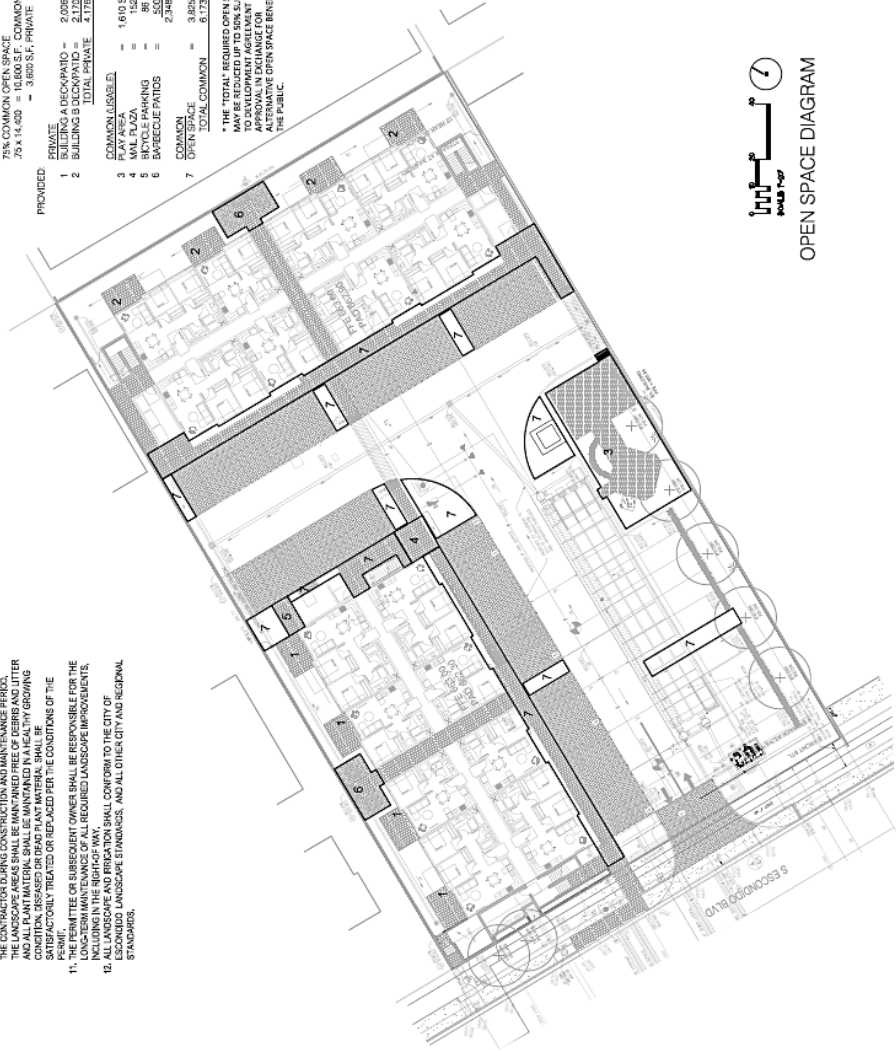








## OPEN SPACE DIAGRAM





100% SD  
SUBMITTAL

LANDSCAPE IMPROVEMENT PLANS FOR  
SOUTH ESCONDIDO  
APARTMENTS  
1600 S. Escondido Blvd., Escondido, CA 92025



**NLA**  
NERI  
LANDSCAPE  
ARCHITECTURE  
322 N. HANCOCK STREET, SUITE 403  
SAN DIEGO, CA 92101  
TEL: 619/274-4022 • FAX: 619/274-4023

$N_{\text{eff}} = 1$   
 $X_{\text{eff}} = 100$   
 $X_{\text{eff}} = 100$







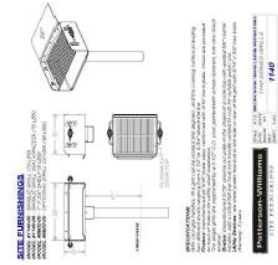
Sand Finish Concrete - #5 TopCast with Davis 'Sandstone' color



Concrete Pavers - Adenstone Aviano-509



Ball Wall - Pacific Play



Barbecue Grills - Patterson Williams



Trash Receptacle - Victor Stanley



Bike Racks - Victor Stanley



Tables - Victor Stanley



Light Retrofit - Architectural Area Lighting

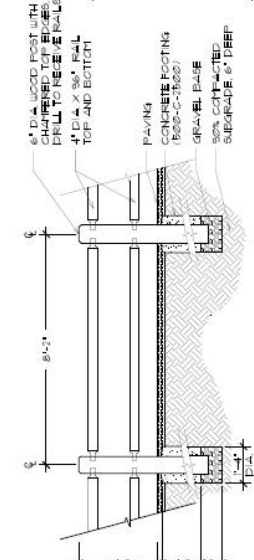


LANDSCAPE IMPROVEMENT PLANS FOR  
SOUTH ESCONDIDO  
APARTMENTS  
1800 S. Esccondido Blvd., Escondido, CA 92025

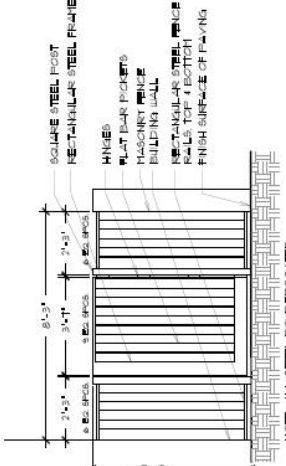
100% SD  
SUBMITTAL  
6/10/2022

SCHEMATIC  
LANDSCAPE  
MATERIALS

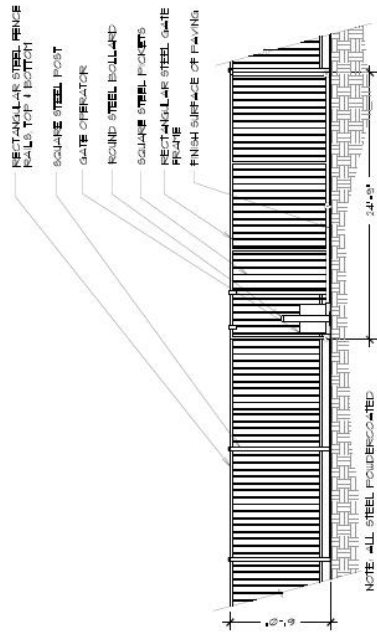
DETAIL A - PLAY AREA FENCING



DETAIL B - STEEL FENCE & PEDESTRIAN GATE



DETAIL C - STEEL FENCE & VEHICULAR GATE



L4







**SOUTH  
ESCONDIDO  
Apartments**

1805 S. ESCONDIDO BLVD, ESCONDIDO CA 92025

PROPERTY OWNER:

SPRINGTIME EQUITY PARTNERS, LLC  
1805 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

PROJECT TEAM:

ARCHITECT:

PRELIMINARY  
2005 SAN BLAS AVE #445  
CARPENTERS-SEA, CA 92007

STRUCTURAL ENGINEER:  
1440 MANCHESTER AVE, SUITE 200  
ESCONDIDO, CA 92024

CIVIL ENGINEER:  
K&S ENGINEERING, INC.  
1440 MANCHESTER AVE, SUITE 100  
SAN DIEGO, CA 92108

LANDSCAPE ARCHITECT:  
NEEL LANDSCAPE ARCHITECTURE  
428 HORNBLENDE ST, SUITE 3  
SAN DIEGO, CA 92109

MFP ENGINEER:  
1440 MANCHESTER AVE, SUITE 100  
SAN DIEGO, CA 92108

MECHANICAL ENGINEER:  
1440 MANCHESTER AVE, SUITE 100  
SAN DIEGO, CA 92108

ELECTRICAL ENGINEER:  
1440 MANCHESTER AVE, SUITE 100  
SAN DIEGO, CA 92108

ENVIRONMENTAL ENGINEER:  
1440 MANCHESTER AVE, SUITE 100  
SAN DIEGO, CA 92108

DRY UTILITIES:  
1440 MANCHESTER AVE, SUITE 100  
SAN DIEGO, CA 92108

WATER UTILITIES:  
1440 MANCHESTER AVE, SUITE 100  
SAN DIEGO, CA 92108

DATE	DESCRIPTION
12/15/2017	1. Initial Design
01/10/2018	2. Preliminary Design
02/10/2018	3. Preliminary Design
03/10/2018	4. Preliminary Design
04/10/2018	5. Preliminary Design
05/10/2018	6. Preliminary Design
06/10/2018	7. Preliminary Design
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11/10/2025	96. Preliminary Design
12/10/2025	97. Preliminary Design
01/10/2026	98. Preliminary Design
02/10/2026	99. Preliminary Design
03/10/2026	100. Preliminary Design



**BUILDING A  
LEVEL 02  
FLOOR PLAN  
A2.02**



**1 FLOOR PLAN - LEVEL 02**  
SCALE: 1/8"=1'-0"





**SOUTH ESCONDIDO Apartments**

1805 E. ESCONDIDO BLVD, ESCONDIDO CA 92025

**PROPERTY OWNER:**

SPRINGCRE EQUITY PARTNERS, LLC  
10000 SPRINGCRE BLVD  
ESCONDIDO, CA 92025

**PROJECT TEAM:**

**ARCHITECT:**  
fieldstudio  
2005 SAN BLAS AVE #245  
CARPENTHERIA, CA 92007

**STRUCTURAL ENGINEER:**  
QUALTE ENGINEERING  
10000 SPRINGCRE BLVD SUITE 200  
ESCONDIDO, CA 92025

**M/E/P ENGINEER:**  
K&N ENGINEERING, INC  
7801 MCGRAW CENTER CT, SUITE 100  
SAN DIEGO, CA 92138

**LANDSCAPE ARCHITECT:**  
WEST LANDSCAPE ARCHITECTURE  
10000 SPRINGCRE BLVD SUITE 3  
SAN DIEGO, CA 92130

**MEP ENGINEER:**  
H&W ENGINEERING, INC  
1810 BALLEW WAY #207  
EL CAJON, CA 92020

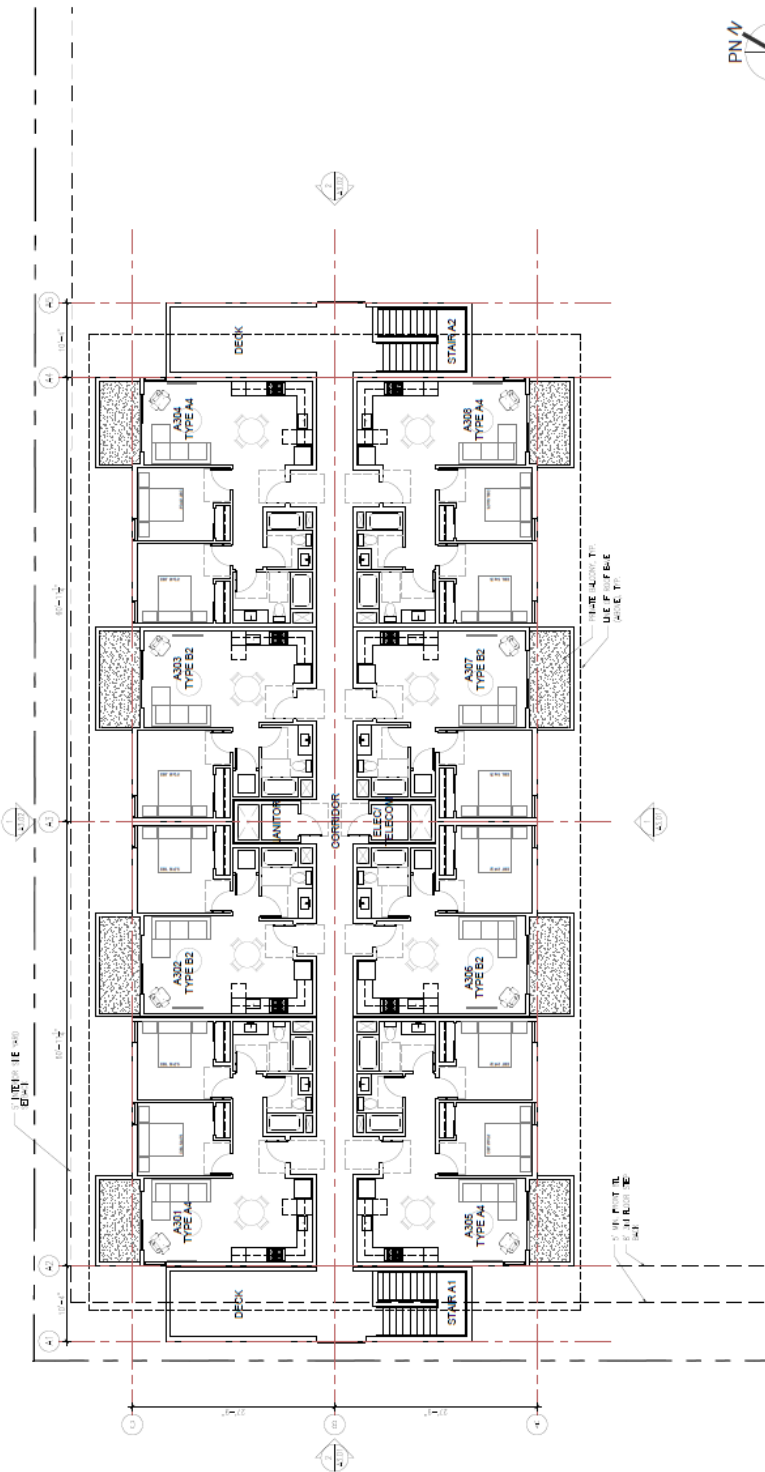
**GEOTECHNICAL ENGINEER:**  
SANDRAN WHEELER ENGINEERING  
2005 SAN BLAS AVE #245  
SAN DIEGO, CA 92130

**ENVIRONMENTAL ENGINEER:**  
ENGINEERING PARTNERS INC.  
10000 SPRINGCRE BLVD SUITE 200  
SAN DIEGO, CA 92130

REVISIONS	
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2.	2025.01.01
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99.	2025.01.01
100.	2025.01.01



**BUILDING A  
LEVEL 03  
FLOOR PLAN  
A2.03**



SCALE  
0' 2' 4' 6' 8' 10'

**1 FLOOR PLAN - LEVEL 03**

SCALE: 1/8"=1'-0"







# **SOUTH ESCONDIDO Apartments**

1905 S. ESCONDIDO BLVD, ESCONDIDO CA 92025

## **PROPERTY OWNER:**

SPRINGCRE EQUITY PARTNERS, LLC  
1905 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

## **PROJECT TEAM:**

**ARCHITECT:**  
FIELDSTUDIO  
2002 SAN ELIO AVE #540  
CARLSBAD-THESDA, CA 92007

**STRUCTURAL ENGINEER:**  
QUALLE ENGINEERING  
10000 S. ESCONDIDO BLVD SUITE 200  
BRIGHTON, CA 92024

**CIVIL ENGINEER:**  
K&B ENGINEERING, INC  
7801 MISSION CENTER CT. SUITE 100  
SAN DIEGO, CA 92108

**LANDSCAPE ARCHITECT:**  
WEST LANDSCAPE ARCHITECTURE  
10000 S. ESCONDIDO BLVD SUITE 2  
SAN DIEGO, CA 92108

**MEP ENGINEER:**  
H+M ENGINEERING, INC  
1815 GALLEPPE WAY #207  
EL CAJON, CA 92020

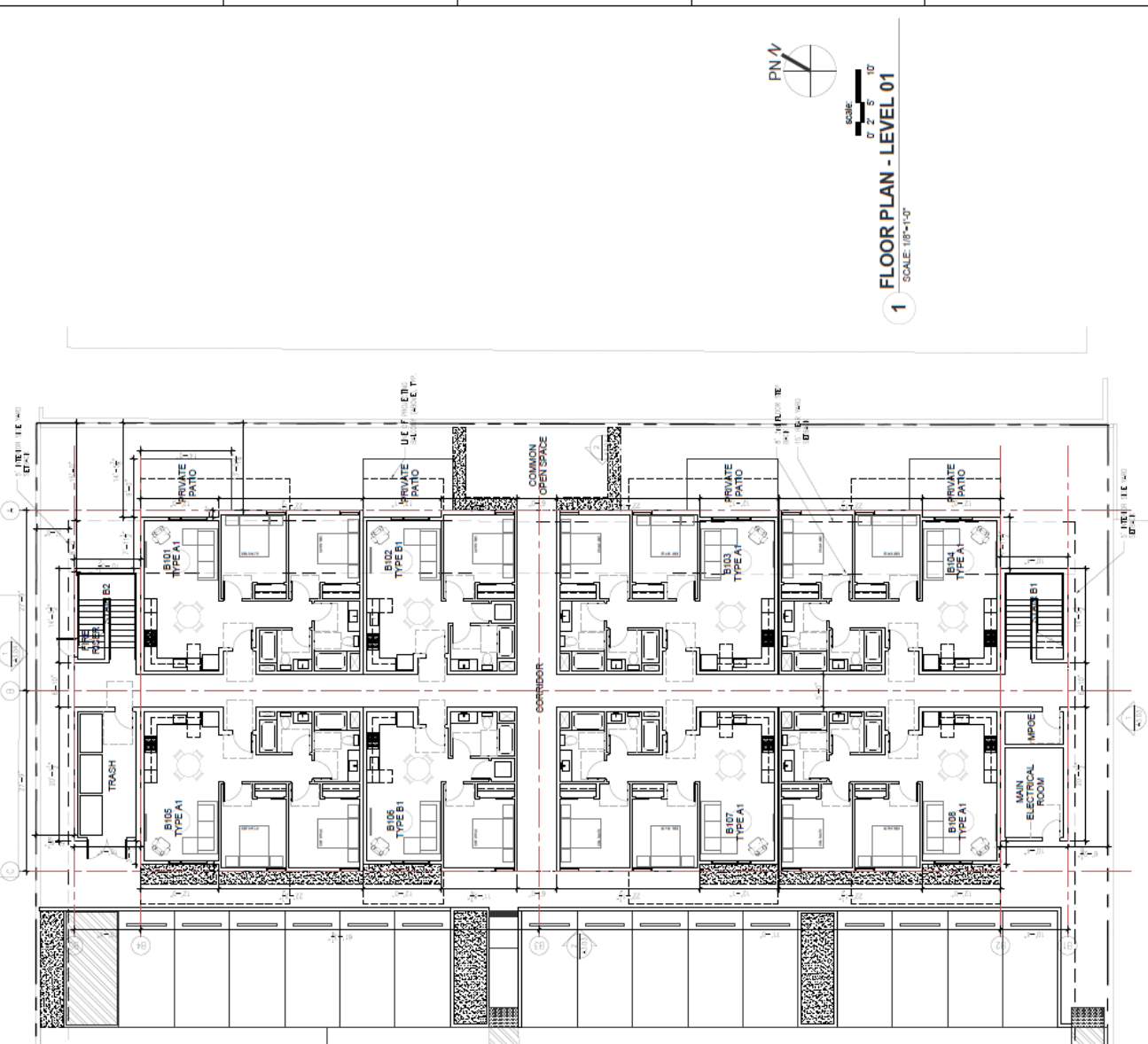
**GEOTECHNICAL ENGINEER:**  
SPRINGCRE VENTURES ENGINEERING  
3800 HOME AVENUE  
SAN DIEGO, CA 92105

**CIVIL UTILITIES:**  
ENGINEERING PARTNERS, INC.  
10100 MEANLEY DRIVE SUITE 200  
SAN DIEGO, CA 92131

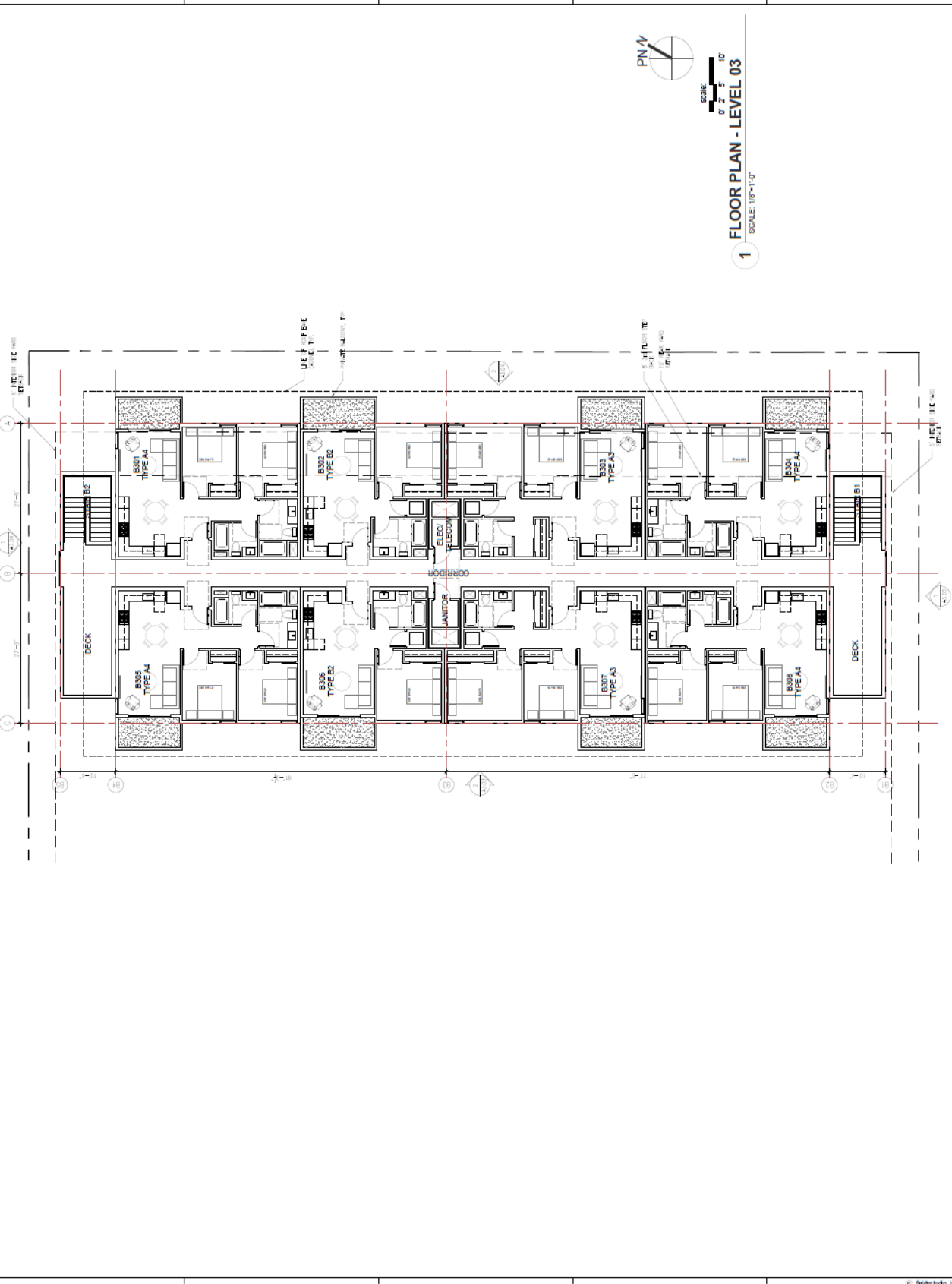
DATE	DESCRIPTION
12/20/2017	2. 30% Schematic Design
01/22/2018	3. 100% Construction Package
05/07/2018	4. Permitting



**BUILDING B  
LEVEL 01  
FLOOR PLAN  
A2.11**











**SOUTH  
ESCONDIDO  
Apartments**

1805 S. ESCONDIDO BLVD, ESCONDIDO CA 92025

PROPERTY OWNER:

SPINERIE EQUITY PARTNERS, LLC  
1805 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

PROJECT NAME:

ARCHITECT:  
FIELDSTUDIO  
2005 SAN BLAS AVE #640  
CARLETON THESEA, CA 92007  
STRUCTURAL ENGINEER:  
K&S ENGINEERING, INC  
4425 MANCHESTER AVE, SUITE 200  
ESCONDIDO, CA 92024

CIVIL ENGINEER:  
K&S ENGINEERING, INC  
7807 MEDINA CENTER CT, SUITE 100  
SAN DIEGO, CA 92126

LANDSCAPE ARCHITECT:  
WESTLANDSCAPE ARCHITECTURE  
10000 SAN DIEGO AVE, SUITE 100  
SAN DIEGO, CA 92126

M&P ENGINEER:  
M&P ENGINEERING, INC  
1815 GALLEPPE WAY #207  
EL CAJON, CA 92020

GEOTECHNICAL ENGINEER:  
CHRISTIAN WHEELER ENGINEERING  
SAN DIEGO, CA 92120

ENVIRONMENTAL ENGINEER:  
ENVIRONMENTAL ENGINEERING PARTNERS INC.  
10130 MEANLEY DRIVE SUITE 200  
SAN DIEGO, CA 92121

DRAWING NUMBER:

1. 201/2016 Draw  
2. 201/2016 Draw  
3. 201/2016 Draw  
4. 201/2016 Draw

PROJECT NAME:

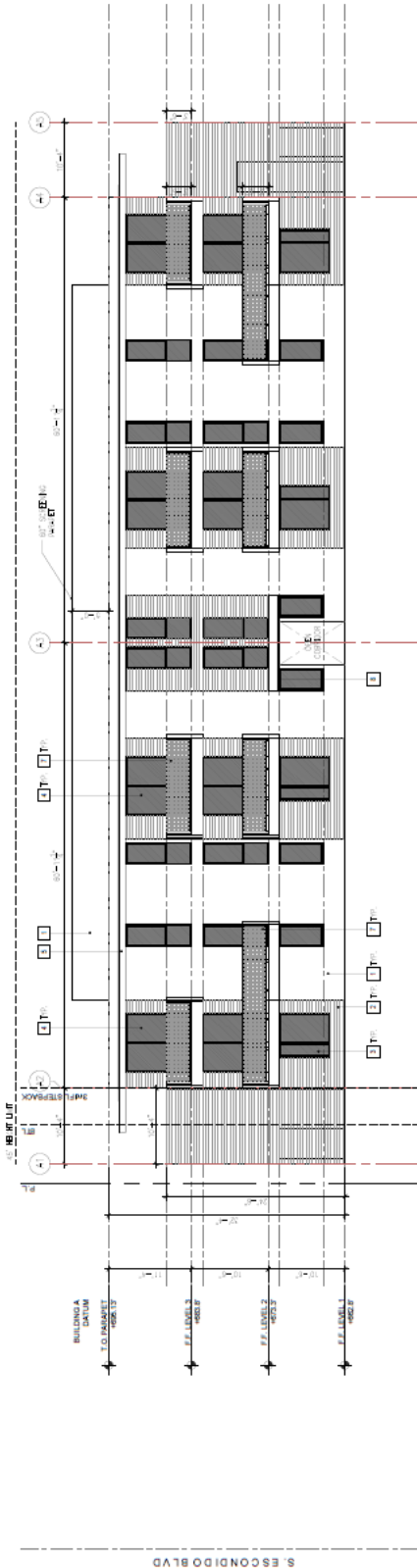


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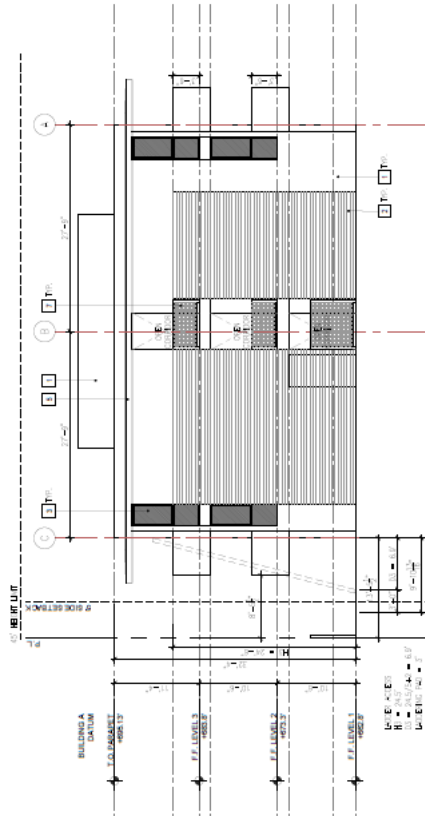
**BUILDING A  
EXTERIOR  
ELEVATIONS**

**A3.01**

Item 8.



**1 SOUTH ELEVATION - BLDG A**  
SCALE: 1/8"=1'-0"



**2 WEST ELEVATION - BLDG A**  
SCALE: 1/8"=1'-0"

**GENERAL NOTES:**

1. GROUND LINES ARE MEASURED TO THE FACE OF STUD & CENTER OF STUD.
2. INTERIOR DIMENSIONS ARE MEASURED TO FACE OF FINISH.
3. DIMENSIONS SHOWN ARE TYPICAL OF THESE SHEET ONLY.
4. KEY NOTES ON THIS SHEET ARE AN ACCUMULATION OF ITEMS NOTED ON PREVIOUS SHEETS. SEE PREVIOUS SHEETS FOR DETAILS.
5. ALL WORKING TO BE DONE AS SHOWN ON THESE SHEETS FOR MATERIALS.
6. REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFO.
7. REFER TO SPECIFICATIONS AND NOTES FOR FINISHES.

**KEY NOTES:**

- 1. STUCCO COLOR 1-TAN
- 2. CEMENTITIOUS SHEPLAP SIDING PAINTED
- 3. ALUM. WINDOW SYSTEM DARK BRONZE ANODIZED
- 4. ALUM. DOOR SYSTEM DARK BRONZE ANODIZED
- 5. ALUM. BREAK METAL TRIM
- 6. METAL DOOR & TRIM PAINTED
- 7. STEEL & WIRE MESH GUARDRAIL SYSTEM
- 8. PLATE STEEL CANOPY
- 9. 1\"/>

fieldxstudio

ARCHITECTURAL DESIGN & CONSTRUCTION

SOUTH ESCONDIDO Apartments

1901 S. ESCONDIDO BLVD. ESCONDIDO CA 92025

PROPERTY OWNER:

SUNSHINE EQUITY PARTNERS, LLC

1901 S. ESCONDIDO BLVD

ESCONDIDO, CA 92025

PROJECT TEAM:

ARCHITECTS:

FIELDXSTUDIO

2002 SAN ELIO AVE #245

CARLEIGH-THESAC CA 92007

STRUCTURAL ENGINEER:

QUALIS ENGINEERING

10000 MEANLEY DRIVE SUITE 200

ESCONDIDO, CA 92024

CIVIL ENGINEER:

K&S ENGINEERING, INC

1781 MESQUITA CENTER CT, SUITE 100

SAN DIEGO, CA 92108

LANDSCAPE ARCHITECT:

NEW LANDSCAPE ARCHITECTURE

14000 SAN DIEGO AVE SUITE 5

SAN DIEGO, CA 92174

MECHANICAL ENGINEER:

H&W ENGINEERING, INC

1815 GILLETTE WAY #207

EL CAJON, CA 92020

GEOTECHNICAL ENGINEER:

CHRISTIAN WHEELER ENGINEERING

10000 MEANLEY DRIVE SUITE 200

SAN DIEGO, CA 92108

ENVIRONMENTAL ENGINEER:

ENGINEERING PARTNERS INC.

10000 MEANLEY DRIVE SUITE 200

SAN DIEGO, CA 92108

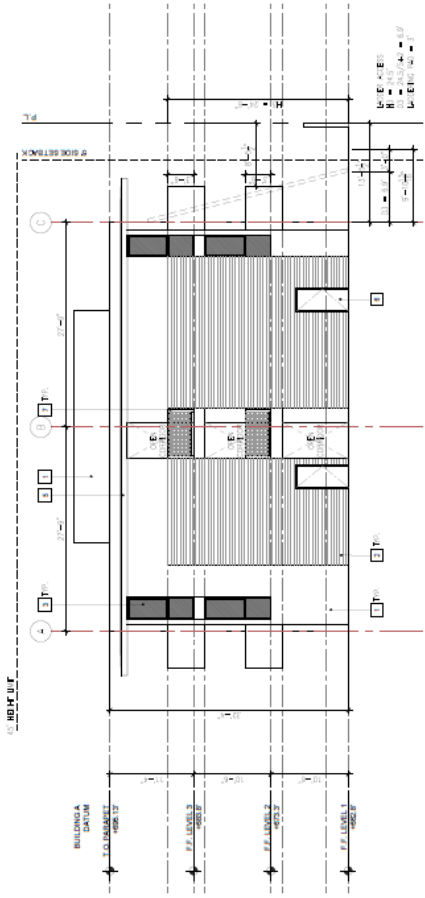
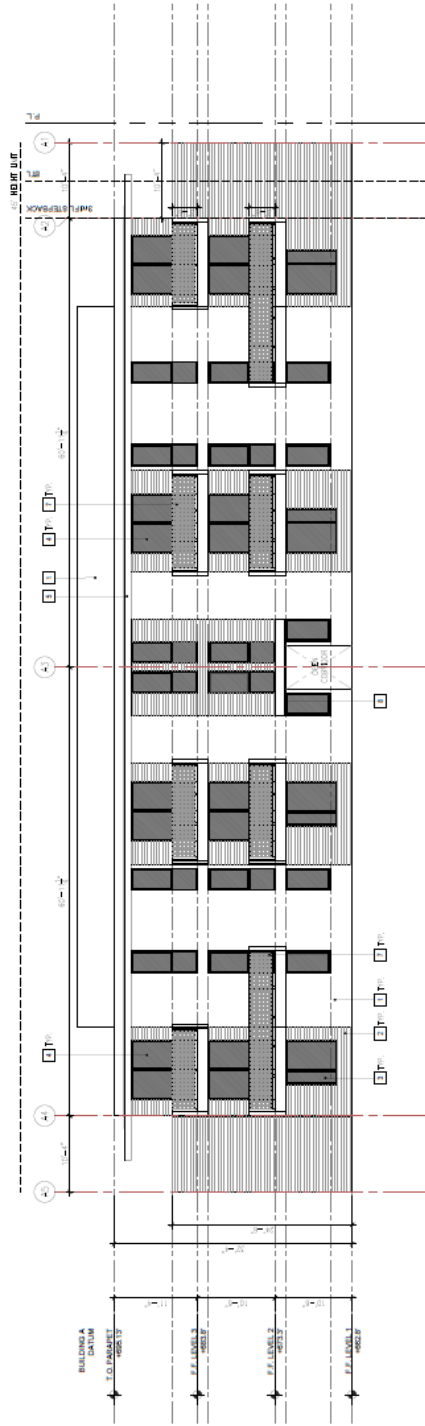


BUILDING A

EXTERIOR ELEVATIONS

A3.02

Item8.



GENERAL NOTES:

- 1. DIMENSIONS ARE MEASURED TO THE FACE OF STUD & CENTER OF STEEL I.B.G.
- 2. INTERIOR DIMENSIONS ARE MEASURED TO FACE OF FINISH.
- 3. DIMENSIONS SHOWN ARE TYPICAL OF THESE SHEET ONLY.
- 4. ALL MATERIALS AND FINISHES ARE TO BE AS SHOWN ON THE PLANS FOUND ON THE PLANS SECTIONS AND ELEVATIONS. NOTE THAT ALL MATERIALS AND FINISHES ARE TO BE AS SHOWN ON THE PLANS.
- 5. REFER TO WALL, FLOOR AND CEILING TYPES FOR RAILINGS.
- 6. ALL ROOFING TO BE CLASS A FIRE RATED.
- 7. REFER TO SHEETS A3.01 AND A3.02 FOR ADDITIONAL INFO.
- 8. REFER TO SHEETS A3.01 AND A3.02 FOR ADDITIONAL INFO.

KEY NOTES:

- 1. STUDO COLOR 1-TN
- 2. CEMENTITIOUS BRICKPAINT SIGNED PAINTED
- 3. ALUM WINDOW SYSTEM DARK BRONZE ANODIZED
- 4. ALUM WINDOW SYSTEM DARK BRONZE ANODIZED
- 5. ALUM WINDOW SYSTEM DARK BRONZE ANODIZED
- 6. ALUM WINDOW SYSTEM DARK BRONZE ANODIZED
- 7. METAL DOOR & TRIM PAINTED
- 8. STEEL & WIRE MESH GLAZIAL SYSTEM
- 9. PLATE STEEL CANOPY
- 10. WROUGHT IRON FENCING & GATE
- 11. CMU RETAINING WALL







**SOUTH ESCONDIDO Apartments**  
1800 S. ESCONDIDO BLVD. ESCONDIDO CA 92025

**PROPERTY OWNER:**  
SPINELINE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

**PROJECT TEAM:**  
**ARCHITECT:**  
FELDMAN  
1800 S. ESCONDIDO BLVD. #400  
ESCONDIDO, CA 92025

**STRUCTURAL ENGINEER:**  
QUALITY ENGINEERING  
4400 MANCHESTER AVE. SUITE 200  
ESCONDIDO, CA 92024

**CIVIL ENGINEER:**  
HAWK ENGINEERING, INC.  
1800 S. ESCONDIDO BLVD. SUITE 100  
ESCONDIDO, CA 92025

**LANDSCAPE ARCHITECT:**  
NEER LANDSCAPE ARCHITECTURE  
2400 S. ESCONDIDO BLVD. SUITE 5  
ESCONDIDO, CA 92025

**MERIT ENGINEER:**  
HAWK ENGINEERING, INC.  
1800 S. ESCONDIDO BLVD. SUITE 100  
ESCONDIDO, CA 92025

**MECHANICAL ENGINEER:**  
HAWK ENGINEERING, INC.  
1800 S. ESCONDIDO BLVD. SUITE 100  
ESCONDIDO, CA 92025

**ELECTRICAL ENGINEER:**  
HAWK ENGINEERING, INC.  
1800 S. ESCONDIDO BLVD. SUITE 100  
ESCONDIDO, CA 92025

**PLUMBING ENGINEER:**  
HAWK ENGINEERING, INC.  
1800 S. ESCONDIDO BLVD. SUITE 100  
ESCONDIDO, CA 92025

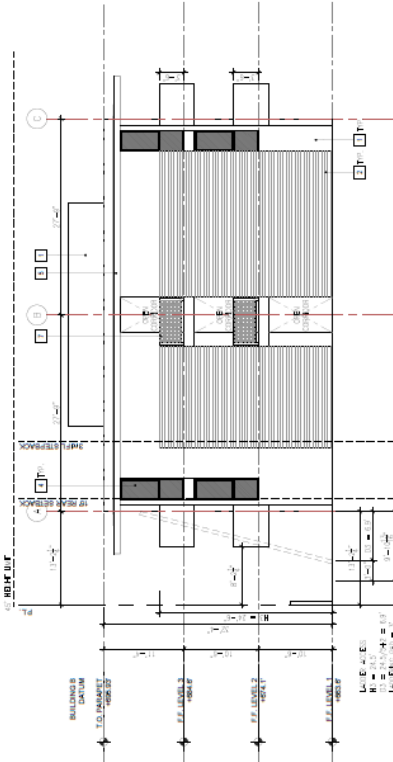
**MECHANICAL ENGINEER:**  
HAWK ENGINEERING, INC.  
1800 S. ESCONDIDO BLVD. SUITE 100  
ESCONDIDO, CA 92025

**ELECTRICAL ENGINEER:**  
HAWK ENGINEERING, INC.  
1800 S. ESCONDIDO BLVD. SUITE 100  
ESCONDIDO, CA 92025

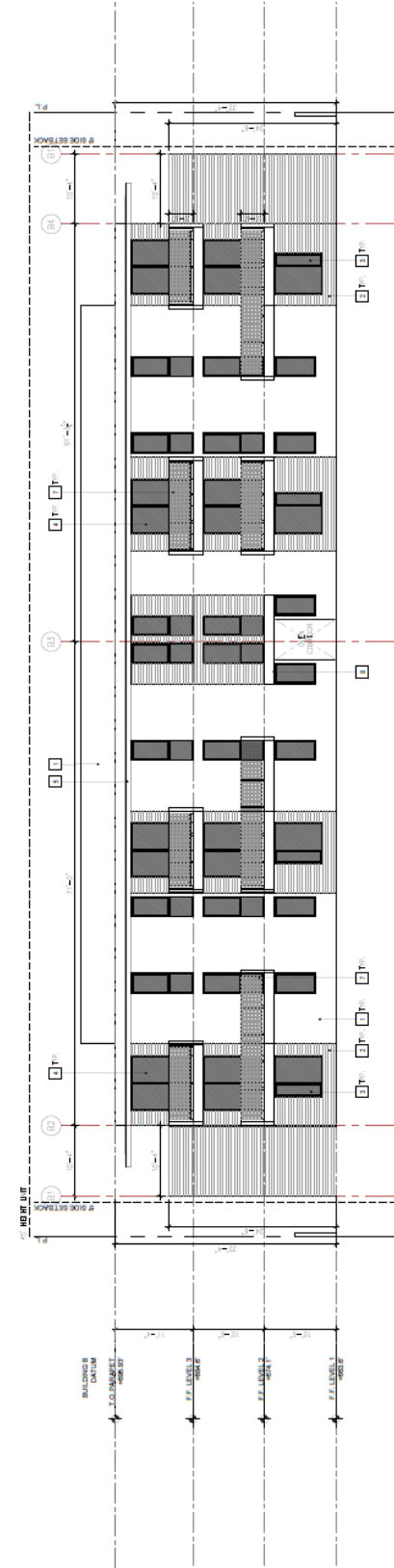
**PLUMBING ENGINEER:**  
HAWK ENGINEERING, INC.  
1800 S. ESCONDIDO BLVD. SUITE 100  
ESCONDIDO, CA 92025

**MECHANICAL ENGINEER:**  
HAWK ENGINEERING, INC.  
1800 S. ESCONDIDO BLVD. SUITE 100  
ESCONDIDO, CA 92025

**ELECTRICAL ENGINEER:**  
HAWK ENGINEERING, INC.  
1800 S. ESCONDIDO BLVD. SUITE 100  
ESCONDIDO, CA 92025



**1 NORTH ELEVATION - BLDG B**  
SCALE: 1/8"=1'-0"



**2 EAST ELEVATION - BLDG B**  
SCALE: 1/8"=1'-0"

- GENERAL NOTES:**
1. DIMENSIONS ARE MEASURED TO THE FACE OF STUD & CENTER OF STUD.
  2. INTERIOR DIMENSIONS ARE MEASURED TO FACE OF FINISH.
  3. DIMENSIONS SHOWN ARE TYPICAL OF THESE SHEET ONLY.
  4. ANY NOTES ON THIS SHEET ARE AN ACCUMULATION OF TIME.
  5. NOT ALL ITEMS ARE FOUND ON EACH SHEET.
  6. ALL WORKING TO BE CLASSED A FIRE RATED.
  7. REFER TO SHEETS A101 AND A102 FOR DETAILS.
  8. REFER TO SHEETS A103 AND A104 FOR DETAILS.
- KEY NOTES:**
- 1. STUCCO COLOR 1-1/2 IN.
  - 2. CONCRETE COLOR 1-1/2 IN.
  - 3. ALUM. WINDOW SYSTEM DARK BRONZE ANODIZED
  - 4. ALUM. DOOR SYSTEM DARK BRONZE ANODIZED
  - 5. ALUM. BREAK METAL TRIM
  - 6. ALUM. BREAK METAL TRIM
  - 7. STEEL & WIRE REINFORCED SYSTEM
  - 8. PLATE STEEL CANOPY
  - 9. WROUGHT IRON FENCING & GATE
  - 10. CMU RETAINING WALL

**BUILDING B  
EXTERIOR  
ELEVATIONS  
A3.04**



**SOUTH  
ESCONDIDO  
Apartments**

1000 S. ESCONDIDO BLVD, ESCONDIDO CA 92025

**PROPERTY OWNER:**

SPINEMINE EQUITY PARTNERS, LLC  
1000 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

**PROJECT TEAM:**

**ARCHITECT:**  
FIELDSTUDIO  
1000 S. ESCONDIDO BLVD, SUITE 400  
ESCONDIDO, CA 92025  
**GENERAL ENGINEER:**  
QUALIA ENGINEERING  
4403 MANCHESTER AVE, SUITE 205  
ESCONDIDO, CA 92024  
**CIVIL ENGINEER:**  
K&S ENGINEERING, INC  
1810 MONTELEONE ST, SUITE 100  
SAN DIEGO, CA 92108  
**Mechanical ENGINEER:**  
NEWLANDER ARCHITECTURE  
1020 MONTELEONE ST, SUITE 5  
SAN DIEGO, CA 92108  
**MEP ENGINEER:**  
H&W ENGINEERING, INC  
1810 MONTELEONE ST, SUITE 100  
SAN DIEGO, CA 92108  
**SELECTION ENGINEER:**  
H&W ENGINEERING, INC  
1810 MONTELEONE ST, SUITE 100  
SAN DIEGO, CA 92108  
**DRY UTILITIES:**  
ENGINEERING PARTNERS, INC.  
10100 MEADOW DRIVE, SUITE 200  
SAN DIEGO, CA 92131

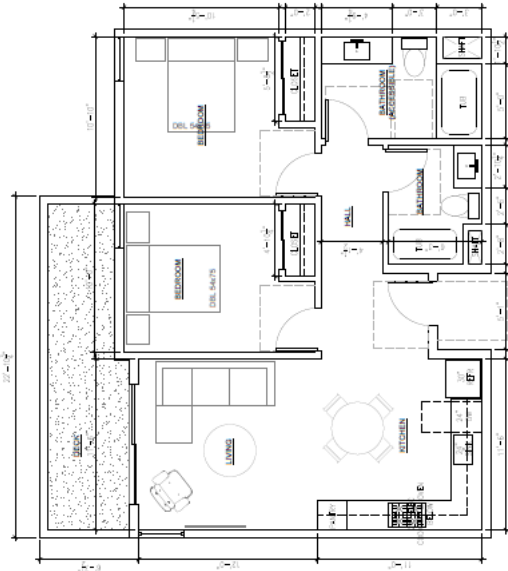
PERMITS REQUIRED:	
2. City of Escondido - Zoning	2020021
3. City of Escondido - Planning	2020021
4. Department of Public Works - Engineering	2020021
5. Department of Public Works - Planning	2020021
6. Department of Public Works - Planning	2020021
7. Department of Public Works - Planning	2020021
8. Department of Public Works - Planning	2020021
9. Department of Public Works - Planning	2020021
10. Department of Public Works - Planning	2020021
11. Department of Public Works - Planning	2020021
12. Department of Public Works - Planning	2020021
13. Department of Public Works - Planning	2020021
14. Department of Public Works - Planning	2020021
15. Department of Public Works - Planning	2020021
16. Department of Public Works - Planning	2020021
17. Department of Public Works - Planning	2020021
18. Department of Public Works - Planning	2020021
19. Department of Public Works - Planning	2020021
20. Department of Public Works - Planning	2020021



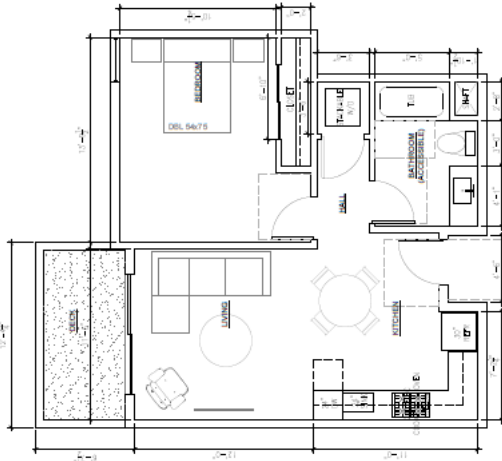
DATE: 08/11/2020

UNIT TYPE PLANS  
**A5.01**

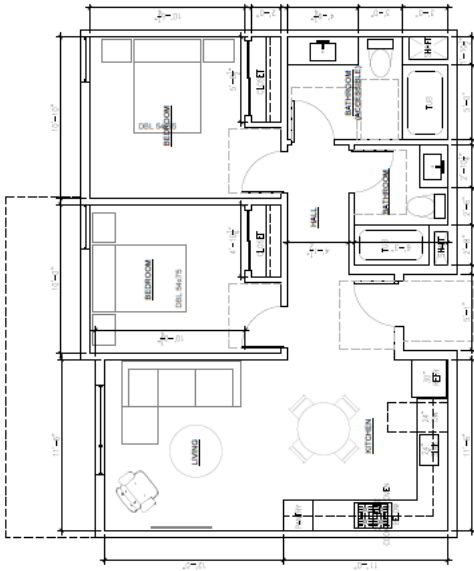
Item 8.



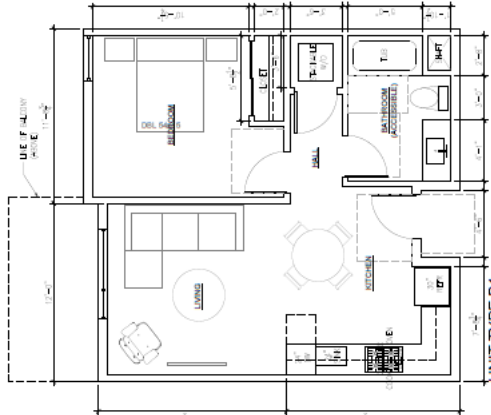
**UNIT TYPE A2**  
1-BEDROOM, 1-BATHROOM  
520 sq ft gross



**UNIT TYPE B2**  
1-BEDROOM, 1-BATHROOM  
610 sq ft gross



**UNIT TYPE A1**  
2-BEDROOM, 1-BATHROOM  
520 sq ft gross



**UNIT TYPE B1**  
1-BEDROOM, 1-BATHROOM  
550 sq ft gross

**1** UNIT TYPE PLANS  
SCALE: 1/4"=1'-0"



**SOUTH ESCONDIDO Apartments**  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

PROPERTY OWNER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

PROJECT TEAM:

ARCHITECT:

FIELDXSTUDIO  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

STRUCTURAL ENGINEER:

QUALIS ENGINEERING  
4400 MANCHESTER AVE, SUITE 202  
BOHART, CA 92024

CIVIL ENGINEER:

K&S ENGINEERING, INC.  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

LANDSCAPE ARCHITECT:

NEB LANDSCAPE ARCHITECTURE  
625 HORNBLAND ST, SUITE 5  
SAN DIEGO, CA 92108

M&P ENGINEER:

H&W ENGINEERING, INC.  
1870 BOLLEA WAY #207  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

DRY (PLUMBING):

ENGINEERING PARTNERS, INC.  
1870 BOLLEA WAY #207  
ESCONDIDO, CA 92025

DRY (ELECTRICAL):

ENGINEERING PARTNERS, INC.  
1870 BOLLEA WAY #207  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

MECHANICAL ENGINEER:

SPRINCONE EQUITY PARTNERS, LLC  
1800 S. ESCONDIDO BLVD  
ESCONDIDO, CA 92025



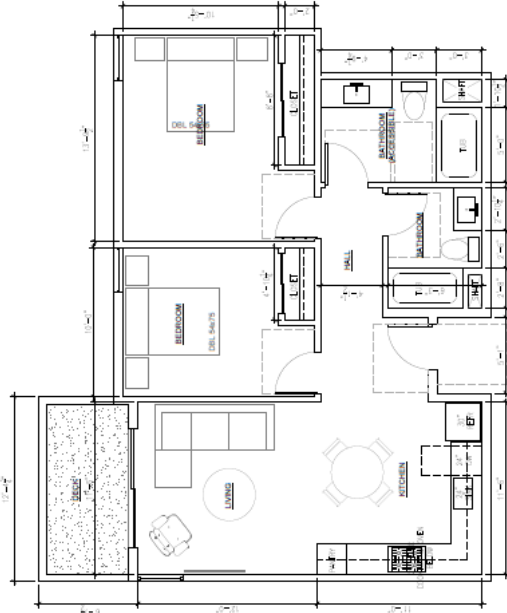
DATE: 08/14/19

UNIT TYPE PLANS

**A5.02**



**UNIT TYPE A3**  
2-BEDROOM, 1-BATHROOM  
882 sq ft gross



**UNIT TYPE A4**  
2-BEDROOM, 1-BATHROOM  
820 sq ft gross

**1 UNIT TYPE PLANS**

SCALE: 1/4"=1'-0"

fieldx

**SOUTH  
ESCONDIDO**  
Apartments  
1800 S. ESCONDIDO BLVD. ESCONDIDO CA 92026

1600 S. ESCONDIDO BLVD. ESCONDIDO CA 92025

PROPERTY OWNER:  
  
SPINEZONE EQUITY PARTNERS, LLC  
1600 O. ESCONDIDO BLVD  
ESCONDIDO, CA 92025

**PROJECT TEAM:**

**ARCHITECT:**  
PHELPSSTUDIO  
2005 SAN BLAS AVE #W40  
CAROL-REY-BY-DE-OBAL, CA 92007

**STRUCTURAL ENGINEER:**  
QUALIS ENGINEERING  
4045 MANCHESTER AVE, SUITE 200  
ENCINITA, CA 92024

**CIVIL ENGINEER:**  
P&G ENGINEERING, INC  
7801 MEDISON CENTER CT, SUITE 100  
SAN DIEGO, CA 92108

**LANDSCAPE ARCHITECT:**  
NENI LANDSCAPE ARCHITECTURE  
928 NORWELLO CT, SUITE D  
SAN DIEGO, CA 92108

**PEB ENGINEER:**  
H+W ENGINEERING, INC  
1810 SALLEPPE WAY #207  
EL CAJON, CA 92002

**GEOTECHNICAL ENGINEER:**  
CHRISTIAN WHEELER ENGINEERING  
5660 HONG AVE  
SAN DIEGO, CA 92105

**DRY UTILITIES:**  
ENGINEERING PARTNERS INC.  
10150 MEANLEY DRIVE SUITE 200  
SAN DIEGO, CA 92151



**1 CONCEPTUAL 3D VIEWS**  
NOT TO SCALE

NOT TO SCALE

NOTE: THESE COLOR RENDERINGS ARE CONCEPTUAL IN NATURE AND INTENDED TO ILLUSTRATE THE DESIGN INTENT. FINAL MATERIALS, COLORS, AND DETAILING MAY CHANGE

[illegible]

**SHEET NAME:**

### CONCEPTUAL 3D VIEWS

### A6.01











Steel & Wire Mesh Guardrail System



Unit Pavers



1. Stucco: Color 1 Tan



Wrought Iron Fencing



Concrete Flatwork broom finish



2. Cement Shiplap Siding: Painted



CMU Retaining Walls



Concrete Flatwork heavy aggregate finish



3. Alum. Doors/Windows: Dark Bronze Anodized

COLOR & MATERIALS BOARD

SOUTH ESCONDIDO APARTMENTS  
1600 S. Escondido Blvd

PL22-0032  
July 28, 2022  
Page 54

## EXHIBIT D

### Legal Description

the following described property in the City of **Escondido**, County of **San Diego**, State of **California**:

**THE WESTERLY 297.00 FEET OF LOT 1 IN BLOCK 256 OF THE RESURVEY OF THE RANCHO RINCON DEL DIABLO, IN THE CITY OF ESCONDIDO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 725, MADE BY J. M. GRAHAM, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 13, 1892.**

**EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE SOUTH 7 1/2 ACRES OF SAID LOT AS CONVEYED IN DEED FROM EDWIN J. FITCH AND MARY FITCH TO MRS. H. LONIGAN, DATED AUGUST 28, 1894 AND RECORDED IN BOOK 230, PAGE 415, OF DEEDS.**

PL22-0032  
July 28, 2022  
Page 55



**EXHIBIT E**  
**CITY OF ESCONDIDO**  
**PLANNING DIVISION**  
**201 NORTH BROADWAY**  
**ESCONDIDO, CA 92025-2798**  
**(760) 839-4671**

## Notice of Exemption

**To:** San Diego Assessor/Recorder/County Clerk  
Attn: Fish and Wildlife Notices  
1600 Pacific Highway, Room 260  
San Diego, CA 92101  
MS A-33

**From:** City of Escondido  
201 North Broadway  
Escondido, CA 92025

**Project Title/Case No.:** Major Plot Plan and Density Bonus (City Project No. PL22-0032)

**Project Location - Specific:** 1600 S. Escondido Boulevard (APN 236-460-16-00)

**Project Location - City:** Escondido **Project Location - County:** San Diego

**Description of Project:** A Major Plot Plan and Density Bonus to construct 48 apartment units on a 1.02-acre parcel of land within the South Centre City Specific Plan (Escondido Boulevard District). The site contains an existing commercial building that will be removed. The project includes the development of two, three-story buildings that contain 24 units per building. 58 open parking spaces will be provided.

**Name of Public Agency Approving Project:** City of Escondido

**Name of Person or Agency Carrying Out Project:**

Name: Scott Maas / FieldXStudio Telephone: (858) 337-6909

Address: 2033 San Elijo Ave., #643 Cardiff by the Sea, CA 92007

☒ Private entity ☐ School district ☐ Local public agency ☐ State agency ☐ Other special district

**Exempt Status:** Categorical Exemption. CEQA Sections 15332 "In-fill Development Projects."

**Reasons why project is exempt:**

1. The project is consistent with the applicable general plan designation (South Center City Specific Plan – Escondido Boulevard District); all applicable general plan policies, and the applicable zoning designation and regulations.
2. The proposed project occurs within City limits on no more than five acres and is surrounded by urban uses on all sides.
3. The project has no value as habitat for endangered, rare, or threatened species.
4. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
5. The site can be adequately served by all required utilities and public services.

**Lead Agency Contact Person:** Jay Paul, Planning Division Area Code/Telephone/Extension (760) 839-4537

Signature: J Paul July 28, 2022  
Jay Paul, Senior Planner Date

☒ Signed by Lead Agency Date received for filing at OPR: N/A  
☐ Signed by Applicant





**CITY OF ESCONDIDO**  
**Planning Division**  
 201 North Broadway  
 Escondido, CA 92025-2798  
 (760) 839-4671  
 Fax: (760) 839-4313

FOR INTERNAL USE ONLY	
Case No.:	PL22-0032
Date Submitted:	8-8-2022
Project Planner:	JPAL
Fees Paid:	✓
Receipt No.:	
Date Deemed Complete:	
Planning Commission Hearing Date:	9-13-22

**APPEAL OF ADMINISTRATIVE DECISION  
TO PLANNING COMMISSION**

**APPLICANT/CONTACT PERSON/APELLANT**

Name (Print): Fieldxstudio, Inc.  
 Address: 2033 San Elijo Ave #643  
 City, State, Zip: Cardiff by the Sea, CA 92007  
 Phone: 858-752-9212  
 Fax: \_\_\_\_\_  
 E-mail: scott@fieldxstudio.com  
 Signature: [Signature]  
 Date: 8/5/2022

**OWNER** (If multiple owners/addresses, attach additional sheets as necessary.)

Name (Print): Spinezone Equity Partners LLC  
 Address: 1600 S. Escondido Blvd  
 City, State, Zip: Escondido, CA 92025  
 Phone: 858-337-6909  
 Fax: \_\_\_\_\_  
 E-mail: kam@spinezone.com  
 Signature: [Signature]  
 Date: 8/8/2022 | 11:10:15 PDT

Description of Administrative Decision Being Appealed: As detailed in Attachment 1, Applicant is appealing the City's conditional approval of the Major Plot Plan and Density Bonus to develop 48 apartment units and 58 surface parking spaces at 1600 S. Escondido Boulevard ("Project"). Specifically, Applicant appeals from the City condition requiring Applicant to fund all on-going operational costs of municipal services associated with the Project via (a) annexation into Community Facilities District ("CFD") 2020-1; or (b) establishment of another lawful funding mechanism. Applicant requests an incentive/concession waiving this condition, as permitted by State Density Bonus Law.

Related Case No. (if applicable): Planning Case No. PL22-0032

Site Address: 1600 S. Escondido Boulevard

Assessor Parcel Number: APN 236-460-16-00

Submittal Requirements:

As determined by the Director of Community Development, additional information may be required to make a complete application. This will be determined on a case-by-case basis.

1. Completed and signed Appeal Application form (a letter of permission, signed by the owner may be substituted for the owner's signature on the application form)
2. Plat map showing all properties within 500 feet of the subject property with the 500-foot radius drawn (see attached)
3. Typewritten list of all current Assessor Parcel Numbers within the 500-foot radius (see attached)
4. Plans as needed on a case-by-case basis
5. Photographs of the site and the adjacent property, mounted on 8½" x 11" paper and labeled (if applicable)
6. Fees

The Administrative Decision shall be final unless a written appeal to the Planning Commission and fee are filed in accordance with Section 33-1304 of the Zoning Code.

**ATTACHMENT 1**

Item8.

**Allen Matkins**

Allen Matkins Leck Gamble Mallory & Natsis LLP  
 Attorneys at Law  
 One America Plaza  
 600 West Broadway, 27<sup>th</sup> Floor | San Diego, CA 92101-0903  
 Telephone: 619.233.1155 | Facsimile: 619.233.1158  
 www.allenmatkins.com

**Timothy M. Hutter**  
 E-mail: thutter@allenmatkins.com  
 Direct Dial: 6192351510 File Number: 392846.00002/4869-0139-4221.3

August 8, 2022

Mayor Paul MacNamara and Escondido City Council  
 City of Escondido  
 201 North Broadway  
 Escondido, CA 92025-2798

**Re: Appeal of Administrative Decision Conditionally Approving  
 Project No. PL22-0032; Request for Density Bonus Incentive**

Dear Honorable Mayor MacNamara and esteemed Councilmembers:

This firm represents KirE Builders, Inc. ("KirE"), a prospective purchaser and developer of the real property located at 1600 S. Escondido Boulevard, in Escondido, CA (APN No. 236-460-16-00) ("Property"). We write this letter in support of the Appeal of Administrative Decision ("Appeal") filed by FieldXStudio ("Applicant") for the above-referenced project.

On July 28, 2022, the City conditionally approved a Major Plot Plan and Density Bonus to develop 48 apartment units and 58 surface parking spaces at 1600 South Escondido Boulevard, in Escondido, CA (the "Project"). The Conditions of Approval for the Project require Applicant to fund all on-going operational costs of providing municipal services required for the Project through either (1) an agreement to form or annex into a Community Facilities District, or (2) the establishment of another lawful funding mechanism reasonably acceptable to the City. The Conditions of Approval specifically provide that Applicant will meet this requirement through annexation into the Citywide Community Facilities District ("CFD 2020-1").

By this appeal, Applicant requests that the City approve a Density Bonus concession waiving the requirement that Applicant "fund all on-going operational costs of providing municipal services required for the Project," via annexation into CFD 2020-1 or otherwise.

**A. Density Bonus Incentives and Concessions**

Under State Density Bonus Law, a developer who agrees to include a specified percentage of affordable housing in a project is entitled to a density bonus, plus incentives and concessions intended to reduce the costs of building projects with affordable housing. (Gov. Code § 65915(d).) Here, the Project will provide five affordable units (15% of base density) for very low-income households and, for that reason, Applicant is entitled to three incentives or concessions under State Density Bonus Law and the Escondido Municipal Code. (See Gov. Code § 65915(d)(2)(C); EMC §

Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law

Mayor Paul MacNamara and Escondido City Council  
August 8, 2022

Page 2

33-1414(a)(1)(A), Table E.) Incentives or concessions may include any “regulatory incentives or concessions proposed by the developer or the [local agency] that result in identifiable and actual cost reductions to provide for affordable housing costs.” (Gov. Code § 65915(k)(3).) Direct financial incentives (e.g., the waiver of fees or dedication requirements) are permitted. (Gov. Code § 65915(l); EMC 33-1414(a)(2)(E).)

Under State Density Bonus Law, local agencies have limited discretion to deny requested concessions or incentives. Specifically, Government Code section 65915(d)(1) provides that a local agency “shall grant the concession or incentive requested by the applicant” unless the local agency makes a written finding, based upon substantial evidence, of any of the following:

- (A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).
- (B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.
- (C) The concession or incentive would be contrary to state or federal law.

Importantly, the applicant “is not required to establish that cost reductions result.” (*Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549, 555.) Instead, the local agency “shall bear the burden of proof for the denial of a requested concession or incentive.” (Gov. Code § 65915(d)(4).) “By requiring the city to grant incentives unless it makes particular findings, the statute places the burden of proof on the city to overcome the presumption that incentives will result in cost reductions.” (*Schreiber, supra*, 69 Cal.App.5th at 556.) Here, the burden clearly falls on the City to support and make a written finding to deny the concession. In other circumstances where development regulations or conditions are implicated in a concession or incentive request, there can be debate about whether the requested concession would actually reduce costs for a project providing affordable housing. Here, that question is easily answered in the affirmative.

Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law

Mayor Paul MacNamara and Escondido City Council  
August 8, 2022

Page 3

**B. Elimination of the CFD 2020-1 Annexation Requirement Will Reduce Costs Associated With the Project, and No Other Grounds Exist to Deny the Requested Concession**

CFD 2020-1 was formed on May 13, 2020 as part of the City's efforts to fund municipal services associated with new residential development. In furtherance of this goal, each new residential unit permitted after May 13, 2020 must be annexed into CFD 2020-1 and pay a special annual tax or, alternatively, provide an alternate funding mechanism to offset the development's impact to municipal services.

Here, Applicant requests that the City grant a Density Bonus concession waiving the requirement that the Project be annexed into CFD 2020-1 or provide an alternative funding mechanism. As you are likely aware, the creation of CFD No. 2020-1 was initially driven by the City's approval of a single-family home project planned for land that had previously been a golf course. The CFD is thus intended to cover the costs of extending municipal services to parts of the City where they were not previously needed. By contrast, this Project is an infill project that is replacing existing commercial development. As a result, at least some of the costs that would be covered by CFD No. 2020-1 are already provided for in the current budget. Still, the cost impacts are unknown, but likely to be tens of thousands of dollars annually for the Project. For the affordable units in the Project, where rents are capped at 30% of 50% of area median income, the annual CFD expense may approach the monthly rent that can be charged. For the market-rate units, some or all of the CFD expense will necessarily be passed onto residents, thereby increasing the cost of housing for those units and pushing them out of reach for some tenants.

Even with the exact amount levied against the Project still to be determined, elimination of such a tax would unquestionably reduce costs associated with the Project, and thereby assist the developer as it strives to provide affordable housing in the City. There is no evidence that elimination of this requirement would have a specific, adverse impact on public health and safety or on any real property that is listed in the California Register of Historical Resources; nor is there evidence that granting such a concession would be contrary to state or federal law. Under these circumstances, approval of the requested concession is appropriate and consistent with the Density Bonus Law.

Eliminating this requirement is likewise consistent with the City's prior waiver of the CFD annexation requirement for other projects, most recently for the Palomar Heights project approved in January 2021. The Palomar Heights project included 510 market-rate units. The much smaller size of the Project – and the provision of affordable housing – makes elimination of the CFD requirement even more appropriate in this case.


Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law

Mayor Paul MacNamara and Escondido City Council  
August 8, 2022

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For all of the reasons discussed above, KirE supports Applicant's Appeal and respectfully requests that the City grant the requested Density Bonus concession.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tim Hutter", written in a cursive style.

Timothy M. Hutter

TMH



# PLANNING COMMISSION

**Agenda Item No.: G.2**  
**Date: September 13, 2022**

**PROJECT NUMBER / NAME:** PL22-0032 / 1600 S. Escondido Blvd. Apartments

**REQUEST:** An appeal of a Condition of Approval applied to a Major Plot Plan requiring funding of ongoing municipal services required by the project

**LOCATION:** 1600 S. Escondido Blvd.

**APN / APNS:** 236-460-16-00

**GENERAL PLAN / ZONING:** Specific Plan Area (SPA 15) / Specific Plan (S-P; South Centre City Specific Plan)

**APPLICANT:** Spinezone Equity Partners, LLC., Kamshad Raiszadeh

**PRIMARY REPRESENTATIVE:** Scott, Maas, FieldXStudio

**DISCRETIONARY ACTIONS REQUESTED:** Appeal of a Plot Plan approval.

**PREVIOUS ACTIONS:** The Plot Plan was administratively approved by the Director of Development Services on July 28, 2022.

**PROJECT PLANNER:** Jay Paul, Senior Planner

**CEQA RECOMMENDATION:** The development was determined to be categorically exempt pursuant to California Environmental Quality Act (CEQA) Guidelines section 15332 (In-fill Development Projects).

**STAFF RECOMMENDATION:** Recommend the City Council deny the appeal and uphold the Director's decision.

**REQUESTED ACTION:** Adopt Resolution No. 2022-08.

**CITY COUNCIL HEARING REQUIRED:** ☒ YES ☐ NO

**REPORT APPROVALS:**

☐ Andrew Firestine, Director of Development Services  
☐ Adam Finestone, City Planner

## A. **BACKGROUND:**

An administrative approval for a Plot Plan, inclusive of a density bonus, was issued on July 28, 2022, for a 48-unit apartment complex located at 1600 S. Escondido Blvd. The project includes five units that will be deed-restricted for very-low income households. The applicant appealed the inclusion of a condition of approval applied to the project which requires the developer to fund ongoing operational costs of providing municipal services required for the project. The appeal is based on the premise that density bonus projects are entitled to certain incentives and waivers, in addition to an increase in allowable density, in order to make a project financially feasible.

All other aspects of the project have been approved and not subject to the appeal.

## B. **ANALYSIS:**

Density bonus law (Government Code section 65915 et. seq.) and Article 67 of the Escondido Zoning Code (Density Bonus and Residential Incentives) are intended to encourage the development of affordable housing. This is accomplished through the allowance for an increase in residential density above what would typically be allowed for a property, and through the provision of incentives and waivers from development standards that make construction of the project infeasible.

Allowable increases in density are based on a sliding scale that involves both the percentage of affordable units being provided, and the level of affordability of those units. Current zoning for the subject property would allow a total of 31 units; however, by deed restricting 15% of those units (amounting to five units) for very-low income households, the project is eligible for a 50% increase in allowable density, resulting in a total allowance of 48 units.

The percentage of affordable units and level of affordability also entitles the applicant to three incentives and waivers. The incentives for this project include a reduction in open space, parking design requirements, and design standards. The applicant has also requested an incentive to facilitate the construction of the project by eliminating the requirement to fund ongoing operational costs of providing municipal services required for the project. This requirement is identified as Condition of Approval A.11 in the Letter of Conditional Approval dated July 26, 2022, and included as Attachment 1 to this staff report. Specifically, the condition states:

***Community Facility District or Funding Mechanism.*** *The Applicant shall fund all ongoing operational costs of providing municipal services required for the Project, the amount of such funding to be determined by the City Council at the time of Project approval. Such funding shall occur through either an agreement to form or annex into a Community Facilities District ("CFD") or the establishment of another lawful funding mechanism reasonably acceptable to the City ("Public Services Funding Agreement"). The provisions of the Public Services Funding Agreement shall specify any terms and limitations necessary to implement the CFD or other funding mechanism to offset the impacts to public services associated with the project. The City Manager, or*

*City Manager's designee, shall be authorized to approve and execute the Public Services Funding Agreement, and the Public Services Funding Agreement shall be finalized prior to the City's issuance of any permit for the Project.*

Government Code section 95915(l) states that density bonus law "...does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements." Similarly, section 33-1414(a)(2)(E) of the City of Escondido Municipal Code states that "the city council may, but is not required to, provide direct financial incentives, including direct financial aid in the form of a loan or grant, the provision of publicly owned land, or the waiver of fees or dedication requirements." Staff has consistently interpreted this to mean that the City is not required under density bonus law to waive fees or provide other direct financial incentives for a housing development and that staff does not have the authority to do so under the City of Escondido Municipal Code or the current City Council adopted policy concerning the funding of municipal services by new development.

### **Costs of Municipal Services**

The condition cited above is consistent with existing City Council policy requiring all residential development to offset its impact on the general fund by providing an ongoing funding source to pay for public services demanded by the project. The following is a brief history of the creation, purpose, and implementation of that policy:

- On June 12, 2019, the City Council directed staff to investigate all options to address the structural budget deficit to ensure the budget deficit does not grow as the City develops, including evaluating the feasibility of a Citywide Services CFD as a streamlined means for projects to offset their ongoing impact to the general fund.
- On April 8, 2020, the City Council indicated its intent to require new residential development to offset the ongoing costs of providing public services.
- On May 13, 2020, the City Council held a duly noticed public hearing and adopted Resolution No. 2020-44 (Resolution of Formation) establishing CFD 2020-1, the Citywide Services CFD.
- On September 16, 2020, the City Council adopted Resolution No. 2020-115 annexing five projects with 66 units into CFD 2020-1 creating the second (2) zone of the Services CFD (Zone 2020-2).
- On September 23, 2020, the City Council restated its intent to require new residential development to offset the ongoing costs of providing public services, specifically noting that the requirement be applied to any project approved after May 13, 2020.



Project Case No.: PL22-0032  
 Planning Commission Meeting  
 Date: September 13, 2022

- On October 21, 2020, the City Council adopted Resolution No. 2020-147 annexing a 42-unit project located at 2608 S. Escondido Blvd. into CFD 2020-1 and creating the third (3) zone of the Services CFD (Zone 2020-03).
- On November 18, 2020, the City Council adopted Resolution No. 2020-160 annexing two (2) projects containing 21 units into CFD 2020-1 creating the fourth zone of the Services CFD (Zone 2020-04).
- On July 21, 2021, the City Council adopted Resolution No. 2021-77 approving the special tax rate for CFD 2020-1 (Public Services).

### ***Planning Commission Review***

Pursuant to Zoning Code Section 33-1304, decisions of the director may be appealed to the Planning Commission. However, because the requirement to fund all on-going operational costs of providing municipal services is a policy established by City Council, the Planning Commission does not have decision-making authority on the appeal. At its public hearing related to the Palomar Heights project on September 22, 2020, the Planning Commission specifically discussed this issue, at which time staff indicated that the Commission did not have the authority to waive Council policy. As such, the Planning Commission is acting in an advisory role to City Council on this appeal.

### **C. CONCLUSION AND RECOMMENDATION:**

The Director of Development Services applied Condition of Approval A.11 to the project approval, requiring the project to fund all on-going operational costs of providing municipal services. Because the condition is consistent with current City Council policy, and because neither the Government Code nor the City of Escondido Municipal Code require the City to provide direct financial assistance to a density bonus project, staff does not support the removal of said condition. As such, and because the Planning Commission is serving in an advisory role to City Council on this appeal, staff recommends that the Planning Commission adopt Resolution No. 2022-08, recommending City Council deny the appeal and uphold the Director's decision to approve the project subject to all conditions of approval contained in the Conditional Letter of Approval attached to this staff report.

### **ATTACHMENTS:**

- ~~1. Plot Plan Conditional Letter of Approval dated July 28, 2022~~
- ~~2. Appeal of Condition of Approval~~
- ~~3. Planning Commission Resolution No. 2022-08~~

## RESOLUTION NO. 2022-141

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
ESCONDIDO, CALIFORNIA, DENYING THE APPEAL OF THE  
STANDARD CONDITION OF APPROVAL AND REQUIRING  
PAYMENT FOR ONGOING MUNICIPAL SERVICES

WHEREAS, Fieldxstudio, Inc. ("Applicant") on behalf of Spinezone Equity Partners, LLC ("Owner") filed a land use development application, Planning Case No. PL22-0032 ("Application"), consisting of a request for a Plot Plan for a 48-unit apartment complex including five deed-restricted very-low income units ("Project") on a 1.02 net acre site located at 1600 S. Escondido Boulevard (Assessor's Parcel Number 236-460-16-00), in the South Centre City Specific Plan; and

WHEREAS, the subject property is all that real property described in Exhibit "A" which is attached hereto and made a part hereof by this reference as though full set forth herein ("Property"); and

WHEREAS, the Application was submitted to, and processed by, the Planning Division of the Development Services Department in accordance with the rules and regulations of the Escondido Zoning Code and the applicable procedures and time limits specified by the Permit Streamlining Act (Government Code section 65920 et seq.) and the California Environmental Quality Act (Public Resources Code section 21000 et seq.) ("CEQA"); and

WHEREAS, pursuant to CEQA and 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 Project, and it was determined that the Project as a whole is categorically exempt from further review pursuant to CEQA Guidelines section 15332 (Class 32) – Infill Development Projects; and

WHEREAS, the Planning Division studied the Application, performed necessary investigations, and the Director of Development Services approved the Plot Plan for the Project as depicted in the administrative approval and subject to all conditions of approval included in the administrative approval; and

WHEREAS, the Applicant submitted an appeal of one condition of approval associated with the payment of costs associated with providing ongoing municipal services; and

WHEREAS, no other aspect of the Plot Plan approval has been appealed, and all other components of the Project have been approved and are not subject to the appeal; and

WHEREAS, on September 13, 2022, the Planning Commission held a duly noticed public hearing as prescribe by law, at which time the Planning Commission received and considered the report and recommendation of the Planning Division and gave all persons full opportunity to be heard and to present evidence and testimony, regarding the appeal. Evidence was submitted to and considered by the Planning Commission, including, without limitation:

- a. Written information and other material submitted by the Applicant;
- b. Oral testimony from City staff, interested parties and the public;
- c. The staff report, dated September 13, 2022, with its attachments as well as City staff recommendation on the appeal;
- d. Additional information submitted during the public hearing; and

WHEREAS, following the public hearing, the Planning Commission adopted Resolution No. 2022-08, recommending that the City Council grant the appeal; and

WHEREAS, on September 28, 2022, the City Council held a duly noticed public hearing as prescribed by law. Evidence was submitted to and considered by the City Council, including without limitation:

- a) written testimony from City staff, interested parties, and the public;
- b) oral testimony from City staff, interested parties and the public;
- c) the City Council staff report, dated September 28, 2022, with its attachments as well as City staff recommendation on the appeal, which is incorporated herein by this reference as though fully set forth herein;
- d) the Planning Commission's recommendation; and
- e) additional information submitted during the public hearing.

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 Findings of Fact attached hereto as Exhibit "B" are hereby made by this City Council, and represent the City Council's careful consideration of the record. The findings of this City Council contained in Exhibit "B" shall be the final and determinative Findings of Fact related to this appeal.
3. That upon consideration of the Findings, the staff report dated September 28, 2022 (a copy of which is on file in the Office of the City Clerk), public testimony presented at the meeting, and all

other oral and written evidence regarding the appeal, the City Council hereby denies the appeal of the standard condition of approval requiring payment for ongoing municipal services.

## **EXHIBIT "A"**

### **LEGAL DESCRIPTION**

**PL22-0032**

**THE WESTERLY 297.00 FEET OF LOT 1 IN BLOCK 256 OF THE RESURVEY OF THE RANCHO RINCON DEL DIABLO, IN THE CITY OF ESCONDIDO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 725, MADE BY J. M. GRAHAM, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 13, 1892.**

**EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE SOUTH 7 1/2 ACRES OF SAID LOT AS CONVEYED IN DEED FROM EDWIN J. FITCH AND MARY FITCH TO MRS. H. LONIGAN, DATED AUGUST 28, 1894 AND RECORDED IN BOOK 230, PAGE 415, OF DEEDS.**

## **EXHIBIT "B"**

### **FINDINGS OF FACT**

The City Council has reviewed the record, and makes the following findings for denying the appeal of the condition of approval that requires ongoing payment for municipal services:

1. On September 23, 2020, following multiple public hearings, the City Council adopted a policy requiring all new residential development approved after May 13, 2020, to pay for their ongoing costs of providing municipal services.
2. Removal of the condition of approval is contrary to the City Council adopted policy requiring future residential projects to fund all on-going operational costs of providing municipal services.

## RESOLUTION NO. 2022-142

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
ESCONDIDO, CALIFORNIA, GRANTING THE APPEAL OF  
THE STANDARD CONDITION OF APPROVAL AND  
WAIVING THE REQUIREMENT FOR PAYMENT FOR  
ONGOING MUNICIPAL SERVICES

WHEREAS, Fieldxstudio, Inc. ("Applicant"), on behalf of Spinezone Equity Partners, LLC ("Owner") filed a land use development application, Planning Case No. PL22-0032 ("Application"), consisting of a request for a Plot Plan for a 48-unit apartment complex including five deed-restricted very-low income units ("Project") on a 1.02 net acre site located at 1600 S. Escondido Boulevard (Assessor's Parcel Number 236-460-16-00), in the South Centre City Specific Plan; and

WHEREAS, the subject property is all that real property described in Exhibit "A" which is attached hereto and made a part hereof by this reference as though full set forth herein ("Property"); and

WHEREAS, the Application was submitted to, and processed by, the Planning Division of the Development Services Department in accordance with the rules and regulations of the Escondido Zoning Code and the applicable procedures and time limits specified by the Permit Streamlining Act (Government Code section 65920 et seq.) and the California Environmental Quality Act (Public Resources Code section 21000 et seq.) ("CEQA"); and

WHEREAS, pursuant to CEQA and 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 Project, and it was determined that the Project as a whole is categorically exempt from further review pursuant to CEQA Guidelines section 15332 (Class 32) – Infill Development Projects; and



WHEREAS, the Planning Division studied the Application, performed necessary investigations, and the Director of Development Services approved the Plot Plan for the Project as depicted in the administrative approval and subject to all conditions of approval included in the administrative approval; and

WHEREAS, the Applicant submitted an appeal of one condition of approval associated with the payment of costs associated with providing ongoing municipal services; and

WHEREAS, no other aspect of the Plot Plan approval has been appealed, and all other components of the Project have been approved and are not subject to the appeal; and

WHEREAS, on September 13, 2022, the Planning Commission held a duly noticed public hearing as prescribe by law, at which time the Planning Commission received and considered the report and recommendation of the Planning Division and gave all persons full opportunity to be heard and to present evidence and testimony, regarding the appeal. Evidence was submitted to and considered by the Planning Commission, including, without limitation:

- a. Written information and other material submitted by the Applicant;
- b. Oral testimony from City staff, interested parties and the public;
- c. The staff report, dated September 13, 2022, with its attachments as well as City staff recommendation on the appeal;
- d. Additional information submitted during the public hearing; and

WHEREAS, following the public hearing, the Planning Commission adopted Resolution No. 2022-08, recommending that the City Council grant the appeal; and

WHEREAS, on September 28, 2022, the City Council held a duly noticed public hearing as prescribed by law. Evidence was submitted to and considered by the City Council, including without limitation:

- a) written testimony from City staff, interested parties, and the public;
- b) oral testimony from City staff, interested parties and the public;
- c) the City Council staff report, dated September 28, 2022, with its attachments as well as City staff recommendation on the appeal, which is incorporated herein by this reference as though fully set forth herein;
- d) the Planning Commission's recommendation; and
- d) additional information submitted during the public hearing.

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 Findings of Fact attached hereto as Exhibit "B" are hereby made by this City Council, and represent the City Council's careful consideration of the record. The findings of this City Council contained in Exhibit "B" shall be the final and determinative Findings of Fact related to this appeal.
3. That upon consideration of the Findings, the staff report dated September 28, 2022 (a copy of which is on file in the Office of the City Clerk), public testimony presented at the meeting, and all other oral and written evidence regarding the appeal, the City Council hereby grants the appeal of the

standard condition of approval and waives the requirement for payment for ongoing municipal services for the Project.

## **EXHIBIT "A"**

### **LEGAL DESCRIPTION**

**PL22-0032**

**THE WESTERLY 297.00 FEET OF LOT 1 IN BLOCK 256 OF THE RESURVEY OF THE RANCHO RINCON DEL DIABLO, IN THE CITY OF ESCONDIDO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 725, MADE BY J. M. GRAHAM, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 13, 1892.**

**EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE SOUTH 7 1/2 ACRES OF SAID LOT AS CONVEYED IN DEED FROM EDWIN J. FITCH AND MARY FITCH TO MRS. H. LONIGAN, DATED AUGUST 28, 1894 AND RECORDED IN BOOK 230, PAGE 415, OF DEEDS.**

## **EXHIBIT "B"**

### **FINDINGS OF FACT**

The City Council has reviewed the record, and makes the following findings for approving the appeal of the condition of approval that requires ongoing payment for municipal services:

1. On September 23, 2020, following multiple public hearings, the City Council adopted a policy requiring all new residential development approved after May 13, 2020, to pay for their ongoing costs of providing municipal services. However, the City's required regional housing needs assessment (RHNA) identified a goal of an additional 9,607 housing units, 1864 of which need to provide housing to very-low income individuals or families. The five deed-restricted units for very-low income households included in this project will help contribute to that goal. Additional ongoing costs would negatively impact the ability to provide these deed restricted units.
2. Removal of the condition of approval would support the City Council adopted Housing Element policies promoting the development of very-low income deed-restricted housing units to meet the City's RHNA goals, and removing the funding requirement would support the development of very-low income deed-restricted units.



# STAFF REPORT

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September 28, 2022  
File Number 0600-10; A-3433

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## SUBJECT

**APPROVAL OF A RIGHT-OF-WAY ENCROACHMENT AGREEMENT WITH SIFI NETWORKS ESCONDIDO, LLC**

## DEPARTMENT

Information Systems

## RECOMMENDATION

Request that the City Council adopt Resolution No. 2022-143, awarding the Right-Of-Way Encroachment Agreement to SiFi Networks, Escondido LLC ("SiFi") to allow for the installation of a citywide fiber communications system ("Project"), and authorizing the Mayor to execute the Agreement.

Staff Recommendation: Approval (Jennifer Schoeneck, Deputy Director of Economic Development, Robert Van De Hey, Chief Information Officer, and Julie Procopio, City Engineer)

Presenter: Jennifer Schoeneck, Rob Van De Hey, and Julie Procopio

## FISCAL ANALYSIS

There is no direct cost to the City of Escondido ("City") associated with the installation and operation of the system. SiFi has agreed to cover the cost of all City staff time associated with plan checks and field inspections. SiFi is not a registered state utility and therefore not afforded the typical protection that registered utility companies operating under the purview of the California Public Utilities Commission (CPUC) receive. As a result, SiFi typically executes agreements with its host cities in order to obtain access to their rights-of-way, establish the agreed upon permitting process, and memorialize any community benefits to be provided. Following a competitive analysis, SiFi was determined to be the superior fiber communications system provider meeting Escondido's citywide infrastructure needs.

## PREVIOUS ACTION

None.

## BACKGROUND

SiFi Networks is a privately-owned telecom company that funds, builds, and operates open access fiber networks across the United States. SiFi's business model and its Escondido proposal include the installation of fiber along every public street at no cost to the City.



# CITY of ESCONDIDO

## STAFF REPORT

SiFi Networks is a international company that has deployed open access fiber networks internationally, including a number of cities in North America. Although the company has had a US presence since 2014, it is relatively new to California. SiFi is currently working on projects within Fullerton, Downey, Placentia and Simi Valley and has announced plans to deploy in Simi Valley, Yuba City, Rancho Cordova, Lancaster, Palmdale and Folsom. SiFi owns and operates all equipment within its system and partners with various Internet Service Providers ("ISPs") that provide the point of connection between SiFi's backbone system and each individual premises.

SiFi offers an affordable, subsidized internet access program called FiberCity Aid which currently offers Gigabyte speed internet service for as low as \$30 per month to qualifying households. SiFi is also committed to providing fiber access to City facilities and equipment at a substantially reduced rate.

The installation of a citywide fiber system along every public street at no cost to the City would provide significant public benefits to our community. Once the network is completed, every property that fronts on a public street in Escondido would have access to Gigabyte speed internet service which would greatly enhance connectivity for our residents, businesses, and City facilities. SiFi will also make efforts to provide access to communities that are served by a private street system.

The provision of a citywide fiber network would complement the City's economic development efforts as many businesses rely on high speed internet service to remain competitive. This network would also ensure that our residents have access to reliable high-speed internet service with opportunities to provide low cost access to economically disadvantaged households. Offering Gigabyte speed fiber access to our local residents would also complement the City's and SANDAG's ongoing efforts to address the "digital divide."

It is recommended that the right of way agreement be approved with SiFi for the installation of a citywide fiber system. SiFi anticipates completing system buildout within three to four years with the first customers connected approximately eight months from commencement of construction.

### RESOLUTIONS

- a. Resolution No. 2022-143
- b. Resolution No. 2022-143 Exhibit "A" – Right of Way Encroachment Agreement

## RESOLUTION NO. 2022-143

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, A RIGHT-OF-WAY ENCROACHMENT AGREEMENT WITH SIFI NETWORKS ESCONDIDO, LLC

WHEREAS, SiFi desires to install a fiber optic network system ("System") in the City of Escondido's ("City") public right-of-way ("Public Way") and the City desires to allow such a System for community benefit; and

WHEREAS, SiFi owns the rights to the FOCUS proprietary fiber optic cable System technology; and

WHEREAS, the City has agreed to grant SiFi permission to access and use the Public Way to install, operate, and maintain the System, subject to the terms and conditions of this Agreement; and

WHEREAS, SiFi plans to allow the City to use the System for governmental internal data communication and non-retail purposes, subject to a separate agreement to be negotiated in good faith between the Parties, at a rate substantially less than current market rate.

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

1. That the above recitations are true.
2. That the City Council authorizes the Mayor to execute, on behalf of the City, a Right-of-Way Encroachment Agreement with SiFi Networks, Escondido LLC, 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.





## **RIGHT-OF-WAY ENCROACHMENT AGREEMENT**

This Right-of-Way Encroachment Agreement (the “**Agreement**”) is dated \_\_\_\_\_, 2022 and will be effective upon the (“**Effective Date**” as defined below), by and between the City of Escondido (“**City**”) in the State of California, (“**State**”), a municipal corporation, and SiFi Networks Escondido LLC a Delaware limited liability company (“**SiFi**”) (each of City and SiFi, a “**Party**” and collectively, the “**Parties**”).

### **RECITALS**

WHEREAS, SiFi desires to install a fiber optic network System (as defined below) in the City’s public rights-of-way and the City desires to allow such a System for community benefit; and

WHEREAS, SiFi owns the rights to the FOCUS (as defined below) proprietary fiber optic cable System technology; and

WHEREAS, the City has agreed to grant to SiFi permission to access and use the Public Way to install, operate, and maintain the System, subject to the terms and conditions of this Agreement; and

WHEREAS, SiFi plans to allow the City to use the System for governmental internal data communication and non-retail purposes, subject to a separate agreement to be negotiated in good faith between the Parties, at a rate substantially less than current market rate.

NOW, THEREFORE, in consideration of the mutual obligations of the Parties, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties covenant and agree as follows:

### **SECTION 1**

#### **1. Definition of Terms.**

1.1 **Terms.** For the purpose of this Agreement, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below.

“**Access**” means facilitation of all necessary City permits encroachments and/or license and/or lease agreements for specified areas within the Public Way.

“**Boundary**” means the legal boundaries of the City as of the Effective Date.

“**Cabinets**” means above ground enclosures placed within the Public Way for the protection of active and passive equipment for the provision of Service throughout the System and as further described in Exhibit A.

“**Chambers**” means underground enclosures placed within the Public Way facilitating access to the active and passive equipment for the provision of Service throughout the System.

“**Commencement Date**” means the date that Substantial Completion, as that term is defined herein, of the System has been achieved.

“**Construction**” means breaking ground for the installation of the System.

**“Construction Contractor”** or **“Contractor”** means the construction company(ies) performing the physical work of installing the System.

**“Drop”** means the fiber optic cable run from the System at the edge of the Public Way or the Fiber Access Box (“FAB”) or the Toby Box (as each is described in Attachment 1) in the Public Way, as the case may be, to the Premises Wall.

**“Excavation and Right-of-Way Encroachment Policy”** means those policies, including the (i) City’s Encroachment Permit Application and Standard Conditions (ii) and Fiber Optic Cable Plan Check documents, as they apply as of the Effective Date, which set forth the procedures, standards and conditions under which the Escondido City Engineer will issue permits for the installation, construction, excavation, inspection, maintenance and/or repair, or other work performed in connection with underground, overhead and surface-mounted utility facilities located or proposed within the public rights-of-way.

**“Facility”** means the secure spaces that the City agrees to make available to SiFi during the Term for the installation of Shelters and Cabinets.

**“FOCUS”** means SiFi’s trademarked FOCUS™ system including the patented Wastewater Fiber Technology, know-how and other proprietary rights, comprising, among other things, a combination of blown fiber, aerial, wastewater and other conventional techniques to enable multi gigabit technologies.

**“FON”** means SiFi’s fiber optic network built by utilizing a combination of blown fiber, aerial, wastewater and/or other conventional techniques, which may also include FOCUS™ design, as well as electronics to enable multi gigabit technologies.

**“Home”** means a residential single-family dwelling, or a residential single dwelling unit located within a Multiple Dwelling Unit, located within the Boundary.

**“Multiple Dwelling Unit”** means an apartment building or other building containing more than four dwelling units located within the Boundary.

**“Microtrenching”** means the process of cutting a trench with a dry cut machine and reinstated with cementitious slurry fill as further described in Section 4.1.1, and according to the requirements of the City’s Excavation and Right-of-Way Encroachment Policy, which Policy shall take precedence in the event of any conflicts.

**“Pass”** or **“Passes”** means the duct or Chamber as parts of the System has reached to the curbside of a residential Primary Premise, or the engineered point at or near a commercial Premises from which a Drop can be connected.

**“Person”** means any natural person or any association, firm, partnership, joint venture, corporation, limited liability company, or other legally recognized entity, whether for profit or not for profit, but shall not mean the City or SiFi.

**“Premises”** means a Home, Multiple Dwelling Unit, office, other public and private building, and City infrastructure asset located within the Boundary.

**"Premises Wall"** means the exterior of an outside wall of a Premises to which the fiber optic cable can be terminated.

**"Primary Premises"** means all Premises within the Boundary as of the Effective Date but excluding any Premises which SiFi cannot connect to (i) because of a lack of a right to access and use of the Public Way due to the City not possessing the right, title, interest or authority to permit SiFi to use and occupy the Public Way in order for SiFi to access such Premises, or (ii) because SiFi lacks a right to access to any non-City owned property within the Boundary in order to access such Premises, or (iii) because the incremental material cost to connect such Premises would be at least ten percent (10%) higher than the average cost to connect SiFi-accessible Primary Premises within the Boundary, or (iv)) where such Premises already have a pre-existing fiber service available to them and do not desire SiFi to connect such Premises. SiFi shall not be required or obligated to make the System available to such Premises described in (i) through (iv) in this definition, and Substantial Completion determination shall not be impacted as a result.

**"Public Way"** shall mean the surface of, and the space above and below, any now existing or future: public street, road, highway, parkway, driveway, freeway, lane, path, court, sidewalk, bridge, alley, boulevard, traffic signals, lamp post, public way, or other public right of way or easement, including public utility easements, dedicated utility strips, or rights of way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by, granted or dedicated to or under the jurisdiction of the City within the Boundary. For the avoidance of doubt, the term "Public Way" shall also mean any easement now or hereafter held by the City within the Boundary for the purpose of public travel, or for utility or public service use dedicated for compatible uses and shall include all other easements or rights of way held by the City within the Boundary over which it may lawfully grant this right.

**"Service"** means internet, voice, data, and video service or any combination thereof, provided by a Service Provider over the System.

**"Service Providers"** means any entity who enters into a contract with SiFi to provide Services over the System.

**"Shelter"** means the above ground facility housing System equipment as further described in Section 4.2 and in Exhibit A hereto.

**"Subscribe"** means an agreement to receive from a Service Provider.

**"Subscriber"** means any Person (which for purposes of this definition shall include the City) who has entered into an agreement to receive or otherwise lawfully receives Service.

**"Substantial Completion"** means the date on which, the System has been installed such that it Passes the addresses of each of the Primary Premises and the System is capable of providing Service to each such Primary Premises (but for the lack of a Drop) or four (4) years post Construction being commenced, whichever event occurs first; provided, however, in the event that Substantial Completion is deemed to have occurred due to the expiration of four (4) years post Construction being commenced, SiFi shall use commercially reasonable efforts to complete, subject to the conditions in the proviso above, such construction as is necessary to provide Service to all Primary Premises within a commercially reasonable time.

**"System"** means all parts of the FON system under and above ground in the City that is designed to support the delivery of Service to Subscribers, including the fiber optic cable and its component parts and appurtenances, and the other cables, wires, components, facilities, Cabinets, ducts, conduits, connectors, Shelters, Chambers, fiber access boxes, appliances, splitters, attachments, and other property, equipment, components, materials, apparatus and appurtenances to the FON system.

**"Work Zone"** means an area within the Boundary that is subject to a separate permit for installation of a portion of the System.

## **SECTION 2**

### **2. Grant of Authority.**

#### **2.1 Grant of Permission.**

2.1.1 **SiFi Permission to Use Public Way.** To the extent allowed by law, and subject to the City's authority to manage the Public Way for the benefit and convenience of the public, the City hereby authorizes SiFi to erect, install, construct, repair, replace, reconstruct, maintain, operate or retain the System in, on, over, under, upon, across, or along any Public Way, including wires, cables, facilities, Cabinets, components, materials, apparatus ducts, conduits, connectors, vaults, fiber access boxes, appliances, splitters, pots, attachments, and other related property or equipment as may be necessary or appurtenant to the System, within the Boundary, and all extensions and additions thereto. Subject to City approval of the applicable permit and final engineering design, SiFi shall be responsible to submit for approval the proposed final engineering design and location, including but not limited to depth, width, and height, of all equipment and other parts of the System. Both Parties agree to cooperate during the design and permitting process and SiFi acknowledges and agrees that the City has final discretion and authority to approve any proposed designs, approve equipment to be permanently installed in the Public Way, and issue any requested permits, each of which shall not be unreasonably conditioned, withheld and/or delayed and subject to Section 2.5 below. Notwithstanding the foregoing, installation of the System and use of the Public Way is subject to the applicable permit for a specific Work Zone.

2.1.2 **Removal or Abandonment of the System upon Termination of Agreement.** Upon the expiration or termination of this Agreement, SiFi shall remove any above-ground portion of the System and shall reimburse the City for any costs associated with SiFi's failure to adequately remove the System or restore City property to its original condition, minus reasonable wear and tear. Upon the expiration or termination of this Agreement, SiFi shall either remove from, or abandon in place, all or any subsurface portion of the System in the Public Way. Any part of the System not removed by SiFi upon expiration or termination shall be deemed abandoned by SiFi as described in this Agreement and may become the property of the City, if so elected by the City in its sole discretion. If the System is abandoned and the City elects not to take ownership of it, SiFi shall remain responsible for and agrees to defend and indemnify the City against any and all costs, claims or damages associated with the System.

2.2 **Term of Agreement.** This Agreement shall become effective upon the execution and delivery of this Agreement by the Parties (the **"Effective Date"**). The term of this Agreement shall commence on Commencement Date and run until midnight on the date that is thirty (30) years after the Commencement Date (the **"Initial Term"**). Following the Initial Term,

and subject to the System operating in accordance with this Agreement, this Agreement shall automatically renew for two additional terms of thirty (30) years each commencing on the thirtieth (30th) anniversary and on the sixtieth (60<sup>th</sup>) anniversary of the Commencement Date, respectively (each, a "**Renewal Term**," and, collectively with the Initial Term, the "**Term**") unless SiFi provides written notice to the City of its intent not to renew at least one hundred eighty (180) days prior to end of the Initial Term and thereafter at least one hundred eighty (180) days prior to end of the first Renewal Term. If SiFi elects to not renew this Agreement, the provisions of Subsection 2.1.2, above, will govern the disposition of the System.

### 2.3 **License**.

(i) City hereby grants and conveys to SiFi, and its licensees, successors, lessees, transferees, and assigns, a revocable exclusive license ("**License**") to enter and occupy portions of the City's Public Way and/or City-owned land including for up to three (3) specific locations for Facilities as further described in Section 4.2, which locations will be mutually agreed upon in good faith between the City and SiFi (the "**License Area**"), for the purposes of erecting, installing, constructing, operating, repairing, replacing, reconstructing, removing, maintaining, using and retaining said System, including, without limitation, wires, cables, ducts, conduits, connectors, vaults, handholes, handhole covers, fencing, appliances, splitters, attachments, and other property, equipment, components, materials, apparatus and appurtenances to the System and the Facilities (the "**Improvements**"). This License is subject to easements, covenants, conditions, and regulations in existence as of the date hereof, as well as the City's authority to manage the Public Way for the benefit of the public. SiFi must obtain all necessary permits to install the Improvements.

(ii) SiFi shall not make any alterations to the License Area or the Improvements without the City's prior written approval. SiFi shall be responsible for all costs incurred in any such alterations. All construction, installation, maintenance and repair of the License Area shall be conducted so as to not interfere with, and shall be subordinate to, City's use and operation of the Public Way. The installation of the System and alterations by SiFi in the License Area shall be completed by competent personnel or contractors, in conformity with all applicable permits, licenses, ordinances, laws and regulations, and free from any liens for labor or materials. Any damage to the License Area resulting from or in connection with the exercise of SiFi's rights hereunder shall be corrected within a reasonable time by SiFi at its sole cost and expense.

(iii) SiFi will maintain the Improvements in accordance with this Agreement and the City's Excavation and Rights-of-Way Encroachment Policy.

(iv) SiFi shall not install or construct any other structures or improvements other than the Improvements and associated appurtenances described herein and noted on the approved permit plans.

(v) The Improvements installed within the License Area by SiFi shall be made at no expense to City. SiFi shall be responsible, and assume all costs, for any relocation or protection of any part of the System in the event the relocation or protection of the System is necessary due to changes in any Public Way at any time during the term of this Agreement.

(vi) City shall, except for emergencies, provide prior written notice to SiFi of any modifications to, or alterations of, the License Area. SiFi acknowledges the City has a

Pavement Management Program that consists of Full Depth Reclamation, Grind and Overlay and Slurry Seal treatments, and that the City has several storm drain, water, recycled water and wastewater (wet utility) projects, inclusive of lateral connections and service connection. SiFi acknowledges this type of work may be to a depth greater than the installation depth of SiFi's infrastructure, and, as such, acknowledges its duties and responsibilities to relocate, at its own expense, any and all infrastructure affected by the City's street maintenance or wet utility projects.

(vii) City, its agents or assigns, or any utility company, or City franchisee, may at any time, enter upon the License Area, except for the Shelter locations, covered by this Agreement for the purpose of installing, maintaining, relocating, altering, enlarging, repairing, or inspecting any utility, facility, or public work thereon; provided that if the Parties have entered an agreement for the City's use of the System, as described in Section 2.8, the City will require its contractors and agents to indemnify SiFi, as a third party, for any damages to the System, Improvements and Facilities caused by the negligence of the City contractors or its agents.

(viii) Subject to the below, SiFi shall restore or cover the cost to restore, in its discretion, damaged or disturbed surfaces or underground utilities at or adjacent to the License Area to substantially the same as the original condition. Restoration shall be carried out immediately after construction or as otherwise reasonably directed by the City as provided for in the permit. Any damage not repaired by SiFi or its contractors, but excluding repairs performed by other third parties, to the reasonable satisfaction of the City shall be a cause to suspend any construction operations on the System within the City's limits until the unsatisfactory repairs are completed to be reasonably satisfactory to the City or termination of this Agreement pursuant to Section 8 below. Where SiFi or its contractor use microtrenching and such microtrenching directly results in cracking of the surrounding roadway emanating from the microtrench of the existing roadway creating loose pieces of roadway larger than 1 inch then such loose pieces will be removed and the affected area will be restored with cementitious slurry fill and over band seal. Specific details for repair of floating islands of pavement of 12-24" wide will be included in the project plans that may include 2" grind of pavement and asphalt concrete overlay.

(ix) SiFi will provide City with not less than thirty (30) spray cans with Cabinet matching color paint, which the City can use to spray paint over any graffiti on any Cabinet. SiFi shall also provide product information for the Cabinet matching paint color such that the City may secure additional paint if needed. If City is unable to remove or cover such graffiti, City may request SiFi's assistance by providing written notice and SiFi shall use commercially reasonable efforts to remove the graffiti within fourteen (14) days of such notice. Should such graffiti not be removed by SiFi or its contractor to the satisfaction of the City within said fourteen (14) days, the City may cause the graffiti to be removed and may submit an itemized statement to SiFi of the costs incurred by the City for such removal. Upon receipt of a demand for payment by City, SiFi must reimburse City for those costs within thirty (30) days of receipt of the invoice.

(x) The System and all of its parts and components which are installed and constructed by SiFi in the License Area shall at all times be and remain the property of SiFi, except as otherwise provided for herein.

(xi) Subject to City's right and authority to manage the Public Way, and as may be provided for or allowed by any issued construction or encroachment permit issued under this Agreement, City shall not install or construct, or permit the installation or construction of, any structures, improvements or obstructions on or over the License Area that unreasonably interferes with SiFi Network' access to, use and possession of the License Area, nor shall City otherwise

unreasonably impede, disturb, interfere with, or restrict, SiFi's access to, use and possession of, the License Area.

2.4 **Exclusivity.** Until after the first anniversary of the Effective Date, and only to the extent allowed by law, and provided that the Parties have entered into an agreement for the City's use of the System as described in Section 2.8, the City shall not solicit any third party regarding any competing fiber optic cable system within the City's Boundary, subject to any obligation or requirements imposed upon the City in its capacity as a land use authority under federal or state law or regulation. Notwithstanding the above, the City may allow installation of fiber optic cables by any franchisee of the State's Public Utility Commission, an established internet service provider with an existing franchise agreement with the City as of the Effective Date, with the State to operate within the City, or as otherwise required by law.

2.5 **Efficient Permitting Process.**

2.5.1 During the Term, the City will use its best efforts to provide efficient and diligent good faith review of all applications for permits by SiFi and/or its contractors, to the extent reasonably possible and to the extent permits are necessary, including permits or other necessary items for construction work on the System within the Public Way. SiFi agrees to reimburse the City for additionally incurred review costs including the temporary hiring of: a permit technician to process the permits, a utility engineer to review and approve plans in accordance with City Policies and requirements, and a construction manager/inspector to manage the inspection process for the City in connection with this expedited permitting process. Conditioned upon SiFi's reimbursement of the City's costs pursuant to Section 2.6, and subject to sufficient staffing levels, the City agrees to process and will endeavor to meet the timeframes below in connection with all applications for permits by SiFi and/or its contractors in connection with this Agreement:

(i) Within two (2) business days of submittal by SiFi and/or its contractors of an application or other request for a permit in connection with this Agreement, the City will provide written acknowledgment to SiFi and/or its contractor confirming receipt of such submittal; and

(ii) Within five (5) business days of submittal by SiFi and/or its contractors of an application or other request for a permit in connection with this Agreement, the City will either acknowledge in writing that such application is properly submitted and complete, or in the event such application is not properly submitted and complete, provide SiFi and/or its contractors with a detailed written explanation of any deficiencies. Upon curing any such deficiencies, the City will undertake an expedited review of the application per the timelines specified herein; and

(iii) Within fifteen (15) calendar days of a reasonably sufficient submittal by SiFi and/or its contractors of an application or other request for a permit in connection with this Agreement, the City will provide written notification of initial review and provide in writing to SiFi and/or its contractors a detailed explanation of any additional information needed for the City to complete its review process. In the event no additional information is needed, the City shall so notify SiFi and/or its contractors in writing; and

(iv) Within twenty-one (21) calendar days of a sufficient submittal by SiFi and/or its contractors of an application or other request for a permit in connection with this



Agreement, the City will provide final approval and issue any necessary approval or permits to SiFi and/or its contractors. In accordance with applicable City policies and procedures, permits shall be issued by Work Zone; however, SiFi shall be allowed to submit permits for and construct multiple Work Zones simultaneously, subject to the City Engineer's approval, which shall not be unreasonably withheld, delayed or conditioned.

2.5.2 The engineering details provided in Exhibit A are the typical details that may or may not change during the final engineering design process.

2.5.3 Nothing herein shall be construed as a promise, warranty, or guarantee of approval of any permit, license, or other land use approval which may be required.

2.5.4 SiFi is responsible for obtaining all other Agency or Public Utility permits or rights-of-entry permits outside of the purview of the City. Neither Party shall be held liable for delays caused by other agencies' or parties' permitting requirements.

**2.6 Processing Fees.** Prior to the submittal of the first permit application by SiFi, and pursuant to City policy and standards, the City and SiFi will enter into an agreement to establish a Developer Deposit Account ("DDA") to cover the cost of plan review, inspection, staff time, construction management, and the cost of efficient and timely water and wastewater utility markings by the City within, but no later than, three (3) business days from SiFi's request for such markings. The City will notify SiFi in writing to replenish the DDA once the account reaches the threshold specified in the agreement. The initial deposit for the DDA will be set forth in the agreement at the time of signing.

**2.7 Fees, Expenses and other Charges.** Except as expressly set forth herein, each Party shall bear and be responsible for all of its own costs, fees and expenses incurred in executing and performing this Agreement. The City agrees that City bonding and insurance requirements may be satisfied by bonds and insurance coverage provided as part of the encroachment permit application and supplied by the Construction Contractor (as principal) performing the construction of the System. Such bonds and insurance documentation to be supplied prior to the start of Construction. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 2.7 will survive expiration or termination of this Agreement.

**2.8 Use Agreement.** Within six months of the Effective Date, the Parties agree to commence negotiations in good faith regarding terms for the City's use of the System for governmental internal data communication and non-retail purposes at rates substantially less than current market rates.

### **SECTION 3**

#### **3. The System.**

**3.1 System Description.** SiFi will install the System within the Boundary using the Public Way and shall use good faith efforts in order to install the System in unincorporated San Diego County areas located within the Boundary. As part of the System, SiFi will deploy a 10Gbps XGSPON fiber optic cable network, throughout the Boundary. It shall begin from the Shelter to the applicable Cabinet in the Public Way and then connect to the private Premises Wall for each applicable Primary Premise. Service providers connecting the System will be able to set

symmetrical baseline internet speeds of up to ten (10) Gbps to retail subscribers. The City acknowledges and agrees that SiFi has the right to install the System within the Boundary using the Public Way in order to make the delivery of Service over the System available to all Primary Premises within the Boundary, subject to the terms and conditions of this Agreement. The Parties acknowledge and agree that there is no agreed design or configuration of the actual location of the System within the Public Way at this time and that SiFi shall submit such designs specification, plan and associated details to the City for approval when ready. The City will work with SiFi to approve the physical location of the fiber optic cable and other equipment and components of the System in, on, over, under, upon, across, or along the Public Way and from the Public Way to the Premises Wall.

**3.2 Certain Permit Rights and Obligations.** SiFi is deemed to have approval to locate the System within the Boundary, subject to applicable permits including but not limited to encroachment, licenses, or other forms of plan review and approval or authorization necessary to construct, install, operate, maintain, replace, reconstruct, or repair the System, or any part thereof, during the term of this Agreement and any extensions. Construction and installation of the System shall be performed in a safe manner using materials of good quality. City will not issue additional permits if SiFi remains in an uncured material breach of this Agreement. Unless approved by City Engineer, all permits shall provide for and allow SiFi and its contractors operational hours as described in Section 3.3 below. SiFi will adhere to all City building code and other applicable City requirements; provided, however in the event of an inconsistency or conflict between the permission granted to SiFi pursuant to this Agreement and a City building code provision, the City building code provision will be interpreted in a manner that supports the objectives and intent of this Agreement.

**3.3 Working Hours.** City agrees SiFi's contractors working hours are Monday through Friday from 7:00 AM to 5:00 PM on residential streets; provided that, work will be performed as specified below:

- 7AM - 9AM Toolbox talks / Prep / Move to site, etc.
- 9AM - 3PM Microtrenching / Reinstatement/Handholes / Laterals, etc.
- 3PM - 5PM Site clean-up, etc.
- 5PM off-site. All material stockpiles, equipment, and contractor equipment to be completely removed from the public right-of-way by 5 p.m.
- Arterial streets work hours are limited from 9AM to 3PM.
- Work within 1,000 feet of a School Zone subject to review and approval of City Engineer.
- Work on Saturdays and City Holidays requires City pre-approval and if approved may be allowed between the hours of 9AM to 3PM to perform punch list repairs and other clean-up activities only.

## **SECTION 4**

### **4. Construction and Facilities.**

4.1 The City acknowledges that SiFi and its contractors intend to use varying construction techniques for the System Construction and deployment, which may include any of the following, and which shall comply with the City's Excavation and Right-of-Way Encroachment Policy:

- (i) traditional open trench and/or directional boring;
- (ii) slot cut Microtrenching as set forth in the specifications set forth in Exhibit A to this Agreement;
- (iii) the use of a ground penetration radar system as the primary method for identifying underground utilities prior to any Microtrenching;
- (iv) techniques ancillary or related to the foregoing.

Subject to review of each Work Zone permit, or sub-permits as may be required, the City hereby approves each of the above referenced construction methods and the specifications in Exhibit A and agrees to work cooperatively with SiFi in reviewing all other potential construction methods and System locations in the event of conflict with the City's Excavation and Right-of-Way Encroachment Policy.

### **4.2 Location of Equipment/Facilities.**

4.2.1 **Facilities.** During the Term, the City shall provide SiFi, as needed, with access to and use of the Facilities for the installation and operation of up to three (3) SiFi's Shelters (enclosed area of approximately one thousand (1,000) square feet per location for each Shelter) subject to a separate lease, easement or another suitable agreement to be negotiated in good faith between the parties including payment by SiFi of fair market value for the use and occupancy of each such Shelter Facility on City-owned land.

4.2.2 **Shelters and Cabinets Locations.** SiFi will identify and provide to the City a selection of suitable sites, which the City and SiFi agree to cooperatively review. However, City has sole and absolute but reasonable discretion to reject a proposed location; provided that, the City will use reasonable efforts to offer suitable alternative locations. SiFi agrees to provide engineering designs including intended locations of the Shelters and Cabinets required for the System to the City prior to Construction in accordance with City's permitting process.

## **SECTION 5**

### **5. Oversight and Regulation by City.**

5.1 **Oversight of Construction.** In accordance with applicable law, the City shall have the right to oversee, inspect and approve the Construction of the System in the Public Way.

5.2 **Compliance with Applicable Laws and Orders.** SiFi shall, at all times during the Term, be subject to and comply in all material respects with all applicable federal, state and local laws and orders from government agencies and courts of competent jurisdiction.

## **SECTION 6**

### **6. Insurance.**

6.1 SiFi and its contractors shall procure and maintain from the date of start of Construction for the duration of the term of the Agreement, appropriate insurance for the services SiFi or its contractor performs, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the SiFi, its agents, representatives, employees, or subcontractors.

6.2 **Minimum Scope and Limit of Coverage.** Coverage shall be at least as broad as:

A. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL 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. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. Coverage shall include blanket contractual liability and broad form property damage, premises, operations, explosion, collapse, underground hazard (commonly referred to as "X", "C" and "U" coverages

B. **Automobile Liability:** Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

C. **Workers' Compensation:** Workers Compensation insurance as required by the State, with Statutory Limits, and Employers' Liability insurance with a limit of not less than \$1,000,000 per accident for bodily injury or disease.

D. **Excess Liability Insurance.** In an amount not less than Five Million Dollars (\$5,000,000.00) applying in excess over all limits and coverages noted in paragraphs A, B and C above.

E. **Professional Liability.** Professional Liability with limits not less than \$2,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract work.

F. **Pollution:** Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. If the services involve lead-based paint or asbestos identification/remediation, the Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors

Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

If the Contractor or SiFi maintains broader coverage and/or higher limits than the minimums shown above for all policies in paragraphs A through F inclusive, above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor or SiFi. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City to the extent necessary to cover any actual damages suffered by the City.

### **6.3 Self-Insured Retentions**

Self-insured retentions must be declared to and approved by the City. At the option of the City, SiFi shall cause the insurer to reduce or eliminate such self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or SiFi shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

### **6.4 Other Insurance Provisions:**

A. Additional Insured. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of SiFi including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of SiFi. General liability coverage can be provided in the form of an endorsement to the SiFi's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

B. Primary Insurance. For any claims related to this project, SiFi's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the SiFi's insurance and shall not contribute with it.

C. Notice of Cancellation. SiFi shall provide prompt written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, SiFi shall forthwith obtain and submit proof of substitute insurance.

D. Builder's Risk (Course of Construction) Insurance. SiFi may, if requested by the City, submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery, and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure,

machinery, or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

E. Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City.

F. Waiver of Subrogation. SiFi hereby agrees to waive rights of subrogation which any insurer of SiFi may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. However, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

G. Verification of Coverage. SiFi shall furnish, upon request, the City with Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before the date of the start of Construction. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

H. Contractor/Subcontractors. SiFi shall require that the Contractor and all subcontractors maintain insurance meeting all requirements stated herein, as applicable to the scope of their respective services, and SiFi shall require the Contractor and all the subcontractors to list City as an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

I. Special Risks or Circumstances. City reserves the right to modify, at any time, these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

J. Maintenance Obligation. From the Commencement of Construction and throughout the Term of this Agreement, SiFi, and its successors and assigns, shall be obligated to maintain and restore the condition of the Public Way directly impacted by the Construction of the System and such obligation shall be supported by cash in escrow, subject to a mutually agreed escrow agreement, in an aggregate annual amount of not less than one million dollars (\$1,000,000.00) and following Substantial Completion as determined by the City, SiFi shall maintain a cash account managed by the City of not less than fifty thousand dollars (\$50,000), which shall be subject to said escrow agreement or subject to a separate escrow agreement, as the case may be. SiFi may replace the initial one million dollars (\$1,000,000) cash in escrow with either: (i) a maintenance bond in accordance with the City's bonding requirements, or (ii) an irrevocable letter of credit from a financial institution approved by the City.

## **SECTION 7**

### **7. Parties' Obligations.**

7.1 **Obligations of the City.** In addition to all other duties and obligations contained elsewhere in this Agreement, City has the following duties and obligations:

(i) Provide a single point of contact ("**SPOC**") for SiFi, which SPOC will be responsible to address all issues related to the System, providing coordination with and act as a liaison to City departments, and serving as a communication and troubleshooting resource for SiFi.

(ii) To the extent feasible, offer the full cooperation of all City departments with respect to relevant issues with respect to the System. Such cooperation will be supervised by the SPOC.

(iii) Participate in regular status meetings for the coordination of all matters related to the System.

(iv) Provide efficient and diligent, as specified in Section 2.5, good faith review of all applications for permits submitted by SiFi or its representatives or contractors, including permits or other necessary items for construction work on the System within the Public Way.

(v) In the event emergency repairs by the City or its contractors in the Public Way are necessary, coordinate the repairs with SiFi, any utilities or other users of the Public Way, in order to facilitate prompt repairs, such coordination to be supervised by the SPOC and the SPOC shall keep SiFi continually apprised of the status of such repairs.

(vi) Except in case of emergency, City will provide SiFi with a least thirty (30) days advance notice of any work in the Public Way that requires the relocation of the System. In addition, where feasible, the City will provide SiFi with an opportunity to access the System at the time of the excavation in the Public Way by others.

(vii) City shall and shall require its contractors to exercise reasonable care when performing work in the Public Way to protect SiFi's System, and City shall be liable to SiFi for any damages to the System resulting from City's or its contractors' negligence or willful misconduct; provided, however, that City shall have no liability for damages resulting from inaccuracies in the as-built drawings provided by SiFi pursuant to Section 7.2(iv).

(viii) City agrees that SiFi shall have the right, subject to the terms and conditions herein, to construct and maintain the System on recently resurfaced public streets.

(ix) City hereby agrees that access to and from the FAB and/or or Toby Box to extend the Drop to a Premise does not require permits from the City.

7.2 **Obligations of SiFi.** In addition to all other duties and obligations contained elsewhere in this Agreement, SiFi has the following duties and obligations:

(i) Work closely with the SPOC of the City and relevant City departments with respect to the construction of the System.

(ii) Comply with all requirements of City for permit and Public Way use applications, to the extent they may be required.

(iii) Maintain or provide for the maintenance of the System.

(iv) To comply with all state, federal and local laws relating to economic sanctions in response to Russia's actions in Ukraine including, but not limited to, California Governor Gavin Newsom's Executive Order (EO) N-6-22 and the U.S Department of Treasury sanctions referenced therein.

(v) Provide to the City the following, upon its prior written request but no more on an annual basis, unless specifically identified below, the following:

(a) All initial drawings as GIS data files (as defined in the City of Escondido GIS Data Standard) along with a Project Report (as defined in Section 4.5 of the City of Escondido GIS Project Requirements);

(b) Weekly/monthly/quarterly updated GIS data files, along with an updated Project Report as defined in Section 4.5 of the City of Escondido GIS Project Requirements);

(c) "Redline" drawings (as defined in Section 4.5 of the City of Escondido GIS Project Requirements) of other City assets that are different to an approved permit;

(d) Email and phone support for GIS data transfer efforts, redline asset edit advisories, and the QAQC of GIS data (as defined in Section 3.2 of the City of Escondido GIS Project Requirements); and

(e) Reimbursement via the DDA referenced in paragraph 2.6 for GIS data transfer costs, including the temporary hiring of a GIS Technician to process the incoming GIS data, if required;

(vi) SiFi and its contractors shall register with the State's safe excavation notification system.

(vii) When work to be performed by the City or its contractors is reasonably required to be within two inches (2") radius from the SiFi System in accordance with industry standards ("**Conflict**"), City shall provide SiFi with not less than sixty (60) days written notice of such Conflict, except in case of emergency, and City shall provide all reasonable accommodations including excavating to the SiFi impacted facilities as reasonably requested by SiFi to allow and facilitate coordination with the City contractor in order for SiFi to protect, or to temporarily or permanently relocate the impacted portion of the System; provided that, SiFi shall bear the direct reasonable cost for additional delays or costs incurred by the City for such Conflict work, and City will not be liable to SiFi for any resulting damages to the System.



If, after its receipt of a Conflict relocation notice per the preceding paragraph, SiFi fails or refuses to relocate, within the time period identified in such notice, its facilities located in, on, upon, along, under, over, across or above any Public Way or to pave, surface, grade, repave, resurface or regrade as required, pursuant to any provision of the Agreement, the City or other public entity may cause the work to be done and will keep an itemized account of the entire cost thereof, and SiFi shall hold harmless the City, its officers and employees from any liability, claims or damages which may arise or be claimed to arise from the moving, cutting, or alteration of any of SiFi's facilities, or the turning on or off of water, oil, or other liquid, gas, or electricity. In addition, SiFi agrees to, and shall, reimburse the City for such cost within forty-five (45) days after presentation to SiFi of an itemized account of such costs.

(viii) SiFi shall be solely responsible for all repairs, maintenance, and adjustments to the System; provided that City will require its contractors and agents to indemnify SiFi, as a third party, for any damages to the System, Improvements and Facilities caused by City contractors or its agents.

(ix) SiFi and/or SiFi's contractors will provide the following response times in connection with repairs based upon one of the following categories:

(1) Non-life-threatening Emergency Response ("NON-LTER")

(a) Description: Curb and gutter projects, and utility (including telecommunications) projects requiring relocation, repair, or replacement that are impacted by the SiFi System and/or may impact the SiFi System, provided that any such NON-LTER repair is subject to the then current California Dig Safe laws and regulations, and all other applicable laws and regulations.

(b) SiFi response time: On-site within five (5) days.

(2) Life Threatening Emergency Response ("LTER")

(a) Description: Break or hit in the main gas, main electric, main water, or main sewer or storm line in the Public Way that has an immediate and direct impact to the traveling safety of the public in or around the Public Way, and wherein the City's ability to implement repairs is impacted by the SiFi System and/or City repairs may impact the SiFi System.

(b) SiFi contractor's response time: On-site within twenty-four (24) hours.

(x) Prior to the date of start of Construction, SiFi shall provide the name and contact information of a representative whose responsibility shall be to field public inquiries or complaints relative to system Construction. This person's contact information shall be included on any Construction notifications disseminated to the public. The person shall be available to answer public inquiries during SiFi's contractor's working hours. SiFi shall inform the City of changes to the designated contact person within five business days of such change.

(xi) SiFi, through its FiberCity® Aid Program, will provide internet service providers ("ISPs") providing services over the System with a reduced wholesale rate to encourage and enable such ISPs, subject to ISPs participation, to provide low-cost gigabit internet service to a number of qualified low-income subscribers, by applying subscriber qualification criteria established by the City in its discretion, not to exceed six thousand four hundred eighty (6,480) of all residential Primary Premises.

(xii) SiFi will facilitate the City's use of the System for governmental internal data communication and non-retail purposes at rates substantially less than current market rates pursuant to the agreement described in Section 2.8.

SiFi recognizes the importance of cyber and network security and strives for continuous improvement in all its systems. Therefore, the security systems and protocols of SiFi's network operators and ISPs are considered in selecting the partners that meet industry standards.

## **SECTION 8**

### **8. Breach; Rights and Remedies; Termination; Indemnification.**

8.1. **SiFi Breach or Default.** In the event the City believes that SiFi has not complied with or is otherwise in default with regard to any material term of this Agreement, the City shall promptly notify SiFi in writing with specific details regarding the exact nature of the alleged noncompliance or default (a "**City Breach Notice**"). The failure to promptly provide such notice, however, shall not act as a waiver of any rights and remedies of the City hereunder unless and only to the extent that SiFi is materially prejudiced by such failure. City agrees that it shall not issue a City Breach Notice and shall not raise any claims for breach against SiFi, if such breach would not have occurred or such claim would not have been raised had the City issued a permit(s) required and when required, when SiFi has provided the reasonably required information for such a permit, to construct the System or any part thereof to SiFi or its contractor(s).

8.1.1 **SiFi's Right to Cure or Respond.** SiFi shall have forty-five (45) days from its receipt of a City Breach Notice (the "**Initial SiFi Cure Period**") to:

(i) respond to the City, contesting the assertion of noncompliance or default and in such event the Parties shall use commercially reasonable efforts to promptly resolve such contest and to the extent the Parties are unable to resolve such contest within thirty (30) days of SiFi's response, each Party shall be entitled to seek any and all rights and remedies available to it at law or in equity to resolve such contest; or

(ii) cure an actual default or noncompliance; provided, however, in the event that the default is curable but due to the nature of the default or noncompliance, such default or noncompliance cannot be cured within the Initial SiFi Cure Period, so long as SiFi initiates reasonable steps to remedy and continuously and diligently uses all reasonable efforts to cure such default or noncompliance promptly and notifies the City of the steps being taken and the projected date that they will be completed, the Initial SiFi Cure Period shall be extended for a reasonable amount of time to permit such cure but not to exceed ninety (90) days from SiFi's receipt of a City Breach Notice (the "**Extended SiFi Cure Period**") and together with the Initial SiFi Cure Period, the "**SiFi Cure Period**").

### 8.1.2 **City Rights and Remedies.**

(i) Except as provided in Section 8.1.2(ii), below, which shall control in connection with the events described therein, if SiFi fails to cure any actual noncompliance or default as provided in Section 8.1.1(ii) above within the SiFi's Cure Period, the City may:

(a) seek specific performance of any provision of this Agreement which lends itself to such remedy as an alternative to money damages;

(b) seek money damages from SiFi; or

(c) in the event of the breach of, noncompliance with or default under any material term of this Agreement, terminate this Agreement and seek any and all rights and remedies available to it at law or in equity.

(ii) In the event of termination of this Agreement City shall allow SiFi to continue all network operations necessary to maximize use of the existing FON in accordance with this Agreement. The City shall however have authority over all extensions of the FON in the Public Way. In the event City elects to permit SiFi to continue all network operations, such permission may include mutually agreed and executed amendment of this Agreement, including but not limited to a requirement for additional compensation to be mutually agreed upon by City and SiFi.

**8.2 City Breach or Default.** In the event SiFi believes that the City has not complied with or is otherwise in default with regard to any term of this Agreement, SiFi shall promptly notify the City in writing with specific details regarding the exact nature of the alleged noncompliance or default (a "**SiFi Breach Notice**"). The failure to promptly provide such notice, however, shall not act as a waiver of any rights and remedies of SiFi hereunder unless and only to the extent that the City is materially prejudiced by such failure.

**8.2.1 City's Right to Cure or Respond.** The City shall have forty-five (45) days from its receipt of a SiFi Breach Notice (the "**City Cure Period**"); provided that the City Cure Period for a failure of the City to review permit applications and issue a permit(s) necessary to construct the System as required under Section 3.2 (a "**Permit Issuance Breach**") shall be seven (7) days from its receipt of a SiFi Breach Notice to:

(i) respond to SiFi, contesting the assertion of noncompliance or default and in such event the Parties shall use commercially reasonable efforts to promptly resolve such contest and to the extent the Parties are unable to resolve such contest within thirty (30) days of the City's response, each Party shall be entitled to seek the rights and remedies provided herein; or

(ii) cure an actual default or noncompliance; provided, however, in the event that the default is curable but due to the nature of the default or noncompliance, such default or noncompliance cannot be cured within the City Cure Period, so long as the City initiates reasonable steps to remedy and continuously and diligently uses all reasonable efforts to cure such default or noncompliance promptly and notifies SiFi of the steps being taken and the projected date that they will be completed, the City Cure Period shall be extended for a reasonable

amount of time to permit such cure but not to exceed ninety (90) days from the City's receipt of a SiFi Breach Notice (the "**Extended City Cure Period**"); provided further, however, no Extended City Cure Period shall apply to a Permit Issuance Breach.

**8.2.2 SiFi Rights and Remedies.** If the City fails to cure any actual noncompliance or default as provided in Section 8.2.1(ii) above within the applicable City Cure Period, the City shall not be liable for money damages, and SiFi's sole and exclusive remedies are to:

- (i) seek specific performance of any provision of this Agreement; or
- (ii) terminate this Agreement.

### **8.3 Additional Rights to Terminate.**

8.3.1 At any time prior to commencing Construction, SiFi shall have the immediate right, at its option, upon written notice to the City to terminate this Agreement.

8.3.2 A Party shall have the right, at its option, upon notice to the other Party to terminate this Agreement if the other Party becomes (i) insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (ii) subject to any bankruptcy or insolvency proceeding under federal, state or foreign statutes which is not rescinded or dismissed within thirty (30) days.

### **8.4 Indemnification.**

8.4.1 SiFi represents and warrants that to the extent of its knowledge it does not require any state and federal regulatory authorizations to construct, operate, maintain and manage the System. SiFi agrees to defend, indemnify and hold the City, its officials, officers, employees free and harmless from any and all claims, demands, penalties or proceedings resulting from any breach of this warranty or in connection with SiFi's compliance with state and federal laws and regulations applicable to installation, maintenance and operation of the System.

8.4.2 SiFi shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner which actually or allegedly arise out of or are incident to any alleged acts, omissions, negligence or willful misconduct of SiFi, its officials, officers, employees, agents, and subcontractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all attorney's fees and other related costs and expenses except where caused by the active negligence, sole negligence, or willful misconduct of the City its officers, officials, employees and volunteers. SiFi shall defend, at its own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its directors, officials, officers, employees, agents or volunteers. SiFi shall pay and satisfy any judgment, award or decree, including an award of attorney's fees, that may be rendered against the City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. SiFi shall reimburse the City, its officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. SiFi's obligation to indemnify shall not be

restricted to insurance proceeds, if any, received by the City its officials, officers, employees, agents or volunteers.

**8.5 Limitation of Liability.** EXCEPT WITH RESPECT TO SiFi's INDEMNITY OBLIGATIONS UNDER SECTION 8.4, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING ANY LOST SAVINGS OR HARM TO BUSINESS. EACH PARTY HEREBY RELEASES THE OTHER PARTY AND ITS AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MANAGERS, MEMBERS, EQUITY AND DEBT HOLDERS, PARTNERS, EMPLOYEES, CONTRACTORS AND REPRESENTATIVES AND THEIR HEIRS, SUCCESSORS AND ASSIGNS, FROM CLAIMS FOR ANY SUCH DAMAGES. SiFi per occurrence liability under this Agreement shall be limited to the higher of five million dollars (\$5,000,000) or the amount of available applicable insurance coverage. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 8.5 will survive expiration or termination of this Agreement.

## **SECTION 9**

### **9. Disputes.**

9.1 For all claims, disputes or controversies arising out of, or in connection with, the breach, interpretation, application, or enforcement of this Agreement, or arising out of, or in connection with, the System which cannot be settled through negotiation, the Parties agree first to try in good faith to settle the matter by mediation in San Diego County prior to commencing litigation.

9.2 All claims, disputes or controversies arising out of, or in connection with, the breach, interpretation, application, or enforcement of this Agreement, or arising out of, or in connection with, the System, not resolved informally or through mediation shall be decided in a court of law. The sole and exclusive venue for all claims, disputes or controversies arising out of, or in connection within the breach, interpretation, application, or enforcement of this Agreement, or arising out of, or in connection with, the System, shall be the United States District Court with applicable federal jurisdiction for the City or, if there is no federal court jurisdiction, in San Diego Superior Court, North County branch.

## **SECTION 10**

### **10. Miscellaneous Provisions**

10.1 **Assignment.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and each of their respective successors and assigns as provided herein. The City shall not be permitted to assign, sell or transfer this Agreement, or its rights and duties under this Agreement, without the prior written consent of SiFi, which consent shall not be unreasonably withheld, conditioned, or delayed. SiFi shall have the right to assign, novate, sell, encumber, or transfer this Agreement and the System or any part thereof, without the consent of the City to SiFi's principal, affiliates, subsidiaries, subsidiaries of its principal or any entity which acquires all or substantially all of the SiFi's assets in the market by reason of a merger, acquisition, or other business reorganization, provided such assignee, purchaser, or transferee (i) has all appropriate licenses, to the extent SiFi's licenses, permits and approvals cannot be assigned or transferred, for the operation, management, and maintenance of the

facilities contemplated herein, and (ii) has sufficient financial resources to fulfill all applicable terms and obligations under this Agreement. At least thirty (30) days prior to the effective date, or as soon as practicable, of any such assignment, sale or transfer, SiFi shall provide City with a fully executed copy of the assignment, sale or transfer document, signed by both SiFi and assignee/purchaser/transferee, indicating the assignee's/purchaser's/ transferee's assumption of all of SiFi's performance duties, liabilities and obligations under this Agreement. SiFi shall not be relieved of its performance duties, liabilities or obligations under this Agreement until City is in receipt, of a fully executed copy of the document evidencing such assignment of the obligations herein and the assignee's/purchaser's/transferee's assumption of SiFi's performance duties, liabilities, and obligations under this Agreement. SiFi may not otherwise assign this Agreement or the System without City's consent, City's consent not to be unreasonably withheld, conditioned, or delayed. Upon any such City-approved assignment, sale, transfer, or novation, SiFi shall be released from all obligations and liabilities under this Agreement from and after the date of such assignment. SiFi shall give the City fourteen (14) days' advance written notice of such assignment, sale, transfer or novation disclosing the identity of the Person to whom it has been assigned, transferred, sold or novated. The City agrees from time to time to promptly deliver (and in no event later than thirty (30) days after request by SiFi) to SiFi an estoppel certificate addressed to the assignee, buyer or transferee designated by SiFi, affirming for the benefit of such buyer, assignee or transferee the following (to the extent that the following are then true): the Agreement is in full force and effect; SiFi is not in default thereunder; and such other matters as such assignee, buyer or transferee may reasonably request.

**10.2 Force Majeure.** Except as otherwise expressly set forth in this Agreement, neither Party will be held in default under, or in breach or noncompliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of this Agreement), where such noncompliance or alleged defaults occurred or were caused by any of the following events (each a "**Force Majeure Event**"): labor strike, riot, war, earthquake, flood, hurricane, health crisis, pandemic, drought, tornado, unusually severe weather conditions, or other act of nature, labor disputes, failure of utility service necessary to construct the System, governmental, administrative or judicial order, or other event that is beyond the Party's reasonable control. Force Majeure Events also include work delays caused by waiting for (i) utility providers to service or monitor their own utility infrastructure on which SiFi's fiber optic cable and/or equipment may be deployed, as well as unavailability of materials and/or reasonably qualified labor to perform the work or (ii) third parties' acts or omissions within the Public Way which materially interfere with the Parties' ability to perform their obligations under this Agreement.

**10.3 Notice.** All notices and communications hereunder shall be in writing and shall be served upon the other party by hand delivery, nationally recognized overnight delivery service, United States certified mail, return receipt requested, or by electronic mail and addressed as follows:

IF TO THE CITY:  
City of Escondido  
201 N Broadway  
Escondido, CA 92025  
Attn: City Engineer  
Email: jprocopio@escondido.org

IF TO SIFI:  
SiFi Networks Escondido LLC  
103 Foulk Road, Suite 500  
Wilmington, DE 19803  
Email: NOTICES@SiFiNetworks.com

or to such other address as such Party may hereafter specify for the purpose by notice to the other Party in the manner provided in this Section 10.3. All such notices, requests and other communications will be deemed received on the date of receipt if received prior to 5 p.m. on any business day in the place of receipt. Otherwise, any such notice, request or communication will be deemed not to have been received until the next succeeding business day in the place of receipt. Rejection or other refusal to accept or inability to deliver because of change of address of which no notice was given shall be deemed to be receipt of the notice.

10.4 **Entire Agreement.** This Agreement, including all Exhibits, embodies the entire understanding and agreement of the City and SiFi with respect to the subject matter hereof. This Agreement supersedes all other agreements whether written, verbal, or otherwise between SiFi and the City with respect to the subject of this Agreement.

10.5 **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement (which other terms and provisions shall remain in full force and effect) or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

10.6 **Governing Law.** This Agreement shall be deemed to be executed in the State and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State as applicable to contracts entered into and performed entirely within the State, irrespective of conflict of laws principles.

10.7 **Modification.** This Agreement shall not be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and SiFi. For the avoidance of doubt, this Agreement cannot be amended or modified orally or by course of conduct, and no executory agreement, oral agreement or course of conduct shall be effective to amend or modify this Agreement in whole or in part.

10.8 **No Third-Party Beneficiaries.** Nothing in this Agreement or in any prior agreement is or was intended to confer third party beneficiary status on any party or Person not a party to this Agreement including a member of the public.

10.9 **No Waiver of Rights.** Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural that SiFi or the City may have under federal or state law unless such waiver is expressly stated herein.

10.10 **No Rights to the System.** The City expressly agrees that, except as expressly set forth in this Agreement, it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the System, throughout the term of this Agreement. Except as otherwise provided herein, SiFi shall, at all times, retain title to and ownership of the System and all future extensions of the System, and shall have the right to lease the System or parts thereof to a provider of internet, data, voice, video and other services.

10.11 **Representations and Warranties.**

10.11.1 The City represents and warrants to SiFi that: (a) it has full authority (including the authority required by any applicable law, ordinance, rule or regulation) to enter into and perform this Agreement and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby and thereby are within the right, power and authority of the City and have been duly authorized by all necessary action on the part of City, (b) this Agreement has been duly executed and delivered by the City and it constitutes a legal, valid and binding agreement of the City enforceable against the City in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity), and (c) the execution and delivery of this Agreement by the City and its performance hereunder and thereunder will not violate any law, ordinance, rule, or regulation applicable to the City.

10.11.2 SiFi represents and warrants to the City that: (a) it has full authority to enter into and perform this Agreement and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby and thereby are within the power and authority of SiFi and have been duly authorized by all necessary action on the part of SiFi, (b) this Agreement has been duly executed and delivered by SiFi and it constitutes a legal, valid and binding agreement of SiFi enforceable against SiFi in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity), and (c) the execution and delivery of this Agreement by SiFi and its performance hereunder and thereunder will not violate any law, rule, or regulation applicable to SiFi.

10.11.3 OTHER THAN THE EXPLICIT REPRESENTATIONS AND WARRANTIES MADE BY SIFI TO CITY UNDER THIS AGREEMENT, SIFI MAKES NO REPRESENTATIONS OR WARRANTIES TO THE CITY OR ANY PERSON WITH RESPECT TO THE SYSTEM (OR THE COMPONENTS THEREOF) AND HEREBY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. TO THE EXTENT THAT SIFI MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

10.12 **No Third-Party Contractual Rights.** Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either SiFi or the City.

10.13 **No Partnership.** Nothing in this Agreement shall be construed to create an employment, partnership, joint venture or agency relationship between the City and SiFi or any



other relationship other than a contractual relationship as expressly set forth in this Agreement. Neither Party shall in any manner act or indicate to any third party that it is acting as the employee or agent of the other Party. SiFi shall at all times remain an independent contractor. Neither Party shall control or direct the day-to-day affairs of the other Party, or their mode or method of performing their respective obligations hereunder.

10.14 **Headings.** The headings and captions of this Agreement are solely for the convenience of the Parties and shall not be deemed to modify or vary any of the substantive terms thereof.

10.15 **Construction.** Each of the Parties acknowledge that each Party to this Agreement has been represented by counsel in connection with this Agreement. Legal or equitable principles that might require the construction of this Agreement or any provision hereof against the party drafting this Agreement shall not apply in any construction or interpretation of this Agreement and is expressly waived. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. The words "hereof", "herein" and "hereunder" and words of like import used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement. References to Articles, Sections, and clauses are to Articles, Sections and clauses of this Agreement unless otherwise specified. Any singular term in this Agreement will be deemed to include the plural, and any plural term the singular. Whenever the words "include", "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation", whether or not they are in fact followed by those words or words of like import. "Writing", "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

10.16 **Counterparts.** This Agreement may be signed in any number of counterparts, each of which will be deemed an original, with the same effect as if the signatures were upon the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission (including PDF) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

10.17 **Further Assurances.** Each Party agrees that it will execute and deliver such other documents and take such other action as may be reasonably requested by the other Party to effectuate the purposes and intention of this Agreement.

10.18 **No Waiver.** No provision of this Agreement may be waived unless such waiver is in writing and signed by the Party against whom the waiver is to be effective. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

[Signature Page to Follow]

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

**SiFi Networks Escondido LLC**  
A Delaware Limited Liability Co.

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

EXHIBIT A  
SPECIFICATIONS, SHELTERS, CABINETS

# EXHIBIT A

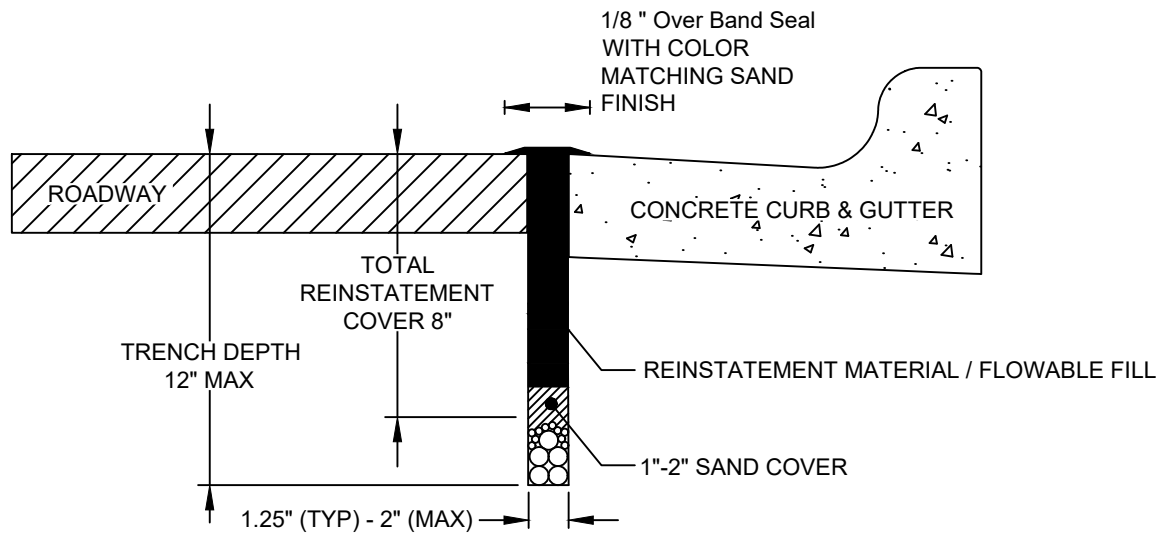
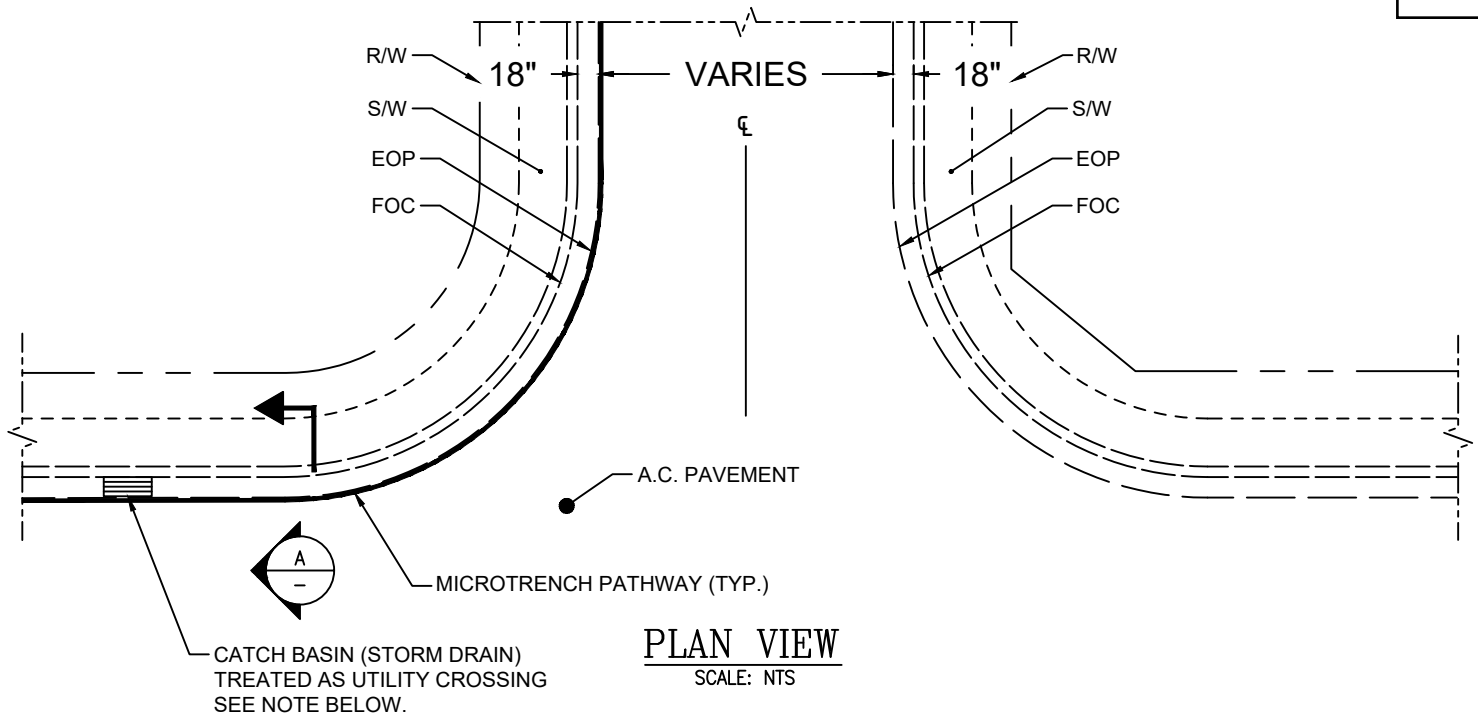
## SPECIFICATIONS-SHELTERS-CABINETS FIBER CITY TYPICAL SPECIFICATIONS 9/13/2022



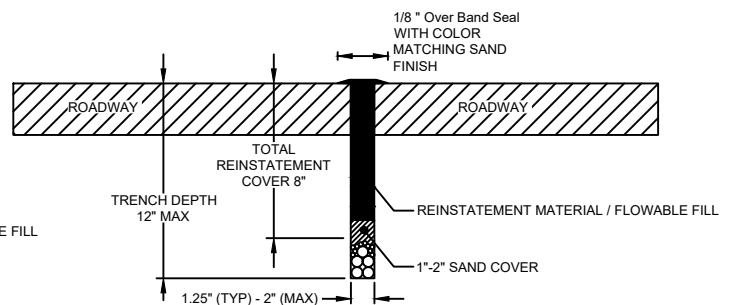
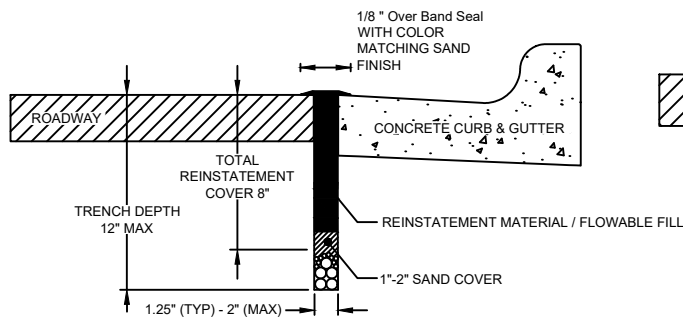
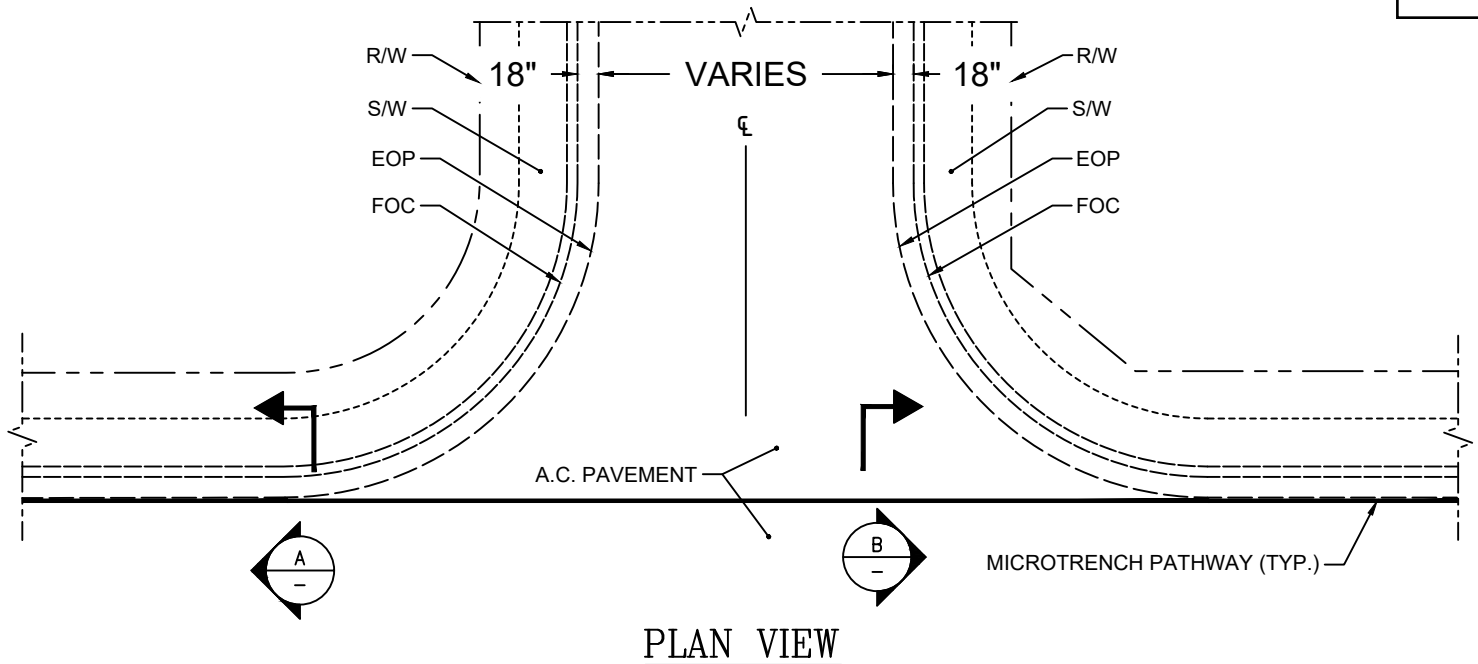
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# ROADWAY WITH A CURB RETURN



## ROADWAY WITH CURB &amp; GUTTER - VARIANT A





SECTION VIEW A-A



# ROADWAY WITH A CURB RETURN VARIANT B

NO.	REVISIONS	BY	DATE

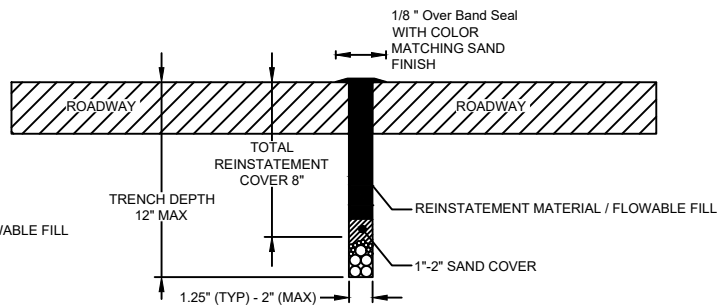
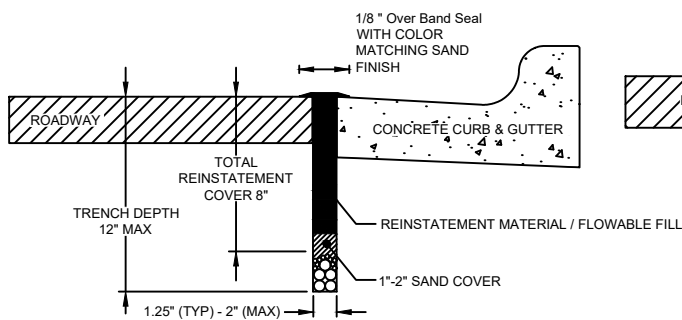
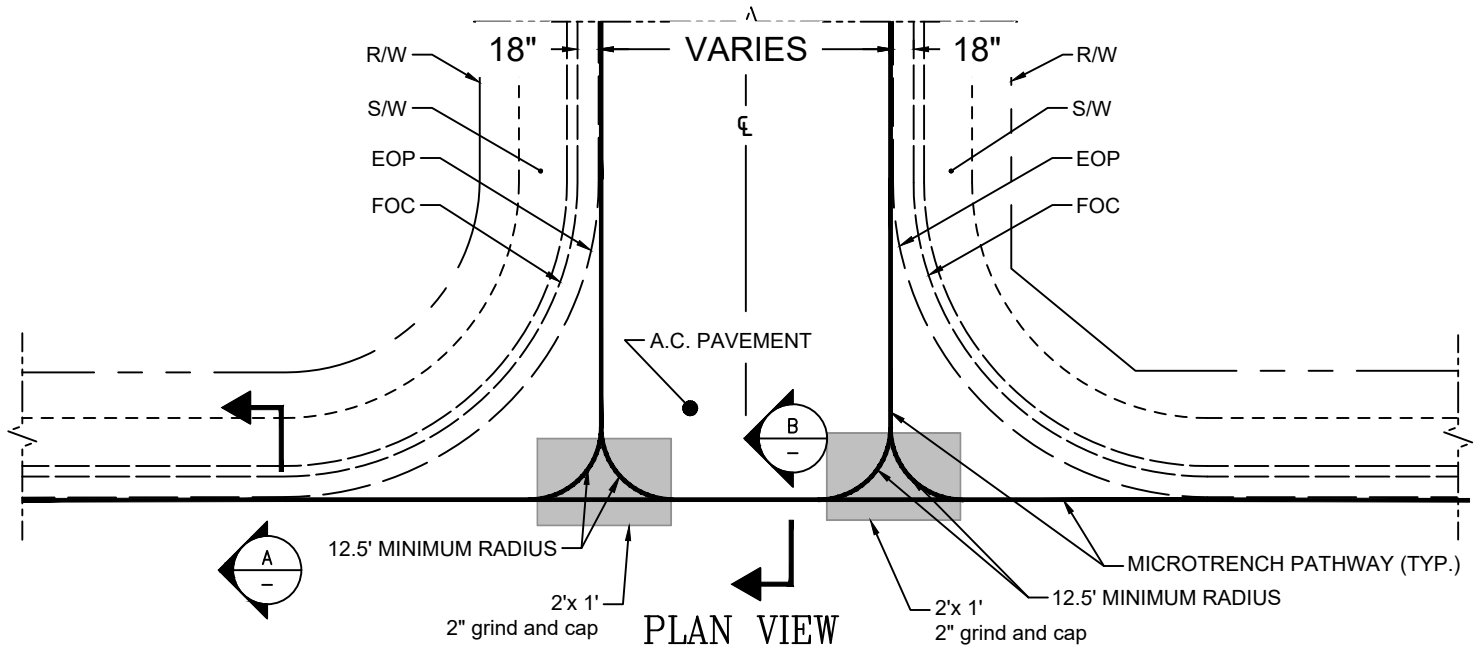
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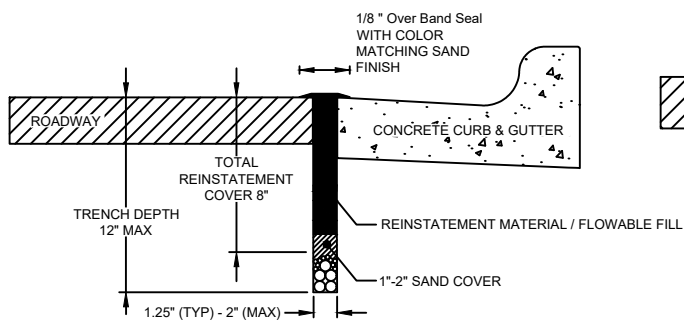
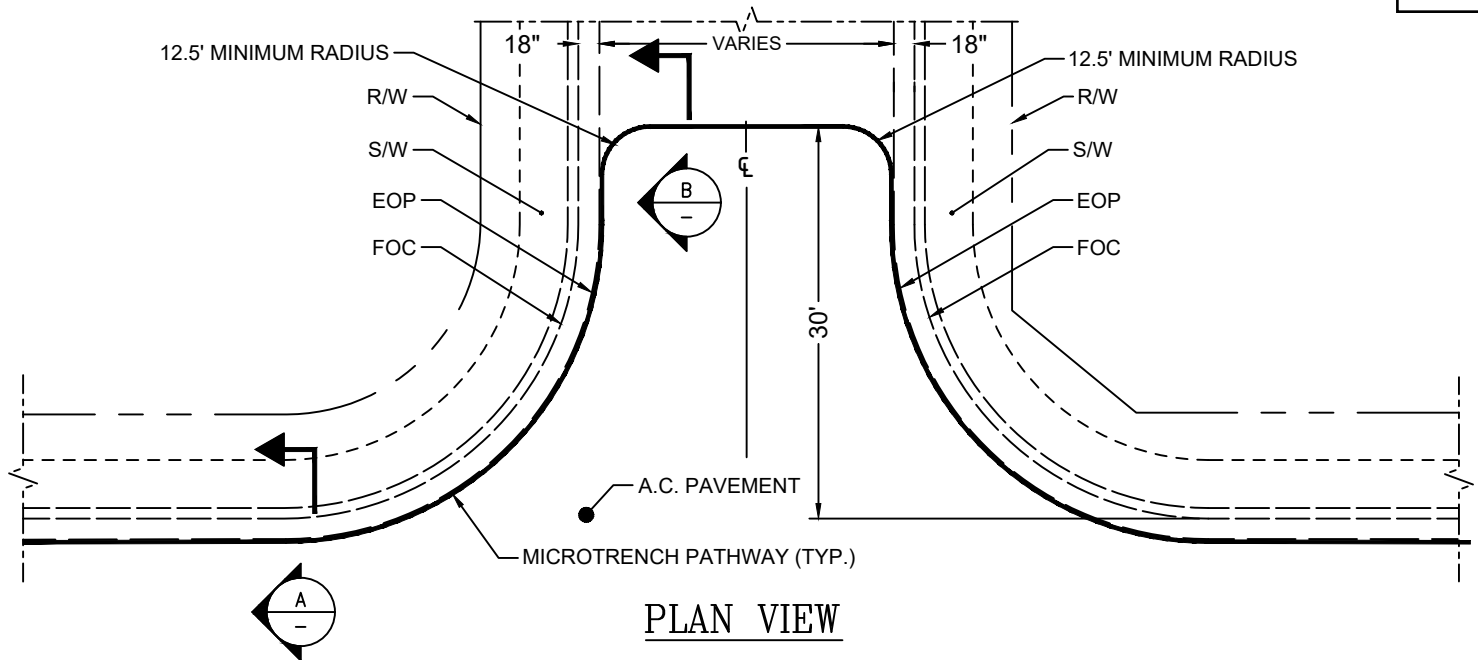
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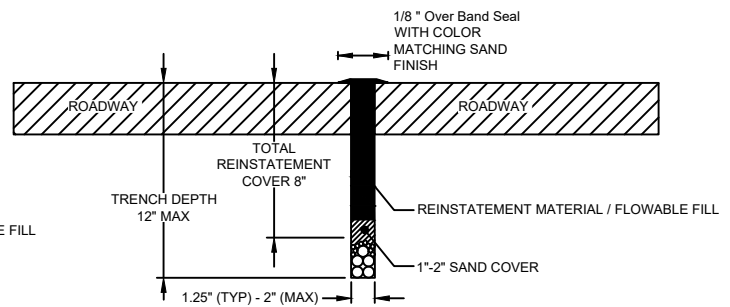
## ROADWAY WITH CURB AND GUTTER - VARIANT

Item9.



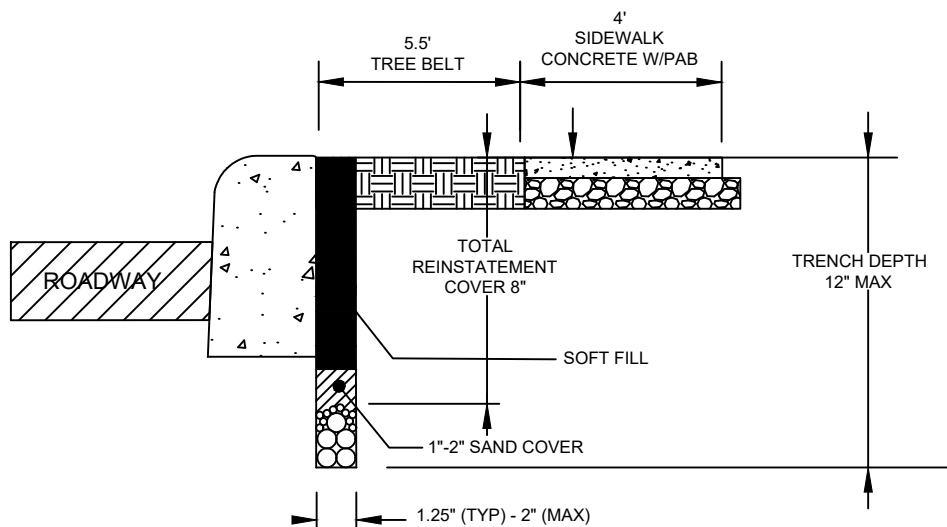
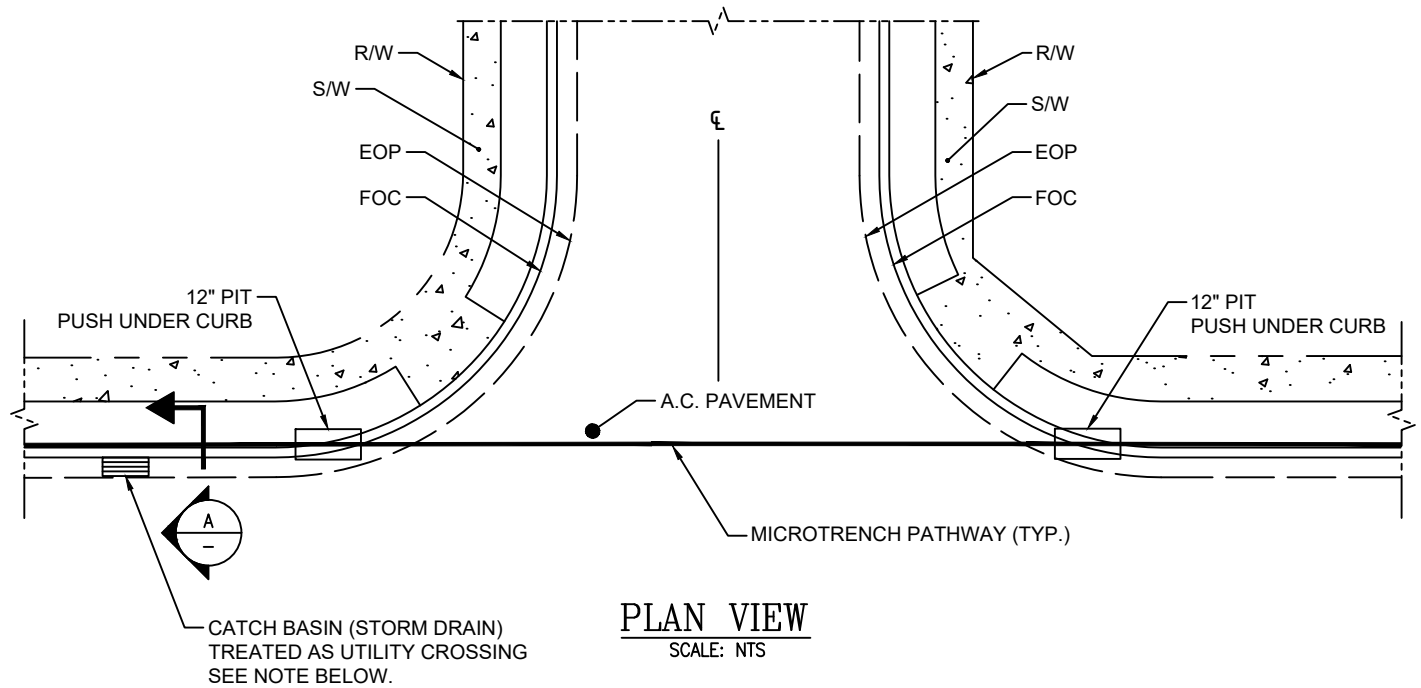


SECTION VIEW A-A

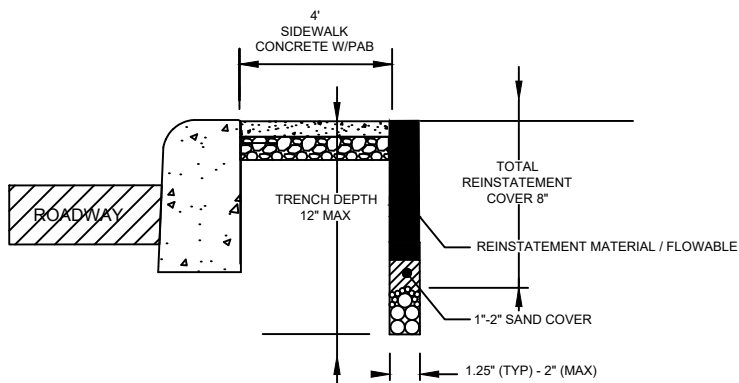
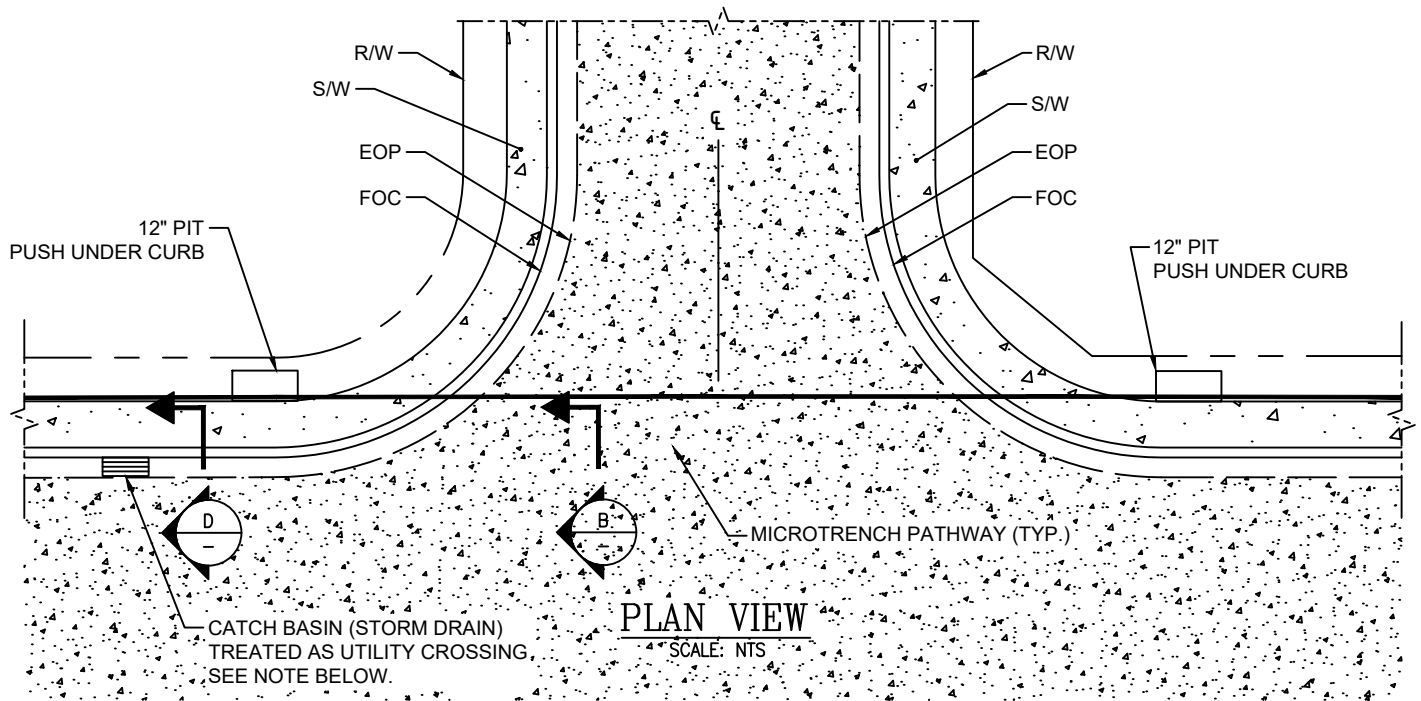


SECTION VIEW B-B

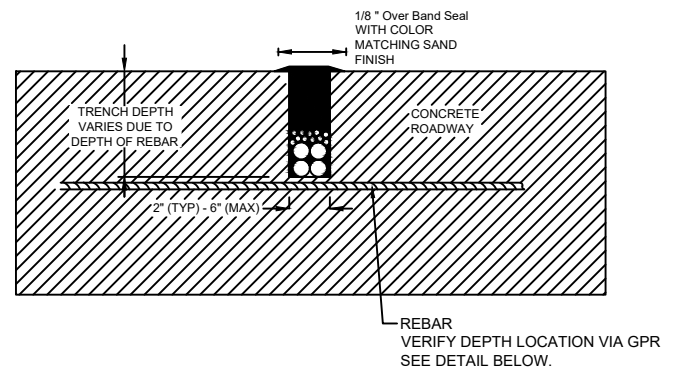
# ASPHALT ROAD CROSSING FROM BACK OF CURB



# CONCRETE ROAD CROSSING FROM BACK OF SIDEWALK



SECTION VIEW D-D



SECTION VIEW BB-BB



STANDARD CHAMBER/INLET PROTECTION

Item9.

FEATURES:

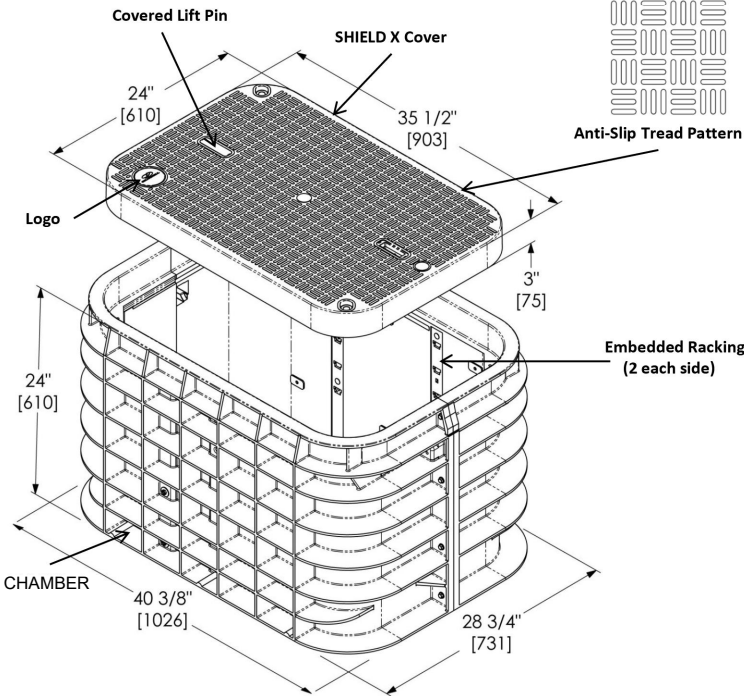
- 24" X 36" X 24" (open floor) (actual dimensions on drawing)
- CHAMBER – SHIELD X COVER- Tier 22 Load Rated (ANSI/SCTE 77: 2013)
- (2) Cover locking Auger bolts, Hex (9/16") or Penta (7/8") head with washer
- (2) Non-Seizing Fastening System, Field Replaceable
- (4) Embedded Composite Rack Support
- (2) Lifting slot equipped with stainless steel pin (slot is approximately 2 ¾"x¾")
- (2) Winterized Cable Drop slide (1 ¼" X 1 ¼")
- (1) Logo Disk

WEIGHT & SHIPPING:

- Cover Weight: 47 lbs
- Box Weight: 55 lbs
- Assembly Weight : 102 lbs

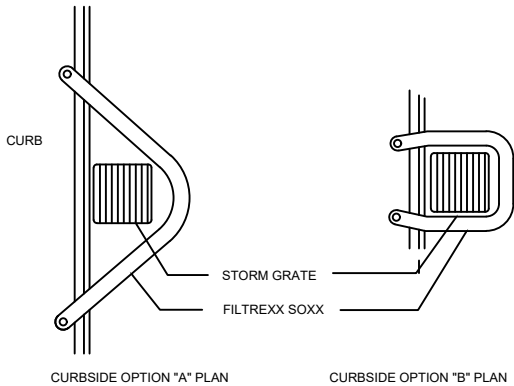
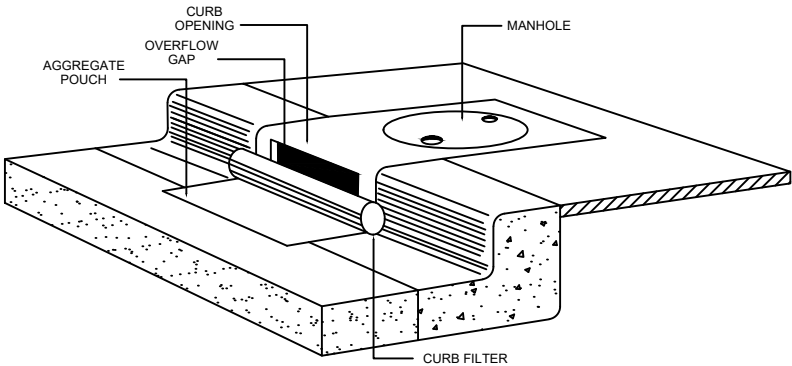
PERFORMANCE TESTING:

- ANSI/SCTE 77: 2013 - TIER 22 Rated (33,750 lbs)
- AS3996 – Class C
- EN124 Class B125
- ASTM C1028-07 & AS-4586 (Slip Resistance)
- 10,000 Hour Xenon-Arc Exposure (No fiber-bloom)
- ASTM D635-06 (Flammability)



Inside Dimensions		
Length	Width	Depth
34 ¾" [873]	22 ¾" [578]	21" [533]

EXCESS SOXX MATERIAL  
TO BE DRAWN IN AND TIED OFF TO  
2X2 WOODEN STAKE (TYP.)

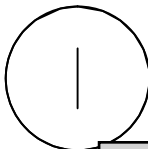


INLET PROTECTION



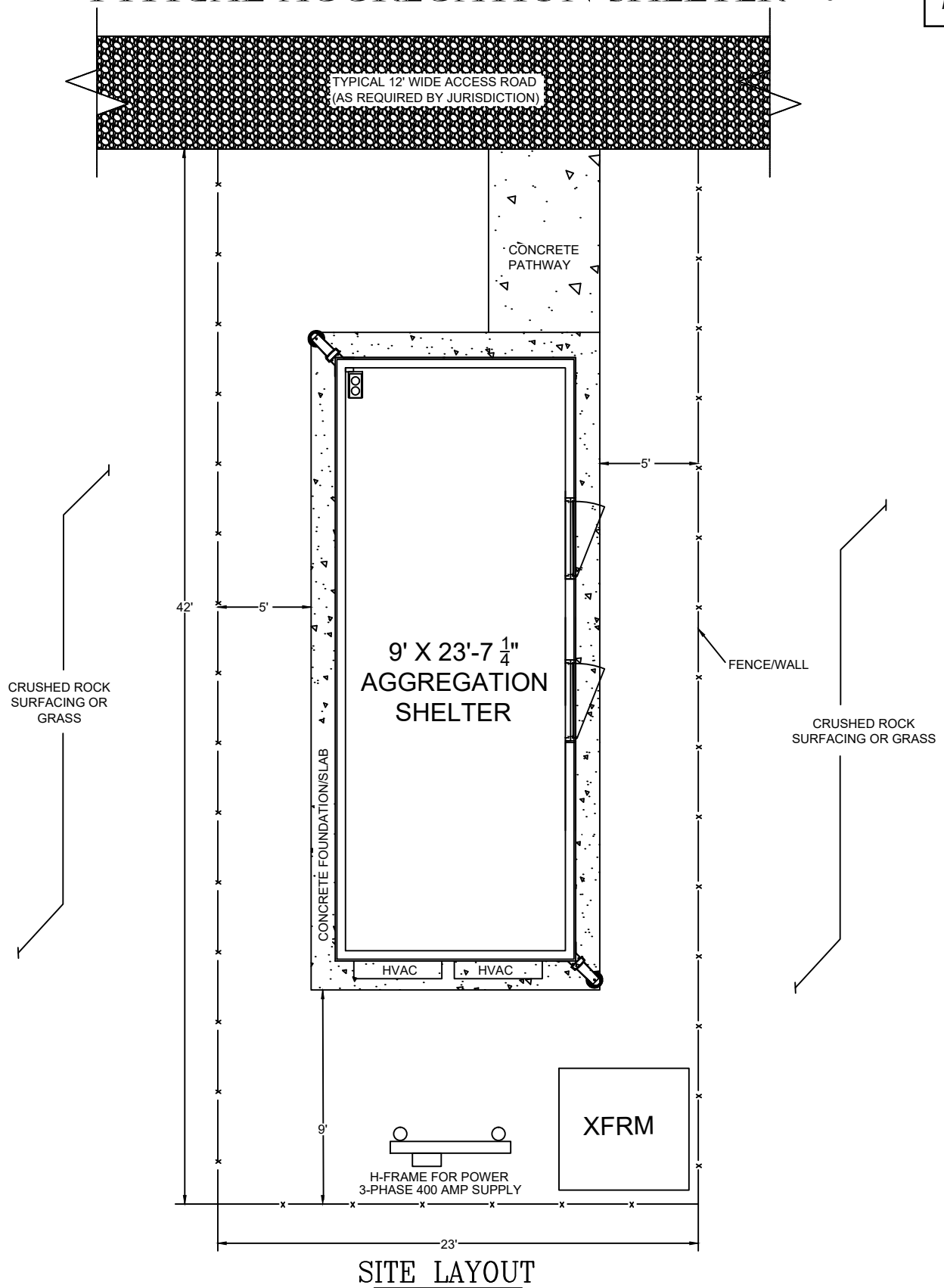
STANDARD  
CHAMBER/INLET  
PROTECTION

NO.	REVISIONS	BY	DATE
STD DWG			
NOT TO SCALE			



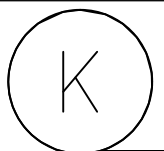
PAGE# 219

## TYPICAL AGGREGATION SHELTER



TYPICAL  
AGGREGATION  
SHELTER

NO.	REVISIONS	BY	DATE
STD DWG			
NOT TO SCALE			

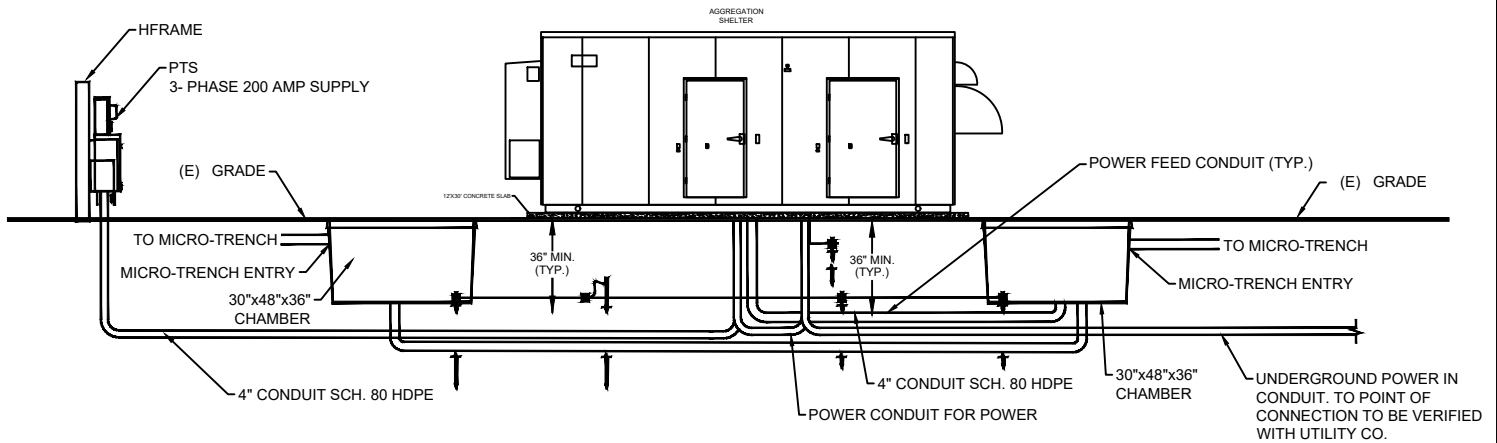




# TYPICAL AGGREGATION SHELTER ELEVATION VIEW

MICRO TRENCH ENTRY NOTE:

- 4" DIAMETER PENETRATION
- 9" DOWN FROM TOP OF CHAMBER
- 6" IN FROM CORNER OF CHAMBER

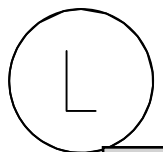


## ELEVATION VIEW



TYPICAL  
AGGREGATION  
SHELTER  
ELEVATION VIEW

NO.	REVISIONS	BY	DATE
STD DWG			
NOT TO SCALE			



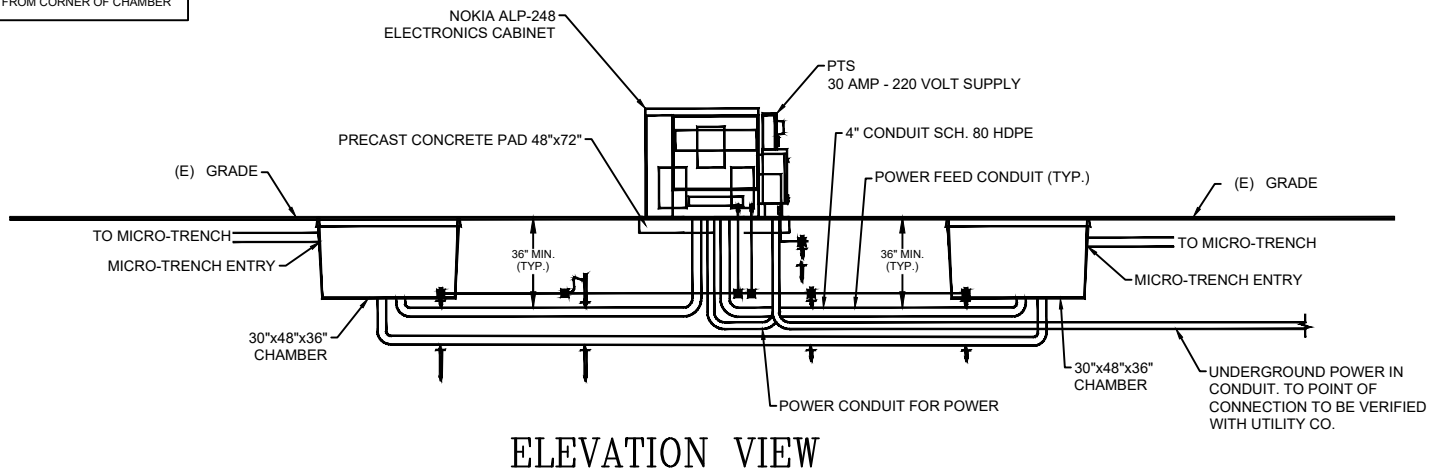
PAGE 221

PAGE# 222

## TYPICAL CABINET DETAILS

MICRO TRENCH ENTRY NOTE:

- 4" DIAMETER PENETRATION
- 9" DOWN FROM TOP OF CHAMBER
- 6" IN FROM CORNER OF CHAMBER



TYPICAL CABINET  
DETAILS

NO.	REVISIONS	BY	DATE
STD DWG			
NOT TO SCALE			



PAGE 223

CABINET & AGGREGATION SHELTER

Item9.

FEATURES:

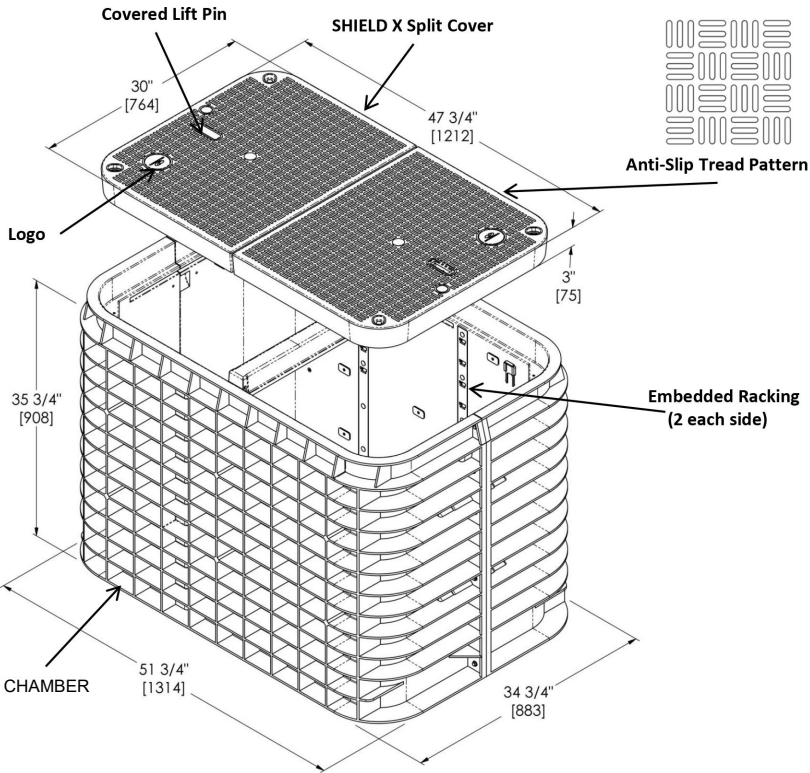
- 30" X 48" X 36" (open floor) (actual dimensions on drawing)
- CHAMBER – SHIELD X Split COVER- Tier 22 Load Rated (ANSI/SCTE 77: 2013)
- (4) Cover locking Auger bolts, Hex (9/16") or Penta (7/8") head with washer
- (4) Non-Seizing Fastening System, Field Replaceable
- (4) Embedded Composite Rack Support
- (1) Lifting slot equipped with stainless steel pin (slot is approximately 2 ¾"x¾")
- (4) Winterized Cable Drop slide (1 ¼" X 1 ¼")
- (1) Galvanized Center Beam
- (2) Logo Disk

WEIGHT & SHIPPING:

- Cover Weight: 50 lbs (Per Half)
- Box Weight: 129 lbs
- Assembly Weight : 229 lbs

PERFORMANCE TESTING:

- ANSI/SCTE 77: 2013 - TIER 22 Rated (33,750 lbs)
- AS3996 – Class C
- EN124 Class B125
- ASTM C1028-07 & AS-4586 (Slip Resistance)
- 10,000 Hour Xenon-Arc Exposure (No fiber-bloom)
- ASTM D635-06 (Flammability)

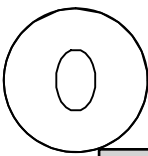


Inside Dimensions		
Length	Width	Depth
46 ½" [1180]	28 ¾" [730]	32 ¾" [832]

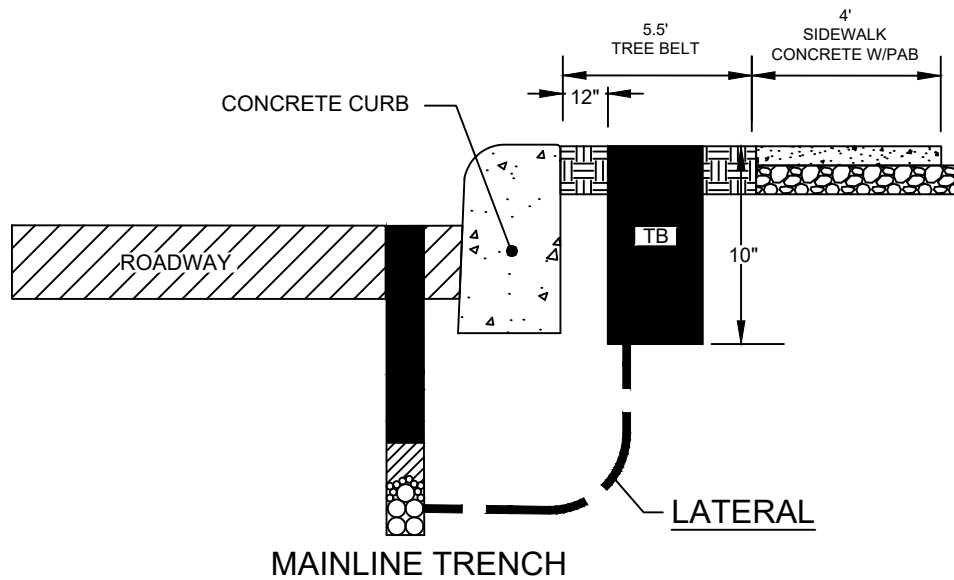
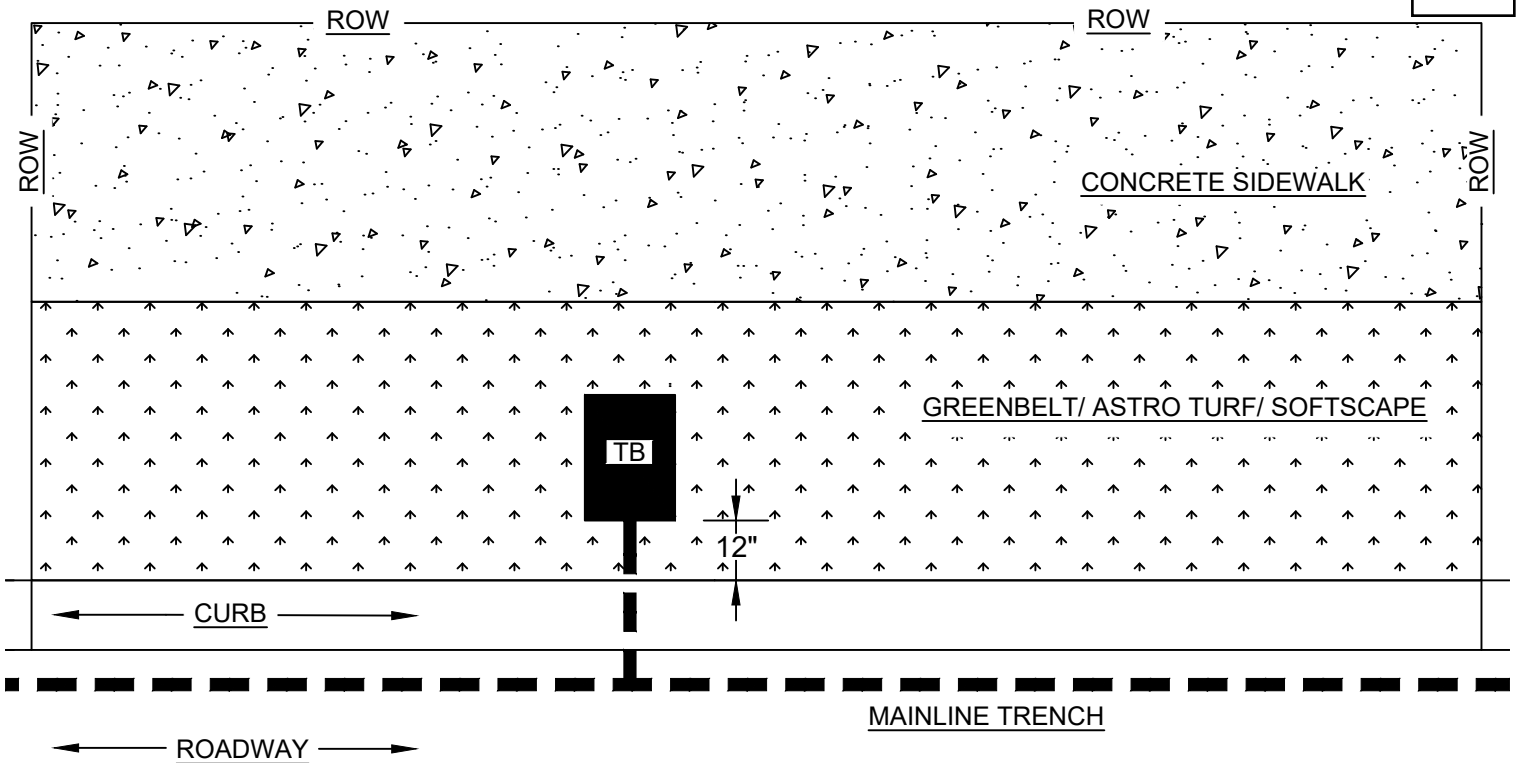


CABINET &  
AGGREGATION  
SHELTER

NO.	REVISIONS	BY	DATE
STD DWG			
NOT TO SCALE			



PRIVATE PROPERTY

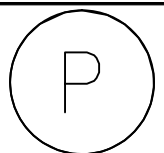


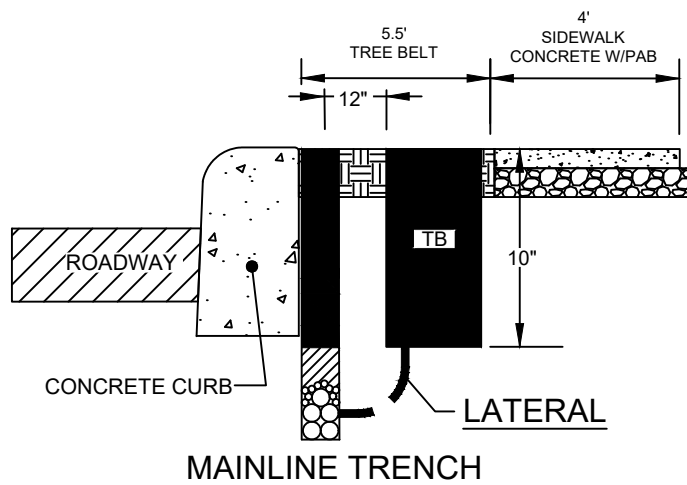
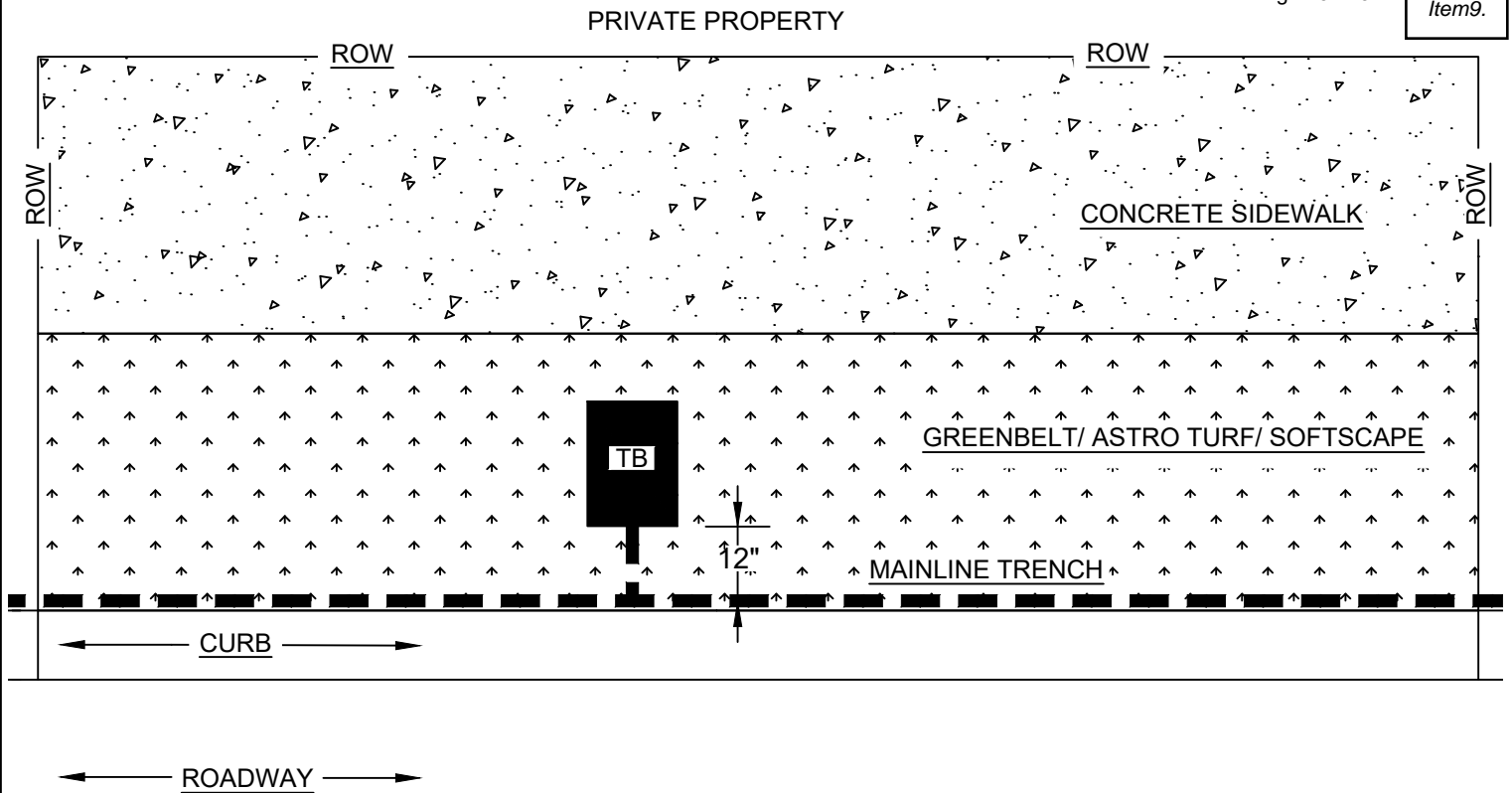
## SECTION VIEW E-E



TOBY BOX PLACEMENT  
IN SOFTSCAPE  
WITH MAINLINE  
TRENCH IN ROAD

NO.	REVISIONS	BY	DATE
STD DWG			
NOT TO SCALE			





SECTION VIEW F-F



TOBY BOX PLACEMENT  
IN SOFTSCAPE  
WITH MAINLINE  
TRENCH AT BACK OF  
CURB

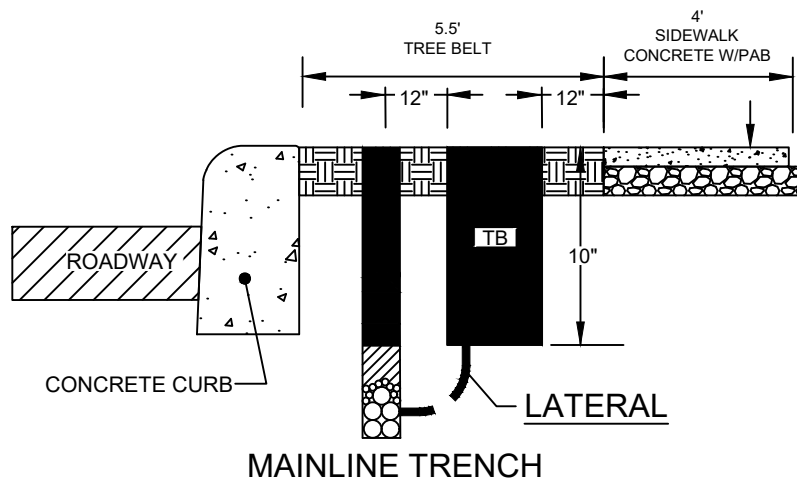
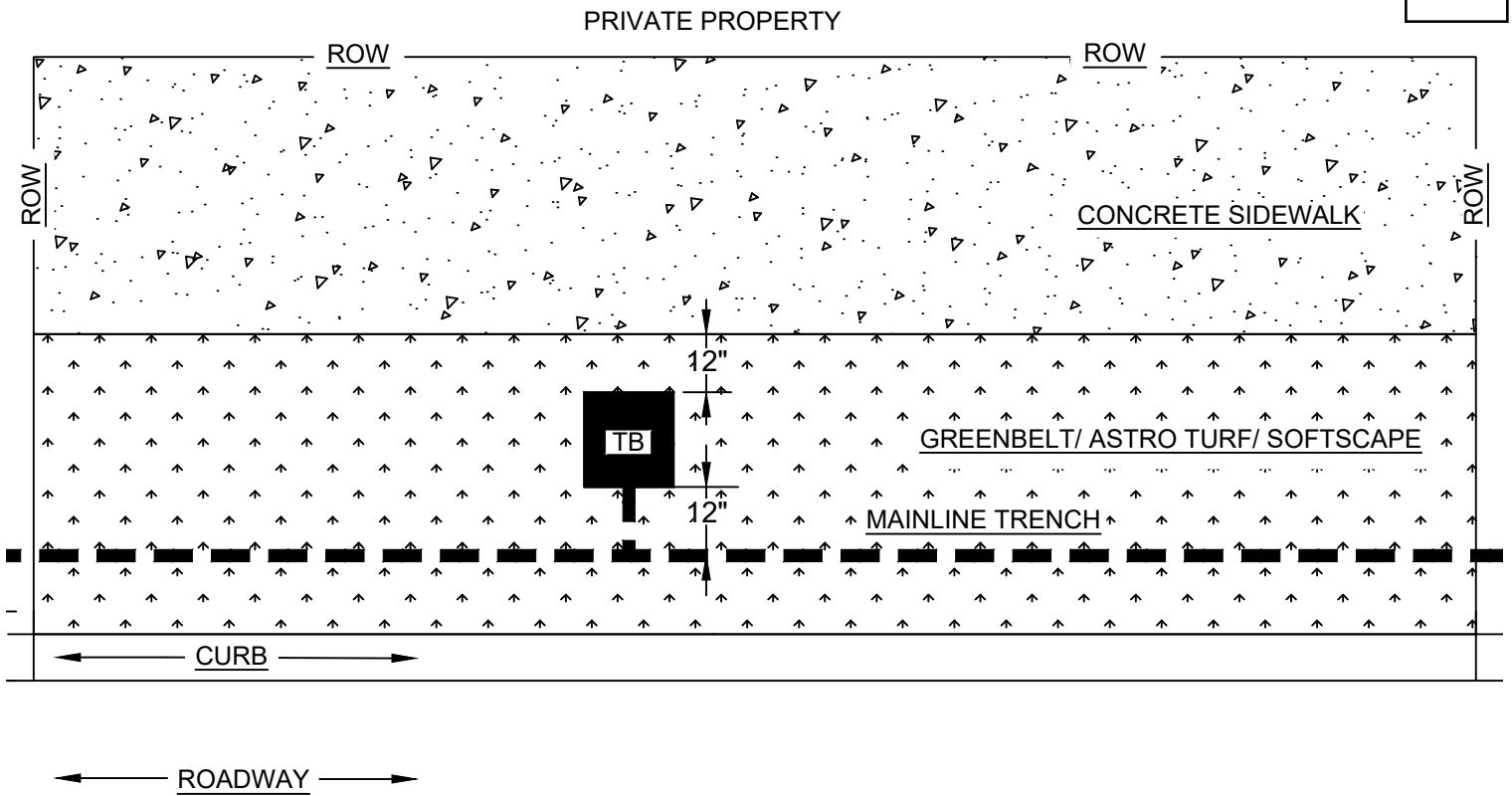
NO.	REVISIONS	BY	DATE

STD DWG	
NOT TO SCALE	

Q

PAGE# 226



SECTION VIEW G—G



# TOBY BOX PLACEMENT IN SOFTSCAPE WITH MAINLINE TRENCH THROUGH SOFTSCAPE.

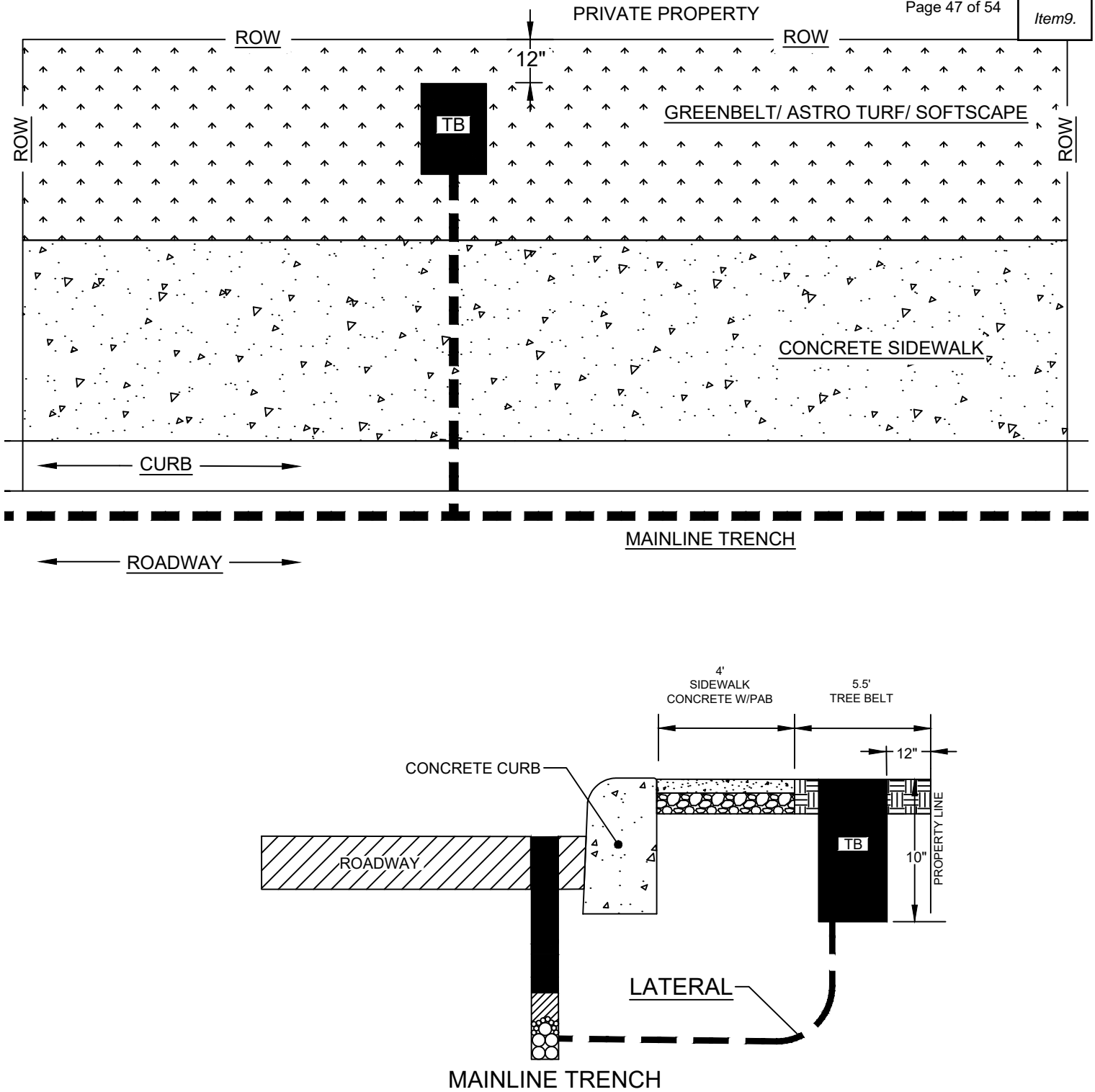
NO.	REVISIONS	BY	DATE

STD DWG

NOT TO SCALE

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PAGE# 227

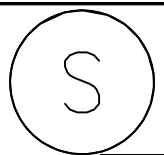


## SECTION VIEW H-H



**TOBY BOX PLACEMENT IN  
SOFTSCAPE WITH MAINLINE  
TRENCH  
IN ROAD & GREENSPACE  
AGAINST THE PROPERTY LINE**

NO.	REVISIONS	BY	DATE
STD DWG			
NOT TO SCALE			





PRIVATE PROPERTY

ROW

ROW

ROW

ROW

GREENBELT/ ASTRO TURF/ SOFTSCAPE

TB

12"

CURB

MAINLINE TRENCH

ROADWAY

TREE BELT CURB  
TO R.O.W.

12"

CONCRETE CURB

ROADWAY

TB

10"

LATERAL

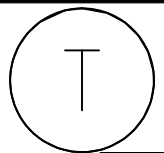
MAINLINE TRENCH

## SECTION VIEW I-I

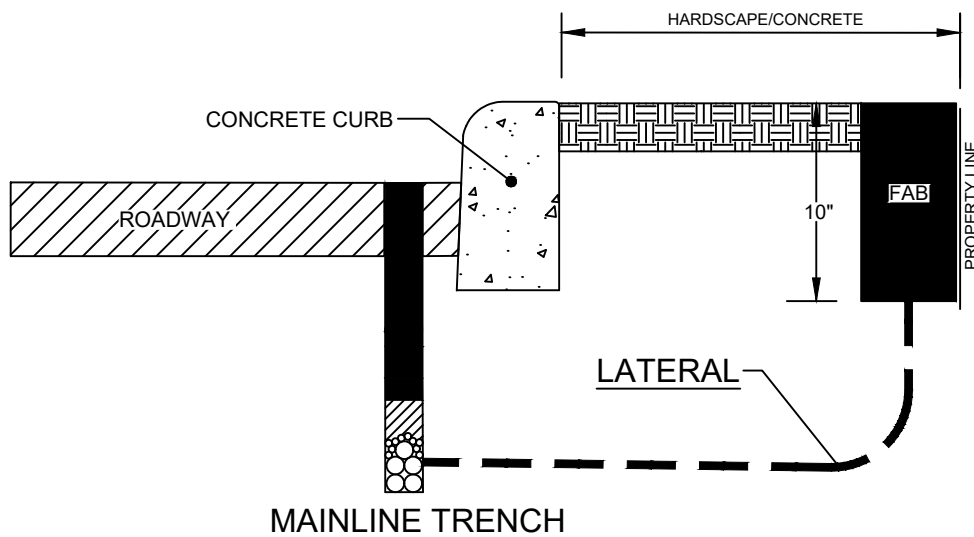
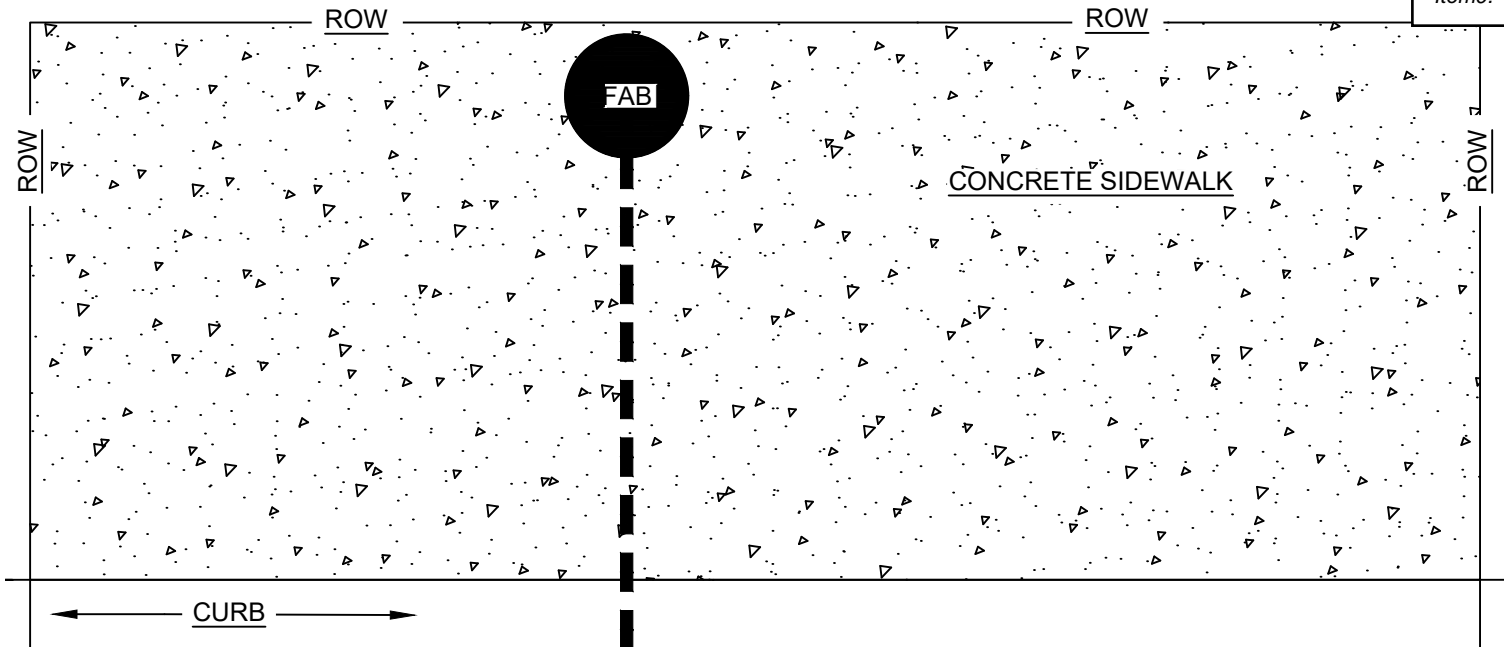


TOBY BOX PLACEMENT IN  
SOFTSCAPE WITH MAINLINE  
TRENCH  
IN ROAD & GREENSPACE  
FROM CURB TO PROPERTY  
LINE

NO.	REVISIONS	BY	DATE
STD DWG			
NOT TO SCALE			



PRIVATE PROPERTY

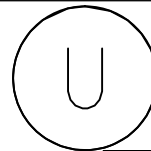


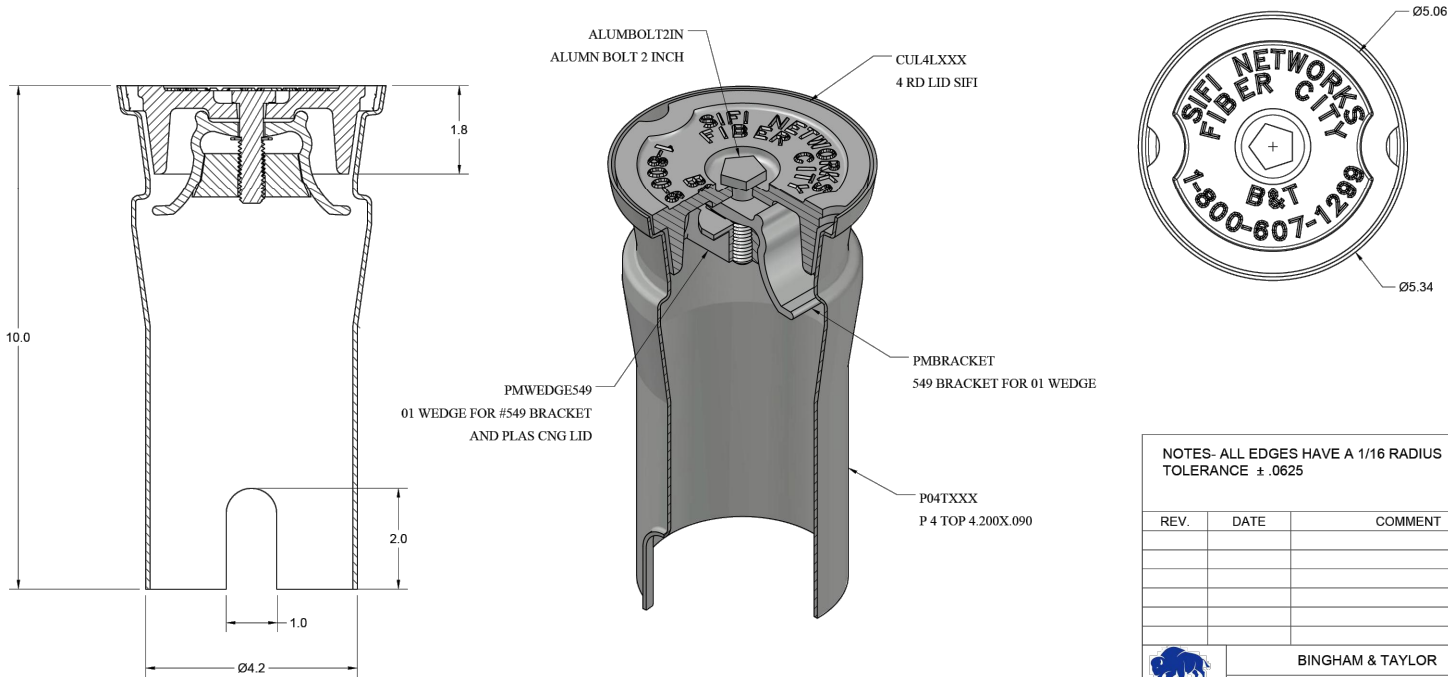
## SECTION VIEW J-J



**FAB (FIBER ACCESS BOX)  
PLACEMENT IN HARDSCAPE WITH  
MAINLINE TRENCH IN ROAD &  
HARDSCAPE/CONCRETE  
FROM CURB TO PROPERTY LINE**

NO.	REVISIONS	BY	DATE
STD DWG			
NOT TO SCALE			





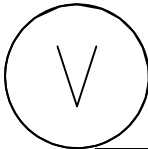
NOTES- ALL EDGES HAVE A 1/16 RADIUS TOLERANCE ± .0625		
REV.	DATE	COMMENT
BINGHAM & TAYLOR		
CONCEPT_SIFI_L		
BOX CONCEPT SIFI, LOCKING		DRAWN BY: J. Butcher
		10/22/20
		WEIGHT: 5.3 lbs
APPROVED BY:		DATE:
APPROVED BY:		DATE:

- NOTES:
1. ENTIRE ANNULAR SPACE BETWEEN BOX AND 6" DIAMETER CORE HOLE SHALL BE FILLED WITH GROUT.
  2. LID IS MADE FROM CAST IRON PER ASTM A-48, CLASS 30.
  3. PLASTIC LEGS ARE PUSHED OUTWARD WHEN PENTABOLT IS TIGHTENED. THIS SECURES THE LID TO THE BOX.



FAB (FIBER ACCESS BOX)  
SPECIFICATION SHEET

NO.	REVISIONS	BY	DATE
STD DWG			
NOT TO SCALE			



**HEXATRONIC** 

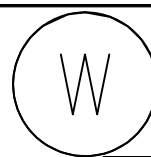

## Subscriber Underground Access Chamber – 250mm

A universal modular chamber for housing subscriber terminations at customer demarcations.

### Features

- 250mm depth Hand Hole
- Narrow Footprint - Optimised for Narrow trenching
- 250mm Depth with radius optimised for Microduct routing
- Cost-Effective
- Modular Construction
- Simple to Install
- High Load Bearing Strength
- Up to 2x Microduct Couplers (2 Subscribers)
- Capable of housing Optical connectivity demarcations

NO.	REVISIONS	BY	DATE
STD DWG			
NOT TO SCALE			



Design

Designed to offer operators a universal modular chamber for housing subscriber terminations at customer demarcations.

The Underground Chamber can be used as a connection point for Microduct Links. Minimizing the effort and investment required to convert a network from homes passed to Homes Connected.

Product Information



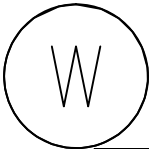
Technical Information

Product Color	Black PP Gloss
Temperature, Operation [°C]	-45 to 90
Temperature, Storage [°C]	-45 to 90
Temperature, Installation [°C]	-45 to 90



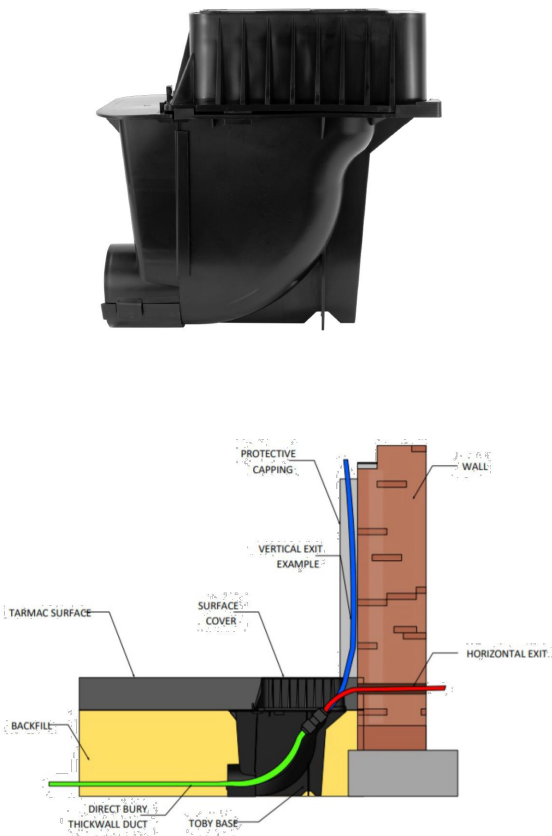
TOBY BOX  
SPECIFICATION SHEETS

NO.	REVISIONS	BY	DATE
STD DWG			
NOT TO SCALE			



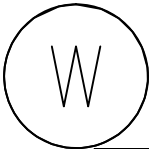
Conformance	Able to withstand loads of up to 5.5kN in accordance with BS 5834-2 testing. Exceeding requirements for a Grade C lid.
Marking	Custom Logo Marking available on request

Technical Details



TOBY BOX  
SPECIFICATION SHEETS

NO.	REVISIONS	BY	DATE
STD DWG			
NOT TO SCALE			



Subscriber Underground Access Chamber – 250mm

**HEXATRONIC** 

## Articles

Article name	Color	Dimensions [mm]	Weight [kg]
Subscriber Underground Access Chamber ENPP-TBY-BOX	Black	256W255L × 128Dmm	0.7



### TOBY BOX SPECIFICATION SHEETS

NO.	REVISIONS	BY	DATE
STD DWG			
NOT TO SCALE			



PAGE# 235



# STAFF REPORT

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September 28, 2022

File Number 0670-30

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## SUBJECT

**LEGAL UPDATE ON SAFE SIDEWALK VENDING ACT (AB 946) AND CONSIDERATION OF LOCAL REGULATIONS**

## DEPARTMENT

City Attorney

## RECOMMENDATION

Request that the City Council receive and file report and give direction to staff on future actions, if any.

Staff Recommendation: Provide Direction (City Attorney: Michael R. McGuinness)

Presenter: Michael R. McGuinness, City Attorney

## FISCAL ANALYSIS

Adoption of a local ordinance regulating sidewalk vending may have additional costs depending on the amount of administrative regulation adopted, number of ability-to-pay hearings held, and enforcement activity conducted. Given the potential limitations on the ability to collect fines and penalties, it is not known whether such administrative costs will be offset by any enforcement revenues.

## PREVIOUS ACTION

None.

## BACKGROUND

Periodically, the City Council has received complaints from individuals regarding the presence of persons setting up pop up tents, tables, push carts and other equipment to sell merchandise or food along City streets and public sidewalks. On August 10, 2022, Councilmember Morasco requested an update on the laws relating to such commercial activity.

### A. Safe Sidewalk Vending Act.

In 2018, the California legislature passed and the Governor signed Senate Bill 946, also known as the Safe Sidewalk Vending Act ("Act"). The Act added Government Code sections 51036 through 51039 to





# CITY of ESCONDIDO

## STAFF REPORT

California law. In its stated effort to promote and support low-income and immigrant communities, the legislature made the following findings and declarations in the Act:

- Sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities.
- Sidewalk vending increases access to desired goods, such as culturally significant food and merchandise.
- Sidewalk vending contributes to a safe and dynamic public space.
- The safety and welfare of the general public is promoted by encouraging local authorities to support and properly regulate sidewalk vending.
- The safety and welfare of the general public is promoted by prohibiting criminal penalties for violations of sidewalk vending ordinances and regulations.

The legislature made other findings that criminal penalties, locally-imposed barriers to entrepreneurship, and an interest in ensuring the appropriate regulation and flow of traffic for pedestrians are matters of statewide concern and this legislation would be applied to charter cities as well as general law cities such as the City of Escondido. As such, all local jurisdictions in the state are subject to the Act and any conflicting local ordinances are unenforceable.

Under the Act, which went into effect January 1, 2019, sidewalk vendors may not be *prohibited* by way of local ordinances but a certain level of control may still be exercised over these operators. The touchstone of local control over these operations primarily relate to objective health, safety and welfare concerns. In general, the Act addresses sidewalk vending in four contexts: (1) generally, (2) in parks, (3) within the vicinity of farmers' markets and swap meets, and (4) within temporary special permit areas. (Discussed in detail below.)

The statute defines "sidewalk vendors" as "persons who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path." A sidewalk vendor can be roaming or stationary.

### B. Opportunities for Local Ordinances and Control.

As noted above, the legislature desired to promote entrepreneurship and limit local control over such activities. As a result, under the Act, local jurisdictions may not do the following:

1. Require a sidewalk vendor to operate within specific parts of the public right-of-way, except when directly related to "objective health, safety, or welfare concerns."



# CITY of ESCONDIDO

## STAFF REPORT

2. Prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority.
3. Restrict sidewalk vendors to operate only in a designated neighborhood or area, except when the restriction is directly related to objective health, safety, or welfare concerns. However, stationary sidewalk vendors (as opposed to roaming sidewalk vendors) may be prohibited in areas zoned exclusively residential.
4. Restrict the overall number of sidewalk vendors permitted to operate within the local authority's jurisdiction, unless the restriction is directly related to objective health, safety, or welfare concerns.
5. Require a sidewalk vendor to first obtain the consent or approval of any non-governmental entity or individual (private business or property owners) before he or she can sell food or merchandise.

Under the law, a local municipality may adopt certain objective requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns,<sup>1</sup> including, but not limited to, any of the following:

1. Limitations on hours of operation (provided they are not unduly restrictive).
2. Requirements to maintain sanitary conditions.
3. Requirements necessary to ensure compliance with the federal Americans with Disabilities Act and other disability access standards.
4. Requiring the sidewalk vendor to obtain a permit for sidewalk vending and a valid business license.
5. Requiring the sidewalk vendor to possess a valid California Department of Tax and Fee Administration (CDTFA) seller's permit.
6. Prohibiting stationary sidewalk vendors, but not roaming vendors, in areas zoned exclusively residential.
7. Prohibiting stationary sidewalk vendors (as opposed to roaming sidewalk vendors) from vending in a City park if an operator in the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire.
8. Prohibiting sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market or a permitted swap meet during the limited operating hours of that certified farmers' market or swap meet. The statute additionally provides definitions of "certified farmers' market" in accordance with the Food and Agricultural Code and "swap meet" in accordance with the Business and Professions Code.

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<sup>1</sup> Objective health, safety, or welfare concerns" are not defined in the Act. However, SB 946 makes clear that "perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern."



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9. In City parks, prohibiting activity to ensure the public's use and enjoyment of natural resources and recreational opportunities and necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.
10. Prohibiting sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit for the duration of the temporary special permit. A temporary special permit is "a permit issued by the local authority for the temporary use of, or encroachment on, the sidewalk or other public area, including, but not limited to, an encroachment permit, special event permit, or temporary event permit" for purposes such as parades and outdoor concerts.
11. Requiring a sidewalk vendor to submit certain information on his or her operations (e.g. name of vendor; type of merchandise; CDTFA permit number; if seller is agent of another, the name of the principal, etc.)
12. Requiring compliance with other generally applicable laws.

### C. Enforcement.

Criminal penalties for sidewalk vending are prohibited. Instead, a violation of a local ordinance may only be enforced through an administrative fine and pursuant to an "ability-to-pay determination." The fine tiers for a violation of the agency's program cannot exceed: \$100/first violation; \$200/second violation within one year of first violation; and \$500/all additional violations within one year of first violation.

Failure to pay the administrative fine is not punishable as an infraction or misdemeanor and additional fines, fees, assessments, or any other financial conditions may not be imposed. Despite the lack of "teeth" to enforcement through such fines, a local authority may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation and any subsequent violations. If the seller continues to violate the local ordinance by selling without a permit, the agency may then institute another fine schedule not exceeding the following: \$250/first violation; \$500/second violation; and \$1000/third and subsequent violations.

In the event a vendor is cited, the City must provide notice to the violator that he or she has the right to request an ability-to-pay determination and make instructions available for such a hearing. As a part of that process, the City must accept payment of 20% in full satisfaction of the fine(s) if the violator earns less than 125% of the federal poverty line or receives certain means-tested government benefits as described in Government Code section 68632(a) and (b) (SSI or SSP, CalWORKS, Tribal TANF, SNAP, etc.). Alternatively, the local authority may allow the person to complete community service in lieu of paying the total administrative fine, may waive the fine, or may offer an alternative disposition.

There is insufficient data to know the anticipated percentage of violators who would qualify for this reduction and the fact-finding necessary to investigate and make that type of determination may be



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substantial. Further, the costs to administer allowable alternative community service programs in lieu of fines are also an unknown at this time.

### CONCLUSION

The Act was admittedly designed to promote the opportunity for both stationary and roaming sidewalk vending by establishing a comprehensive set of restrictions on local agencies in the regulation of these microbusinesses. The City Council may establish a local program to restrict, in certain limited ways, the operations and conduct of sidewalk vendors. However, the burden on staff in the administration and enforcement of a local program, including conducting ability-to-pay hearings, in relation to the benefits to residents and businesses, should be considered in identifying an effective program.

KEY-

CONSENT CALENDAR CURRENT BUSINESS

PUBLIC HEARING WORKSHOP

Item 11.



## CITY of ESCONDIDO

FUTURE AGENDA

10/5/2022 - NO MEETING

10/12/2022

PROCLAMATION - National Hispanic Heritage Month October, 2022

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

**CONSENT CALENDAR**- (A. FIRESTINE) - ANNUAL PROGRESS REPORT ON THE IMPLEMENTATION OF THE GENERAL PLAN (PL0503)

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

**CURRENT BUSINESS** - (J. SCHOENECK) - PARKLETS