



# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

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**WEDNESDAY, AUGUST 28, 2024**

**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**

Dane White

#### **DEPUTY MAYOR**

Christian Garcia (District 3)

#### **COUNCILMEMBERS**

Consuelo Martinez (District 1)

Joe Garcia (District 2)

Michael Morasco (District 4)

#### **CITY MANAGER**

Sean McGlynn

#### **CITY ATTORNEY**

Michael McGuinness

#### **CITY CLERK**

Zack Beck

#### **HOW TO WATCH**

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

##### **In Person**



201 N. Broadway

##### **On TV**



Cox Cable Channel 19 and U-verse Channel 99

##### **Online**



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



# CITY of ESCONDIDO

COUNCIL MEETING AGENDA

WEDNESDAY, AUGUST 28, 2024

## HOW TO PARTICIPATE

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

### In Person



Fill out Speaker Slip and Submit to City Clerk

### In Writing



[escondido-ca.municodemeetings.com](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, AUGUST 28, 2024

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### CLOSED SESSION

4:30 PM

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#### CALL TO ORDER

1. Roll Call: C. Garcia, J. Garcia, Martinez, Morasco, White

#### ORAL COMMUNICATIONS

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

#### CLOSED SESSION

- I. **1. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION (Government Code § 54956.9(d)(1))**
  - a. *Thomas Pugh v. City of Escondido*  
Workers Compensation Appeals Board Case No. ADJ15407550
  - b. *Thomas Pugh v. City of Escondido*  
Workers Compensation Appeals Board Case No. ADJ10571443
  - c. *John Taylor v. City of Escondido*  
Workers Compensation Claim Nos. 10-292234, 12-480157, 19-145332
  - d. *Julio Lopez v. City of Escondido; AdminSure, Inc.*  
Workers Compensation Appeals Board Case No. ADJ11392033

#### ADJOURNMENT



# CITY of ESCONDIDO

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WEDNESDAY, AUGUST 28, 2024

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

#### PROCLAMATIONS

National Emergency Preparedness Month

#### PRESENTATIONS

Proposition 36 Presentation by District Attorney Summer Stephan

San Diego County Water Authority - Southern First Aqueduct Facilities Improvement Project

#### CLOSED SESSION REPORT

#### ORAL COMMUNICATIONS

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# CITY of ESCONDIDO

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WEDNESDAY, AUGUST 28, 2024

### CONSENT CALENDAR

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

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

**2. APPROVAL OF WARRANT REGISTERS (COUNCIL)**

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

- 386365 – 386475 dated August 7, 2024
- 386476 – 386666 dated August 14, 2024

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

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

**3. APPROVAL OF MINUTES: Regular Meeting Minutes of August 7, 2024 and August 14, 2024**

**4. WAIVER OF READING OF ORDINANCES AND RESOLUTIONS**

**5. CONTINUING THE EMERGENCY REPAIR OF THE ESCONDIDO TRUNK SEWER MAIN**

Request the City Council adopt Resolution No. 2024-117, declaring that pursuant to the terms of Section 22050 of the California Public Contract Code, the City Council finds there is a need to continue the emergency repair of the Escondido Trunk Sewer Main.

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

Presenter: Stephanie Roman, Interim Assistant Director of Utilities – Construction & Engineering

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

**COUNCIL PRIORITY – Improve Public Safety**

a) Resolution 2024-117

**6. NOTICE OF COMPLETION FOR EMERGENCY REPAIR OF THE ESCONDIDO LAND OUTFALL**

Request the City Council adopt Resolution No. 2024-119, authorizing the Director of Utilities to file a Notice of Completion for Emergency Repair of the Escondido Land Outfall Project.

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

Presenter: Stephanie Roman, Interim Assistant Director of Utilities, Construction & Engineering



# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, AUGUST 28, 2024

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

**COUNCIL PRIORITY** – Improve Public Safety

a) Resolution No. 2024-119

**7. AGREEMENT OF PURCHASE AND SALE BETWEEN THE CITY OF ESCONDIDO AND 1501 AUTO PARKWAY, LLC (“BUYER”) AND DECLARATION OF EXEMPT SURPLUS LAND**

Request the City Council adopt Resolution No. 2024-122 authorizing and approving the execution of an Agreement of Purchase and Sale between the City of Escondido and 1501 Auto Parkway, LLC (“Buyer”) for real property located at or about 707 S. Hale Avenue, Escondido, California (“Property”).

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

Presenter: Jennifer Schoeneck, Director of Economic Development

**ESSENTIAL SERVICE** – Yes, Land Use/Development

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

a) Resolution No. 2024-122

**8. AWARD CONSULTING AGREEMENT FOR DESIGN OF THE WESTSIDE PARK SKATE SPOT PROJECT**

Request the City Council adopt Resolution No. 2024-129 authorizing the Mayor to execute a Consulting Agreement for the design of the Westside Park Skate Spot Project (“Project”) with New Line Skateparks, Inc., determined to be the most qualified and responsive proposal, in the amount of \$260,196.

Staff Recommendation: Approval (Chris McKinney, Director of Development Services, and Jonathan Schauble, City Engineer)

Presenter: Jonathan Schauble, City Engineer

**ESSENTIAL SERVICE** – Yes, Parks Facilities/Open Spaces

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

a) Resolution No. 2024-129



# CITY of ESCONDIDO

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WEDNESDAY, AUGUST 28, 2024

### 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.)

**9. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING AND ADOPTING REGULATING RECREATIONAL VEHICLE PARKING**

Approved on August 7, 2024 with a vote of 4/1 (Martinez - No)

a) Ordinance No. 2024-10R (Second Reading and Adoption)

**10. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING AND ADOPTING THE ESCONDIDO CONSISTENCY AMENDMENTS TO THE LAND USE ELEMENT AND EAST VALLEY AREA PLAN | PL24-0007**

Approved on August 7, 2024 with a vote of 5/0

a) Ordinance No. 2024-11 (Second Reading and Adoption)

### CURRENT BUSINESS

**11. UPDATE CONCERNING THE REQUEST FOR PROPOSALS FOR MANAGEMENT OF THE CALIFORNIA CENTER FOR THE ARTS, ESCONDIDO; CORRECTIONS OF PREVIOUSLY REPORTED 5-YEAR EXPENSES DATA; AND APPOINTMENT OF A CITY COUNCIL AD HOC SUBCOMMITTEE TO REVIEW ALL PROPOSALS RECEIVED**

Request the City Council receive and file the report from staff, including the corrected 5-year average expenses at the CCAE; and consideration of Mayoral recommendation of two members of the City Council to serve on an ad hoc Subcommittee to review the responses received to the Request for Proposals ("RFP") for the operation of the CCAE facility.

Staff Recommendation: Receive and File (City Manager: Christopher McKinney, Deputy City Manager) the report; Approve Mayoral nominations of two City Council members to serve on an Ad Hoc Subcommittee to review all submitted proposals

Presenter: Christopher McKinney, Deputy City Manager

**ESSENTIAL SERVICE** – Yes, Maintenance of Facilities

**COUNCIL PRIORITY** – Eliminate Structural Deficit



# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, AUGUST 28, 2024

**12. ESCONDIDO CREEK TRAIL MULTI-USE PATH PROJECT: AWARD OF CONSTRUCTION CONTRACT IN THE AMOUNT OF \$11,781,411.50 TO TRI-GROUP CONSTRUCTION AND AWARD CONSTRUCTION MANAGEMENT CONSULTING AGREEMENT IN THE AMOUNT OF \$1,074,473 TO T.Y. LIN INTERNATIONAL**

Request the City Council adopt Resolution No. 2024-107 authorizing the Mayor to execute a Public Improvement Agreement for the Escondido Creek Trail Multi-Use Path Project (“Project”) with Tri-Group Construction and Development, Inc., determined to be the lowest responsible and responsive bidder, in the amount of \$11,781,411.50.

Further, it is requested that the City Council adopt Resolution No. 2024-108 authorizing the Mayor execute a consulting agreement with T.Y. Lin International in the amount of \$1,074,473 to provide construction management, inspection, and environmental services for the Project.

Staff Recommendation - Approval (Chris McKinney, Deputy City Manager, and Jonathan Schauble, City Engineer)

Presenters: Joanna Axelrod, Deputy City Manager, and Jonathan Schauble, City Engineer

**ESSENTIAL SERVICE – Yes, Infrastructure/Parks Facilities**

**COUNCIL PRIORITY – Improve Public Safety/Increase Attraction of People/Encourage Housing Development**

a) Resolution No. 2024-107

b) Resolution No. 2024-108

**13. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, EXPRESSING ITS POSITION AND RECOMMENDATIONS ON BATTERY ENERGY STORAGE SYSTEM PROJECTS IN AND ADJACENT TO THE CITY OF ESCONDIDO**

Request the City Council adopt Resolution No. 2024-113 expressing its position and recommendations on Battery Energy Storage System Projects in and adjacent to the City of Escondido.

Staff Recommendation: Approval (City Council: Mayor Dane White, Councilmember Mike Morasco)

Presenter: Mayor Dane White

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

**COUNCIL PRIORITY – Improve Public Safety**

a) Resolution No. 2024-113





# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, AUGUST 28, 2024

**14. CANCELLATION OF NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION FOR THE POSITION OF CITY TREASURER AND THE APPOINTMENT OF THE INCUMBENT CANDIDATE TO THE OFFICE OF CITY TREASURER**

Request the City Council approve the City Clerk's certification that there are not more candidates than offices to be filled for the position of City Treasurer for the City of Escondido's ("City") General Municipal Election on November 5, 2024; and consider and discuss whether to cancel the City Election and appoint the respective incumbent as the only verified candidate for the open office, or hold the City Election as scheduled.

Staff Recommendation: Approve the Clerk's certification and authorize cancelling the November 5, 2024, General Municipal Election for the Office of City Treasurer for the four-year term from 2024-2028 and appoint the incumbent City Treasurer to the position. (City Clerk's Office: Zack Beck, City Clerk)

Presenter: Zack Beck, City Clerk

**ESSENTIAL SERVICE – No**

**COUNCIL PRIORITY – Eliminate Structural Deficit**

### **FUTURE AGENDA**

**15. FUTURE AGENDA**

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

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

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

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

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



# CITY of ESCONDIDO

## COUNCIL MEETING AGENDA

WEDNESDAY, AUGUST 28, 2024

### ORAL COMMUNICATIONS

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### ADJOURNMENT

### UPCOMING MEETING SCHEDULE

Wednesday, September 11, 2024	4:00 & 5:00 PM	Closed Session, Regular Meeting, <i>Council Chambers</i>
Wednesday, September 18, 2024	4:00 & 5:00 PM	Closed Session, Regular Meeting, <i>Council Chambers</i>

### SUCCESSOR AGENCY

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



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



# STAFF REPORT

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August 28, 2024  
File Number 0400-40

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## **SUBJECT**

APPROVAL OF WARRANT REGISTERS (COUNCIL)

## **DEPARTMENT**

Finance

## **RECOMMENDATION**

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

386365 – 386475 dated August 7, 2024

386476 – 386666 dated August 14, 2024

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

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

**COUNCIL PRIORITY** –

## **FISCAL ANALYSIS**

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

August 01, 2024 – August 07, 2024 is \$1,111,040.41

August 08, 2024 – August 14, 2024 is \$4,908,447.16

## **PREVIOUS ACTION**

None

## **BACKGROUND**

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



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

### REGULAR SESSION – 5:00PM

August 14, 2024

#### **MOMENT OF REFLECTION**

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#### **FLAG SALUTE**

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

#### **CALL TO ORDER**

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

#### **PRESENTATIONS**

San Diego Evacuation Alerting Systems

#### **CLOSED SESSION REPORT**

None

#### **ORAL COMMUNICATIONS**

Becky Rapp – Expressed concern regarding the impacts of cannabis on public safety and public health.

Christine Jackson – Expressed concern regarding the Council policy for adding items to the agenda.

Maria Wallace – Expressed concern that the United Sovereign America Organization is spreading misinformation regarding voting fraud in the United States.

TJ Musser – Expressed concern regarding the 5:00 p.m. start time of City Council Meetings.

#### **CONSENT CALENDAR**

Motion: Morasco; Second: C. Garcia; Approved: 5-0



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

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

2. **APPROVAL OF WARRANT REGISTERS (COUNCIL)**

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

- 386173 – 386364 dated July 31, 2024

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

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

3. **APPROVAL OF MINUTES:** None

4. **WAIVER OF READING OF ORDINANCES AND RESOLUTIONS**

5. **TREASURER’S INVESTMENT REPORT FOR THE QUARTER ENDED JUNE 30, 2024**

Request the City Council approve the Quarterly Investment Report for the quarter ended June 30, 2024.

Staff Recommendation: Approve (Douglas Shultz, City Treasurer)

Presenter: Douglas Shultz, City Treasurer

6. **LIBRARY SERVICES AND TECHNOLOGY ACT GRANT, PLAY FOR ALL - \$19,710**

Request the City Council adopt Resolution No. 2024-114 authorizing the Assistant Director of Community Services to receive a Library Services and Technology Act (“LSTA”) Grant for \$19,710 grant from the California State Library on behalf of the Escondido Public Library.

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

Presenter: Robert Rhoades, Assistant Director of Community Services

**ESSENTIAL SERVICE** – No

a) Resolution No. 2024-114

7. **APPROVE BUDGET ADJUSTMENT, CHANGE ORDER AND CONTRACT AMENDMENT FOR THE CITRACADO PARKWAY EXTENSION PROJECT**

Request the City Council adopt Resolution No. 2024-112 authorizing a budget adjustment to program available Transnet Funds in the amount of \$1,036,965 for use on this Project; Resolution No. 2024-115 for a change order in the amount of \$957,688.50 to the construction



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

contract with Flatiron West, Inc.; and Resolution No. 2024-116 authorizing Amendment 6 to the consultant contract with TY Lin International in the amount of \$376,460 for the Citracado Parkway Extension Project (“Project”).

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

Presenter: Matt Souttere, Project Manager

Resolution No. 2024 – 112

Resolution No. 2024 – 115

Resolution No. 2024 – 116

### **ADDITION OF EMERGENCY ITEM (CA GOVERNMENT CODE SECTION 54954.2B)**

Motion to add an emergency item related to a water main break on Grand Ave: White; Second: J. Garcia; Approved: 5-0

### **EMERGENCY ITEM (CA GOVERNMENT CODE SECTION 54954.2C)**

### **RATIFICATION OF LOCAL EMERGENCY PROCLAMATION AND APPROVE EMERGENCY REPAIR OF EAST GRAND AVENUE**

Request the City Council take the following action: Adopt Resolution No. 2024-128, ratifying Proclamation No. 2024-03 by the Director of Emergency Services and declaring that pursuant to the California Public Contract Code AND Escondido Municipal Code, the City Council affirms that it was appropriate for City staff to forego competitive bidding procedures and to award a contract for emergency repair of East Grand Avenue due to a water main break.

Staff Recommendation: Approval (Utilities: Angela Morrow)

Presenter: Angela Morrow, Director of Utilities, Construction & Engineering

**ESSENTIAL SERVICE** – Yes; Keep City Clean for Public Health and Safety; Clean Water; Public Works/Infrastructure

**COUNCIL PRIORITY** – Improve Public Safety

Motion: White; Second: C. Garcia; Approved: 5-0

### **CURRENT BUSINESS**



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

**8. FY 2024 USDA URBAN AND COMMUNITY FORESTRY PROGRAM SUBAWARD AGREEMENT**

Request the City Council to adopt Resolution No. 2024-127, authorizing the Mayor, to receive grant funds from the United States Department of Agriculture (“USDA”) Urban and Community Forestry Program Subaward in the amount of \$665,500, and execute on its behalf, all grant-related agreements and documents necessary to receive and expend the funds for the completion of the Urban Forestry Management Plan.

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

Presenter: Oscar Romero, Principal Planner

**ESSENTIAL SERVICE** – Yes, Land Use/Development; Public Works/Infrastructure; Maintenance of Parks facilities/Open Spaces

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

a) Resolution No. 2024-127

Maria Wallace – Expressed support for this item.

Patricia Borchmann – Expressed support for this item.

Laura Hunter – Expressed support for this item.

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

**9. AMENDMENT TO MOBILEHOME RENT REVIEW BOARD GUIDELINES**

Request the City Council, serving in its capacity as the Escondido Rent Review Board, adopt RRB Resolution No. 2024-121 amending the Mobilehome Rent Review Board Guidelines.

Staff Recommendation: Approval (Michael McGuinness, City Attorney; Danielle Lopez, Housing and Neighborhood Services Manager)

Presenters: Michael McGuinness, City Attorney, and Danielle Lopez, Housing and Neighborhood Services Manager

**ESSENTIAL SERVICE** – Yes, Land Use/Development

a) RRB Resolution No. 2024-121R

Louise Reed – Expressed opposition to this item.





# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

Carol Hanegan – Expressed opposition to this item.

Evelyn Langston – Expressed opposition to this item.

Delores McQuiston – Expressed opposition to this item.

Joan de Vries – Expressed opposition to this item.

Bill Zigler – Expressed opposition to this item.

Daniel Ingraham – Expressed opposition to this item.

Elias Velazquez – Expressed opposition to this item.

Julie Paule – Expressed support for this item.

Motion: Morasco; Second: White; Approved: 4-1 (Martinez – No)

### **10. DESIGNATION OF VOTING DELEGATE – LEAGUE OF CALIFORNIA CITIES CONFERENCE**

Request the City Council designate the Voting Delegate and up to two alternates for the League of California Cities Annual Conference in Sacramento, California, on October 16-18, 2024.

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

Presenter: Zack Beck, City Clerk

#### **ESSENTIAL SERVICE –No**

Motion to appoint Deputy Mayor Christian Garcia as voting delegate; Councilmember Joe Garcia as alternate: White; Second: J. Garcia; Approved: 5-0

### **11. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, ESTABLISHING A POLICY ON FRIENDSHIP CITIES AND SISTER CITIES**

Request the City Council adopt Resolution No. 2024-126 establishing a Friendship and Sister City Policy for the City of Escondido.

Staff Recommendation: None (City Council: Mayor Dane White, Councilmember Joe Garcia)

Presenter: Mayor Dane White and Councilmember Joe Garcia

#### **ESSENTIAL SERVICE – No**



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

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

a) Resolution No. 2024-126

Juan Tapia – Expressed support for this item.

Motion: J. Garcia; Second: White; Approved: 5-0

### **FUTURE AGENDA**

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

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

White/C. Garcia – Annual report on Mobile Home Rent Review Board Guidelines

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

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

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

#### **ORAL COMMUNICATIONS**

None

#### **ADJOURNMENT**

Mayor White adjourned the meeting at 7:15 p.m.

\_\_\_\_\_  
MAYOR

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



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

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### CLOSED SESSION

4:30 PM

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#### CALL TO ORDER

1. Roll Call: C. Garcia, J. Garcia, Morasco, White

#### ORAL COMMUNICATIONS

None

#### CLOSED SESSION

- I. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Government § 54956.8)**
  - a. Property: 3500 Burnet Drive, Escondido, California 92027 (APN 76016998)
  - b. Agency Negotiator: Sean McGlynn, City Manager, or designee
  - c. Negotiating Party: San Diego Humane Society
  - d. Under Negotiation: Price and Terms of Sale

#### ADJOURNMENT

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

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MAYOR

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CITY CLERK



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

### REGULAR SESSION

5:00 PM Regular Session

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### FLAG SALUTE

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### CALL TO ORDER

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

### PRESENTATIONS

Miss National Extraordinaire Pageant Winners

Escondido Street Stewards

### CLOSED SESSION REPORT

### ORAL COMMUNICATIONS

Tony Young – Executive Director of San Diego Workforce Partnership.

Maria Wallace – Expressed support for the Escondido Climate Action Plan (CAP).

Aisha Wallace Palomares – Expressed support for the Escondido Climate Action Plan (CAP).

### CONSENT CALENDAR

Motion: Morasco; Second: C. Garcia; Approved: 5-0

1. AFFIDAVITS OF PUBLICATION, MAILING, AND POSTING (COUNCIL/RRB)
2. APPROVAL OF WARRANT REGISTERS (COUNCIL)



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

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

- 385478 – 385730 dated July 10, 2024
- 385731 – 385967 dated July 17, 2024
- 385968 – 386172 dated July 24, 2024

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

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

3. **APPROVAL OF MINUTES: Regular Meeting Minutes of July 10, 2024 and July 17, 2024**
4. **WAIVER OF READING OF ORDINANCES AND RESOLUTIONS**
5. **ESTABLISHING THE PROPERTY TAX RATE AND FIXED CHARGE ASSESSMENTS FOR GENERAL OBLIGATION BONDED INDEBTEDNESS**

It is requested that the City Council adopt Resolution No. 2024-111 to establish the property tax rate and fixed charge assessments for bonded indebtedness for Fiscal Year 2024/25.

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

Presenter: Christina Holmes, Director of Finance

**ESSENTIAL SERVICE** – Yes, Internal Requirement, Debt Repayment

**COUNCIL PRIORITY** – Internal Requirement, Debt Repayment

a) Resolution No. 2024-111

6. **FY23 URBAN AREA SECURITY INITIATIVE (“UASI”) GRANT PROGRAM AND BUDGET NUMBER**

Request the City Council adopt Resolution No. 2024-104 authorizing the Escondido Fire Department to accept FY 2023 Urban Area Security Initiative (“UASI”) grant funds in the amount of \$53,300; authorize the Fire Chief or his designee to execute grant documents on behalf of the City; and approve budget adjustments needed to spend grant funds.

Staff Recommendation: Approval (Fire: John Tenger, Fire Chief)

Presenter: Tyler Batson, Fire Division Chief

**ESSENTIAL SERVICE** – Yes, Police Services; Fire/EMS Services

**COUNCIL PRIORITY** – Improve Public Safety



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

a) Resolution No. 2024-104

**7. PUBLIC SERVICES AGREEMENT WITH WEST COAST ARBORISTS INC. FOR LANDSCAPE MAINTENANCE TREE SERVICES FOR THE CITY OF ESCONDIDO LANDSCAPE MAINTENANCE ASSESSMENT DISTRICTS (LMD)**

It is requested that the City Council adopt Resolution No. 2024-99 awarding the Public Services Agreement (Exhibit "A") to West Coast Arborists, Inc., for Landscape Maintenance Tree Services for the City of Escondido and authorizing the Mayor to execute the agreement in the amount of \$1,400,000 over a four-year period.

Staff Recommendation: Approval (Chris McKinney, Development Services Director, and Owen Tunnell, Interim City Engineer)

Presenter: Jen Conway, Management Analyst II

**ESSENTIAL SERVICE – Yes, Keep City Clean for Public Health and Safety; Maintenance of Parks Facilities/Open Spaces**

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

a) Resolution No. 2024-99

**8. CONTINUING THE EMERGENCY REPAIR OF THE ESCONDIDO TRUNK SEWER MAIN**

Request the City Council take the following actions:

Adopt Resolution No. 2024-106, declaring that pursuant to the terms of Section 22050 of the California Public Contract Code, the City Council finds there is a need to continue the emergency repair of the Escondido Trunk Sewer Main. The resolution, which must be passed by four-fifths vote, also declares that public interest and necessity demand the immediate expenditure to safeguard life, health, or property; and

Approve a Budget Adjustment in the amount of \$12,036,225.

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

Presenter: Stephanie Roman, Interim Assistant Director of Utilities – Construction & Engineering

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

**COUNCIL PRIORITY – Improve Public Safety**



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

a) Resolution No. 2024-106

### 9. FY 2023 STATE HOMELAND SECURITY GRANT PROGRAM AND BUDGET ADJUSTMENT

Request the City Council adopt Resolution No. 2024-109 to authorize the Escondido Police Department to accept FY 2023 State Homeland Security Grant funds in the amount of \$86,760; 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 \$45,693 and the Police Department will receive \$41,067 from this award.

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

Presenter: Edward Varso, Chief of Police

**ESSENTIAL SERVICE** – Yes, internal requirement in support of Police Services and Fire/EMS Services

**COUNCIL PRIORITY** – Improve Public Safety

a) Resolution No. 2024-109

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

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

### **PUBLIC HEARINGS**

### 10. CONSIDERATION OF AN ORDINANCE REGULATING RECREATIONAL VEHICLE PARKING

Request the City Council adopt Ordinance No. 2024-10 amending Escondido Municipal Code section 28-142 to regulate recreational vehicle (“RV”) parking.

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

Presenter: Christopher McKinney, Deputy City Manager, and Ed Varso, Chief of Police

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

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



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

- a) Ordinance No. 2024-10 (First Reading and Introduction)

Motion to introduce Ordinance No. 2024-10 and permit RV parking within 100 yards of the RV registered address for loading and unloading before and after a trip from 24 hours to 48 hours: Morasco; Second: C. Garcia; Approved: 4-1 (Martinez – No)

**11. CONSISTENCY AMENDMENTS TO THE LAND USE ELEMENT AND EAST VALLEY AREA PLAN | PL24-0007**

Request the City Council adopt Ordinance No. 2024-11, approving the General Plan Land Use and Community Form chapter and East Valley Parkway Area Plan text and figure amendments for consistency with the East Valley Specific Plan (“EVSP”), which was adopted by City Council on July 19, 2023.

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

Presenter: Pricila Roldan, Associate Planner

**ESSENTIAL SERVICE** – Yes, Land Use/Development

- a) Ordinance No. 2024-11 (First Reading and Introduction)

Motion: White; Second: C. Garcia; Approved: 5-0

**12. 2024-2025 ANNUAL ACTION PLAN FOR THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (“HUD”) FUNDING FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (“CDBG”) AND HOME INVESTMENT PARTNERSHIP (“HOME”) PROGRAMS**

It is requested that the City Council conduct a public hearing to solicit and consider citizen input on the FY 2024-2025 HUD Annual Action Plan for the use of CDBG and HOME funds; and

Adopt Resolution No. 2024-110 approving Fiscal Year 2024-2025 HUD Annual Action Plan for use of CDBG and HOME Funds, conditionally commit funds to projects, authorize the Director of Community Development to execute contracts as appropriate and approve the submittal of the FY 2024-2025 Annual Action Plan to HUD.

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

Presenter: Danielle Lopez, Housing and Neighborhood Services Manager and Dulce Salazar, Management Analyst





# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

**ESSENTIAL SERVICE** – Yes, Keep City Clean for Public Health and Safety; Land Use/Development; Public Works/Infrastructure; Maintenance of Parks facilities/Open Spaces

**COUNCIL PRIORITY** – Eliminate Structural Deficit; Encourage Housing Development

a) Resolution No. 2024-110

Rick Paul – Stated that the Alabaster Jar Project will submit an accurate application next year.

Melanie Favre – Expressed support for the WeeCare Boost Upwards Program.

Emerald Carroll – Expressed support for the WeeCare Boost Upwards Program.

Motion to approve Resolution No. 2024-110; explore alternative funding for the Alabaster Jar Project; increase the allocation from \$24,000 to \$50,000 for the Rental Subsidy Program and increase the amount provided to recipients in the Rental Subsidy Program from \$150 to \$200 per month: White; Second: J. Garcia; Approved: 5-0

### CURRENT BUSINESS

#### **13. 2023 GENERAL PLAN ANNUAL PROGRESS REPORT | PL24-0082**

Request the City Council receive and file the 2023 General Plan Annual Progress Report, documenting the City's progress on implementing the General Plan for the 2023 calendar year.

Staff Recommendation: Receive and File (Development Services Department: Christopher W. McKinney, Deputy City Manager)

Presenter: Pricila Roldan, Associate Planner

**ESSENTIAL SERVICE** – Yes Land Use/Development

#### **14. 2023 CLIMATE ACTION PLAN ANNUAL MONITORING REPORT | PL24-0082**

Request the City Council receive and file the 2023 Climate Action Plan ("CAP") Annual Monitoring Report

Staff Recommendation: Receive and File (Development Services Department: Christopher W. McKinney, Deputy City Manager)

Presenter: Veronica Morones, City Planner

**ESSENTIAL SERVICE** – Yes Land Use/Development



# CITY of ESCONDIDO

## COUNCIL MEETING MINUTES

Item moved to a later date

### FUTURE AGENDA

#### 15. 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)

Councilmember Garcia / Mayor White – Friendship and Sister City Policy

### COUNCILMEMBERS SUBCOMMITTEE REPORTS AND OTHER REPORTS

#### CITY MANAGER'S WEEKLY ACTIVITY REPORT

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

#### ORAL COMMUNICATIONS

None

#### ADJOURNMENT

Mayor White adjourned the meeting at 7:15 p.m.

\_\_\_\_\_  
MAYOR

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



# STAFF REPORT

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## ITEM NO. 4

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### SUBJECT

### WAIVER OF READING OF ORDINANCES AND RESOLUTIONS –

### ANALYSIS

The City Council/RRB has adopted a policy that is sufficient to read the title of ordinances at the time of introduction and adoption, and that reading of the full text of ordinances and the full text and title of resolutions may be waived.

Approval of this consent calendar item allows the City Council/RRB to waive the reading of the full text and title of all resolutions agendized in the Consent Calendar, as well as the full text of all ordinances agendized in either the Introduction and Adoption of Ordinances or General Items sections. **This particular consent calendar item requires unanimous approval of the City Council/RRB.**

Upon approval of this item as part of the Consent Calendar, all resolutions included in the motion and second to approve the Consent Calendar shall be approved. Those resolutions removed from the Consent Calendar and considered under separate action may also be approved without the reading of the full text and title of the resolutions.

Also, upon the approval of this item, the Mayor will read the titles of all ordinances included in the Introduction and Adoption of Ordinances section. After reading of the ordinance titles, the City Council/RRB may introduce and/or adopt all the ordinances in one motion and second.

### RECOMMENDATION

Staff recommends that the City Council/RRB approve the waiving of reading of the text of all ordinances and the text and title of all resolutions included in this agenda. Unanimous approval of the City Council/RRB is required.

Respectfully Submitted,

Zack Beck  
City Clerk



# STAFF REPORT

August 28, 2024

File Number 0600-10; A-3519

## SUBJECT

### CONTINUING THE EMERGENCY REPAIR OF THE ESCONDIDO TRUNK SEWER MAIN

## DEPARTMENT

Utilities Department

## RECOMMENDATION

Request the City Council adopt Resolution No. 2024-117, declaring that pursuant to the terms of Section 22050 of the California Public Contract Code, the City Council finds there is a need to continue the emergency repair of the Escondido Trunk Sewer Main. The Resolution, which must be passed by four-fifths vote, also declares that public interest and necessity demand the immediate expenditure to safeguard life, health, or property.

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

Presenter: Stephanie Roman, Interim Assistant Director of Utilities – Construction & Engineering

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

**COUNCIL PRIORITY** – Improve Public Safety

## FISCAL ANALYSIS

A Public Improvement Agreement with J.R. Filanc Construction Company has been executed for the emergency repair of Section 1 of the trunk sewer paralleling the Escondido Creek from Harding Street to Ash Street in an amount not to exceed \$1,795,534. All work will be performed on a time and materials basis.

## PREVIOUS ACTION

On June 26, 2024, the City Council adopted Resolution No. 2024-86, ratifying Proclamation No. 2024-02, affirming that it was appropriate for City staff to forego competitive bidding procedures and work with contractors for the necessary emergency repairs of the failing trunk sewer main.

On July 10, 2024, the City Council adopted Resolution No. 2024-94, reaffirming that there was a need to continue efforts toward emergency repairs of the failing trunk sewer main sections.



# CITY of ESCONDIDO

## STAFF REPORT

On July 17, 2024, the City Council adopted Resolution No. 2024-103, reaffirming that there was a need to continue efforts toward emergency repairs of the failing trunk sewer main sections.

On July 23, 2024, the City of Escondido (“City”) completed an agreement in an amount not to exceed \$10,240,691 to perform the emergency repair of the sewer pipeline in Section 2, from Beech Street to Grape Day Park.

On August 7, 2024, the City Council adopted Resolution No. 2024-106, reaffirming that there was a need to continue efforts toward emergency repairs of the failing trunk sewer main sections and approved a budget adjustment in the amount of \$12,036,225 which consists of \$7,036,225 from the unallocated Wastewater Reserves and \$5,000,000 from the Capital Improvement Project No. 801508.

### BACKGROUND

The City’s trunk sewer mains, constructed in the 1950’s, are a critical and integral part of the City’s wastewater system. On June 17, 2024, during routine closed-circuit television inspection, Utilities Staff identified multiple failed and severely deteriorated sections of 21-inch trunk sewer main. In order to act quickly to avoid catastrophic failure, a local emergency was proclaimed on June 20, 2024, by the City Manager, serving as the Director of Emergency Services. This allowed staff to work directly with contractors to address the necessary repairs to the failing trunk sewer main.

The scope of work includes two sections of pipe that are in critical condition. These sections are shown in **Figure 1** below and defined as follows: 1) Ash Street - paralleling the Escondido Creek, from the Firestone Complete Auto Care parking lot to the Walmart Neighborhood Market parking lot; and 2) Beech Street to Grape Day Park - paralleling the Escondido Creek, traversing a short section of North Hickory Street, then continuing in East Pennsylvania Street from North Hickory and extending into Grape Day Park.

Figure 1





# CITY *of* ESCONDIDO

## STAFF REPORT

Work associated with the emergency repairs for Section 2 began on July 25, 2024, and is anticipated to be complete by May 31, 2025. The majority of the work will be done during regular day-time hours, with some night-time work anticipated at the intersection of North Broadway and East Pennsylvania Avenue. Temporary bypass pumping systems with associated above grade highlines will operate during active construction; however, will remain in place throughout the duration of the project.

Utilities Staff continues to meet with franchise utilities, the public, other City departments, and applicable regulatory agencies.

### RESOLUTIONS

- a. Resolution 2024-117
- b. Resolution No. 2024-117 – Exhibit “A” – Public Improvement Agreement

RESOLUTION NO. 2024-117

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, FINDING THAT AN EMERGENCY CONTINUES TO REQUIRE THE IMMEDIATE REPAIR OF THE ESCONDIDO TRUNK SEWER MAIN

WHEREAS, the City Council recognizes that the City’s trunk sewer main pipeline previously defined in the three following sections are at risk of imminent, catastrophic failure:

Section 1: Harding Street to Ash Street - paralleling the Escondido Creek; and

Section 2: Beech Street to Grape Day Park - paralleling the Escondido Creek, traversing a short section of North Hickory Street, then continuing in East Pennsylvania Street from North Hickory and extending into Grape Day Park; and

Section 3: Centre City Parkway to Norlak Avenue - traversing through Fire Station #1, traversing a short section of North Quince Street, then continuing in Norlak Avenue; and

WHEREAS, Utilities Staff provided three scopes of work as defined above to three separate contractors to obtain not-to-exceed costs and estimated schedules to complete the necessary emergency repairs with the intent to draft Public Improvement Agreements for execution; and

WHEREAS, proposed costs for the work defined above came in significantly higher than anticipated; and

WHEREAS, Utilities Staff refined and narrowed the scope of work to include the two sections in critical condition, and defined as follows:

Section 1: Ash Street - paralleling the Escondido Creek, from the Firestone Complete Auto Care parking lot to the Walmart Neighborhood Market parking lot; and

Section 2: Beech Street to Grape Day Park - paralleling the Escondido Creek, traversing a short section of North Hickory Street, then continuing in East Pennsylvania Street from North Hickory and extending into Grape Day Park; and

WHEREAS, Section 3 was determined to be in comparatively better condition than both Section 2 some parts of Section 1; and

WHEREAS, Utilities Staff has made the decision to forego emergency repairs on Section 3 and truncate the emergency repairs associated with Section 1 at this time; and

WHEREAS, repairs to Section 3 and some parts of Section 1 will be replaced as a part of a future CIP project; and

WHEREAS, pursuant to the approval of Resolution No. 2024-86 on June 26, 2024, ratifying Proclamation No. 2024-02; Resolution No. 2024-94 on July 10, 2024; and Resolution No. 2024-103 on July 17, 2024, the City Council previously found that the failing trunk sewer risk constitutes an emergency and found it appropriate for Utilities Staff to proceed to contract services without adopting plans, specifications, working details, or giving notice of bids to award contracts; and

WHEREAS, Staff entered into a Public Improvement Agreement (“Agreement”) with CCL Contracting, Inc., in an amount not to exceed ten million, two hundred forty thousand, six hundred ninety-one dollars (\$10,240,691); and



WHEREAS, Staff entered into a Public Improvement Agreement (“Agreement”) with J.R. Filanc Construction Company in an amount not to exceed one million, seven hundred ninety-five thousand, five hundred thirty-four dollars (\$1,795,534); and

WHEREAS, pursuant to Section 22050 of the Public Contract Code, the City Council must review the emergency action every 14 days, or its next regularly scheduled meeting, and determine by a four-fifths vote there is a need to continue the action; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to continue the emergency action.

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

1. That the above recitations are true.
2. That the City Council finds the failure of the trunk sewer main is a public health and safety emergency; that this emergency will not permit the delay that would result from a competitive bidding process; and that the proposed action and expenditure is still necessary to respond to the emergency requiring immediate repair of the trunk sewer main.



CITY OF ESCONDIDO  
PUBLIC IMPROVEMENT AGREEMENT

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

Between: CITY OF ESCONDIDO  
a California municipal corporation  
201 N. Broadway  
Escondido, CA 92025  
Attn: Randy Manns  
760-839-6290, ext. 7031  
("CITY")

And: Filanc  
a California corporation  
740 N. Andreasen Dr.  
Escondido, CA 92029  
Attn: Jim Roessling  
760-941-7130  
("CONTRACTOR").

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

WHEREAS, the City Manager, in his role as Director of Emergency Services, has made findings that an emergency exists at a City of Escondido facility immediately affecting public safety, and has taken the following actions regarding those findings: issued Proclamation 2024-02 on June 20, 2024, which was subsequently affirmed by the City Council via Resolution 2024-86 on June 26, 2024; and ratifying Proclamation 2024-02, which was subsequently affirmed by the City Council via Resolution 2024-94 on July 10, 2024, and was reaffirmed by the City Council via Resolution 2024-103 on July 17, 2024, continuing the Emergency;

WHEREAS, pursuant to Proclamation 2024-02 and Resolution 2024-94, the City desires to enter into this Agreement for emergency repair services under Chapter 7 and Section 10-80 of the Escondido Municipal Code;

WHEREAS, the Parties desire to enter into this Agreement for the performance of work relating to the Emergency Repair of the Escondido Trunk Sewer Main Section 1: Ash Street

paralleling the Escondido Creek/Channel from the Firestone Complete Auto Care parking lot to the Walmart Neighborhood Market parking lot, as further described herein, and as depicted in Attachment "A" to this agreement, which is incorporated by this reference.

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

1. Project Documents. Attachment A: Project Location; Attachment B: Scope of Work; Attachment C: Project Rates, and Attachment D: City of Escondido General Conditions, plus any Change Orders, Shop Drawing Transmittals, Insurance Certificates, Guarantees, Special Conditions, Plans, Drawings, Specifications, the Agreement, and all modifications, addenda, and amendments thereto ("Project Documents") are incorporated herein by this reference as if fully set forth herein. The Project Documents are complementary, and what is called for by any one shall be as binding as if called for by all.
2. Description and Performance of Work. CONTRACTOR shall furnish all work described in Attachment "B" to this Agreement, which is incorporated herein by this reference ("Work"). All Work to be performed and materials to be furnished shall be completed in a good workmanlike manner, free from defects, in strict accordance with the plans, drawings, specifications, and requirements set forth in the Project Documents and all provisions of this Agreement.
3. Compensation. In exchange for CONTRACTOR's completion of the Work, the CITY shall pay, such rates for labor and equipment pursuant to Attachment "C" to this Agreement, and CONTRACTOR shall accept in full, an amount not to exceed the sum of **\$1,795,534** ("Contract Price"). CONTRACTOR shall be compensated only for performance of the Work described in this Agreement. No compensation shall be provided for any other work or services without the CITY's prior written consent.
4. Term and Time of Performance. CONTRACTOR shall commence work within one week from the CITY's notice to proceed. CONTRACTOR shall diligently perform and complete the Work with professional quality and technical accuracy by December 31, 2024 ("Completion Date"). Extension of terms or time of performance shall be subject to the CITY's sole discretion.
5. Time Is of the Essence. If the Work is not completed by the Completion Date, it is understood that the CITY will suffer damage. It being impractical and infeasible to determine the amount of actual damage, in accordance with Government Code section 53069.85, the Parties agree that CONTRACTOR shall pay to the CITY as fixed and liquidated damages, and not as a penalty, the sum of **\$1,500 per day** for each calendar day of delay until the Work is completed and accepted ("Liquidated Damages Amount"). The Liquidated Damages Amount shall be deducted from any payments due to, or that become due to, CONTRACTOR. CONTRACTOR and CONTRACTOR'S surety shall be liable for the Liquidated Damages Amount.
6. Insurance Requirements.
  - a. CONTRACTOR shall procure and maintain, at its own cost, during the entire term of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Work, and the results of such Work, by CONTRACTOR, its agents, representatives, employees, or subcontractors. Insurance coverage shall be at least as broad as the following:

- (1) *Commercial General Liability.* Insurance Services Office (“ISO”) Form CG 0001 11188 covering Commercial General Liability on an “occurrence” basis, including products and completed operations, property damage, bodily injury (including emotional distress), sickness, disease, or death of any person other than the CONTRACTOR's employees, and personal and advertising injury, and damages because of injury or destruction of tangible property, including loss of use resulting there from, with limits no less than \$3,000,000 combined single limit coverage per occurrence for bodily injury and property damage; or, if a general aggregate limit is applicable, either: (i) the general aggregate limit shall specifically apply to the project identified in the bid specifications or to the location of such project which is the subject of these bid specifications with coverage to be no less than \$3,000,000, or (ii) the general aggregate shall be at least \$3,000,000 combined single limit coverage per occurrence for bodily injury and property damage.
  - (2) *Automobile Liability.* ISO Form CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired (Code 8) and non-owned autos (Code 9), including damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under CONTRACTOR's control and engaged in the Work, with limits no less than \$3,000,000 combined single limit per accident for bodily injury and property damage.
  - (3) *Workers' Compensation.* Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
  - (4) *Builder's Risk/"All Risk" Insurance.* The CONTRACTOR, during the progress of the Work and until final acceptance of the Work by CITY, shall maintain Builder's Risk/"All Risk," course-of-construction insurance satisfactory to CITY issued on a completed value basis of all WORK pursuant to this Agreement. Coverage is to provide extended coverage and insurance against vandalism, theft, malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, earthquake, collapse, flood, wind, lightning, smoke, riot, debris removal (including demolition), and reasonable compensation for the Engineer's services and expenses required as a result of such insured loss upon the Work, including completed Work and Work in progress to the full insurable value thereof. Such insurance shall include the CITY and the City Engineer as an additional named insured and any other person with an insurable interest designated.
  - (5) *Contractors Pollution Liability.* Contractors Pollution Liability insurance applicable to work being performed, with a limit no less than \$2,000,000 per claim and \$2,000,000 aggregate per policy period of one year.
  - (6) If CONTRACTOR maintains broader coverage and/or higher limits than the minimums otherwise required by this Agreement, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by CONTRACTOR.
- b. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:
- (1) *Compliance with General Condition Requirements.* Insurance coverage shall comply with and meet all requirements set forth in Article 5.2 of General Conditions

- (2) *Acceptability of Insurers.* Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A-:VII, or as approved by the CITY.
- (3) *Additional Insured Status.* Both the Commercial General Liability and the Automobile Liability policies must name the CITY (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of *both* CG 20 10, CG 20 26, CG 20 33, or CG 20 38, *and* CG 20 37 if a later edition is used. The Automobile Liability additional insured endorsement shall be at least as broad as ISO Form CA 20 01.
- (4) *Transportation Pollution Liability Endorsement.* The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be transported by Contractor pursuant to the contract. This coverage may also be provided on the contractors Pollution Liability policy.
- (5) *Primary Coverage.* CONTRACTOR's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the CITY, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, officers, agents, employees, or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (6) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.
- (7) *Subcontractors.* If applicable, CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated within this Agreement, and CONTRACTOR shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.
- (8) *Waiver of Subrogation.* CONTRACTOR hereby grants to the CITY a waiver of any right to subrogation that any insurer of CONTRACTOR may acquire against the CITY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this subsection shall apply regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Agreement shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONTRACTOR, its agents, representatives, employees and subcontractors.
- (9) *Self-Insurance.* CONTRACTOR may, with the CITY's prior written consent, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-insurance. CONTRACTOR shall only be permitted to utilize such self-insurance if, in the opinion of the CITY, CONTRACTOR's (i) net worth and (ii) reserves for payment of claims of liability against CONTRACTOR are sufficient to adequately compensate for the lack of other insurance coverage required by this Agreement. CONTRACTOR's utilization of self-insurance shall not in any way limit the liabilities assumed by CONTRACTOR pursuant to this Agreement.

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

- c. *Verification of Coverage.* At the time CONTRACTOR executes this Agreement, CONTRACTOR shall provide the CITY with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting the insurance coverage required by this Agreement), which shall meet all requirements under this Agreement. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Agreement, at any time.
- d. *Special Risks or Circumstances.* The CITY reserves the right, at any point during the term of this Agreement, to modify the insurance requirements in this Agreement, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- e. *No Limitation of Obligations.* The insurance requirements within this Agreement, including the types and limits of insurance coverage CONTRACTOR must maintain, and any approval of such insurance by the CITY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant to this Agreement, including but not limited to any provisions within this Agreement concerning indemnification.
- f. *Compliance.* Failure to comply with any of the insurance requirements in this Agreement, including but not limited to a lapse in any required insurance coverage during the term of this Agreement, shall be a material breach of this Agreement. Compliance by CONTRACTOR with the requirement to carry insurance and furnish certificates, policies, Additional Insured Endorsement and Declarations Page evidencing the same shall not relieve the CONTRACTOR from liability assumed under any provision of this Agreement, including, without limitation, the obligation to defend and indemnify the CITY and the City Engineer. In the event that CONTRACTOR fails to comply with any insurance requirement set forth in this Agreement, in addition to any other remedies the CITY may have, the CITY may, at its sole option, (i) immediately terminate this Agreement; or (ii) order CONTRACTOR to stop Work under this Agreement and/or withhold any payment that becomes due to CONTRACTOR until CONTRACTOR demonstrates compliance with the insurance requirements in this Agreement.

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

- a. CONTRACTOR (including CONTRACTOR's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "Claims"), of every nature caused by, arising out of, or in connection with CONTRACTOR's (including CONTRACTOR's agents, employees, and subcontractors, if any) Work pursuant to this Agreement but only to the extent caused by CONTRACTOR'S negligence except where caused by the active negligence, sole negligence, or willful misconduct of the CITY. This indemnity provision shall govern and control over any indemnity provision contained elsewhere in the Contract Documents.
- b. CONTRACTOR (including CONTRACTOR's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all Claims caused by, arising under, or resulting from

any violation, or claim of violation, of the San Diego Municipal Storm Water Permit (Order No. R9-2013-0001, as amended) of the California Regional Water Quality Control Board, Region 9, San Diego, that the CITY might suffer, incur, or become subject to by reason of, or occurring as a result of, or allegedly caused by, any Work performed pursuant to this Agreement but only to the extent caused by a breach of CONTRACTOR'S obligations under this Agreement.

c. All terms and provisions within this Section 7 shall survive the termination of this Agreement.

8. Bonds.

a. CONTRACTOR shall furnish and deliver to the CITY, simultaneously with the execution of this Agreement, the following surety bonds:

(1) *Faithful Performance Bond.* CONTRACTOR shall furnish to the CITY a surety bond in an amount equal to the Contract Price as security for faithful performance of this Agreement.

(2) *Labor and Materials Bond.* CONTRACTOR shall furnish to the CITY a surety bond in an amount equal to the Contract Price as security for payment to persons performing labor and furnishing materials in connection with the Project.

b. All bonds furnished to the CITY pursuant to this Agreement shall be in the form set forth herein and approved by the City Attorney.

c. All bonds shall be executed by sureties that are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

d. If the surety on any bond furnished by the CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Work is located, the CONTRACTOR shall, within seven days thereafter, substitute another bond and surety, which must be acceptable to the CITY. No portion of the Work shall be performed without bonds, in a form and issued by a surety acceptable to the City. If one or more of such bonds shall, at any time, not be in full force and effect, CONTRACTOR shall immediately cease performance of the Work until CONTRACTOR is in full compliance with the bonding requirements of this Agreement and California law. All delays and costs incurred or resulting from such occurrence shall be to the exclusive account of CONTRACTOR. Failure of the CONTRACTOR to promptly cure any failure to have the necessary bonds in full force and effect shall be grounds for immediate termination of this Agreement.

e. All bonds shall be obtained from surety companies that are duly licensed or authorized in the State of California. Such surety companies shall also meet any additional requirements and qualifications as may be provided in the Supplementary General Conditions.

9. Substitution of Securities. This Agreement is subject to California Public Contract Code section 22300, which permits the substitution of securities for any monies withheld by the CITY to ensure performance of this Agreement. At the request and expense of the CONTRACTOR, securities equivalent to the amount withheld shall be deposited with the CITY, or with a state- or federally-chartered bank in this state as the escrow agent, who shall then pay those moneys to

CONTRACTOR. Upon satisfactory completion and acceptance of the Work, such securities shall be returned to the CONTRACTOR.

10. Contractor Default. In the event CONTRACTOR, for a period of 10 calendar days after receipt of written demand from the CITY to do so ("Cure Period"), fails to furnish tools, equipment, or labor in the necessary quantity or quality required by this Agreement, or fails to prosecute the Work and all parts thereof in a diligent and workmanlike manner, or after commencing to do so within the Cure Period, fails to continue to do so, then the CITY in its sole discretion may exclude the CONTRACTOR from the Property, or any portion thereof, and take exclusive possession of the Property or any portion thereof, together with all material and equipment thereon, and may complete the Work or any portion of the Work, either by (i) furnishing the necessary tools, equipment, labor, or materials; or (ii) letting the unfinished portion of the work, or any portion thereof, to another contractor; or (iii) demanding the surety hire another contractor; or (iv) any combination of such methods. The CITY's procuring of the completion of the Work, or the portion of the Work taken over by the CITY, shall be a charge against the CONTRACTOR and may be deducted from any money due or to become due to CONTRACTOR from the CITY, or the CONTRACTOR shall pay the CITY the amount of such charge, or the portion thereof unsatisfied. The sureties provided for under this Agreement shall become liable for payment if CONTRACTOR fails to pay in full any such cost incurred by the CITY. The permissible charges for any such procurement of the completion of the Work include actual costs and fees incurred to third party individuals and entities (including but not limited to consultants, attorneys, inspectors, and designers) and actual costs incurred by the CITY for the increased dedication of time of the CITY's employees to the Project.
11. Other Legal Requirements Incorporated. Each and every provision of law and clause required by law to be inserted in this Agreement or its attachments shall be deemed to be inserted herein, and this Agreement shall be read and enforced as though such law or clause were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either Party, the Agreement shall forthwith be physically amended to make such insertion or correction, without further changes to the remainder of the Agreement.
12. Merger Clause. This Agreement, together with its attachments or other documents described or incorporated herein, if any, constitutes the entire agreement and understanding of the CITY and CONTRACTOR concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. In the event of any conflict between the provisions of this Agreement and any of its attachments or related documents, if any, the provisions of this Agreement shall prevail.
13. Attorney's Fees and Costs. In any action to enforce the terms and conditions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs.
14. Independent Contractor. CONTRACTOR is an independent contractor, and no agency or employment relationship is created by the execution of this Agreement.
15. Amendment. This Agreement shall not be amended except in a writing signed by the CITY and CONTRACTOR, and pursuant to action of the Escondido City Council.
16. Anti-Waiver Clause. None of the provisions of this Agreement shall be waived by the CITY because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived by the CITY, in whole or in part.
17. Severability. This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision



of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.

18. Governing Law. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Venue for any action arising from this Agreement shall be conducted only in the state or federal courts of San Diego County, California.
19. Counterparts. This Agreement may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement by electronic means, including an attachment to an email, shall be effective as delivery of an executed original. The Agreement on file with the City is the copy of the Agreement that shall take precedence if any differences exist between or among copies or counterparts of the Agreement.
20. Provisions Cumulative. The foregoing provisions are cumulative to, in addition to, and not in limitation of any other rights or remedies available to the CITY.
21. Business License. CONTRACTOR shall obtain a City of Escondido Business License prior to execution of this Agreement and shall maintain such Business License throughout the term of this Agreement.
22. Compliance with Laws, Permits, and Licenses. CONTRACTOR shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements in effect during the term of this Agreement. This shall include, but shall not be limited to, all California Labor Code laws regarding payment of prevailing wages and all OSHA regulations. CONTRACTOR shall obtain any and all permits, licenses, and other authorizations necessary to perform the work under this Agreement. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.
23. Prevailing Wages and Department of Industrial Relations Compliance. Pursuant to California Labor Code section 1770 et seq., CONTRACTOR agrees that a prevailing rate and scale of wages, in accordance with applicable laws, shall be paid in performing this Agreement. CONTRACTOR shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements pertaining to the payment of prevailing wages, including but not limited to the keeping of certified payroll records, overtime pay, employment of apprentices, and workers' compensation coverage, as further set forth in the General Conditions. CONTRACTOR shall file the required workers' compensation certificate before commencing work under this Agreement. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. CONTRACTOR shall post all job site notices required by regulation. CONTRACTOR, as well as any subcontractors, shall be registered pursuant to California Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal (subject to the requirements of Public Contract Code section 4104), or engage in the performance of any public works contract subject to the requirements of Division 2, Part 7, Chapter 1 of the California Labor Code. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.
24. Immigration Reform and Control Act of 1986. CONTRACTOR shall keep itself informed of and shall comply with the Immigration Reform and Control Act of 1986 ("IRCA"). CONTRACTOR represents and warrants that all of its employees and the employees of any subcontractor retained by CONTRACTOR who perform any portion of the Work under this Agreement are and will be authorized to perform the Work in full compliance with the IRCA. CONTRACTOR affirms that as a

licensed contractor and employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will perform the Work. CONTRACTOR agrees to comply with the IRCA before commencing any portion of the Work, and continuously throughout the performance of the Work and the term of this Agreement.

25. Effective Date. Unless a different date is provided in this Agreement, the effective date of this Agreement shall be the latest date of execution set forth by the names of the signatories below.

(SIGNATURE PAGE FOLLOWS)

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

CITY OF ESCONDIDO

Date: 08 / 07 / 2024

Sean McGlynn  
Sean McGlynn, City Manager

Filanc

Date: 08 / 06 / 2024

Omar Rodea  
Omar Rodea, PE, DBIA  
President

134877  
Contractor's License No.

95-1758372  
Tax ID/Social Security No.

APPROVED AS TO FORM:

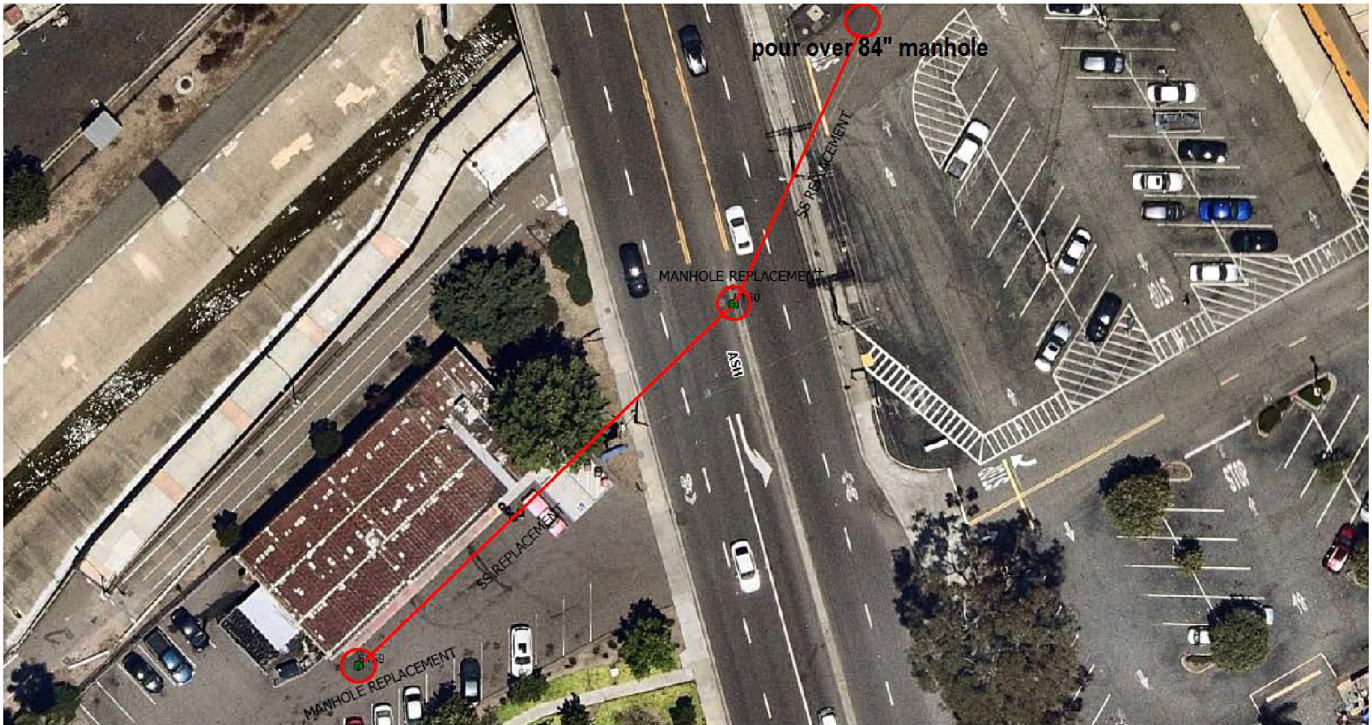
OFFICE OF THE CITY ATTORNEY  
MICHAEL R. MCGUINNESS, City Attorney

BY: Elyse Dayrit

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

# ATTACHMENT "A" - PROJECT LOCATION

EMERGENCY TRUNK SEWER PROJECT – 2024  
SECTION 1 – ASH STREET PARALLELING THE ESCONDIDO CREEK/CHANNEL  
FROM THE FIRESTONE COMPLETE AUTO CARE PARKING LOT  
TO THE WALMART NEIGHBORHOOD MARKET PARKING LOT



## ATTACHMENT “B” – SCOPE OF WORK

Open trench construction to remove approximately 300 ft. of failing 21” RCP sanitary sewer pipe and replacing with 24” PVC C905 beginning at manhole 6159 located just south of Firestone Complete Auto Care building at 433 N Ash St to east, across Ash St. and ending at proposed 84” pour over manhole at Walmart Neighborhood Market west parking lot 1266 E Valley Parkway.

The existing manhole (#6160) located in Ash St. will be abandoned if possible.

## ATTACHMENT "C"

### CONTRACTOR LABOR RATES AND EQUIPMENT RATES



#### Emergency Repair to the Eastside Trunk Sewer 2024 Filanc Labor Rate Sheet

Labor Craft	Labor Classification	Reg Time	OT
<b>CRAFT LABOR</b>			
WELDER	JOURNEYMAN	\$ 127.00	\$ 161.00
CARPENTER	JOURNEYMAN	\$ 98.00	\$ 130.00
MILLWRIGHT	JOURNEYMAN	\$ 94.00	\$ 127.00
LABORERS	JOURNEYMAN	\$ 89.00	\$ 118.00
LABORERS	APPRENTICE	\$ 69.00	\$ 94.00
OPERATING ENGINEERS	APPENDIX A - GROUP 8 Foreman	\$ 129.00	\$ 163.00
OPERATING ENGINEERS	APPENDIX A - GRP 8	\$ 127.00	\$ 161.00
OPERATING ENGINEERS	APPENDIX A - GRP 8 (Grade Checker)	\$ 127.00	\$ 161.00
<b>OFFICE</b>			
PROJECT MANAGER		\$ 200.00	N/A
PROJECT ENGINEER		\$ 180.00	N/A
SUPERINTENDENT		\$ 170.00	N/A
CAD DESIGNER		\$ 130.00	N/A
ESTIMATOR		\$ 150.00	N/A
ACCOUNTING		\$ 120.00	N/A

Note: office rates include mark up, craft labor does not.



**Emergency Repair to the Eastside Trunk Sewer 2024  
 Filanc Equipment Rate Sheet**

	<b>Asset Description</b>	<b>Caltrans Code</b>	<b>Caltrans Rate to 3/31/2025</b>	<b>Billing Rate with 15% Mark Up</b>
1	Forman Truck Chevy 2500 HD	20-28	\$ 54.23	\$ 62.36
2	Service Truck Chevy 3500	20-28	\$ 54.23	\$ 62.36
3	Conex	n/a	\$ 2.00	\$ 2.30
4	Trailer Mounted Welder	250-500	\$ 15.52	\$ 17.85
5	Mikas Waker MTR 40 or 70	0-250	\$ 5.38	\$ 6.19
6	Light Tower	003-008	\$ 5.52	\$ 6.35
7	Air Compressor - Sullivan	025-045	\$ 47.34	\$ 54.44
8	Cat 950	2310H	\$ 177.00	\$ 203.55
9	Cat259	259D	\$ 56.06	\$ 64.47
10	Cat 335	0350E	\$ 201.07	\$ 231.23
11	Cat 305 SE2	0250	\$ 55.25	\$ 63.54
12	Asphalt Zipper	AZ500	\$ 101.00	\$ 116.15
13	PM Car Ford Edge	00-06	\$ 37.19	\$ 42.77
14	Cat 345	0355	\$ 245.00	\$ 281.75
15	John Deer Back Hoe 410	2508E	\$ 72.10	\$ 82.92
16	Skid steer 50 HP	A	\$ 36.90	\$ 42.44
17	TBD			\$ -

Rental Equipment will be billed and marked up based on invoice amount.

Fuel for rented equipment to be billed separately from owned equipment.

## ATTACHMENT "D"

### CITY OF ESCONDIDO GENERAL CONDITIONS



**SECTION A-00700 - GENERAL CONDITIONS**

**SECTION INDEX**

	<u>Page Number</u>
<b>ARTICLE 1 – DEFINITIONS</b> .....	A-00700-5
<b>ARTICLE 2 – PRELIMINARY MATTERS</b>	
2.1 Delivery of Bonds and Insurance Certificates.....	10
2.2 Copies of Documents.....	10
2.3 Escrow of Bid Documents .....	10
2.4 Commencement of Contract Times; Notice to Proceed .....	13
2.5 Starting the Work .....	13
2.6 Continuing the Work.....	13
2.7 Preconstruction Meeting .....	13
2.8 City Observed Holidays.....	13
<b>ARTICLE 3 – INTENT AND USE OF CONTRACT DOCUMENTS</b>	
3.1 Review of Contract Documents, Drawings, and Specifications.....	14
3.2 Detail Drawings and Instructions .....	15
3.3 Referenced Standard .....	16
3.4 Amending Contract Documents .....	16
3.5 No Assignment.....	16
3.6 Reuse of Documents .....	16
<b>ARTICLE 4 – SITE OF THE WORK</b>	
4.1 Availability of Lands .....	16
4.2 Soils Investigation Report and Claims for Concealed or Unknown Conditions.....	17
4.3 Physical Conditions – Underground Utilities.....	17
4.4 Hazardous Materials .....	19
4.5 Reference Points.....	20
<b>ARTICLE 5 – BONDS AND INSURANCE</b>	
5.1 Bonds.....	20
5.2 Liability, Property, Fire, Builder's Risk, and Other Insurance Requirements.....	21
5.3 Proof of Carriage Insurance .....	22
<b>ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES</b>	
6.1 Communications .....	24
6.2 Independent CONTRACTOR .....	24
6.3 CONTRACTOR License.....	25
6.4 CONTRACTOR Registration.....	25
6.5 Change In Name and Nature of CONTRACTOR's Legal Entity .....	25
6.6 CONTRACTOR Superintendent.....	25
6.7 CONTRACTOR Supervision .....	25
6.8 Field Measurements, Layout, Record Drawings, and Field Engineering.....	26
6.9 Details of the Work .....	26
6.10 Means and Methods .....	26
6.11 Subcontractors.....	26
6.12 Duty to Provide Fit Workers.....	27
6.13 Overtime .....	27
6.14 Materials and Work .....	28
6.15 Access to CONTRACTOR's Records.....	29
6.16 CONTRACTOR's Substitution of "Or Equal" Items.....	29

Item 5.

6.17 Permits ..... 30

6.18 Patent Fees and Royalties ..... 31

6.19 Laws and Regulations ..... 31

6.20 Taxes..... 31

6.21 Use of Premises ..... 31

6.22 Safety and Protection ..... 32

6.23 Emergencies ..... 33

6.24 Submittals ..... 33

6.25 CONTRACTOR's General Warranty and Guarantee ..... 37

6.26 Indemnification ..... 39

6.27 CONTRACTOR's Daily Reports ..... 40

6.28 CONTRACTOR Payments..... 40

6.29 Dial Before You Dig ..... 40

6.30 Documents on Work ..... 41

6.31 Temporary Utilities ..... 41

6.32 Sanitary Facilities ..... 41

6.33 Cleaning Up..... 41

6.34 Wage Rates..... 42

6.35 Hours of Work..... 43

6.36 Apprentices..... 44

6.37 First Aid..... 45

6.38 Protection of Persons and Property..... 45

6.39 Accessibility Requirements ..... 46

**ARTICLE 7 – OTHER WORK**

7.1 Other Contracts ..... 46

7.2 Integration of Work ..... 47

**ARTICLE 8 – THE CITY'S RESPONSIBILITIES**

8.1 Communications ..... 47

8.2 Observations on the Site ..... 47

8.3 Project Representation ..... 47

8.4 Clarifications, Requests for Information ..... 47

8.5 Authorized Variations in Work ..... 47

8.6 Rejecting Work ..... 47

8.7 CONTRACTOR Submittals, Change Orders, and Payments..... 47

8.8 Decisions on Disputes ..... 48

8.9 Limitation of City's Responsibilities ..... 48

8.10 Lands, Easements, and Surveys ..... 48

8.11 Reports and Drawings ..... 48

8.12 Suspension of Work ..... 48

8.13 Termination of Agreement..... 48

8.14 Undisclosed Hazardous Environmental Conditions ..... 48

**ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION**

9.1 The Engineer of Work ..... 49

**ARTICLE 10 – CHANGES IN THE WORK**

10.1 General ..... 49

10.2 Allowable Quantity Variations ..... 50

**ARTICLE 11 – CHANGE OF CONTRACT PRICE**

11.1 General ..... 50

Item 5.

11.2	Cost of Work – Force Account (Based on Time and Materials) .....	52
11.3	Overhead and Profit (O&P) Percentage Schedule .....	54
11.4	CONTRACTOR's Daily Extra Work Report.....	55
11.5	CONTRACTOR Shall Provide Notice .....	55
11.6	Costs Related to Weather/Force Majeure.....	56

**ARTICLE 12 – CHANGE OF CONTRACT TIMES**

12.1	General .....	56
12.2	Extensions of Contract Times for Delay Due to Weather .....	57
12.3	Ownership of Project Schedule Float/Early Completion.....	57
12.4	Extensions of Time Liquidated Damages .....	57

**ARTICLE 13 – INSPECTIONS AND TESTS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

13.1	Authority of Inspector .....	58
13.2	Inspection .....	58
13.3	Notice of Defective Work.....	58
13.4	Access to Work .....	58
13.5	Inspections and Tests .....	58
13.6	The City May Stop the Work.....	60
13.7	Correction or Removal of Defective Work .....	60
13.8	Acceptance of Defective Work.....	60
13.9	The City May Correct Defective Work.....	60
13.10	Correction Period .....	61

**ARTICLE 14 – PAYMENTS TO CONTRACTOR, RETENTION AND COMPLETION**

14.1	Application for Progress Payment.....	61
14.2	Unit Price Bid Schedule.....	64
14.3	Schedule of Values (Lump Sum Price Breakdown) .....	64
14.4	Allowances .....	64
14.5	Waiver, Conditional Release, Release of Claims (Forms) .....	65
14.6	Retention .....	71
14.7	Substitution of Securities, Escrow Account .....	71
14.8	CONTRACTOR's Warranty of Title, Assignment of Antitrust Actions.....	72
14.9	Review of Application for Progress Payment .....	72
14.10	Partial Occupation / Utilization .....	74
14.11	Project Completion.....	74
14.12	Final Application for Payment.....	75
14.13	Final Payment and Acceptance.....	75
14.14	Release of Retention and Other Deductions.....	76

**ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

15.1	City's Right to Terminate Agreement.....	76
15.2	Termination of the Agreement by the City for Convenience .....	77

**ARTICLE 16 – CONSTRUCTION CLAIMS, WAIVER AND RELEASE FORMS, DISPUTES, FALSE CLAIMS ACT**

16.1	CONTRACTOR Claims.....	78
16.2	Disputes – The City's and Engineer's Decisions .....	79
16.3	False Claims Act Certification.....	80

**ARTICLE 17 – MISCELLANEOUS**

17.1 Giving Notice ..... 80  
17.2 Title to Materials Found on the Work ..... 81  
17.3 Right to Audit..... 81  
17.4 Survival of Obligations ..... 81  
17.5 Controlling Law ..... 81  
17.6 Severability ..... 81  
17.7 Waiver ..... 81  
17.8 Prohibited Interests..... 82  
17.9 California Public Contract Code § 9204..... 82  
17.10 California Public Contract Code § 20104..... 85  
17.11 California Public Contract Code § 20104.2..... 85  
17.12 California Public Contract Code § 20104.4..... 86  
17.13 California Public Contract Code § 20104.6..... 87

## ARTICLE 1 – DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated in this Article 1, with meanings applicable to both the singular and plural forms thereof. Descriptions of these terms are binding, and form an integral part of these General Conditions.

**Addenda** – Written or graphic representations issued prior to the opening of Bids which make additions, deletions, or revisions to the Contract Documents.

**Agreement** – The written Public Improvement Agreement Contract between the City and the CONTRACTOR covering the Work to be performed; other documents are attached to the Agreement and made a part thereof as provided therein.

**Application for Payment** – The form accepted by the City which is to be used by the CONTRACTOR to request progress payments or final payment and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

**Approval** – The written authorization by the Engineer or City for specific applications. Approvals required by the Escondido City Council shall mean the approval of a specific resolution by that Council.

**Asbestos** – Any material that contains more than one percent (1%) asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

**As directed, accepted, rejected, approved,** or others of similar meaning which authorize any exercise of judgment shall be distinctly understood to mean that such power to direct, accept, reject, and approve shall be vested only in the City and/or the Engineer.

**As shown, as indicated, and as detailed** refer to drawings accompanying the specification.

**Bid** – The offer or proposal of the Bidder, submitted on the prescribed form, setting forth the price or prices for the Work.

**Bonds** – Bid, performance, and Payment Bonds as well as other instruments of security.

**Called For** – As called for, shown, noted, and/or indicated in the specifications and/or drawings.

**City** – The City of Escondido with whom the CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.

**Clarification** – A document issued by the Engineer to the CONTRACTOR that interprets the requirement(s) and/or design intent of the Contract Documents, which may not represent an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times.

**Competent Person** – *"One who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and has authorization to take prompt corrective measures to eliminate them."* Excerpt from the California Occupational Safety and Health Standards Board.

**Confined Space** – *"Confined space means a space that:*

- (1) Is large enough and so configured that an employee can bodily enter and perform assigned work;*
- (2) Has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and*
- (3) Is not designed for continuous employee occupancy."* Excerpt from Title 8, General Industry Safety Orders Section 5157.

**Construction Administration Documents: Terms, uses and protocols-** Notwithstanding any other provisions in the General Conditions, the following terms and definitions shall be used.

- (1) **CCD** – The term "CCD" shall mean Construction Change Directive. The CCD is a written instrument prepared by the City or its designee and submitted to the CONTRACTOR. The CCD is a written order directing a change in the Work and stating the required pricing method, if any, in the contract sum, and the Contract Time adjusted to reflect a previously approved Fragnet, if any. The CCD, without invalidating the Contract, may order changes in the Work within the general scope of the Contract, consisting of additions, deletions, or other revisions within. The CCD shall become

effective when the City has signed the CCD (CONTRACTOR signature is not required). If the CCD results in additional time, the CONTRACTOR shall provide a Fragnet Submittal within **fourteen (14) days**. If the Fragnet Submittal is approved, the Contract Time adjustment shall be incorporated into originating CCD, or incorporated into a separate CCD and/or a Change Order (CO). The approved Fragnet, if any, shall become incorporated into the next monthly schedule update to reflect the time impact(s).

- (2) **CO** – The term "CO" shall mean Change Order. The Change Order shall state the change in Work and the contract sum and/or time adjustments, if any. RFP's, FO's and/or CCDs may be incorporated into a Change Order after any adjustments in the contract sum and/or time have been reviewed and accepted by the City. The Change Order and items contained therein cannot be incorporated into the progress payments until the Change Order has been fully executed and accepted by the Contractor and the City.
- (3) **COR** – The term "COR" shall mean Change Order Request. The COR is a written instrument prepared by the CONTRACTOR and submitted to the City. The COR is the CONTRACTOR's method for requesting the full and complete terms for changes in the contract sum and/or time, if any. All of the terms of the COR need to be presented without reservations so that the City and/or Engineer can consider the full impact of the COR. The request shall provide an explanation of the basis for entitlement referenced by or based on the Contract Documents. The City shall endeavor to respond to the COR on or within **twenty-one (21) days** of receipt.
- (4) **FO** – The term "FO" shall mean Field Order. A Field Order may be approved by the Inspector, at the City's discretion. A written order signed by the City, which may or may not involve a change in the Work, without invalidating the Contract, within the general scope of the Contract. If the FO results in additional time, the CONTRACTOR shall provide a Fragnet Submittal within **fourteen (14) days**. If the Fragnet Submittal is approved, the Contract Time adjustment shall be incorporated into the next monthly schedule update to reflect the time impact, if any.
- (5) **RFI** – The term "RFI" shall mean Request for Information. An RFI is a written instrument prepared by the CONTRACTOR and submitted to the City or its designee. An RFI shall be considered a tool for requesting additional information above and beyond that which is available in the Contract Documents and all reference standards, as well as fulfilling the Contract coordination requirements for which the CONTRACTOR is obligated to perform. The RFI shall not be used for requesting design and/or material substitutions.

Prior to issuing an RFI, the CONTRACTOR, Subcontractors, material suppliers and the like shall thoroughly review the Contract Documents and refer to all reference standards for the information sought.

When submitting an RFI, the document shall specify the date issued and the date the information is needed by. However, the contractual response time shall be **fourteen (14) days** from the date the City or its designee receives the RFI. The CONTRACTOR shall plan its work and submit questions in sufficient time to accommodate the response time. For those contracts requiring a CPM schedule, the CONTRACTOR shall include in the RFI the CPM Activity Number and the originating Subcontractor.

The CONTRACTOR shall make efforts to coordinate the work in a timely fashion so as to alleviate priority RFIs. If the RFI is considered a priority, the CONTRACTOR shall state the word "Priority" on the document, and the CONTRACTOR shall provide weekly

RFI Priority Schedules. The CONTRACTOR shall issue and maintain weekly RFI Priority Schedules.

The RFI Priority Schedule shall include a listing of pending requests, including the most current request, which ranks the RFIs in order of priority. The Engineer shall endeavor to respect the CONTRACTOR's requested order of priorities and requested response dates.

The Engineer's response to the RFI shall be considered a Supplemental Instruction (SI) in which the contract sum and/or time is not altered. If the RFI response alters the contract sum and/or time, a Construction Change Directive (CCD) or a Request for Proposal (RFP) may be issued for the changed condition(s).

Should the CONTRACTOR determine the response to the RFI creates changes in the contract sum and/or time, the CONTRACTOR must submit a Change Order Request (COR) to the City for review and decision along with a Fragnet if required.

- (6) **RFP** – The term "RFP" shall mean Request for Proposal. The RFP is a written instrument prepared by the City and submitted to the CONTRACTOR. The RFP is a request for changes in the contract sum and/or time, and a proposal for potential change in contract conditions, for which the contract sum and/or time may or may not be affected. The CONTRACTOR shall provide the full and complete terms of the request in a Change Order Request (COR) within **fourteen (14) days**: If the RFP results in added time, the CONTRACTOR shall provide a Fragnet Submittal within the same **fourteen (14) days**. If the City accepts the full terms of the RFP, the RFP shall be incorporated into a Construction Change Directive (CCD) and/or a Change Order (CO), and/or a Field Order (FO) and the approved Fragnet, if any, shall become incorporated into the next monthly schedule update to reflect the time impact(s).
- (7) **SI** – The term "SI" shall mean Supplemental Instruction. The SI is a written instrument prepared by the Engineer and submitted to the CONTRACTOR. The SI can order changes in the Work that do not affect the contract sum and/or time. Supplemental Instructions can also be made in an RFI response by issuing a formal SI document or by written letter from the City's or its designee's office.

**Contract Price** – The total monies payable by the City to the CONTRACTOR under the terms and conditions of the Contract Documents.

**Contract Time** – The duration of the Project as defined in the Agreement.

**Contractor** – The individual, partnership, corporation, joint venture, or other legal entity with whom the City has executed the Agreement.

**Day** – Days shall be considered calendar days and measured from midnight to the next midnight.

**Defective work**- Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents; or Work that has been damaged prior to the final payment.

**Deficiency List** – A list maintained by the City, representing an ongoing list of items that do not conform to the Contract Documents. The Deficiency List is added to the Punch-List when the CONTRACTOR asserts that the Work is complete.

**Deficiency Notice** – A notice from the City to the CONTRACTOR describing work that does not conform to the Contract Documents.

**Delay Days** – Delay Days shall be considered working days. Assuming a 5-day workweek, delay days shall be converted into calendar days by a factor of 1.4. Hence 10 Delay Days equal 14 Calendar Days. Delay Days will be evaluated and identified as one of the three categories listed below. Excusable delays will create adjustments in the Contract Time. Compensable delays will create

adjustments in both the contract sum and Contract Time. In the event of concurrent delays caused by the City and CONTRACTOR or its subcontractors, material men or suppliers, no delay damages are recoverable by either the City or the CONTRACTOR, but an extension in time shall be granted for each contemporaneous Delay Day occurring on the critical path. Contemporaneous delays shall be evaluated using a schedule fragnet(s), schedule updates, daily reports, notices, and any other records of delaying events. In the event of a delay, the CONTRACTOR shall provide a Notice of Delay in accordance with Article 11.5 "CONTRACTOR SHALL PROVIDE NOTICE" and submit a schedule fragnet depicting the delay with all substantiating documentation within **fourteen (14) days** of the event.

<u>Excusable &amp; Compensable</u>	<u>Excusable &amp; Non-Compensable</u>	<u>Inexcusable</u>
Delays caused by the City, the Engineer, or the City's separate Contractor(s).	<ol style="list-style-type: none"> <li>1. Unusual weather</li> <li>2. Strikes or labor shortages</li> <li>3. Acts of God</li> <li>4. Fires, war, acts of government &amp; pestilence</li> <li>5. Unusual and unanticipated delays in manufacturing and/or deliveries of materials and/or equipment</li> <li>6. Concurrent Delays</li> </ol>	Delays caused by the CONTRACTOR, Subcontractor(s), material-men or suppliers.

- (1) **Concurrent Delay** – Delays caused by both the Contractor and the City and occurring at the same time; existing together, relating to same activity or activities, and affecting the critical path.
- (2) **Contemporaneous Delay** – Delays existing or happening in the same period of time.

**Drawings** – The drawings, plans, maps, profiles, diagrams, and other graphic representations which indicate the character, location, nature, extent, and scope of the Work and which have been prepared by the Engineer and are included and/or referred to in the Contract Documents. Shop Drawings are not Drawings as so defined.

**Effective Date of the Agreement** – The Effective Date is indicated in the Agreement, but if no such date is indicated, the Effective Date is when the Agreement is signed and delivered by the last of the two parties.

**Engineer** – The individual, partnership, corporation, joint venture, or other legal entity designated by the City, if any is so designated, in the Supplementary General Conditions. Such designation may include more than one individual or entity, and may be changed by the City with written notification to the CONTRACTOR.

**Engineer of Work** - The responsible Engineer who wet stamped and signed the Contract Specifications and Drawings. The responsibilities of the Engineer of Work are set forth in California Business and Professions code and other laws as may be applicable. The responsibilities under law of the Engineer of Work are not modified by these General Conditions.

**Fragnet** – Also known as a "Sub-network." Refer to the specification section titled CONSTRUCTION SCHEDULING for the definition of a Fragnet and the requirements thereof. A Fragnet will be required for time impact analysis and time extensions. CONTRACTOR's failure to provide a Notice of Delay within **24 hours**, and submit a Fragnet for time impact analysis and time extension(s) on or within **14 days** of the delaying event, shall forfeit and invalidate all considerations for time and/or payment. (Refer to the definition of "Delay Days" for additional information.) The costs to prepare Fragnets and schedule updates resulting from approved Fragnets



are part of the Work, regardless of number and difficulty. The City will provide a response to the Fragnet on or within **14 days**.

**Hazardous Waste** – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6906), as amended from time to time.

**Inspector** – The City's appointed representative(s) for inspection of in-progress or completed Work.

**Laws and Regulations; Laws or Regulations** – Any and all applicable laws, rules, regulations, ordinances, codes, and/or orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

**Materials** – Materials incorporated in the project or used or consumed in the performance of the Work.

**Milestone** – A principal event specified in the Contract Documents relating to an intermediate completion date of a separately identifiable part of the Work or a period of time within which the separately identifiable part of the Work should be performed prior to Project Completion of all the Work.

**Notice of Award** – The written notice by the City to the apparent successful bidder stating that, upon compliance by the apparent successful bidder with the precedent conditions enumerated therein within the time specified, the City will enter into an Agreement.

**Notice of Completion** – A form signed by the City indicating that the Work is Complete ("Project Completion") and stating the date of completion. After acceptance of the Work by the City's governing body, the Escondido City Council, and due authority is given to the Deputy Director of Public Works, the form is signed by the Deputy Director of Public Works and filed with the San Diego County Recorder. This filing starts the 30-day lien filing period on the Work.

**Notice to Proceed** – The written notice issued by the City to the CONTRACTOR authorizing the CONTRACTOR to proceed with the Work and establishing the date of commencement of the Contract Times.

**Partial Utilization** – Use by the City of a completed part of the Work for the purpose for which it is intended prior to Project Completion.

**Project** – The total construction project of which the Work to be provided under the Contract Documents may be the whole or a part as indicated elsewhere in the Contract Documents.

**Project Completion** – The acceptance by the Escondido City Council of the Work of improvement (as in the Notice of Completion).

**Project Documents and/or Contract Documents** – Includes collectively, to wit: Notice Inviting Sealed Bids/Notice to Contractors, Instructions to Bidders, Bid Form, Designation of Subcontractors, Workers' Compensation Certificate, Change Orders, Shop Drawing Transmittals, Information Required of CONTRACTOR, Non-collusion Affidavit, Faithful Performance Bond, Payment Bond, Insurance Certificates, Guarantees, General Conditions, Supplementary General Conditions, Special Conditions, Plans, Drawings, Specifications, the Agreement and all modifications, addenda, and amendments thereto.

**Provide** – Term shall include "provide complete in place," that is, "furnish and install."

**Punch-List** – A list generated by the Engineer, in conjunction with the City, of missing work, of damaged existing facilities, and a list of any and all work described by the Contract Documents that has not been completed in conformance with the Contract Documents. A Punch-List may be amended by the City from time to time based on the results of CONTRACTOR re-work and the discovery of additional non-conforming work.

**Resident Project Representative** – The authorized representative of the City/Engineer who is assigned to the Site or any part thereof.

**Safety Orders/Records** – Those issued by the Division of Industrial Safety and OSHA standards for construction.

**Samples** – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

**Shop Drawings** – All drawings, diagrams, illustrations, schedules, and other data which are specifically prepared by or for the CONTRACTOR and submitted by the CONTRACTOR to illustrate some portion of the Work.

**Site** – The physical locale where the Project is to be constructed, including all public rights-of-way, utilities, improvements, and shall be limited solely by formal, recorded property lines adjacent to the physical locale where the Project is to be constructed.

**Specifications** – Those technical or additional project management provisions that are binding on the Work as described in the Supplementary General Conditions.

**Stipulated Prices or Markups** – Prices or markups set forth as a condition of the Contract.

**Stop Notice** – A legal remedy for subcontractors and suppliers who contribute to public works but who are not paid for their work, which secures payment from construction funds possessed by the City. The Stop Notice may also be issued by public entities, such as the department of Labor, as a notice to withhold due to failure to pay the required wages to workers.

**Subcontractor** – A licensed entity of any tier (whether having a direct contractual relationship with Contractor or another Subcontractor) that provides labor to the Project and/or furnishes material worked to a special design according to plans, drawings, and specifications of this work, but does not include one who merely furnishes material not so worked.

**Supplementary General Conditions** – The part of the Contract Documents which make additions, deletions, or revisions to these General Conditions.

**Supplier** – A manufacturer, fabricator, distributor, material-man, or vendor having a direct contract with the CONTRACTOR or with any Subcontractor to furnish materials, equipment, or product to be incorporated in the WORK by the CONTRACTOR or any Subcontractor.

**Surety** – The person, firm, or corporation that executes as surety the CONTRACTOR's Bid Security, faithful performance bond and/or payment bond.

**Utilities** – All pipelines, conduits, ducts, cables, wires, tracks, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities which have been installed underground or above the ground to furnish any of the following services or materials: water, sewage, sludge, drainage, fluids, electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, traffic control, or other control systems.

**Work** – The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

**Workers** – Workers include laborers, workers, and mechanics.

## ARTICLE 2 – PRELIMINARY MATTERS

2.1 **DELIVERY OF BONDS AND INSURANCE CERTIFICATES.** When the CONTRACTOR delivers the signed Agreement to the City, the CONTRACTOR shall also deliver to the City such Bonds and insurance policies and certificates and documents as the CONTRACTOR may be required to furnish in accordance with the Contract Documents.

2.2 **COPIES OF DOCUMENTS.** The City will furnish to the CONTRACTOR as many copies of the Contract Documents specified in the Instructions to Bidders. Additional copies will be provided, upon request, at the cost of duplication.

2.3 **ESCROW OF BID DOCUMENTS**

A. **SCOPE:**

1. The CONTRACTOR shall submit, within **ten (10) days** after the award of contract one (1) copy of all documentary information generated in preparation of the bid price for the project. This material is hereinafter referred to as the "Escrow Bid Documents." The Escrow Bid Documents will be held in escrow for the duration of the contract.

2. The CONTRACTOR agrees that the Escrow Bid Documents constitute all of the information used in preparation of the bid, and that no other bid preparation information will be considered in resolving claims.
  3. Nothing in the Escrow Bid Documents shall change or modify the terms or conditions of the Contract.
- B. **PROPERTY:** The Escrow Bid Documents are and will always remain the property of the CONTRACTOR, subject only to joint review by the City and the CONTRACTOR, as provided in paragraph (G) "EXAMINATION." The City stipulates and expressly acknowledges that the Escrow Bid Documents constitute trade secrets and are proprietary and confidential. This acknowledgment is based on the City's express understanding that the information contained in the Escrow Bid Documents is not known outside the CONTRACTOR's business, is known only to a limited extent and only by a limited number of employees of the CONTRACTOR, is safeguarded while in CONTRACTOR's possession, is extremely valuable to CONTRACTOR and could be extremely valuable to CONTRACTOR's competitors by virtue of it reflecting CONTRACTOR's contemplated techniques of construction. The City acknowledges that the CONTRACTOR expended substantial sums of money in developing the information included in the Escrow Bid Documents and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. The City further acknowledges that the Escrow Bid Documents and the information used in the CONTRACTOR's business were intended to give the CONTRACTOR an opportunity to obtain an advantage over competitors who do not know of or use the contents of the documentation. The City agrees to safeguard the Escrow Bid Documents and all the information contained therein against disclosure to the fullest extent permitted by law.
- C. **PURPOSE:** Escrow Bid Documents will be used to assist in the negotiation for the settlement of claims. They will not be used for evaluation of the CONTRACTOR's anticipated methods of construction or to assess the CONTRACTOR's qualification for performing the Work.
- D. **FORMAT AND CONTENTS:**
1. CONTRACTOR may submit Escrow Bid Documents in the usual cost-estimating format. Escrow Bid Documents shall be adequate to enable complete understanding and proper interpretation for their intended use.
  2. Escrow Bid Documents shall clearly itemize the estimated costs of performing the Work. Items shall be separated into sub-items as required to present a complete and detailed cost estimate and allow a detailed cost review. The Escrow Bid Documents shall include all quantity takeoffs, labor, equipment, calculations of rate production and progress, copies of quotations from Subcontractors and suppliers, memoranda, narratives, consultant's reports, add/deduct sheets, and all other information used by the CONTRACTOR to arrive at the prices contained in the bid proposal. Estimated costs shall be broken down into the CONTRACTOR's usual estimate categories such as direct labor, repair labor, material, equipment, construction equipment operation, construction equipment ownership, expendable materials, materials and Subcontractor cost as appropriate. Plant and equipment, indirect costs shall be detailed in the CONTRACTOR's usual format. The CONTRACTOR's allocation of plant and equipment, indirect costs, contingencies, markup and other items shall be included.
  3. All costs shall be identified for all items. Sub-items amounting to less than \$10,000.00 estimated unit costs are acceptable without a detailed cost estimate,

provided that labor, equipment, materials, construction equipment, expendable materials and subcontracts, as applicable, are included, provided that indirect costs, contingencies, and markups, as applicable, are allocated.

4. Bidding materials provided by the City shall not be included in the Escrow Bid Documents unless needed to comply with the requirements of this specification.

E. SUBMITTAL:

1. The Escrow Bid Documents shall be submitted by the CONTRACTOR in a sealed container(s) within **10 days** after the day of award of the contract. The container shall be clearly marked on the outside with the CONTRACTOR's name, date of submittal, project name and the words "Escrow Bid Documents."
2. The Escrow Bid Documents shall be accompanied by an index to inventory the contents of the submittal and a Bid Documentation Certification, signed by the individual who executed the bidding proposal, stating that the material in the Escrow Bid Documents constitutes all documentary information used in preparation of the bid and that he/she has personally examined the contents of the Escrow Bid Documents container and has found that the documents in the container(s) are complete and organized as shown by the CONTRACTOR's index.
3. The City shall examine the index. This examination is to ensure that the index is detailed and complete and conforms to the "format and contents" as stated in paragraph (D) above. If all the documentation required in paragraph (D) "FORMAT AND CONTENTS" has not been indexed in the original submittal a revised index shall be submitted at the CITY's discretion. Timely submission of complete Escrow Bid Documents is an essential element of the CONTRACTOR's responsibility. Failure to provide the necessary Escrow Bid Documents may be sufficient cause for the CITY to assess damages under the contract. If the CONTRACTOR's proposal is based on subcontracting any part of the Work, each Subcontractor, whose total subcontract price exceeds the lesser of five percent (5%) of the total contract price proposed by the CONTRACTOR or \$200,000 shall provide separate Escrow Bid Documents to be submitted with those of the CONTRACTOR. These submittals will be examined in the same manner and at the same time as the examination described above. If the CONTRACTOR wishes to subcontract any portion of the Work or requests substitutions of any Subcontractor after award, the CITY retains the right to require the CONTRACTOR to submit Escrow Bid Documents from the proposed Subcontractor before the subcontract or substitution is approved.

F. STORAGE: The escrow bid documents will be placed in escrow, for the life of the contract, in a mutually agreeable institution. The city will pay the cost of storage.

G. EXAMINATION:

1. The Escrow Bid Documents shall be examined by the City, the Engineer and CONTRACTOR, at any time deemed necessary by either the City or the CONTRACTOR, to assist in the negotiation for the settlement of claims.
2. Examination of the Escrow Bid Documents is subject to the following conditions:
  - a. As trade secrets, the Escrow Bid Documents are proprietary and confidential as described in paragraph (B).

- b. The City and the CONTRACTOR shall each designate, in writing to the other party and a minimum of **five (5) days** prior to examination, representatives who are authorized to examine the Escrow Bid Documents. No other person shall have access to the Escrow Bid Documents.
  - c. Access to the Escrow Bid Documents under this paragraph will take place only in the presence of duly designed representatives of both the City and the CONTRACTOR.
- H. **FINAL DISPOSITION:** The escrow bid documents will be returned to the contractor at such time as the contract has been completed and final settlement has been achieved.
- 2.4 **COMMENCEMENT OF CONTRACT TIMES; NOTICE TO PROCEED.** The Contract Times will start to run on the commencement date stated in the Notice to Proceed.
- 2.5 **STARTING THE WORK**
- A. The CONTRACTOR shall begin to perform the Work on the commencement date stated in the Notice to Proceed, but no Work shall be done at the Site prior to said commencement date. The Work shall be commenced immediately after Notice to Proceed, and shall be diligently prosecuted until completion.
  - B. Before undertaking each part of the Work, the CONTRACTOR shall review the Contract Documents in accordance with Article 3 of these General Conditions.
- 2.6 **CONTINUING THE WORK.** The CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the CONTRACTOR and the City may otherwise agree in writing.
- 2.7 **PRECONSTRUCTION MEETING.** A preconstruction meeting shall be called after the award and execution of the Contract and prior to construction. The CONTRACTOR (a Principal and Project Superintendent) shall attend. The CONTRACTOR shall plan on spending no less than **four (4) hours** of time with Subcontractor(s) and project superintendent(s) for this meeting.
- 2.8 **CITY OBSERVED HOLIDAYS.** CONTRACTOR is required to observe City holidays. The City observes the following holidays:
- 1. New Years Day
  - 2. Martin Luther King, Jr. Day
  - 3. Presidents' Day
  - 4. Memorial Day
  - 5. Independence Day
  - 6. Labor Day
  - 7. Veterans Day
  - 8. Thanksgiving Day
  - 9. Day after Thanksgiving
  - 10. Christmas Day

## ARTICLE 3 – INTENT AND USE OF CONTRACT DOCUMENTS

### 3.1 CONTRACTOR MUST REVIEW CONTRACT DOCUMENTS, DRAWINGS AND SPECIFICATIONS

- A. Drawings and Specifications are intended to be complementary (that which is required by one shall be required by the other; to the extent there is more than one reference which exists, the reference requiring the more stringent and/or best standards and requirements shall be furnished and installed) and delineate and describe the Project and its component parts to such a degree as will enable a skilled and competent CONTRACTOR to intelligently bid upon the Work, coordinate the Work and to carry out the Work to a successful conclusion. If, as and to the extent that Public Contract Code section 1104 is deemed to apply after the Award of Contract, CONTRACTOR shall not be required to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications, notwithstanding any other provision in the Project Documents, except to the extent that CONTRACTOR discovered or should have discovered and reported any errors and omissions to the City, including but not limited to as the result of any review of the plans and specifications by CONTRACTOR required by the Instructions to Bidders or other Project Documents, whether or not actually performed by CONTRACTOR.
- B. Drawings and Specifications are intended to comply with all laws, ordinances, rules and regulations of constituted authorities having jurisdiction, and where referred to in the Project Documents, these laws, ordinances, rules and regulations shall be considered as a part of the Agreement within the limits specified. The CONTRACTOR shall bear all expenses of correcting Work done contrary to applicable laws, ordinances, rules and regulations and if the CONTRACTOR performed the Work (1) without first consulting the City for further instructions regarding the Work, or (2) disregarded the City's instructions regarding the Work.
- C. Questions regarding interpretation of drawings and specifications shall be submitted in writing to be clarified by the City; provided, however, that in the event the City determines that CONTRACTORS requests for information (RFI's) are not justified or do not reflect adequate or competent supervision, coordination, and / or knowledge by the CONTRACTOR or its Subcontractors, CONTRACTOR shall be required to pay the City's reasonable and customary fees in processing and responding to such requests. Should the CONTRACTOR commence Work or any part thereof without seeking clarification, and/or performing its own coordination obligations, the CONTRACTOR waives any claim for extra Work or damages as a result of any ambiguity, conflict or lack of information.
- D. Figured dimensions on drawings shall govern, but Work not dimensioned or mis-described shall be as directed. Work not particularly shown, mis-described or specified shall be the same as similar parts that are shown or specified. Large scale drawings shall take precedence over smaller scale drawings as to shape and details of construction. Specifications shall govern as to materials, workmanship, and installation procedures. Drawings and specifications are intended to be fully cooperative and to agree. If through the process of contract-required coordination, CONTRACTOR observes that drawings and specifications are in conflict, CONTRACTOR shall promptly notify the City in writing, and any necessary changes shall be adjusted as provided in Article 10 titled CHANGES IN THE Work; provided, however, that the specification calling for the higher quality material or workmanship shall prevail without additional cost to the City.

- E. Materials or Work described in words, which so applied, have a well known technical or trade meaning shall be deemed to refer to such recognized standards.
- F. It is not the intention of the Agreement to go into detailed descriptions of any materials and/or methods commonly known to the trade under "trade name" or "trade term." The mere mention or notation of such "trade name" or "trade term" shall be considered a sufficient notice to CONTRACTOR that it will be required to complete the Work so named with all its incidental and accessory items according to the best practices of the trade.
- G. The naming of any material and/or equipment shall mean furnishing and installing, including all incidental and accessory items thereto and/or labor necessary to achieve full and complete functioning of the material and/or equipment according to the best practices of the trade(s) involved, unless specifically noted otherwise.

### 3.2 AGREEMENT TO THOROUGHLY REVIEW DETAIL DRAWINGS AND INSTRUCTIONS

- A. All parts of the described and shown construction drawings shall be of the best quality of their respective kinds and in executing the Agreement, the CONTRACTOR agrees to use all diligence to become fully informed as to the required construction and finish, and in no case to proceed with the different parts of the Work without obtaining first from the City such directions and/or drawings as may be necessary for the proper performance of the Work.
- B. In case of ambiguity, conflict, or lack of information, the City shall furnish additional instructions by means of drawings or otherwise, as necessary for proper execution of the Work. All such drawings and instructions shall be consistent with Project Documents, true developments thereof, and reasonably inferable therefrom. Such additional instructions shall be furnished with reasonable promptness, provided that CONTRACTOR informs the City of the relationship of the request to the critical path of construction. Refer to the term, use and protocol of an RFI defined in Article 1 entitled "Definitions" under "Construction Administration Documents."
- C. Work shall be executed in conformity therewith and CONTRACTOR shall do no Work without proper drawings and instructions.
- D. The City may furnish necessary additional details to more fully explain the Work, which details shall be considered as part of the Project Documents.
- E. Should any details be more elaborate, in the opinion of the CONTRACTOR, than scale drawings and specifications warrant, CONTRACTOR shall give written notice thereof to the Engineer within **21 days** of receipt. In case no notice is given to the Engineer within **21 days**, it will be assumed the details are reasonable development of the scale drawings. In case proper notice is given, then it will be considered, and if found justified, the Engineer will either modify the drawings or shall recommend a change order for any extra Work that may be involved.
- F. If it is found at any time, before or after completion of the Work, that the CONTRACTOR has varied from the drawings and/or specifications, in materials, quality, form, finish, or in the amount or value of the materials and labor used, the City shall take the issue under advisement and consider the following options:
  - 1. That all such improper Work should be removed, remade, replaced, and all Work disturbed by these changes be made good at the CONTRACTOR's expense; or

Item 5.

2. That the City deduct from any amount due CONTRACTOR, the sum of money equivalent to the difference in value between the Work performed and that called for by the drawings and specifications. The City shall determine such difference in value. The City, at its option, may pursue a recommendation made by the Engineer.
  
- 3.3 **REFERENCED STANDARD.** No provision of any referenced standard specification, manual or code shall be effective to change the duties and responsibilities of the City, the CONTRACTOR, the Engineer, or any of their consultants, agents, or employees, from those set forth in the Contract Documents, nor shall it be effective to assign to the City, Engineer, or any of Engineer's consultants, agents, or employees any duty or authority to direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.
  
- 3.4 **AMENDING CONTRACT DOCUMENTS.** The Contract Documents may be amended only in writing to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by a Change Order (pursuant to Article 10-CHANGES IN THE WORK).
  
- 3.5 **NO ASSIGNMENT.** The CONTRACTOR shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement or of its rights, title or interest in or to the same or any part thereof. If the CONTRACTOR shall assign, transfer, convey, sublet or otherwise dispose of the Agreement or its right, title or interest therein, or any part thereof, such attempted or purported assignment, transfer, conveyance, sublease or other disposition shall be null, void and of no legal effect whatsoever; and the Agreement may, at the option of the City, be terminated, revoked and annulled, and the City shall thereupon be relieved and discharged from any and all liability and obligations growing out of the same to the CONTRACTOR, and to its purported assignee or transferee.
  
- 3.6 **REUSE OF DOCUMENTS.** Neither the CONTRACTOR, nor any Subcontractor or Supplier, nor any other person or organization performing any of the Work under a contract with the City shall have or acquire any title to or ownership rights in any of the Drawings, Technical Specifications, or other documents used on the Work, and they shall not reuse any of them on the extensions of the Project or any other project without written consent of City.

#### ARTICLE 4 – SITE OF THE WORK

- 4.1 **AVAILABILITY OF LANDS.** The City will furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the City, unless otherwise provided in the Contract Documents. Nothing contained in the Contract Documents shall be interpreted as giving the CONTRACTOR exclusive occupancy of the lands or rights-of-way provided. The CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment; provided, that the CONTRACTOR shall not enter upon nor use any property not under the control of the City until a written temporary construction easement agreement has been executed by the CONTRACTOR and the property owner, and a copy of said easement furnished to the Engineer prior to said use; and, neither the City nor the Engineer will be liable for any claims or damages resulting from the CONTRACTOR's trespass on or use of any such properties. The CONTRACTOR shall provide the City with a signed release from the property owner confirming that the lands have been satisfactorily restored upon completion of the Work.



4.2 SOILS INVESTIGATION REPORT & CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

- A. **SUBSURFACE EXPLORATIONS:** Reference is made to the Supplementary General Conditions for identification of those reports of explorations and tests, if any, of subsurface conditions at the Site that have been utilized by the City or its Engineer in the preparation of the Contract Documents.
- B. **SOILS INVESTIGATION REPORT.** When a soils investigation report has been prepared or referenced by the City or its Engineer to assist with the design of the facility, such report is available for the CONTRACTOR's use in preparing its bid and Work under this Agreement. All soil and test-hole data, water table elevations, and soil analyses shown on the drawings or included in the Specifications apply only at the location of the test holes and to the depths indicated. Geotechnical reports for the test holes, if any, which have been drilled are available from the City. Any additional subsurface exploration shall be done by the CONTRACTOR or Bidder at their own expense. The indicated elevation of a water table is that which existed on the date when test holes were made and the level of the groundwater was determined. It is the CONTRACTOR's responsibility to determine the level of ground water or water table at the time of project construction. A difference in elevation between the level of ground water or water table indicated on the soil boring logs and groundwater actually encountered during construction is a risk of the CONTRACTOR's bid amount, and will not be considered as a basis for extra Work or additional compensation.
- C. **CONTRACTOR SHALL NOTIFY THE CITY OF UNKNOWN CONDITIONS.** If, during the course of Work under this Agreement, CONTRACTOR encounters subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in contract activities of the character provided for in the Contract Documents, then CONTRACTOR shall notify the City of the discovery of the condition before the condition is materially changed, disturbed and/or covered, and before any additional Work is performed. The CONTRACTOR must notify the City, in writing of unforeseen conditions, or differing Site conditions, promptly upon their discovery and before they are disturbed. Reference Article 11.5 "CONTRACTOR SHALL PROVIDE NOTICE".
- D. **WARNING: THE CITY DOES NOT WARRANT THE SOILS AT THE PROJECT SITE. SOILS INVESTIGATION REPORTS ARE PROVIDED FOR CONTRACTOR'S INFORMATION ONLY. THE CITY OF ESCONDIDO DOES NOT WARRANT THE SOILS CONDITIONS OF THE SITE AND CONTRACTOR IS FULLY RESPONSIBLE TO ASCERTAIN SITE CONDITIONS FOR THE PURPOSES OF DETERMINING CONSTRUCTION MEANS AND METHODS PRIOR TO COMMENCING CONSTRUCTION. IF ANY CONTRACTOR WISHES TO PERFORM A PRE-BID SITE INSPECTION, WHICH INCLUDES SOILS TESTING, A METHOD TO DO SO IS AVAILABLE AND IS DESCRIBED IN PARAGRAPHS 4.7 and 4.8 OF THE "INSTRUCTIONS TO BIDDERS".**

4.3 PHYSICAL CONDITIONS - UNDERGROUND UTILITIES

- A. The information and data indicated in the Contract Documents with respect to existing underground Utilities at or contiguous to the Site are based on information and data furnished to the City or the Engineer by the owners of such underground Utilities. The Contract plans depict the various utilities as they are believed to exist, however, the

CONTRACTOR shall not rely on the locations and depths indicated. The CONTRACTOR shall comply with California Government Code Section 4216 ("Section 4216"). The CONTRACTOR shall determine the location and depth of all utilities that are indicated and those that are not indicated as follows:

1. As provided in Section 4216, at least **2 working days** prior to commencing any excavation, but not more than **14 calendar days**, the CONTRACTOR shall contact the regional notification center (Underground Service Alert of Southern California) and obtain an inquiry identification number. Refer to Article 6.28.
2. Where underground main distribution conduits such as water, gas, sewer, electric power, telephone, or cable television are shown on the Plans, the CONTRACTOR shall assume that every property parcel will be served by a service connection of each type of utility.
3. Section 4216 does not require the Local Agency to mark out non-pressurized sewer lines, non-pressurized storm drains or other non-pressurized drain lines.
4. The California Department of Transportation, CALTRANS, is not required by Section 4216 to become a member of the regional notification center. The CONTRACTOR shall call CALTRANS directly for location of its subsurface installations.
5. The CONTRACTOR shall determine the location and depth of all utilities (the top and the bottom), including joint trenches and service connections, which have been marked by the respective owners and which may affect or be affected by its operations. The CONTRACTOR shall determine the location and depth of all utilities not required to be marked out by the Local Agency.
6. The CONTRACTOR shall further determine the location and depths of all utilities that were not known or indicated on the project plans, but, after CONTRACTOR compliance with Section 4216, were marked out by the utility owners.
7. The CONTRACTOR shall not assume that existing utilities are buried at depths and locations specified in the pertinent standard drawings. In Escondido, existing utilities are frequently found at depths and locations that are not in conformance with the existing standard drawings.
8. The CONTRACTOR shall have the responsibility for coordinating as many call-backs of utility owners and CONTRACTOR mobilizations as may be required to determine the exact location, or identity, of all utilities. Utilities that are indicated on the Contract plans in a certain location, and are marked out in a different location by the utility owner, are considered by this Contract to be the same utility. The City is not responsible for errors in mark-outs made by the Utility owners.
9. The CONTRACTOR shall have full responsibility for the safety and protection of all existing utilities, to the extent allowed by California Government Code Section 4215, and repairing any damage thereto resulting from the Work. The CONTRACTOR shall use hand tools and/or vacuum equipment and use reasonable care to protect existing utilities.
10. Unknown Utility on the Contract plans, but marked out in the field by the utility owner: The Work of potholing, protecting in place, trenching over or under, repairing the road surface, backfilling with the utility owner's preference of material, plotting on the record drawings, and describing a previously unknown utility is fully contemplated by the City as being a regular occurrence on trenching projects.

Item 5.

11. Unknown utilities not marked out by the utility owner: Should the CONTRACTOR come across utilities that are not known nor marked out by the utility owner, the CONTRACTOR shall immediately call Underground Service Alert and the City. The City is not responsible for the consequences of the failure of a Utility owner to mark out its facilities.
12. Abandoned Utilities. Abandoned utilities are considered as unknown utilities for the purpose of CONTRACTOR payment, unless they are indicated on the project plans.
13. The CONTRACTOR shall call for a "standby inspector" when requested to do so by a utility owner, and follow their direction.

B. Locating Subsurface Installations (excerpted from California Government Code section 4216):

1. The excavator shall determine the exact location of subsurface installations in conflict with the excavation by excavating with hand tools within the area of the approximate location of subsurface installations as determined by the field marking provided in accordance with (California Government Code) section 4216.3 before using any power-operated or power-driven excavating or boring equipment within the approximate location of the subsurface installation, except that power-operated or power-driven excavating or boring equipment may be used for the removal of any existing pavement if there are no subsurface installations contained in the pavement. If mutually agreeable with the operator (*the operator is the owner of the Utility in this case*) and the excavator (*the excavator is the CONTRACTOR in this case*), the excavator may utilize power-operated or power-driven excavating or boring equipment within the approximate location of a subsurface installation and to any depth. (*Clarification added*)
2. If the exact location of the subsurface installation cannot be determined by hand excavating in accordance with subdivision B1, the excavator (the CONTRACTOR) shall request the operator (the owner of the Utility) to provide additional information to the excavator, to the extent that information is available to the operator, to enable the excavator to determine the exact location of the installation. (*Clarification added*)

4.4 HAZARDOUS MATERIALS

- A. The provisions of Articles 4.2, 4.3, and 4.4 are not intended to apply to Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material uncovered or revealed at the Site.
- B. Reference is made to the Supplementary General Conditions for identification of those reports and drawings relating to Asbestos, Hazardous Waste, PCBs, Petroleum and/or Radioactive Material identified at the Site that have been utilized by the Engineer in the preparation of the Contract Documents, if any.
- C. Copies of these reports and drawings may be examined at the office of the City during regular business hours. Please make an appointment. The CONTRACTOR may rely upon the accuracy of the technical data contained in such reports and drawings, except for such physical dimensions that can be field verified; however, the interpretation of such technical data, including any interpolation or extrapolation thereof, and opinions contained in such reports and drawings are not to be relied on by the CONTRACTOR.

- D. The City shall be responsible for any Asbestos, Hazardous Waste, PCBs, Petroleum, or Radioactive Material uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the Site. The City will not be responsible for any such material brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

#### 4.5 REFERENCE POINTS

- A. The City will provide access to the bench-mark book maintained by the City Surveyor, and provide any survey reference material that may be on file. The CONTRACTOR shall furnish all other lines, grades, and bench-marks required for proper execution of the Work.
- B. The CONTRACTOR shall preserve all bench marks, stakes, and other survey marks and in case of their removal or destruction by any party, the CONTRACTOR shall be responsible for the accurate replacement of such reference points by personnel qualified under the applicable state codes governing land surveyors. The recording of any replacement corners, or other points, shall be the responsibility of the CONTRACTOR.

### ARTICLE 5 – BONDS AND INSURANCE

#### 5.1 BONDS

- A. CONTRACTOR shall furnish a surety bond in an amount equal to **one hundred percent (100%)** of the contract price as security for faithful performance of this Agreement and shall furnish a separate bond in an amount equal to **one hundred percent (100%)** of the contract price as security for payment to persons performing labor and furnishing materials in connection with this Project. Bonds shall be in the form set forth in these Project Documents.
- B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- C. If the surety on any Bond furnished by the CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Work is located, the CONTRACTOR shall, within **seven (7) days** thereafter, substitute another Bond and surety, which must be acceptable to the City. No Work shall be performed without Bonds, in a form and issued by a surety acceptable to the City, required by the Contract Documents to be in full force and effect. If one or more of such Bonds shall, at any time, not be in full force and effect, CONTRACTOR shall immediately cease performance until it is in full compliance with the bonding requirements of the Contract Documents and California law. All delays and costs incurred and/or resulting from such occurrence shall be to the exclusive account of CONTRACTOR. Failure of the CONTRACTOR to promptly cure any failure to have the necessary Bonds in full force and effect shall be grounds for termination for default.
- D. All Bonds required by the Contract Documents to be purchased and maintained by CONTRACTOR shall be obtained from surety companies that are duly licensed or

authorized in the State in which the Project is located to issue Bonds for the limits so required. Such surety companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary General Conditions.

5.2 LIABILITY, PROPERTY, FIRE, BUILDER'S RISK AND OTHER INSURANCE REQUIREMENTS

- A. LIABILITY AND PROPERTY DAMAGE. Before the commencement of the Work and for the minimum amount of limits set forth herein the CONTRACTOR shall purchase from and maintain such commercial general liability insurance per occurrence for bodily injury, personal injury and property damage as set forth in the Agreement and automobile liability insurance per accident for bodily injury and property damage combined single limit as set forth in the Agreement as will protect the CONTRACTOR, and those required to be endorsed as additional insured from claims set forth below, which may arise out of or result from the CONTRACTOR's operations under the Contract and for which the CONTRACTOR may be legally liable, whether such operations are by the CONTRACTOR, by a Subcontractor, by Sub-subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
1. Claims for damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than the CONTRACTOR's employees. This coverage shall be provided in a form at least as broad as Insurance Services Office (ISO) Form CG 0001 11188;
  2. Claims for damages arising from personal or advertising injury in a form at least as broad as ISO Form CG 0001 11188;
  3. Claims for damages because of injury or destruction of tangible property, including loss of use resulting there from, arising from operations under the Project Documents; and
  4. Claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work; and
  5. Claims involving blanket contractual liability applicable to the CONTRACTOR's obligations under the Project Documents, including liability assumed by and the indemnity and defense obligations of the CONTRACTOR and the Subcontractors; and
  6. Claims involving Operations/Premises and Completed Operations/Products, Independent CONTRACTOR's coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. Coverage for completed operations must be at least as broad as CG 2010 11/85.
- B. If commercial general liability insurance or another insurance form with a general aggregate limit is used, the general aggregate limit shall apply separately to the project location (with the ISO CG 2503 or insurer's equivalent endorsement provided to the City).
- C. Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-

insured retentions as respects the City, its Board of Trustees, members of its Board of Trustees, officers, employees, agents and volunteers; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- D. **CONSENT OF INSURER.** Partial occupancy or use in accordance with the Contract Documents shall not commence until the City's insurance company providing property insurance has consented to such partial occupancy or use by endorsement or otherwise. The City and the CONTRACTOR shall take reasonable steps to obtain consent of the insurance company and shall, without mutual consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of the insurance.
- E. **FIRE INSURANCE.** Before the commencement of the Work, the CONTRACTOR shall procure, maintain, and cause to be maintained at the CONTRACTOR's expense, fire insurance on all Work subject to loss or damage by fire and the entire structure on which the Work of this Contract is to be done to the insurable value thereof. The amount of fire insurance shall be subject to approval by the City and shall be sufficient to protect the Project against loss or damage in full until the Work is accepted by the City. Should the Work being constructed be damaged by fire or other causes during construction, it shall be replaced in accordance with the requirements of the drawings and specifications without additional expense to the City.
- F. **OTHER INSURANCE.** The CONTRACTOR shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.
- G. **COMPLIANCE.** In the event of the failure of any CONTRACTOR to furnish and maintain any insurance required by this Article, the CONTRACTOR shall be in default under the Contract. Compliance by CONTRACTOR with the requirement to carry insurance and furnish certificates, policies, Additional Insured Endorsement and Declarations Page evidencing the same shall not relieve the CONTRACTOR from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the City and the Engineer.
- H. **BUILDER'S RISK/ "ALL RISK" INSURANCE.** The Contractor, during the progress of the Work and until final acceptance of the Work by City upon completion of the entire Contract, shall maintain Builder's Risk/"All Risk," course-of-construction insurance satisfactory to City issued on a completed value basis on all outstanding projects and on all insurable Work included under the Contract Documents. Coverage is to provide extended coverage and insurance against vandalism, theft, malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, earthquake, collapse, flood, wind, lightning, smoke, riot, debris removal (including demolition), and reasonable compensation for the Engineer's services and expenses required as a result of such insured loss upon the entire Work which is the subject of the Contract Documents, including completed Work and Work in progress to the full insurable value thereof. Such insurance shall include the City and the Engineer as an additional named insured and any other person with an insurable interest designated.

### 5.3 PROOF OF CARRIAGE INSURANCE

- A. CONTRACTOR shall not commence Work nor shall it allow any Subcontractor to commence Work under this Agreement until all required insurance certificates and endorsements have been obtained and delivered in duplicate to and approved by the City.

Such insurance shall be with an insurance company with a minimum rating of "A/VII", as rated by the current edition of Best's Key Rating Guide, published by A.M. Best Co., Oldwick, New Jersey 08858 and admitted or qualified to do business in California.

- B. Certificates and insurance policies shall include the following:
1. A clause stating:  
"This policy shall not be canceled or reduced in required limits of liability or amount of insurance until notice has been mailed to City stating date of cancellation or reduction. Date of cancellation or reduction may not be less than **30 days** after date of mailing notice."
  2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
  3. Separate additional insured endorsement specifically naming the City as a named additional insured under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by the City.
- C. In case of CONTRACTOR's failure to provide insurance as required by the Agreement, the City may, at the City's option, take out and maintain at the expense of the CONTRACTOR, such insurance in the name of CONTRACTOR, or Subcontractor, as the City may deem proper and may deduct the cost of taking out and maintaining such insurance from any sums which are due or to become due to the CONTRACTOR under this Agreement.
- D. The CONTRACTOR shall purchase and maintain the insurance required under this Article. Such insurance shall include the specific coverages set out herein and be written for not less than the limits of liability and coverages provided in this Article, or required by Laws or Regulations, whichever are greater. All insurance shall be maintained continuously during the life of the Agreement up to the date of Project Completion when all punch-list items have been completed. The CONTRACTOR's liabilities under this Agreement shall not be deemed limited in any way to the insurance coverage required.
1. CONTRACTOR shall have insurance in the following amounts:
    - a. Commercial general liability insurance with at least three million dollars (\$3,000,000) combined single limit coverage per occurrence for bodily injury and property damage; or, if a general aggregate limit is applicable, either: (i) the general aggregate limit shall specifically apply to the project identified in the bid specifications or to the location of such project which is the subject of these bid specifications with coverage to be no less than three million dollars (\$3,000,000), or (ii) the general aggregate shall be at least three million dollars (\$3,000,000) combined single limit coverage per occurrence for bodily injury and property damage; and
    - b. Automobile liability insurance of three million dollars (\$3,000,000) combined single limit per accident for bodily injury and property damage; and
    - c. Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended.
  2. Each insurance policy required above, except for workers' compensation, shall name the City specifically and separately as an additional insured under the policy on a separate ISO CG 2010 endorsement or equivalent, to the satisfaction of the

City Attorney. The company providing insurance must provide at least **30 days** written notice of cancellation or termination, if such cancellation or termination of the policy is to occur prior to the indicated expiration date on the face of the certificate. General and auto liability insurance coverage must be provided by a Best's 'A' rated, Class VII carrier, admitted in California, and shall be in form satisfactory to the City Attorney. Insurance companies that are not admitted in California must be on the list of approved Non-Admitted Insurers able to write in the state of California and must additionally provide a service of suit endorsement. All insurance requirements must be in a form satisfactory to the City Attorney. Failure to comply with insurance requirements under this Agreement or failure to have completed insurance documents on file within **15 working days** after CONTRACTOR executes this Agreement shall be a material breach of this Agreement.

3. Workers' Compensation and Employer's Liability In accordance with the provisions of Section 3700 of the California Labor Code, the CONTRACTOR and every Subcontractor shall be required to secure the payment of compensation to its employees. The CONTRACTOR shall provide, during the life of the Agreement, workers' compensation insurance for all of its employees engaged in Work under this Agreement, on or at the site of the Project, and, in case any of its Work is sublet, the CONTRACTOR shall require the Subcontractor similarly to provide workers' compensation insurance for all the latter's employees. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the CONTRACTOR's insurance. In case any class of employees engaged in Work under this Agreement, on or at the site of the Project, is not protected under the workers' compensation statute, the CONTRACTOR shall provide or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected before the Subcontractor commences Work. The CONTRACTOR shall file with the City certificates of its insurance protecting workers and a **30 day** notice shall be provided to the City before the cancellation or reduction of any policy of CONTRACTOR or Subcontractor. The CONTRACTOR and each Subcontractor shall provide a waiver of subrogation in favor of the City and Engineer.

## ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

None of the following responsibilities, as between City and CONTRACTOR, shall be delegated by CONTRACTOR to another individual or entity.

### 6.1 COMMUNICATIONS.

- A. Written communications shall be directly to the City, however, the City reserves the right to direct the CONTRACTOR to communicate directly with a construction manager or other consultant, and to copy the City with correspondence.
- B. Notice to Surrounding Properties. CONTRACTOR must provide Notice of Construction to all property owners and businesses at least 3 days before commencement of such work. A sample form notice is found in the Proposed Contract Documents, at page A-00670-1.

- 6.2 INDEPENDENT CONTRACTOR. CONTRACTOR is and shall at all times be deemed to be an independent CONTRACTOR and shall be wholly responsible for the manner in which it performs the services required of it by the terms of the Project Documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the City and CONTRACTOR or any of CONTRACTOR's subcontractors (of



every tier), suppliers, agents or employees. CONTRACTOR assumes exclusively the responsibility for the acts of its subcontractors (of every tier), suppliers, agents, and employees as they relate to the services to be provided during the course and scope of their employment. CONTRACTOR, its subcontractors (of every tier), suppliers, agents and employees shall not be entitled to any rights or privileges of City employees and shall not be considered in any manner to be City employees. The City shall be permitted to monitor all the activities of the CONTRACTOR to determine compliance with the terms of the Project Documents.

- 6.3 CONTRACTOR LICENSE. CONTRACTORS are required by law to be licensed and regulated by the Contractors' State License Board. Any CONTRACTOR not so licensed is subject to penalties under the law, and the contract will be considered void pursuant to Section 7028.7 of the Business and Professions Code. Any questions concerning a CONTRACTOR may be referred to the Registrar, Contractors' State License Board, 3132 Bradshaw Road, P.O. Box 2600, Sacramento, CA 95826. CONTRACTOR shall be duly licensed at all times during performance. Substantial compliance shall not be sufficient.
- 6.4 CONTRACTOR REGISTRATION: CONTRACTOR, as well as any subcontractors, shall be registered pursuant to Cal. Lab. Code § 1725.5 to be qualified to bid on, be listed in a bid proposal, (subject to the requirements of Section 4104 of the Public Contract Code) or engage in the performance of any public work contract that is subject to the requirements of Chapter 1, Part 7, Division 2 of the California Labor Code.
- 6.5 CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY. Before CONTRACTOR makes any change in the name or legal nature of the CONTRACTOR's entity, CONTRACTOR shall first notify the City in writing and cooperate with the City in making such changes as the City may request in the Project Documents.
- 6.6 CONTRACTOR SUPERINTENDENT. During progress of the Work, CONTRACTOR shall keep on the Work site a competent, English-speaking Superintendent satisfactory to the City. Before commencing the Work herein, CONTRACTOR shall give written notice to the City of the name, qualifications and experience of such Superintendent. If, at any time, the Superintendent is found unsatisfactory by the City, CONTRACTOR shall replace the Superintendent with one acceptable to the City. Superintendent shall not be changed or removed from the project except with written consent of the City, unless a Superintendent proves to be unsatisfactory to CONTRACTOR and ceases to be in its employ, in which case, CONTRACTOR shall notify the City in writing and replace said Superintendent with one acceptable to the City. Superintendent shall represent CONTRACTOR and all directions given to Superintendent shall be as binding as if given to CONTRACTOR. During planned absences longer than one Workday (e.g. vacation), CONTRACTOR shall, at least **ten (10) days** prior, provide written notice to the City the name of the individual proposed to assume the responsibilities of Superintendent during his/her absence.
- 6.7 CONTRACTOR SUPERVISION. Without a right to claim additional reimbursement, CONTRACTOR shall staff the project with a sufficient number of experienced, skilled and knowledgeable personnel to meet the needs (both administrative and supervisory) of the Project, and shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills as may be necessary to perform the Work in accordance with the Project Documents. CONTRACTOR shall carefully study and compare all plans, drawings, specifications, and other instructions and shall at once report to the City any error, inconsistency or omission which CONTRACTOR or its employees may discover. The CONTRACTOR represents itself to the City as a skilled, knowledgeable, and experienced CONTRACTOR. The CONTRACTOR shall carefully study and compare the Project Documents with each other, and shall at once report to the City any errors, inconsistencies, or omissions discovered. The CONTRACTOR shall be liable to the City for damage resulting from errors, inconsistencies, or omissions in the Project Documents that the CONTRACTOR recognized and which CONTRACTOR knowingly failed to

report and which a similarly skilled, knowledgeable, and experienced CONTRACTOR would have discovered.

- 6.8 **FIELD MEASUREMENTS, LAYOUT, RECORD DRAWINGS AND FIELD ENGINEERING.** The CONTRACTOR shall verify all indicated dimensions at its expense before ordering materials or equipment, or before performing Work. The CONTRACTOR shall take field measurements, verify field conditions, and shall carefully compare such field measurements and conditions and other information known to the CONTRACTOR with the Project Documents before commencing Work. Errors, inconsistencies or omissions discovered shall be reported to the City at once. Upon commencement of any item of Work, the CONTRACTOR shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make Work properly fit at no additional cost to the City. This responsibility for verification of dimensions is a non-delegable duty and may not be delegated to Subcontractors or agents. The CONTRACTOR shall keep up-to-date record drawings of this project through the course of the project. The City shall approve these record drawings periodically, and the release of progress payments may be delayed if the record drawings are not kept up to date. After the project punch- list has been completed, the CONTRACTOR shall supply a single clean set of accurate blue-line (as-built) plans to the City. Failure to submit these as-builts will delay the Final Notice of Completion and final payment.
- 6.9 **DETAILS OF THE WORK.** Omissions from the plans, drawings or specifications, or the mis-description of customary and usual details of Work which are manifestly necessary to carry out the intent of the plans, drawings and specifications, or which are customarily performed, shall not relieve the CONTRACTOR from performing such omitted or mis-described Work, but they shall be performed as if fully and correctly set forth and described in the plans, drawings and specifications.
- 6.10 **MEANS AND METHODS.** The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Project Documents. The CONTRACTOR shall be solely responsible for all safety precautions and programs incidental thereto.
- 6.11 **SUBCONTRACTORS**
- A. CONTRACTOR agrees to bind every Subcontractor by terms of the Project Documents as far as such terms are applicable to Subcontractor's Work. If CONTRACTOR shall subcontract any part of the Work, CONTRACTOR shall be as fully responsible to the City for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by any Subcontractor, as it is for acts and omissions of persons directly employed by CONTRACTOR. Nothing contained in Project Documents shall create any contractual relation between any Subcontractor and the City, nor shall the Contract Documents be construed to be for the benefit of any Subcontractor.
  - B. The City's consent to any Subcontractor shall not in any way relieve CONTRACTOR of any obligations under the Project Documents and no such consent shall be deemed to waive any provision of any Project Document.
  - C. CONTRACTOR must submit with its bid a Designation of Subcontractors pursuant to the Subletting and Subcontracting Fair Practices Act. If CONTRACTOR specifies more than one Subcontractor for the same portion of Work or fails to specify a Subcontractor, and such portion of the Work exceeds one-half of one percent of the total bid, CONTRACTOR agrees that it is fully qualified to perform and shall perform such Work itself, unless CONTRACTOR provides for substitution or addition of Subcontractors. Substitution or addition of Subcontractors shall be permitted only as authorized under the

Subletting and Subcontracting Fair Practices Act, California Public Contract Code Section 4100, et seq.

- D. In accordance with California Business and Professions Code Section 7059, if CONTRACTOR is designated as a "specialty CONTRACTOR" (as defined in Section 7058 of the Business and Professions Code), all of the Work to be performed outside of the CONTRACTOR's license specialty shall be performed by a licensed Subcontractor in compliance with the Subletting and Subcontracting Fair Practices Act, California Public Contract Code Section 4100, et seq.
- E. INELIGIBLE SUBCONTRACTOR. Pursuant to Public Contract Code Section 6109, no CONTRACTOR may perform Work on a public works project with a subcontractor who is ineligible to perform Work on the project pursuant to sections 1777.1 or 1777.7 of the Labor Code.
- F. A copy of each subcontract, if in writing, or, if not in writing, then a written statement signed by the CONTRACTOR giving the name of the Subcontractor and the terms and conditions of such subcontract, shall be filed with the City before the Subcontractor begins Work. Each subcontract shall contain an express reference to and incorporate the Agreement between the City and the CONTRACTOR and the terms of that Agreement and all parts of the Project Documents shall be made a part of such subcontract insofar as applicable to the Work covered thereby. Each subcontract will provide for termination in accordance with the Article entitled City's RIGHT TO TERMINATE AGREEMENT of these General Conditions. Each subcontract shall provide for its annulment by the CONTRACTOR at the order of the City if in the City's opinion the Subcontractor fails to comply with the requirements of the Project Documents insofar as the same may be applicable to this Work. Nothing herein contained shall relieve the CONTRACTOR of any liability or obligation hereunder.

#### 6.12 DUTY TO PROVIDE FIT WORKERS

- A. CONTRACTOR and Subcontractors shall at all times enforce strict discipline and good order among their employees and shall not employ on the Work any unfit person or anyone not skilled in the Work assigned to such person. It shall be the responsibility of CONTRACTOR to ensure compliance with this Article.
- B. Any person in the employ of the CONTRACTOR or Subcontractors whom the City or Engineer may deem incompetent, unfit, troublesome or otherwise undesirable shall be excluded from the Work site and shall not again be employed on it except with the written consent of the City.

#### 6.13 OVERTIME.

- A. Except as otherwise provided in this Article, the CONTRACTOR shall receive no additional compensation for overtime Work, i.e., Work in excess of **8 hours** in any **1 calendar day** or **40 hours** in any **1 calendar week**, even though such overtime Work may be required under emergency conditions and may be ordered by the City in writing. Additional compensation will be paid to the CONTRACTOR for overtime Work only in the event extra Work is ordered by the City and the Change Order specifically authorizes the use of overtime Work and then only to such extent as overtime wages are regularly being paid by the CONTRACTOR for overtime Work of a similar nature in the same locality.
- B. All increased or additional costs of inspection and/or testing, performed by or on behalf of the City, during overtime Work by the CONTRACTOR which is allowed solely for the convenience of the CONTRACTOR shall be borne by the CONTRACTOR. The City

has the authority to deduct the costs of all such inspection and testing from any partial payments otherwise due to the CONTRACTOR. Payment for inspection overtime beyond a normal Workday (9 hours), Saturdays, Sundays or Union observed holidays will be deducted from the CONTRACTOR's payment at the rate of One Hundred Twelve Dollars and Fifty Cents (\$112.50) per hour (one hour minimum) pursuant to City of Escondido Resolution No. 2007-115(RR).

6.14 MATERIALS AND WORK

- A. Except as otherwise specifically stated in this Agreement, CONTRACTOR shall provide and pay for all materials, supplies, tools, equipment, labor, transportation, administration, management, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete the Project within the specified time.
- B. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted or specified free from defects, and workmanship shall be of excellent quality.
- C. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of Work and shall be stored properly and protected as required.
- D. CONTRACTOR shall, after issuance of the Notice to Proceed by the City, place orders for materials and/or equipment as specified so that delivery may be made without delays to the Work. CONTRACTOR shall, upon demand by the City, furnish to the City documentary evidence showing that orders have been placed.
- E. The City reserves the right, due to any neglect in not complying with the above instructions, to place orders for such materials and/or equipment as it may deem advisable in order that the Work may be completed by the date specified in the Agreement, and all expenses incidental to the procuring of these materials and/or equipment shall be paid for by the CONTRACTOR.
- F. No materials, supplies, or equipment for Work under this Agreement shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. CONTRACTOR warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all Work to deliver the premises, together with all improvements and appurtenances constructed or placed thereon by it, to the City free from any claims, liens, or charges. CONTRACTOR further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any Work covered by this Agreement shall have any right to any lien upon the premises or any improvement or appurtenance thereon, except that CONTRACTOR may install metering devices or other equipment of utility companies or of political subdivisions, title to which is commonly retained by the utility company or political subdivision. In the event of installation of any such metering device or equipment, CONTRACTOR shall advise the City as to the owner thereof.
- G. Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing material or labor under any bond given by CONTRACTOR for their protection or any rights under any law permitting such persons to look to funds due CONTRACTOR in the hand of the City, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all

persons furnishing materials or labor when no formal contract is entered into for such materials or labor.

H. Materials and/or equipment and the attendant liability for its protection and safety shall remain with the CONTRACTOR until incorporated in the Work and accepted by the City, no part of the materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work; and CONTRACTOR shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to the City or its authorized representative.

6.15 ACCESS TO CONTRACTOR'S RECORDS. The CONTRACTOR agrees that the City (including the City's designees) have the right to access, review, obtain and copy upon reasonable written notice (which shall be no greater than **3 working days**), all Records pertaining to the Agreement and/or the Project, including the bid. The CONTRACTOR agrees to provide the City with any relevant information requested and shall permit the State or the City access to its premises upon reasonable notice for purposes of interviewing employees and inspecting Records. The CONTRACTOR agrees to maintain such Records for a period of **3 years** after final payment under the contract. Should the project be funded by the State Revolving Fund, the CONTRACTOR shall maintain records for **20 years**.

6.16 CONTRACTOR SUBSTITUTION OF "OR EQUAL" ITEMS

- A. CONTRACTOR shall follow all instructions and requirements set forth in the "INSTRUCTIONS TO BIDDERS", for compliance with this Article.
- B. Whenever in specifications any materials, process, service or equipment is indicated or specified by brand name, trade name, proprietary name or by name of manufacturer, such specification shall be deemed to be used for the purpose of facilitating description of material, process, service or equipment desired and shall be deemed to be followed by the words "or equal", CONTRACTOR may, unless otherwise stated, offer any material, process, service, or equipment which shall be substantially equal or better in every respect to that so indicated or specified subject to the City's approval.
- C. If material, process, service, or equipment offered by CONTRACTOR is not, in the City's sole discretion determined to be, equal or better in every respect to that specified, then CONTRACTOR shall furnish the material, process, service, or equipment specified. The burden of proof as to equality of any material, process, service, or equipment shall rest with CONTRACTOR. This provision authorizing submission of "or equal" substantiating data shall not in any way authorize an extension of time for performance of this Agreement.
- D. "Or equal" and substitution requests with substantiating data shall be submitted for consideration no later than **14** calendar days prior to bid opening.
- E. The City may choose to allow an "or equal" substitution, if the City determines, in its sole discretion, that the requested substitution is an equal product, and that there is a cost savings resulting in a deductive change order, an increase in the performance with the substituted product, or any other reason deemed by the City to be in the City's best interest to allow the substitution.
- F. If a CONTRACTOR initiated material substitution occurs after the Award of Contract, CONTRACTOR must establish that the specified material is no longer being manufactured or available, that the substituted material is the best possible material

substitution for that which is no longer available, or that there is some other benefit to the City in approving said substitution.

- G. If the City allows the substitution anytime after the Award of Contract, the CONTRACTOR will be responsible for reasonable fees incurred by the Engineer or Engineer's consultants in reviewing the proposed substitution which fees may be deducted from progress payments to CONTRACTOR.
- H. In the event CONTRACTOR furnishes material, process, service, or equipment more expensive than that specified, any difference in cost of such material, process, service, or equipment so furnished shall be borne by CONTRACTOR. Any engineering, design fees, or approval agencies' fees required to make adjustments in material or Work of all trades directly or indirectly affected by the approved substituted items shall be borne entirely by CONTRACTOR. Any difference in cost between an approved substitution that is lower in cost than the originally specified item shall be refunded by CONTRACTOR to the City.
- I. All costs associated with and caused by a CONTRACTOR's "or equal" submittal, including any consequential design changes needed to accommodate the "or equal", and any delay caused to the project schedule resulting from the review of the requested "or equal" submittal shall be borne by the CONTRACTOR.

#### 6.17 PERMITS

- A. Unless otherwise provided in the Supplementary General Conditions, the CONTRACTOR shall obtain and pay for all construction permits and licenses from the agencies having jurisdiction, including the furnishing of insurance and bonds if required by such agencies. The enforcement of such requirements shall not be made the basis for claims for additional compensation by CONTRACTOR. When necessary, the City will assist the CONTRACTOR, in obtaining such permits and licenses. The CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids. The CONTRACTOR shall pay all charges of utility owners for inspection or connections to the Work. Compensation for all permit fees is included in the Lump Sum payment for Mobilization.
- B. The CONTRACTOR shall indemnify, defend and hold harmless the City and its officers, employees and agents from any and all liability arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit (Order No. 2001-01), and updates, of the California Regional Water Quality Control Board Region 9, San Diego, which the City might suffer, incur, or become subject by reason of or occurring as a result of or allegedly caused by performance of the Work.
- C. Prior to beginning Work, the CONTRACTOR shall obtain a no-fee Encroachment Permit from the office of the City of Escondido Field Engineer, 201 N. Broadway, unless otherwise specified in the Supplemental General Conditions. CONTRACTOR shall adhere to all requirements and provisions of said Encroachment Permit as though fully set forth herein.
- D. The CONTRACTOR shall be responsible for complying with the requirements of all permits acquired by the City.

Except for the permits specifically set forth in 'A' above, the CONTRACTOR shall acquire all permits required by Laws or Regulations, including, without limitation, the following specific permits (if applicable):

1. State permits to construct and/or operate sources of air pollution.
2. Certificates and permits are required for sources such as, but not limited to:
  - a. Fuel burning equipment
  - b. Gasoline and petroleum distillate storage containers
  - c. Land disturbing activities
  - d. Processing equipment (sand, gravel, concrete batch plant, etc.)
  - e. Odors
3. Stormwater Permit.
4. Permit-Required Confined Space

The workplace in which the Work is to be performed may contain permit-required confined spaces (permit spaces) as defined in 29 CFR 1910.146 and, if so, permit space entry is allowed only through compliance with a confined space entry program meeting the requirements of 29 CFR 1910.146.

5. Others as required in the Supplementary General Conditions.

6.18 **PATENT FEES AND ROYALTIES.** The CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of the City or the Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed by the City in the Contract Documents. The CONTRACTOR's indemnification obligation under this Article, for all claims and liabilities arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents shall be in accordance with Article 6.16 of these General Conditions.

6.19 **LAWS AND REGULATIONS.** The CONTRACTOR shall observe and comply with all Laws and Regulations which in any manner affect those engaged or employed on the Work, the materials used in the Work, or the conduct of the Work. If any discrepancy or inconsistency should be discovered between the Contract Documents and any such Laws or Regulations, the CONTRACTOR shall report the same in writing to the Engineer. Any particular Law or Regulation specified or referred to elsewhere in the Contract Documents shall not in any way limit the obligation of the CONTRACTOR to comply with all other provisions of federal, state, and local laws and regulations. The CONTRACTOR's indemnification obligations for all claims or liability arising from violation of any such law, ordinance, code, order, or regulation, whether by CONTRACTOR or by its employees, Subcontractors or Suppliers shall be in accordance with Article 6.16 of these General Conditions.

6.20 **TAXES.** The CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by the CONTRACTOR in accordance with the laws and regulations of the place of the Project which are applicable during the performance of the Work.

6.21 **USE OF PREMISES.** The CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site, the land and areas identified in and permitted by the Contract Documents, and the other land and areas permitted by Laws and

Regulations, rights-of-way, permits, and easements. The CONTRACTOR shall assume full liability and responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against the City or the Engineer by any such owner or occupant because of the performance of the Work, the CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim through litigation at the CONTRACTOR's sole liability any expense. The CONTRACTOR's indemnification obligations for all claims and liability, arising directly, indirectly, or consequentially out of any action, legal or equitable, brought by any such owner or occupant against the City, the Engineer, their consultants, subconsultants, and the officers, directors, employees and agents of each and any of them to the extent caused by or based upon the CONTRACTOR's performance of the Work shall be in accordance with Article 6.25 of these General Conditions.

## 6.22 SAFETY AND PROTECTION

- A. The CONTRACTOR shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
  - 1. All persons at the Site and other persons and organizations who may be affected thereby;
  - 2. All the Work materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, mailboxes, and utilities not designated for removal, relocation, or replacement in the course of the performance of the Work.
- B. The CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property or to the protection of persons or property from damage, injury, or loss and shall erect and maintain all necessary safeguards for such safety and protection. The CONTRACTOR shall notify owners of adjacent property and utilities when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and in accordance with Article 14.11. that the Work is acceptable.
- C. During the entire construction period, it shall be the responsibility of the contractor to maintain conditions at the project location so as to meet in all aspects the requirements of the California Code of Regulations, Title 8, Industrial Relations, Chapter 4, Division of Industrial Safety Orders CAL/OSHA. This provision shall cover the CONTRACTOR's employees and all other persons working upon or visiting the project location. To this end, the Contractor shall inform himself and his representatives of CAL/OSHA standards.
- D. The CONTRACTOR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- E. MSDS. Materials that contain hazardous substances or mixtures may be required on the Work. A Material Safety Data Sheet (MSDS.) shall be made available at the Site by the CONTRACTOR for every hazardous product used. Material usage shall strictly conform to OSHA safety requirements and all manufacturer's warnings and application instructions



listed on the MSDS and on the product container label. The CONTRACTOR shall be responsible for the exchange of every MSDS or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

- F. The CONTRACTOR shall notify the City if it considers a specified product or its intended use to be unsafe. This notification must be given to the City prior to the product being ordered, or if provided by some other party, prior to the product being incorporated in the Work.
  - G. **CONFINED SPACES.** The CONTRACTOR will not enter any confined space without using a Confined Space Entry Permit. The CONTRACTOR shall be responsible for implementing, administering and maintaining a confined space entry program (CSEP) in accordance with Sections 5156, 5157 and 5158, Title 8, CCR.
  - H. The CONTRACTOR shall provide a **COMPETENT PERSON** for all excavation operations.
- 6.23 **EMERGENCIES.** In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CONTRACTOR, without special instruction or authorization from the City or Engineer, is obligated to immediately act to prevent threatened damage, injury, or loss. CONTRACTOR shall give City prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If City determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Change Order will be issued to document the action.
- 6.24 **SUBMITTALS.** The City requires submittals for all materials, equipment, parts and systems.
- A. **SHOP DRAWINGS**
    - 1. The City may designate a consultant to receive and review submittals and may require the CONTRACTOR to transmit the submittals to that consultant. Commensurate with the requirements of the project schedule, the CONTRACTOR shall check and verify all field measurements and shall submit to the City six (6) copies, checked, coordinated and approved by CONTRACTOR, of all shop or setting list drawings, schedules, and materials list required for the Work of various trades: If this project consists of any remodel / modernization Work, field dimensions require verification prior to the preparation of the Shop Drawings. The City shall review such drawings, schedules and materials list only for conformance with the design concept of Project and compliance with information given in Project Documents, and return with notations and with guidance as to required corrections within **30 days**. CONTRACTOR shall make any corrections required by the City, file three (3) corrected copies with the City, and furnish such other copies as may be needed for construction within **30 days**. The City's approval of such drawings, schedules, or materials list shall not relieve CONTRACTOR from responsibility for deviations unless CONTRACTOR has in writing called the City's attention to such deviations at time of submission by clearly writing the phrase "**DEVIATION REQUEST**" in bold type at the head of the submittal, and secured the City's written approval, nor shall it relieve CONTRACTOR from responsibility for errors in shop drawings or schedules.

Item 5.

2. The City is entitled to additional review time. The additional review time may be required to review complex and difficult submittals, including but not limited to structural steel shop drawings, mechanical equipment, electrical equipment, and special system components and parts. The CONTRACTOR shall breakout critical submittals into separate packages so as to expedite the review process of an individual item. The coordination of the overall submittal packages shall be the responsibility of the CONTRACTOR.
3. Shop Drawings requiring "**Deferred Approval**" require a substantial amount of time for City review and approval. The Project Documents will identify those shop drawings requiring Deferred Approval, if any. The Contractor shall apply its skill and knowledge to expedite the Deferred Approval(s) from preparation to approval. The Contractor shall schedule the project activities to avoid critical path delays as a result of the Deferred Approval process. Notwithstanding anything to the contrary herein, the CONTRACTOR shall make submittals of all Deferred Approvals to the City within **120 days** of the Award of Contract. The City shall review such Deferred Approval submittal, and shall return as approved or disapproved with guidance as to the required corrections within **60 days**. If resubmittals are required, the City shall endeavor to review and return the resubmittal within **60 days**. CONTRACTOR shall allow sufficient time in its scheduling for corrections and resubmittals of Deferred Approval items in conformance with these requirements.
4. All submittals of shop drawings, catalog cuts, data sheets, schedules and material lists shall be complete and shall conform to contract drawings and specifications. The CONTRACTOR shall prepare layout and coordination drawings to demonstrate the accuracy and fit of the materials and Work.
5. The term "shop drawing" as used herein shall be understood to include, but not be limited to, coordination efforts by CONTRACTOR involving detail design calculations for the development of the Shop Drawing, fabrication and installation drawings, lists, graphs and operating instructions.
6. Shop drawings shall be submitted at a time sufficiently early to accommodate the rate of construction progress required under the Project Documents. CONTRACTOR will be required to pay the City or its consultant's reasonable and customary fees in order to expedite review of Shop Drawings which are not submitted in a timely fashion.
7. All submittals shall be accompanied by an accurately completed transmittal form using the format bound herein, or as approved by the City. Any shop drawing submittal not accompanied by such a form, or where all applicable items on the form are not completed, will be returned for resubmittal. The CONTRACTOR may authorize a material or equipment supplier to deal directly with the City with regard to Shop Drawings. However, ultimate responsibility for the accuracy and completeness of the information contained in the submittal shall remain with the CONTRACTOR.
8. Normally, a separate transmittal form shall be used for each specific item, scheduled activity task, or class of material or equipment for which a submittal is required. However, due to the critical nature of a submittal, a submittal can be broken into separate sub-submittals in order to obtain the review of a more

critical portion(s) of a submittal prior to the review of other sub-submittals. The transmittal form shall include the CPM Activity / Submittal Task Number, Early Start (ES), Early Finish (EF), Late Finish (LF) and the float for the activity. Transmittal of shop drawings on various items using a single transmittal form will be permitted only when the items taken together constitute a manufacturer's "package" or are so functionally related that expediency indicates review of the group or package as a whole.

9. CONTRACTOR's review and approval of Shop Drawings and submittals shall include the following stamp:

"The CONTRACTOR has reviewed and approved not only the field dimensions but the construction criteria and has also made written notation regarding any information in the Shop Drawings or submittal that does not conform to the Project Documents. This Shop Drawing or submittal has been coordinated with all other shop drawings and submittals received to date by CONTRACTOR and this duty of coordination has not been delegated to Subcontractors, material suppliers, the Engineer, or the architects on this project. The Contractor also indicates that it has not relied upon the dimensions shown on the drawings, specifications and schedules, and that the Contractor has double-checked all dimensions for accuracy and fit.

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Signature of CONTRACTOR"

10. Within **30 days** after receipt of Shop Drawings, the City will endeavor to return one or more prints of each drawing to CONTRACTOR with City's comments noted thereon. The CONTRACTOR shall make a complete and acceptable submittal to the City by the second submission of drawings. The City shall withhold funds due the CONTRACTOR to cover additional costs of the City's review beyond the second submission and any other costs incurred by the City.
11. If prints of the shop drawing are returned to the CONTRACTOR marked "**NO EXCEPTIONS TAKEN,**" formal revision of said drawing will not be required. If prints of the drawing are returned to the CONTRACTOR marked "**MAKE CORRECTIONS NOTED,**" formal resubmittal of said drawings will not be required. If prints of the drawing are returned to the CONTRACTOR marked "**REVISE AND RESUBMIT,**" the CONTRACTOR shall revise said drawing and shall resubmit six (6) copies of the revised drawing to the City. If prints of the drawing are returned to the CONTRACTOR marked "**REJECTED RESUBMIT,**" the CONTRACTOR shall resubmit six (6) new copies of the drawing to the ARCHITECT. Submittals being resubmitted for revisions or submitted due to previous rejection, the CONTRACTOR shall provide a written response indicating the nature of the correction(s) and/or cloud the revised item(s).
12. Fabrication of an item shall not be commenced before the City has reviewed the pertinent Shop Drawings and returned copies to the CONTRACTOR marked with "**NO EXCEPTIONS TAKEN,**" or "**MAKE CORRECTIONS NOTED.**" Revisions indicated on shop drawings shall be considered as changes necessary to meet the requirements of the Project Documents and shall not be taken as the

basis of claims for extra Work. The review of such drawings by the City will be limited to checking for general agreement with the Project Documents, and shall in no way relieve the CONTRACTOR of responsibility for errors or omissions contained therein, nor shall such review operate to waive or modify any provision contained in the Project Documents. Fabricating dimensions, quantities of material, applicable code requirements, and other contract requirements shall be the CONTRACTOR's responsibility.

13. No Work represented by required Shop Drawings shall be purchased or commenced until the applicable submittal has been approved. The Work shall conform to the approved Shop Drawings and all other requirements of the Project Documents. The CONTRACTOR shall not proceed with any related Work which may be affected by the Work covered under Shop Drawings until the applicable Shop Drawings have been approved, particularly where piping, machinery, and equipment and the required arrangements and clearances are involved.
14. Except where the preparation of a Shop Drawing is dependent upon the approval of a prior shop drawing, all shop drawings pertaining to the same class or portion of the Work shall be submitted simultaneously.
15. THE CONTRACTOR SHALL HAVE NO CLAIM FOR DAMAGES OR EXTENSION OF TIME DUE TO ANY DELAY RESULTING FROM THE CONTRACTOR HAVING TO MAKE THE REQUIRED REVISIONS TO SHOP DRAWINGS UNLESS REVIEW BY THE CITY IS DELAYED BEYOND THE TIME PROVIDED HEREIN AND THE CONTRACTOR CAN ESTABLISH THAT IT BEARS NO RESPONSIBILITY FOR CAUSING AND/OR CONTRIBUTING TO THE DELAY AND THAT THE CITY'S DELAY IN REVIEW ACTUALLY RESULTED IN A DELAY TO THE CRITICAL PATH IN THE CONTRACTOR CONSTRUCTION SCHEDULE.

**B. PAYROLL SUBMITTALS**

1. Copies of all payrolls shall be submitted weekly to the City. Payrolls shall contain the full name, address and social security number of each employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which that name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or the employer's agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the Contract. The CONTRACTOR shall be responsible for the submission of copies of payrolls of all subcontractors. The CONTRACTOR shall ensure that the payrolls match the Daily Work Reports. The CONTRACTOR shall certify that no Work was done on the job if no Work was done on the job.
2. If by the 15th of the month, the CONTRACTOR has not submitted satisfactory payrolls for all Work performed during the monthly period ending on or before the 1st of that month, the City will retain an amount equal to ten percent (10%) of the estimated value of the Work performed (exclusive of Mobilization) during the month from the next monthly estimate, except that this retention shall not exceed \$10,000 nor be less than \$1,000. Retentions for failure to submit

Item 5.

satisfactory payrolls shall be additional to all other retentions provided for in the Contract. The retention for failure to submit payrolls for any monthly period will be released for payment on the monthly estimate for partial payments next following the date that all the satisfactory payrolls for which the retention was made are submitted.

- 3. The CONTRACTOR shall also submit a second copy of all certified payrolls with all personal information fully redacted. The CONTRACTOR and each subcontractor shall preserve their payroll records for a period of **3 years** from the date of completion of the Contract. The form of the certification shall be as follows:

I, \_\_\_\_\_ (print name), the undersigned,  
 am \_\_\_\_\_ (position in business) with the authority to act  
 for and on behalf of

\_\_\_\_\_  
 (Name of business and/or CONTRACTOR), certify under penalty of  
 perjury that the records or copies thereof submitted and consisting of  
 \_\_\_\_\_ (description,  
 number of pages) are the originals or true, full and correct copies of the  
 originals which depict the payroll record(s) of the actual disbursements  
 by way of cash, check, or whatever form to the individual or individuals  
 named.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

- C. **SUBMITTAL OF HOME OFFICE OVERHEAD.** CONTRACTOR shall furnish within **7 days** after the Notice to Proceed, a certified statement and detailed calculation from its accountant establishing the job site and pro rata home office overhead rates for CONTRACTOR and major Subcontractors, as determined by the City. Such shall be updated quarterly and filed with the City.
- D. **SUBMITTAL OF HOURLY RATES.** CONTRACTOR shall furnish within **7 days** after the Notice to Proceed, a complete listing of CONTRACTORS and Subcontractors hourly labor rates, indicating the direct hourly wage rate, payroll taxes and insurance costs.
- E. **ESCROW BID DOCUMENTS.** The Escrow Bid Documents shall be submitted by the CONTRACTOR in a sealed container(s) within **10 days** after the day of award of the contract. The container shall be clearly marked on the outside with the CONTRACTOR's name, date of submittal, project name and the words "Escrow Bid Documents."
- F. **SWPPP/BMP.** CONTRACTOR shall submit the required Storm Water Pollution Prevention Plan or Best Management Practices, before commencement of any Work.

**6.25 CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE**

- A. CONTRACTOR warrants that the Work (which includes all equipment furnished by CONTRACTOR as part of the materials) shall:
  - 1. Be free from defects in workmanship, integration and material; be free from defects in any design performed by CONTRACTOR;

2. Be new, and conform and perform to the requirements stated in the specifications and where detail requirements are not so stated, shall conform to applicable industry standards; and
  3. Be suitable for the use stated in the specifications.
- B. The warranty period for discovery of defective Work shall commence on the date stamped on the Notice of Completion verifying County recordation and continue for the period set forth in the specifications or for **1 year** if not so specified. If, during the warranty period, the Work is not available for use due to defective Work, such time of unavailability shall not be counted as part of the warranty period. The warranty period for corrected defective Work shall continue for a duration equivalent to the original warranty period.
- C. The City shall give CONTRACTOR prompt written notice after discovery of any defective or incomplete Work. CONTRACTOR shall correct any such defective or incomplete Work, as well as any damage to any other part of the Work resulting from such defective or incomplete Work, and shall provide repair, replacement, or reimbursement, at its sole expense, in a manner approved by the City and with due diligence and dispatch as required to make the Work ready for use by the City, ordinary wear and tear, unusual abuse or neglect excepted. Such corrections shall include, but not be limited to, any necessary adjustments, modifications, changes of design (unless of City's design), removal, repair, replacement or reinstallation, and shall include all necessary parts, materials, tools, equipment, transportation charges and labor as may be necessary, and cost of removal and replacement of Work shall be performed at a time and in such a manner so as to minimize the disruption to the City's use of the Work.
- D. In the event of failure of CONTRACTOR or Surety to commence and pursue with diligence any such repairs or replacements within **10 days** after being notified in writing, the City is hereby authorized to proceed to have defects repaired or replaced and made good at the expense of the CONTRACTOR and the Surety who hereby agree to pay any costs and charges therefore immediately on demand.
- E. If, in the opinion of the City, defective Work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the City or to prevent interruption of operations of the City, the City will attempt to give the written notice required by this Article. If the CONTRACTOR or Surety cannot be contacted or neither complies with the City's requirements for correction within a reasonable time as determined by the City, the City may, notwithstanding the provisions of this Article, proceed to make such correction or provide such attention and the costs of such correction or attention shall be charged against the CONTRACTOR and Surety. Such action by the City will not relieve the CONTRACTOR and Surety of the guarantees provided in this Article or elsewhere in the Project Documents.
- F. This Article does not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. CONTRACTOR shall furnish to City all appropriate guarantee or warranty certificates upon completion of the Project or upon request by the City.
- G. All guarantees required under this Article shall be in writing on a Guarantee form approved by the City.
- H. CONTRACTOR shall provide to the City instruction manuals for all items which require same.

- I. Nothing herein shall limit any other rights or remedies available to the City, and any and all written/express guarantees are in addition to rights provided under California law, including the rights granted under Code of Civil Procedure sections 337.1 and 337.15.
- J. CONTRACTOR warrants and guarantees that all Work will be in accordance with the Project Documents and will not be defective. The CONTRACTOR shall guarantee all parts of the Work against defective materials or workmanship furnished by the CONTRACTOR for a period of 1 year from the date of final acceptance by the City.

6.26 INDEMNIFICATION

- A. To the fullest extent permitted by Laws and Regulations, the CONTRACTOR shall indemnify, defend, and hold harmless the City, the Engineer, their consultants, subconsultants, and the officers, directors, employees, and agents of each and any of them, against and from all claims and liability arising under, by reason of, related, or incidental to the Project Documents or any performance of the Work, but not from the sole negligence or willful misconduct of the City and/ or the Engineer. Such indemnification by the CONTRACTOR shall include, but not be limited to, the following:
  - 1. CONTRACTOR shall indemnify, defend, and hold harmless the City and its officers, employees and agents, from all liability or claim of liability arising by reason of injury or damage to persons (including death) and/or property (both tangible and intangible) occurring as a result of Work done pursuant to the terms of this Agreement, and name same as coinsured in any policy in the Contract Documents;
  - 2. CONTRACTOR shall further indemnify, defend and hold harmless the City and its officers, employees and agents from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceedings, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements, arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit, and updates, of the California Regional Water Quality Control Board Region 9, San Diego, which the City might suffer, incur, or become subject by reason of or occurring as a result of or allegedly caused by work performed by CONTRACTOR.
  - 3. Liability or claims resulting directly or indirectly from the negligence or carelessness of the CONTRACTOR, its employees, or agents in the performance of the Work, or in guarding or maintaining the same, or from any improper materials, implements, or appliances used in its construction, or by or on account of any act or omission of the CONTRACTOR, its employees, or agents;
  - 4. Liability or claims arising directly or indirectly from bodily injury, occupational sickness or disease, or death of the CONTRACTOR's, Subcontractor's, or Supplier's own employees, or agents engaged in the Work resulting in actions brought by or on behalf of such employees against the City and/ or the Engineer;
  - 5. Liability or claims arising directly or indirectly from or based on the violation of any Laws or Regulations, whether by the CONTRACTOR, its employees, or agents;

Item 5.

6. Liability or claims arising directly or indirectly from the use or manufacture by the CONTRACTOR, its employees, or agents in the performance of this Agreement of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance, unless otherwise specifically stipulated in this Agreement;
  7. Liability or claims arising directly or indirectly from the breach of any warranties, whether express or implied, made to the City and/or Engineer or any other parties by the CONTRACTOR, its employees, or agents;
  8. Liability or claims arising directly or indirectly from the willful misconduct of the CONTRACTOR, its employees, or agents;
  9. Liability or claims arising directly or indirectly from any breach of the obligations assumed in this Agreement by the CONTRACTOR;
  10. Liability or claims arising directly or indirectly from, relating to, or resulting from a hazardous condition created by the CONTRACTOR, Subcontractors, Suppliers, or any of their employees or agents, and;
  11. Liability or claims arising directly, or indirectly, or consequentially out of any action, legal or equitable, brought against the City, the Engineer, their consultants, subconsultants, and the officers, directors, employees and agents of each or any of them, to the extent caused by the CONTRACTOR's use of any premises acquired by permits, rights of way, or easements, the Site, or any land or areas contiguous thereto or its performance of the Work thereon.
- B. The indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of insurance carried by CONTRACTOR or by the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or any Subcontractor or other person or organization under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- 6.27 **CONTRACTOR'S DAILY REPORTS.** At the close of each working day, the CONTRACTOR shall submit a daily report to the Inspector, on forms approved by the City, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, and for other services and expenditures when authorized concerning extra Work items. Extra or disputed work shall be specifically described and separated from Contract Work on the report. An attempt shall be made to reconcile the report daily, and the Inspector and the CONTRACTOR shall sign it. In the event of disagreement, pertinent notes shall be entered by each party to explain points that cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by Subcontractors or others shall be submitted through the CONTRACTOR.
- 6.28 **CONTRACTOR PAYMENTS.** To each of its subcontractors, not later than the 5<sup>th</sup> day following each payment to CONTRACTOR by the City the respective amounts allowed CONTRACTOR on account of Work performed by the respective subcontractor's to the extent of such subcontractor's interest therein. If CONTRACTOR does not pay one or more SUBCONTRACTORS the amount (less retention) applied for and received in a payment application, CONTRACTOR shall return said amount back to the City within 5 days.
- 6.29 **DIAL BEFORE YOU DIG.** The CONTRACTOR shall make notification to the regional notification center for utility markouts and keep a record of the inquiry identification number.



The CONTRACTOR shall follow the requirements of California Government Code Section 4216-4216.9. Refer to Article 4.3.

6.30 DOCUMENTS ON WORK. CONTRACTOR shall keep on the job site at all times one legible copy of all Project Documents, including addenda and change orders, and Title 19 of the California Code of Regulations, and all approved drawings, plans, schedules and specifications. Said documents shall be kept in good order and available to the City, Engineer, architect, and all authorities having jurisdiction. CONTRACTOR shall be acquainted with and comply with the provisions of said regulations as they relate to this Project. CONTRACTOR shall also be acquainted with and comply with all California Code of Regulations provisions relating to conditions on this Project, particularly Titles 8 and 17.

6.31 TEMPORARY UTILITIES

- A. All utilities, including but not limited to electricity, water, gas, and telephone used on the Work shall be furnished and paid for by CONTRACTOR. CONTRACTOR shall furnish and install necessary temporary distribution systems, including meters, if necessary, from distribution points to all points on the site where the utility is necessary to carry on the Work. Upon completion of the Work, CONTRACTOR shall remove all temporary distribution systems.
- B. If this Contract is for a modernization, reconstruction and or an addition to existing building(s),
  - 1. CONTRACTOR may, with written permission of the City, use the City's existing utilities by making prearranged payments to the City for utilities used by CONTRACTOR for construction.
  - 2. CONTRACTOR shall arrange, schedule and pay for all temporary utilities to the entire facility and/or portion(s) of the facility, including but limited to electrical power, water and gas. The entire facility and/or portion of the facility shall be any area that is affected by a utility disruption and/or affects the function and use of the facility.

6.32 SANITARY FACILITIES. The CONTRACTOR shall provide sanitary temporary toilet and hand washing facilities in no fewer numbers than required by law and such additional facilities as may be directed by the Inspector for the use of all workers. The toilet facilities shall be maintained in a sanitary condition at all times and shall be left at the site until removal is directed by the Inspector. Use of toilet facilities in the Work under construction shall not be permitted.

6.33 CLEANING UP

- A. For Projects located in the Right-of-Way the CONTRACTOR shall, on a continuous basis, keep Work site free from CONTRACTOR generated debris such as waste, rubbish, and excess materials, dirt, mud, dust, and non-functioning equipment caused by this Work and shall follow the Technical Specifications "TEMPORARY ENVIRONMENTAL CONTROLS & CONSTRAINTS" and "TEMPORARY ENCROACHMENT, MAINTENANCE, AND RESTORATION OF THE CITY RIGHT-OF-WAY".
- B. For Building Projects, or projects that are off the street, CONTRACTOR shall at all times keep Work site free from CONTRACTOR generated debris such as waste, rubbish, and excess materials and equipment caused by this Work, at the least on a daily basis. CONTRACTOR shall not leave debris under, in, or about the Work site. Upon completion of CONTRACTOR Work, CONTRACTOR shall clean all interior and exterior materials

installed by CONTRACTOR, and in addition to, all buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected as a direct or indirect result of the CONTRACTOR Work. Such cleaning shall consist of polishing all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment. If the project consists of any street improvements (paving / gutter and/or sidewalk surfaces), drain inlets and any pipeline facilities, such Work shall also be free of any debris and sediments.

6.34 WAGE RIGHTS [Job Site Notices]

- A. Pursuant to the provisions of the Labor Code, the governing board of the City has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime Work in the locality in which this public Work is to be performed for each craft, classification or type of worker needed for this Project from the Director of the Department of Industrial Relations ("Director.") These rates are on file with the Clerk of the City's governing board and copies will be made available to any interested party on request. CONTRACTOR shall post a copy of such wage rates at the Work site.
- B. Holiday and overtime Work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Agreement applicable to each particular craft, classification or type of worker employed.
- C. CONTRACTOR shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR or any Subcontractor and such workers.
- D. If during the period this bid is required to remain open, the Director of Industrial Relations determines that there has been a change in any prevailing rate of per diem wages in the locality in which this public Work is to be performed, such change shall not alter the wage rates in the Notice Calling for Bids or the contract subsequently awarded.
- E. Pursuant to Labor Code section 1775, CONTRACTOR and any subcontractor shall as a penalty to the City, forfeit fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages, determined by the Director, for such craft or classification in which such worker is employed for any public Work done under the Agreement by CONTRACTOR or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commission and shall be based on consideration of the CONTRACTOR's or subcontractor's mistake, inadvertence or neglect in failing to pay the correct prevailing rate of per diem wage, or the previous record of the CONTRACTOR in meeting his or her prevailing rate of per diem wage obligations, or the CONTRACTOR's or subcontractor's willful failure to pay the correct prevailing rate of per diem wages. A mistake, inadvertence or neglect in failing to pay the correct prevailing rate of per diem wage is not excusable if the CONTRACTOR or subcontractor had knowledge of his or her obligations under this part. The difference between such prevailing rate of per diem wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of per diem wage shall be paid to each worker

by the CONTRACTOR or subcontractor.

- F. Any workers employed to perform Work on the Project, which Work is not covered by any craft or classification listed in the general prevailing rate of per diem wages determined by the Director shall be paid not less than the minimum rate of wages specified therein for the craft or classification which most nearly corresponds to Work to be performed by them, and such minimum wage rate shall be retroactive to time of initial employment of such persons in such craft or classification.
- G. Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, and vacation pay.
- H. CONTRACTOR shall post at appropriate conspicuous points on the site of the Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

### 6.35 HOURS OF WORK

- A. As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, **8 hours** of labor shall constitute a legal day's Work. The time of service of any worker employed at any time by the CONTRACTOR or by any Subcontractor on any subcontract under this Agreement upon the Work or upon any part of the Work contemplated by this Agreement shall be limited and restricted by the Agreement to **8 hours** per day, and **40 hours** during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of CONTRACTOR in excess of **8 hours** per day and **40 hours** during any one week, shall be permitted upon this public Work upon compensation for all hours worked in excess of **8 hours** per day at not less than one and one-half times the basic rate of pay.
- B. The CONTRACTOR shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by CONTRACTOR in connection with the Work or any part of the Work contemplated by this Agreement. The record shall be kept open at all reasonable hours to the inspection of the City and to the Division of Labor Standards Enforcement, Department of Industrial Relations.
- C. Pursuant to Labor Code section 1813, the CONTRACTOR or subcontractor shall pay to the City a penalty of twenty-five Dollars (\$25) for each worker employed in the execution of this Contract by the CONTRACTOR or by any Subcontractor for each calendar day during which such worker is required or permitted to Work more than **8 hours** in any one calendar day and **40 hours** in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.
- D. Any Work necessary to be performed at the Contractor's request or due to the Contractor's actions after the normal working hours of 7:00 a.m. to 4:30 p.m., Monday through Friday, or on weekends or City Holidays, shall be performed without any additional expense to the City. If Contractor seeks to Work after regular working hours, or weekends or holidays, written notice shall be given and costs for inspection, if incurred by the City, shall be reimbursed within **3 days** of presentation or the City may issue, unilaterally, a deductive Change Order crediting the same.

6.36 APPRENTICES

- A. The CONTRACTOR acknowledges and agrees that, if this Agreement involves a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, this Agreement is governed by the provisions of Labor Code section 1777.5. It shall be the responsibility of the CONTRACTOR to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticing occupations.
- B. Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.
- C. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the Work of the craft or trade to which he or she is registered.
- D. Only apprentices, as defined in section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at section 3070), Division 3 of the Labor Code, are eligible to be employed on public works. The employment and training of each apprenticeship shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he or she is training.
- E. Pursuant to Labor Code section 1777.5, the CONTRACTOR and any Subcontractors employing workers in any apprenticeship craft or trade in performing any Work under this Agreement shall apply to the applicable joint apprenticeship committee for a certificate approving the CONTRACTOR or Subcontractor under the applicable apprenticeship standards for the employment and training of apprentices.
- F. Every CONTRACTOR and Subcontractor shall submit contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Agreement, the number of apprentices to be employed and the approximate dates the apprentices will be employed.
- G. If the CONTRACTOR or Subcontractor willfully fails to comply with Labor Code Section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:
  - 1. Be denied the right to bid on any subsequent project for one year from the date of such determination; and
  - 2. Forfeit as a penalty to the City fifty dollars (\$50) per day for each calendar day of noncompliance, which shall be withheld from any payment due or to become due under the terms of this Agreement. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council.
- H. The CONTRACTOR and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.
- I. CONTRACTOR shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and Title 8, California Code of Regulations, section 200 et seq.

Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California.

6.37 **FIRST AID.** The CONTRACTOR shall maintain emergency first aid treatment for CONTRACTOR's workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C.A., Sec. 651 et seq.).

6.38 **PROTECTION OF PERSONS AND PROPERTY**

- A. The CONTRACTOR, (on behalf of itself, all Subcontractors and Suppliers (of every tier), shall be responsible for all damages to persons or property (whether furnished or installed, owned or not owned) that occur as a result of its fault or negligence in connection with the prosecution of this Agreement and shall take all necessary measures and be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance by the City. The CONTRACTOR shall remove all mud, water, or other elements as may be required for the proper protection and prosecution of its work, including the placement of gravel beds and gravel roads for access to and around the Work. CONTRACTOR shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions. All Work shall be solely at the CONTRACTOR's risk with the exception of damage to the Work caused by "acts of God" as defined in Public Contract Code Section 7105.
- B. CONTRACTOR shall take, and require Subcontractors to take, all necessary precautions for the safety of workers and shall comply with all applicable federal, state, local and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to the Work site and to provide a safe and healthful place of employment. CONTRACTOR shall furnish, erect and properly maintain at all times, as directed by the City or Engineer or as required by the conditions and progress of Work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. CONTRACTOR shall designate a responsible employee, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety and health of workers. The name and position of the person so designated shall be reported in writing to the City by CONTRACTOR. CONTRACTOR shall correct any violations of safety laws, standards, orders, rules, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, such violation shall be corrected immediately by the CONTRACTOR at CONTRACTOR's expense.
- C. In an emergency affecting safety of person or of Work or of adjoining property, CONTRACTOR, without special instruction or authorization from the City, architect or Engineer, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury; and CONTRACTOR shall so act if so authorized or instructed by the City, architect or Engineer. Any compensation claimed by CONTRACTOR on account of emergency Work shall be determined by written agreement with the City.
- D. CONTRACTOR shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property, mailboxes (including temporary re-location) and structures (including, without limitation, protection from settlement or loss of lateral

support), and to avoid damage thereto, and repair any damage thereto caused by construction operations.

- 6.39 ACCESSIBILITY REQUIREMENTS: Construction shall be in conformance with all applicable codes per the Department of the State Architect, Title 24 Guidelines for Accessibility by Disabled Persons.

## ARTICLE 7 – OTHER WORK

### 7.1 OTHER CONTRACTS

- A. CONTRACTOR is aware that this Project site may be split into several phases, and or separate contracts. The City reserves the right to let other contracts in connection with this Work, and it shall be the duty of the CONTRACTOR to actively schedule and coordinate its Work with the City's forces, City's Contractor(s) and or other multiple prime contracts. No extra costs or delays shall be considered as a result of any such scheduling, coordination and cooperation. CONTRACTOR shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their Work and shall properly connect and coordinate its Work with such other contractors.
- B. If any part of CONTRACTOR's Work depends for proper execution or results upon Work of any other Contractor, the CONTRACTOR shall inspect and promptly report to the City in writing any defects in such Work that render it unsuitable for such proper execution and results. CONTRACTOR will be held accountable for damages to the City for that Work which it failed to inspect or should have inspected. CONTRACTOR's failure to inspect and report shall constitute its acceptance of other CONTRACTOR's Work as fit and proper for reception of its Work, except as to defects which may develop in other CONTRACTOR's Work after execution of CONTRACTOR's Work.
- C. To ensure proper execution of its subsequent Work, CONTRACTOR shall measure and inspect Work already in place and shall at once report to the City in writing any discrepancy between executed Work and Project Documents.
- D. It is the obligation of CONTRACTOR to ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by City in prosecution of the Project to the end that CONTRACTOR may perform this Agreement in the light of such other contracts, if any.
- E. Nothing herein contained shall be interpreted as granting to CONTRACTOR exclusive occupancy at the site of the Project. CONTRACTOR shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the City shall decide which contractor shall cease Work temporarily and which contractor shall continue or whether Work can be coordinated so that contractors may proceed simultaneously.
- F. If the Project is split into phases then CONTRACTOR has made allowances for any delays or damages which may arise from coordination with contractors for other phases. If any delays should arise from a contractor working on a different phase, CONTRACTOR's sole remedy for damages, including delay damages, shall be against the contractor who caused such damage and not the City. CONTRACTOR shall provide access to contractors for other phases as necessary to prevent delays and damages to contractors working on other phases of construction.

## 7.2 INTEGRATION OF WORK

- A. CONTRACTOR shall perform all cutting, fitting, patching, and preparation of Work as required to make its several parts come together properly, and fit it to receive or be received by Work of other contractors; including both the CONTRACTOR's and City's forces. In the event of clarifications, the CONTRACTOR shall follow all Supplemental Instructions (SI's) given by the City.
- B. All costs caused by defective or ill-timed Work shall be borne by CONTRACTOR.
- C. CONTRACTOR shall not endanger any Work by cutting, excavating, or otherwise altering Work and shall not cut or alter Work of any other CONTRACTOR without the written consent of the City. CONTRACTOR shall be solely responsible for protecting existing Work on adjacent properties and shall obtain all required permits for shoring and excavations near property lines.
- D. When modifying existing Work or installing new Work adjacent to existing Work, CONTRACTOR shall match, as closely as conditions of the site and materials will allow, the finishes, textures, and colors of the original Work, refinishing existing Work as required, at no additional cost to the City.

## ARTICLE 8 – THE CITY'S RESPONSIBILITIES

- 8.1 COMMUNICATIONS. Except as may be otherwise provided in these General Conditions or the Supplementary General Conditions, the City will communicate directly with the CONTRACTOR.
- 8.2 OBSERVATIONS ON THE SITE. The City will make observations on the Site during construction to monitor the progress and quality of the Work and to determine, in general, if the Work is proceeding in accordance with the Project Documents. Neither, the City, the Engineer, nor their representatives will be required to make exhaustive or continuous inspections to check the quality or quantity of the Work.
- 8.3 PROJECT REPRESENTATION. The City may furnish a third party or a City employee to act as Resident Project Representative to assist in observing the performance of the Work.
- 8.4 CLARIFICATIONS, REQUESTS FOR INFORMATION. The City will issue with reasonable promptness such answers to requests for information (RFI) which shall be consistent with or reasonably inferable from the overall intent of the Project Documents.
- 8.5 AUTHORIZED VARIATIONS IN WORK. The City may authorize the execution of variations in the Work from the requirements of the Project Documents complying with Articles 10, 11, and 12 of these General Conditions that cover changes in the Work, Contract Price, and Contract Times.
- 8.6 REJECTING WORK. The City has the authority to reject Work not in accordance with the Contract Documents and will also have authority to require special inspection or testing of the Work as provided in Article 13.
- 8.7 CONTRACTOR SUBMITTALS, CHANGE ORDERS, AND PAYMENTS
  - A. The City will review all CONTRACTOR submittals.
  - B. The City's responsibilities for Change Orders are set forth in Articles 10, 11, and 12.
  - C. The City's responsibilities for Applications for Payment are set forth in Article 14.

8.8 **DECISIONS ON DISPUTES.** The City will be the interpreter of the requirements of the Contract Documents and of the acceptability of the Work thereunder. Disputes, and other matters relating to the acceptability of the Work and interpretation of the requirements of the Contract Documents pertaining to the performance of the Work shall be determined by the City. Any requests from the CONTRACTOR with respect to changes in the Contract Price or Contract Times shall be resolved in accordance with the requirements set forth in Articles 10, 11, 12 and 17.

8.9 **LIMITATION OF CITY'S RESPONSIBILITIES**

A. Neither the City's authority to act under this Article or other provisions of the Contract Documents nor any decision made by the City in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the City to the CONTRACTOR, any Subcontractor, any Supplier, any surety for any of them, or any other person or organization performing any of the Work.

B. Whenever in the Project Documents the terms "as ordered," "as directed," "as required," "as allowed," "as reviewed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," or "satisfactory," or adjectives of like effect or import are used to describe a requirement, direction, review, or judgment of the City as to the Work, it is intended that such requirement, direction, review, or judgment will be solely to evaluate the Work for compliance with the requirements of the Project Documents, and conformance with the design concept of the completed Project as a functioning whole as indicated by the Project Documents, unless there is a specific statement indicating otherwise. The use of any such term or adjective shall not be effective to assign to the City any duty or authority to supervise or direct the performance of the Work.

C. The City shall not supervise, direct or have control or authority over, nor be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. The City will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Project Documents.

8.10 **LANDS, EASEMENTS, AND SURVEYS.** The City's duties in respect of providing lands and easements and providing engineering survey data to establish reference points are set forth in Article 4

8.11 **REPORTS AND DRAWINGS.** The City will identify to the CONTRACTOR copies of reports of physical conditions at the Site and drawings of existing structures which have been utilized in preparing the Contract Documents, in the Supplementary General Conditions.

8.12 **SUSPENSION OF Work.** The City's right to stop Work or suspend Work is set forth in Article 15.

8.13 **TERMINATION OF AGREEMENT.** The City's right to terminate services of the Contractor is set forth in Article 15.

8.14 **UNDISCLOSED HAZARDOUS ENVIRONMENTAL CONDITIONS.** The City's responsibility with respect to an undisclosed hazardous environmental condition is set forth in Article 4.4.



## ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

### 9.1 THE ENGINEER OF WORK

- A. The City may retain the Engineer of Work to assist the City with post-design services. The Engineer of Work's status during construction is addressed in the Supplemental General Conditions.
- B. The Engineer will make observations on the Site during construction to monitor the progress and quality of the Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Engineer will not be required to make exhaustive or continuous inspections to check the quality or quantity of the Work.

## ARTICLE 10 – CHANGES IN THE WORK

### 10.1 GENERAL

- A. CO, FO, CCD. Without invalidating the Agreement and without notice to any surety, the City may at any time or from time to time, order additions, deletions, or revisions in the Work. Such additions, deletions or revisions will be authorized by a Change Order (CO), Field Order (FO) or Construction Change Directive (CCD) as defined in Article 1. Upon receipt of any such document, notwithstanding the issuance, execution, and approval of a Change Order, CONTRACTOR shall promptly proceed to implement the additions, deletions, or revisions in the Work in accordance with the applicable conditions of the Contract Documents. A CO, FO and CCD may be issued to the CONTRACTOR at any time.
- B. UNILATERAL CHANGE ORDER If the City and CONTRACTOR fail to agree to the quantification of costs and/or time to be placed into a Bilateral Change Order, the City, at its own discretion, may issue a Unilateral Change Order for those costs and/or time impacts that is deemed appropriate for the changed Work conditions. Notwithstanding the issuance, execution, and approval of a Change Order, the CONTRACTOR shall proceed immediately with the changed Work upon receipt of a Construction Change Directive (CCD), or Field Order (FO). Should the CONTRACTOR disagree with any terms and conditions set forth in an approved Unilateral Contract Change Order, the CONTRACTOR shall submit a written protest to the City within **fifteen (15) days** after the receipt of the approved Unilateral Contract Change Order. The protest shall state the points of disagreement, and, if possible, the Contract Specification references, quantities and costs involved. If a written protest is not submitted to the City, payment will be made as set forth in the approved Unilateral Contract Change Order, and that payment shall constitute full compensation for all Work included therein or required thereby. Unprotested, approved Unilateral Contract Change Orders will be considered as executed Contract Change Orders as that term is used in Articles 10, 11, and 12.
- C. The CONTRACTOR shall not be entitled to an increase in the Contract Price nor an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified, or supplemented by Change Order, except in the case of an emergency.
- D. If notice of any change in the Work is required to be given to a surety, the giving of any such notice shall be the CONTRACTOR's responsibility. If the change in the Work affects the Contract Price, the City may require an adjustment to the amount of any applicable Bond and the amount of each applicable Bond shall be adjusted accordingly.

- E. If the City and the CONTRACTOR are unable to agree as to the extent, if any, of an increase in the Contract Price or an extension or shortening of the Contract Times that may be allowed as a result of a Field Order, the City may direct the CONTRACTOR to proceed as outlined in Article 11.2. in order to minimize the impact on and delays to the Work, and the CONTRACTOR may make a claim as provided in Articles 11, 12 and 17.
- F. The City of Escondido has the sole authority to approve or disapprove or to delegate the approval or disapproval of Contract Change Orders.

## 10.2 ALLOWABLE QUANTITY VARIATIONS

- A. In the event of an increase or decrease in the quantity of any bid item under a unit price contract, the total amount of Work actually done or materials or equipment furnished will be paid for according to the unit price established for such Work under the Contract Documents, wherever such unit price has been established; provided, that an adjustment in the Contract Price may be made for changes which result in an increase or decrease in excess of twenty-five percent (25%) of the estimated quantity of any unit price bid item of the Work.
- B. In the event a part of the Work is to be entirely eliminated and no lump sum or unit price is named in the Contract Documents to cover such eliminated Work, the price of the eliminated Work shall be agreed upon by the City and the CONTRACTOR by Change Order. The schedule of values submitted by CONTRACTOR shall be referred to in evaluating the price to be reduced, but shall not be determinative unless both parties agree.

## ARTICLE 11 – CHANGE OF CONTRACT PRICE

### 11.1 GENERAL

- A. The Contract Price constitutes the total compensation payable to the CONTRACTOR for performing the Work. All duties, responsibilities, and obligations whether implied, inferred or express, assigned to or undertaken by the CONTRACTOR to complete the Work shall be at its expense without change in the Contract Price.
- B. The Contract Price may only be changed by a Change Order. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following three ways:
  - 1. **UNIT PRICES.** Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved;
  - 2. **AGREED UPON LUMP SUM.** By mutual acceptance of a lump sum, which may include an allowance for overhead and profit not necessarily in accordance with Article 11.4; or
  - 3. **COST OF WORK.** On the basis of the cost of the Work, force account payment (determined as provided in Article 11.2) plus the CONTRACTOR's overhead and profit (determined as provided in Article 11.3).
- C. **AGREED ENTITLEMENT.** When the City is in agreement regarding entitlement due the CONTRACTOR on a particular issue that the CONTRACTOR has brought to the attention of the City with a notice, and finds that there is a clear entitlement for additional compensation, the CONTRACTOR and the City will choose a method to be used for

calculating the value of the extra Work from the three methods described in Article 11.1.B.1, 2, or 3 above.

1. **CHANGE USING UNIT PRICES METHOD.** When a change in Contract Price using unit prices is applied, described in Article 11.1.B.1 (UNIT PRICES), a Field Order, signed by the City, will be given to the CONTRACTOR. The increase in line item quantities shall be tracked and documented in the daily extra Work report (Article 11.4) which must identify the quantities used/consumed/handled and shall be presented to the City's on-site representative on a daily basis for review, for pertinent comments, and counter-signature. The CONTRACTOR will invoice the City for the line item quantity used for the extra Work following the conditions of Article 14, "PAYMENTS TO CONTRACTOR, RETENTION AND COMPLETION". A reconciliation Contract Change Order will be executed when the final quantities used are known. The Contract Change Order will account for the over or under amount of line item quantities.
  2. **CHANGE USING AGREED UPON LUMP SUM METHOD.** When the payment method described in Article 11.1.B.2 (LUMP SUM) is used, a Field Order or a Contract Change Order, signed by the City, will be given to the CONTRACTOR. The CONTRACTOR will invoice the City for the extra Work following the conditions of Article 14.
  3. **CHANGE USING FORCE ACCOUNT "COST OF Work" METHOD.** When no agreement can be reached on the method of payment for the extra Work, the method described in Article 11.1.B.3 (COST OF WORK), force account payment (determined as provided in Article 11.2) shall be used. A Field Order will be given to the CONTRACTOR, signed by the City, describing the Work. The City reserves the right to place a "not to exceed" amount on the Field Order based on a City cost estimate. If the approximate value of the cost of extra Work approaches the "not to exceed" value, the CONTRACTOR shall notify the City in order that a further decision may be made as to how to proceed. When the extra Work is completed a Contract Change Order for the accumulated total value of the extra Work shall be executed, should the value of the Work exceed the Field Order allowance. The extra Work shall be documented in the Daily Extra Work Report (Article 11.4).
- D. **DISAGREEMENT REGARDING ENTITLEMENT.** When there is no agreement between the CONTRACTOR and the City on an issue of Work that has not yet been started that the CONTRACTOR has brought to the City pursuant to Article 11.5 "CONTRACTOR SHALL PROVIDE NOTICE", and the City does not find that there is any entitlement for additional compensation due the CONTRACTOR, the Work in question may be designated "DISPUTED WORK". During the performance of any such "DISPUTED WORK" the CONTRACTOR shall:
1. Although not to be construed as proceeding under agreed-upon extra Work provisions, the CONTRACTOR shall keep and furnish records breaking down the Work as described in the following Article 11.2. Daily records shall be furnished according to Article 11.4.
  2. The CONTRACTOR shall continue with the disputed Work according to Article 2.6.

11.2 COST OF WORK - FORCE ACCOUNT (BASED ON TIME AND MATERIALS)

- A. **GENERAL:** The term "cost of Work" means the sum of all costs necessarily incurred and paid by the CONTRACTOR for labor, materials, and equipment in the proper performance of extra Work. Except as otherwise may be agreed to in writing by the City, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall include the costs itemized in Article 11.3.D.1. to be compensated for as a part of the stipulated overhead and profit allowance.
- B. **LABOR:** The costs of labor will be the actual cost for wages prevailing for each craft or type of workers performing the extra Work at the time the extra Work is done, plus employer payments of payroll taxes, workers compensation insurance, liability insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. Labor costs for equipment operators and helpers will be paid only when such costs are not included in the invoice for equipment rental. The labor costs for foremen shall be proportioned to all of their assigned Work and only that applicable to extra Work shall be paid. Non-direct labor costs including superintendence shall be considered part of the markup set out in Article 11.3. Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by the CONTRACTOR to other workers operating similar equipment already on the Site, or in the absence of such labor, established by collective bargaining agreements for the type of workmen and location of the extra Work, whether or not the operator is actually covered by such an agreement.
- C. **MATERIALS:** The cost of materials reported shall be at invoice or lowest current price at which materials are locally available and delivered to the Site in the quantities involved, plus the cost of freight, delivery and storage, subject to the following:
1. All trade discounts and rebates shall accrue to the City, and the CONTRACTOR shall make provisions so that they may be obtained;
  2. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by the City. Except for actual costs incurred in the handling of such materials, markup will not be allowed;
  3. Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from said sources on extra Work items or the current wholesale price for such materials delivered to the Site, whichever price is lower; and
  4. If in the opinion of the City the cost of material is excessive, or the CONTRACTOR does not furnish satisfactory evidence of the cost of such material, then the cost shall be deemed to be the lowest current wholesale price for the quantity concerned delivered to the Site less trade discount. The City reserves the right to furnish materials for the extra Work and no claim will be allowed by the CONTRACTOR for costs and profit on such materials.
- D. **EQUIPMENT:** The CONTRACTOR will be paid for the use of equipment at the rental rate listed for such equipment specified in the current edition of the "Labor Surcharge and Equipment Rental Rates" published by the State of California Business, Transportation & Housing Agency (CALTRANS). Such rental rate will be used to compute payments for

equipment whether the equipment is under the CONTRACTOR's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment will be the rate resulting in the least total cost to the City for the total period of use. If it is deemed necessary by the CONTRACTOR to use equipment not listed in the publication specified, an equitable rental rate for the equipment will be established by the City. The CONTRACTOR may furnish cost data which might assist the City in the establishment of the rental rate. Payment for equipment shall be subject to the following:

1. All equipment shall, in the opinion of the City, be in good working condition and suitable for the purpose for which the equipment is to be used;
  2. Before construction equipment is used on the extra Work, the CONTRACTOR shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the City a description of the equipment with its identifying number;
  3. Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer;
  4. Individual pieces of equipment or tools having a replacement value of \$250 or less, whether or not consumed by use, will be considered to be small tools and no payment will be made therefore.
- E. **EQUIPMENT RENTAL TIME:** The rental time to be paid for equipment on the Site will be the time the equipment is in productive operation on the extra Work being performed and, in addition, will include the time required to move the equipment to the location of the extra Work and return it to the original location or to another location requiring no more time than that required to return it to its original location; except, that moving time will not be paid if the equipment is used on other than the extra Work, even though located at the Site of the extra Work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made for loading and transporting costs when the equipment is used at the Site of the extra Work on other than the extra Work. Rental time will not be allowed while equipment is inoperative due to breakdowns. The rental time of equipment on the Work site will be computed subject to the following:
1. When hourly rates are listed, any part of an hour less than **thirty (30) minutes** of operation will be considered to be half-hour (1/2 – hour) of operation, and any part of an hour in excess of **30 minutes** will be considered **1 hour** of operation;
  2. When daily rates are listed, any part of a day less than **4 hours** operation will be considered to be **1/2 – day** of operation. When owner-operated equipment is used to perform extra Work to be paid for on a time and materials basis, the CONTRACTOR will be paid for the equipment and operator, as set forth in this Article.
  3. Payment for the equipment will be made in accordance with the provisions in Article 11.

Item 5.

F. SURETIES: All Work performed hereunder shall be subject to all of the provisions of the Contract Documents and the CONTRACTOR's sureties shall be bound with reference thereto as under the original Agreement. Copies of all amendments to Bonds or supplemental Bonds shall be submitted to the City for review prior to the performance of any Work hereunder.

11.3 OVERHEAD & PROFIT (O&P) PERCENTAGE SCHEDULE. The allowance for overhead and profit must not exceed the values in the Overhead & Profit Schedule table below.

- A. For Change Orders, whether additive or deductive and work classified as Extra Work, the allowance for overhead and profit must include full compensation for superintendence, insurance premiums, bond premiums, taxes, field office expense, extended overhead, home office overhead, and any other items of expense e.g., Change Order estimating and preparation cost, claims preparation cost, schedule analysis, project management, and field engineering.
- B. Extended overhead must be any and all costs incurred either in the field or at your office resulting from Extra Work excluding direct costs related to direct hourly labor, equipment, or materials necessary to complete the Extra Work.
- C. Overhead & Profit Schedule table

O & P Schedule		
Component	Overhead	Profit
Labor	10%	10%
Material	10%	5%
Equipment	10%	5%
Subcontractor Extra Work	3.5%	1.5%

- D. Work paid under Allowance Bid items for permits, governmental fees, or direct payments specified in the Contract Documents will not be subject to any markups.
- E. When all or any part of the Extra Work is performed by a Subcontractor, the allowance specified herein will be applied to the labor, materials, and equipment costs of the Subcontractor, to which you may add 5% of the Subcontractor's total cost for the Extra Work.
- F. Regardless of the number of hierarchical tiers of Subcontractors, the 5% which is your allowance 3.5% (for overhead) and 1.5% (for profit) may be applied one time only to the performing Subcontractor's total cost.
- G. You will only be reimbursed, with 6% markup, for the warranty extensions beyond the time required by the Contract Documents if requested by the City.
- H. The O&P Schedule shall be used for "Negotiated Sum" (described in Article 11.1.B.2) and/or "Time and Materials" (described in Article 11.1.B.3) Work. Unit Price Work shall not have the overhead and profit markup applied to the Work, on the basis that the Unit Price includes overhead and profit margins.

CONTRACTOR shall set up separate cost codes for each extra Work item and account for all labor, materials and equipment for each cost code. This includes using said cost codes for all labor expended on extra Work, and coding delivery tickets and P.O.'s as well. The same cost code shall appear on the daily report to account for labor, materials and

equipment devoted/used that day for each extra Work item. Failure to comply with this requirement shall be a waiver of the right to collect the same.

- E. IT IS EXPRESSLY UNDERSTOOD THAT THE VALUE OF SUCH EXTRA WORK OR CHANGES, AS DETERMINED BY ANY OF THE AFOREMENTIONED METHODS, EXPRESSLY INCLUDES ANY AND ALL OF CONTRACTOR'S COSTS AND EXPENSES, BOTH DIRECT AND INDIRECT, RESULTING FROM EFFORTS TO IDENTIFY, QUOTE AND/OR NEGOTIATE THE CHANGE(S) AS WELL AS ADDITIONAL TIME REQUIRED ON THE PROJECT, OR RESULTING FROM DELAYS TO THE PROJECT, INCLUDING BUT NOT LIMITED TO ACCELERATION, CUMULATIVE AFFECT OF THE CHANGE(S), EXPEDITING THE WORK, FRAGNETS, ETC.

NO RESERVATION OF RIGHTS, EXPRESS OR IMPLIED, WILL BE PERMITTED OR ALLOWED.

#### 11.4 CONTRACTOR'S DAILY EXTRA WORK REPORT

- A. General. At the close of each working day, the CONTRACTOR shall submit a daily report to the Inspector, on forms approved by the City, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, and for other services and expenditures when authorized concerning extra Work items. An attempt shall be made to reconcile the report daily, and the Inspector and the CONTRACTOR shall sign it. The report shall clearly differentiate between extra or disputed Work and Contract Work. In the event of disagreement, pertinent notes shall be entered by each party to explain points that cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by Subcontractors or others shall be submitted through the CONTRACTOR. The CONTRACTOR shall organize and forward copies of the CONTRACTOR's and Inspector's reports to the City upon the completion of each "Time and Material" activity.
- B. CONTRACTOR shall maintain its records in such a manner as to provide a clear distinction between the direct costs of any extra Work and/or deductive Work and the original Contract Work. This requirement pertains to the costs for wholly or partially approved Change Order Requests (COR's), Construction Change Directives (CCD's), Change Orders (CO's), Field Orders (FO's), and Work CONTRACTOR considers to be potential Change Orders.

- 11.5 CONTRACTOR SHALL PROVIDE NOTICE. If the CONTRACTOR should claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation obligates the City to pay additional compensation to CONTRACTOR or to grant an extension of time, or constitutes a waiver of any provision in the Agreement, the CONTRACTOR shall provide written "Notice" to the City **within 5 days** after sustaining of such damage, or being notified of an adverse decision, and provide within **14 days** of the event the factual basis supporting the claim (unless otherwise specified). For requests for additional compensation for alleged changed conditions, such as finding rock, notice shall be made before the condition instigating the notice is disturbed. The written "Notice" shall state the summary points for which the factual bases will support the claim and cite in detail the Project Documents (including plans and specifications) upon which the claim is to be based. CONTRACTOR's failure to notify the City within such a period shall be deemed a waiver and relinquishment of such a claim. If such notice is given within the specified time, the procedure for its consideration shall be as stated above in these General Conditions. In addition, on or before the end of the month for which the claim has been filed, the CONTRACTOR shall also file with the City the **WAIVER AND RELEASE FORMS**, for which the claim and the amount of the claim is identified. If the claim is

not indicated on the **WAIVER AND RELEASE FORMS, CONTRACTOR's claim** shall be forfeited and invalidated and it shall not be entitled to consideration for time or payment on account of any such claim.

- 11.6 **COSTS RELATING TO WEATHER/ FORCE MAJEURE.** The CONTRACTOR shall have no claims against the City for damages for any injury to Work, materials, or equipment, resulting from the action of the elements whether caused by weather, earthquakes, or other natural events. If, however, in the opinion of the City, the CONTRACTOR has made all reasonable efforts to protect the materials, equipment, and Work, the CONTRACTOR may be granted a reasonable extension of Contract Times to make proper repairs, renewals, and replacements of the Work, materials, or equipment. All costs incurred as a result of any force majeure, including abnormally or unusually severe weather, earthquakes or other natural perils shall not be compensable from the City and the risks associated therewith shall be exclusively borne by CONTRACTOR. To the extent CONTRACTOR elects to protect itself from any/all of said risks, it shall insure against the same.

## ARTICLE 12 – CHANGE OF CONTRACT TIMES

### 12.1 GENERAL

- A. Contract times are stated in the Notice Inviting Sealed Bids, Section 00030, The Public Improvement Agreement, and the Supplemental General Conditions, Section 00800, of these Contract Documents.
- B. The Contract Times may only be changed by a Change Order. Any claim for an extension of the Contract Times shall be based on written notice delivered by the CONTRACTOR to the City promptly (but in no event later than 24 hours) after the start of the event giving rise to the claim and stating the general nature of the claim. Reference Article 11.5 "CONTRACTOR SHALL PROVIDE NOTICE". Notice of the extent of the claim with supporting data shall be delivered within **5 days** after the start of such event (unless the City allows an additional period of time for the submission of additional or more accurate data in support of the claim) and shall be accompanied by the CONTRACTOR's written statement that the adjustment claimed is the entire adjustment to which the CONTRACTOR is entitled as a result of said event. All claims for adjustment in the Contract Times will be determined by the City. No claim for an adjustment in the Contract Times will be valid if not submitted in accordance with the requirements of this Article 12.1.B. An increase in Contract Times does not mean that the CONTRACTOR is due an increase in Contract Price. Only compensable time extensions will result in an increase in Contract Price.
- C. Extra Work executed by the CONTRACTOR in conjunction, simultaneously or concurrently with the Work does not create a compensable time extension.
- D. Extra Work executed by the CONTRACTOR during Contract Schedule Float does not create a compensable time extension.
- E. The value of time expended on extra Work is fully compensated by the markups for overhead and profit found on the table in Article 11.3.
- F. All time limits stated in the Contract Documents are of the essence of the Agreement.
- G. When CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost on the critical path of the Work due to such delay, if a claim is made therefore as provided in Article 12.1.B. Delays beyond the control of CONTRACTOR shall include, but not be limited



to, acts or neglect by the City; acts or neglect of those performing other Work as contemplated by Article 7; and fires, floods, epidemics, abnormal weather conditions, or acts of God. Delays attributable to and within the control of any Subcontractor or Supplier (of any tier) shall be deemed to be delays within the control of the CONTRACTOR.

H. In no event will the City be liable to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for any increase in the Contract Price or other damages arising out or resulting from the following:

1. Delays caused by or within the control of CONTRACTOR;
2. Delays beyond the control of both the City and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by those performing other Work as contemplated by Article 7; or
3. City-caused/responsible delays, concurrent with items 1 and/or 2 above.

12.2 EXTENSIONS OF CONTRACT TIMES FOR DELAY DUE TO WEATHER. The CONTRACTOR's construction schedule shall anticipate delay due to seasonal weather.

12.3 OWNERSHIP OF PROJECT SCHEDULE FLOAT/EARLY COMPLETION SCHEDULE

A. Total Float is the number of days by which a part of the Work in the Construction Schedule may be delayed from its early dates without necessarily extending the Contract Time. Contract Float is the number of days between the CONTRACTOR's anticipated date for early completion of the Work, or specified part, and the corresponding Contract Time. Total float and Contract Float belong to the Project and are not for the exclusive benefit of any party. They shall be available to the City, the construction manager, their consultants, or the CONTRACTOR, to accommodate changes in the Work, or to mitigate the effects of events which may delay performance or completion. The City will monitor and optimize the use of float for the benefit of the Project.

B. IF CONTRACTOR SUBMITS A REVISED SCHEDULE SHOWING AN EARLIER COMPLETION DATE FOR THE PROJECT, THE CITY'S ACCEPTANCE OF THIS REVISED SCHEDULE SHALL NOT ENTITLE CONTRACTOR TO ANY DELAY CLAIM OR DAMAGES DUE TO ANY SUCH REVISED SCHEDULE. CONTRACTOR AND ALL SUBCONTRACTORS SHALL INCLUDE, AS DEEMED APPROPRIATE, SUFFICIENT AMOUNTS TO COVER THE HOME OFFICE AND FIELD OVERHEAD COSTS COMMENSURATE WITH THE PUBLISHED CONTRACT DURATION. FAILURE TO INCLUDE OVERHEAD COSTS IN THEIR BIDS THROUGH THE CONTRACT DURATION SHALL BE AT THE RISK OF CONTRACTOR AND ITS SUBCONTRACTORS.

12.4 EXTENSION OF TIME - LIQUIDATED DAMAGES

A. The CONTRACTOR and the City hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. CONTRACTOR shall be assessed the sum set forth in the **Agreement**, as liquidated damages for each and every day the Work required under the Project Documents remains unfinished past the time for completion, as set forth in the **Agreement**, and any extensions of time granted by the City to the CONTRACTOR under the terms of the Project Documents. The CONTRACTOR will pay to the City or the City may retain from amounts otherwise payable to the CONTRACTOR, said amount for each day after failure to meet the requirements of the contract completion as scheduled in the Agreement. For purposes of this article, the Work shall be considered "complete" in accordance with these General Conditions, except that the Work may be considered

complete without formal acceptance by the City Council so long as the City Council, at its next regularly scheduled meeting, accepts the Work.

- B. CONTRACTOR shall not be charged for liquidated damages, as set forth above, because of any delays in completion of Work which are not the fault or negligence of CONTRACTOR, including but not restricted to acts of God, as long as CONTRACTOR informs City of such events. As soon as CONTRACTOR become aware of any delay and no later than **14 days** from the commencement of the delay, CONTRACTOR shall notify the City in writing of causes of delay in accordance with the contract scheduling specifications. CONTRACTOR shall provide documentation and justification to substantiate the delay and its relation to the Project's critical path. Extension of time shall apply only to that portion of Work affected by the delay, and shall not apply to other portions of Work not so affected.

**ARTICLE 13 – INSPECTIONS AND TESTS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

- 13.1 **AUTHORITY OF INSPECTOR.** Any Work performed by the CONTRACTOR upon the instructions or comments by the Inspector may be confirmed by the CONTRACTOR, at the CONTRACTOR's option, in writing by the City. Any extra Work performed without the written instruction of the City shall be at CONTRACTOR's sole cost and expense and there will be no delay damages incurred by City for such Work.
- 13.2 **INSPECTION.** No Work shall be carried on except with the knowledge of the Inspector(s). The Inspector shall have free access to any or all parts of Work at any time. CONTRACTOR shall furnish Inspector reasonable opportunities for obtaining such information as may be necessary to keep Inspector fully informed respecting progress and manner of Work and character of materials. Inspection of Work shall not relieve CONTRACTOR from any obligation to fulfill the Project Documents. Inspector shall have authority to stop Work whenever provisions of Project Documents are not being complied with and such noncompliance is discovered. CONTRACTOR shall instruct its employees accordingly.
- 13.3 **NOTICE OF DEFECTIVE Work.** Prompt notice of Defective Work known to the City will be given to the CONTRACTOR. Defective Work discovered or uncovered will be noticed to the CONTRACTOR as soon as practicable. All Defective Work, whether or not in place, may be rejected, corrected, or accepted as provided in this Article 13. Defective Work may be rejected even if approved by prior inspection.
- 13.4 **ACCESS TO WORK.** The City, Engineer, their consultants, subconsultants, other representatives and personnel of the City, independent testing laboratories, and governmental agencies with jurisdictional interests shall have access to the Work at reasonable times for their observation, inspecting, and testing. CONTRACTOR shall provide them proper and safe conditions for such access, including sheeting and shoring as may be necessary, and advise them of CONTRACTOR's Site safety procedures, and programs so that they may comply therewith as applicable.
- 13.5 **INSPECTIONS AND TESTS**
  - A. The CONTRACTOR shall give the City not less than **2 working days** notice of readiness of the Work for all required general inspections, tests, or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. Specialty inspections shall be scheduled **7 days** in advance.

- B. The City shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
1. For inspection, tests, or approvals covered by Articles 13.5.C. and 13.5.D. below;
  2. That costs incurred in connection with tests or inspections conducted pursuant to Article 13.5.G. shall be paid for by the CONTRACTOR.
- C. If Laws and Regulations of any public body having jurisdiction require any Work (or any part thereof) to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests or approvals; pay all costs in connection therewith; and furnish the City the required certificates of inspection or approval.
- D. The CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for the City's acceptance of materials or equipment to be incorporated in the Work or acceptance of materials, mix designs, or equipment submitted for approval prior to the CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to the City.
- E. The City will make, or have made, such inspections and tests as the City deems necessary to see that the Work is being accomplished in accordance with the requirements of the Contract Documents. Unless otherwise specified in the Supplementary General Conditions, the cost of such inspection and testing will be borne by the City. In the event such inspections or tests reveal non-compliance with the requirements of the Contract Documents, the CONTRACTOR shall bear the cost of corrective measures deemed necessary by the City, as well as the cost of subsequent reinspection and retesting. Neither observations by the Engineer nor inspections, tests, or approvals by others shall relieve the CONTRACTOR from the CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents.
- F. If any Work that is to be inspected, tested, or approved is covered without written concurrence of the City, it must, if requested by the City, be uncovered for observation. Such uncovering shall be at the CONTRACTOR's expense.
- G. If any Work is covered contrary to the written request of the City, it must, if requested by the City, be uncovered for the City's observation and recovered at the CONTRACTOR's expense.
- H. If the City considers it necessary or advisable that covered Work be observed by the City or inspected or tested by others, the CONTRACTOR, at the City's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as the City may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is Defective Work, the CONTRACTOR shall bear all direct, indirect, and consequential costs and damages of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction, including but not limited to, fees and charges of engineers, architects, attorneys, and other professionals. However, if such Work is not found to be Defective Work, the CONTRACTOR will be allowed an increase in the Contract Price, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, the CONTRACTOR may make a request for additional compensation therefore as provided in Articles 10, 11 and 12.

- I. All initial tests shall be performed under the direction of the City. All re-testing due to failure shall be performed under the direction of the City, and the cost of all re-testing shall be borne by the CONTRACTOR. The costs and potential loss of productivity to accommodate re-testing shall be borne by the CONTRACTOR.
  - J. A City Inspector, or designee, may be required on the job site at all times Work is in progress as determined by the City. Inspection will be required by the appropriate agency for the following type of Work: trenching, special or sand bedding, laying pipe, any welding, backfill, compaction and pavement replacement. Special Work hours required by the Contract are considered normal hours.
- 13.6 THE CITY MAY STOP THE WORK. If Defective Work is identified, the City may order the CONTRACTOR to stop performance of the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the City to stop the Work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the CONTRACTOR or any other party.
- 13.7 CORRECTION OR REMOVAL OF DEFECTIVE WORK. If required by the City, the CONTRACTOR shall promptly either correct all Defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by the Engineer, remove it from the Site and replace it with non-defective Work. The CONTRACTOR shall bear all direct, indirect, and consequential costs and damages of such correction or removal, including but not limited to fees and charges of engineers, architects, attorneys, and other professionals made necessary thereby.
- 13.8 ACCEPTANCE OF DEFECTIVE WORK. If, instead of requiring correction or removal and replacement of Defective Work, the City prefers to accept the Defective Work, the City may do so. The CONTRACTOR shall bear all direct, indirect, and consequential costs attributable to the City's evaluation of and determination to accept such Defective Work. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and the City shall be entitled to an appropriate decrease in the Contract Price.
- 13.9 THE CITY MAY CORRECT DEFECTIVE WORK
- A. If the CONTRACTOR fails within a reasonable time after written notice from the City to correct Defective Work, or to remove and replace Defective Work as required by the City in accordance with Article 13.7, or if the CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if the CONTRACTOR fails to comply with any other provision of the Contract Documents, the City may, after **7 days** written notice to the CONTRACTOR, correct and remedy any such deficiency.
  - B. In exercising the rights and remedies under this paragraph, the City shall proceed with corrective and remedial action. In connection with such corrective and remedial action, the City may exclude the CONTRACTOR from all or part of the Site, take possession of all or part of the Work, and suspend the CONTRACTOR's services related thereto and incorporate in the Work all materials and equipment for which the City has paid the CONTRACTOR whether stored at the Site or elsewhere. The CONTRACTOR shall provide the City, City's representatives, Engineer, and Engineer's consultants access to the Site to enable the City to exercise the rights and remedies under this Article.
  - B. All direct, indirect, and consequential costs and damages incurred by the City in exercising the rights and remedies under this paragraph will be charged against the CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the City shall be entitled to an appropriate

decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, the City may make a claim therefore as provided in Article 11. Such claim will include, but not be limited to, all costs of repair or replacement of Work of others, destroyed or damaged by correction, removal, or replacement of CONTRACTOR's Defective Work and all direct, indirect, and consequential damages associated therewith.

- D. The CONTRACTOR shall not be allowed an extension of Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by the City of the City's rights and remedies under this paragraph.

### 13.10 CORRECTION PERIOD

- A. The correction period for Defective Work shall be the longer of:
  - 1. One year after the date of final acceptance;
  - 2. Such time as may be prescribed by Laws and Regulations;
  - 3. Such time as specified by the terms of any applicable special guarantee required by the Contract Documents; or
  - 4. Such time as specified by any specific provision of the Contract Documents.
- B. If, during the correction period as defined in Article 13.10A above, any Work is found to be Defective Work, the City shall have the same remedies as set forth in Articles 13.7, 13.8, and 13.9 above.
- C. Where Defective Work (and damage to other Work resulting therefrom) has been corrected, removed, or replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of **1 year** after such correction or removal and replacement has been satisfactorily completed.

## ARTICLE 14 – PAYMENTS TO CONTRACTOR, RETENTION AND COMPLETION

### 14.1 APPLICATION FOR PROGRESS PAYMENT

- A. On the 25th of each month, the CONTRACTOR shall submit to the City for review, the Application for Payment filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application for Payment and accompanied by the appropriate waiver(s) and release upon "Progress Payment" and such supporting documentation as is required by the Project Documents.
- B. The Application for Payment shall identify, as a subtotal, the estimated amount of the CONTRACTOR total earnings to date; plus the value of materials stored at the Site, pursuant to Article 14.1.K, which have not yet been incorporated in the Work; and less a deductive adjustment for materials installed which were not previously incorporated in the Work, but for which payment was allowed under the provisions for payment for materials stored at the Site, but not yet incorporated in the Work.
- C. The net payment due the CONTRACTOR shall be the above-mentioned subtotal from which shall be deducted five percent (5%) retention and the total amount of all previous payments made to the CONTRACTOR. The City shall have the right to issue joint checks to CONTRACTOR and SUBCONTRACTOR and/or Suppliers.

- D. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release CONTRACTOR or Surety from any damages arising from such Work or from enforcing each and every provision of this Agreement, and the City shall have the right subsequently to correct any error made in any estimate for payment.
- E. CONTRACTOR SHALL NOT BE ENTITLED TO HAVE ANY PAYMENT ESTIMATES PROCESSED OR BE ENTITLED TO HAVE ANY PAYMENT FOR WORK PERFORMED SO LONG AS ANY LAWFUL OR PROPER DIRECTION CONCERNING WORK, OR ANY PORTION THEREOF, GIVEN BY THE CITY OR ENGINEER SHALL REMAIN UNCOMPLIED WITH BY THE CONTRACTOR.
- F. The City has discretion to require from the CONTRACTOR any of the following information with the application for payment:
  - 1. Certified payroll covering the period of the prior application for payment;
  - 2. Unconditional waivers and releases from all Subcontractors/suppliers for which payment was requested under the prior application(s) for payment;
  - 3. Receipts or bills of sale for any items.
  - 4. Signature of the Inspector, confirming that the maintenance of the Record Drawings is being kept up-to-date, and that the Record Drawings are not being used as a construction set.
- G. NO PAYMENT BY THE CITY HEREUNDER SHALL BE INTERPRETED TO IMPLY THAT THE CITY HAS INSPECTED, APPROVED, OR ACCEPTED ANY PART OF THE WORK. The final payment of 5% of the value of the Work done under this Agreement, if unencumbered, shall be made within 55 days after the City records the Notice of Completion. ACCEPTANCE WILL BE MADE ONLY BY ACTION OF THE ESCONDIDO CITY COUNCIL.
- H. Payments for Change Order items can be included into the monthly progress payments, only after the Change Order has been fully executed and approved by the CITY and the CONTRACTOR, and only to the extent that Change Order Work has been performed.
- I. The value of materials stored at the Site shall be an amount based upon the value of all acceptable materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing; provided, each such individual item has a value of more than \$5,000 and will become a permanent part of the Work. The Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that the CONTRACTOR has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the City's interest therein, all of which will be satisfactory to the City.
- J. Unless otherwise provided, on or before making request for final payment of the undisputed amount due under the Agreement, CONTRACTOR shall submit to the City, in writing a summary of all claims for compensation under or arising out of this Agreement which were timely submitted. The acceptance by CONTRACTOR of the payment of the final amount shall constitute a waiver of all claims against the City under or arising out of this Agreement, except those previously made, in a timely manner and in writing, and identified by CONTRACTOR as unsettled at the time of CONTRACTOR's final request for payment.

K. Materials included in the progress payments shall be stored properly and protected as required to prevent damage, including but not limited to, rust, dents, scratches, and decay. Materials stored on-site and subject to payment, shall be gated and secured to prevent theft and/or vandalism. When the CONTRACTOR requests payment for materials not incorporated in the Work, the following terms and conditions shall apply:

1. For permanent materials delivered to the project site, or stored in an approved location off-site, an allowance of one-hundred percent (100%) of the material costs plus freight charges as invoiced may be made. The allowance will be based upon validated invoices or bills for such materials, including freight charges, and a copy thereof shall be made a part of the documented records for the project. All permanent materials approved for payment will have been tested by the City for compliance with the requirements of the Project Documents. Payment will only be made for permanent materials that conform to the requirements of the Project Documents.
2. No allowance shall be made for fuels, form lumber, falsework, temporary structures or other materials of any kind that will not become an integral part of the finished contraction.
3. All permanent materials, for which an allowance is requested, shall be stored in an approved manner where damage is not likely to occur. If any of the stored materials are lost or become damaged in any manner, CONTRACTOR shall be responsible for repairing or replacement of such damaged materials. The value of the lost or damaged materials shall be deducted from the CONTRACTOR's subsequent progress payments until replacement has been accomplished.
4. Permanent materials, for which payment has been made, either wholly or partially, shall not be removed from the approved location until such time that it is incorporated into the Work, unless approved by the City and/or the Engineer.
5. The following must accompany the written request for payment of stored materials:
  - a. Consent of the Surety specifying the material type and the bid items in which the material is to be used.
  - b. Validating invoices showing that payment for the material has been made.
  - c. A written statement from CONTRACTOR attesting that the invoices, as submitted do not include charges and/or fees for placing, handling, erecting or any other charges and/or markups other than the actual material cost, sales tax if applicable, and freight charges.
  - d. Bill of lading showing delivery of the material.
  - e. Inspection test reports, and certifications if required by the Contract Documents.
  - f. CONTRACTOR shall obtain a negotiable warehouse receipt, endorsed over to the City for materials and/or equipment stored in an off-site warehouse.
  - g. Certificate of insurance clearly indicating that the materials or equipment is fully insured against theft, fire, vandalism, malicious mischief, as well as other coverage required under the Project Documents.
6. Nothing in these General Conditions shall be interpreted as requiring the City to pay for stored materials. The City shall decide on a case-by-case basis whether stored materials can be paid for. Some factors the City will consider are:

CONTRACTOR's ability to meet the Project Schedule and milestones, the effectiveness of CONTRACTOR's quality control plan, how record drawings are being maintained and kept up, the status of the material submittals, and the on-going cleanliness of the Project and the Project Site. No payment will be made for stored materials that have not been submitted and accepted.

7. If the permanent materials are stored off-site, CONTRACTOR must pay the City's representative's transportation and lodging to see the permanent materials.
8. Full title to the materials and/or equipment shall vest with the City at the time of delivery to the site, warehouse or other storage location.

14.2 UNIT PRICE BID SCHEDULE. Progress payments on account of unit price Work will be based on the number of units completed as determined by the City and/or its representative.

14.3 SCHEDULE OF VALUES (LUMP SUM PRICE BREAKDOWN)

A. CONTRACTOR shall furnish on a form approved by the City:

1. Within **10 days** of award of the contract and commensurate with the specification section entitled **CONSTRUCTION SCHEDULES**, provide a detailed preliminary estimate giving a complete breakdown of contract price for each area of the project and/or site, which shall include all Subcontractor/supplier agreements showing the dollar amounts of these agreements to justify the schedule of values, and showing separate line items for the material cost(s) and installation cost(s).
2. A periodical itemized estimate of Work done for purpose of making partial payments thereon, that is until the cost loaded CPM construction schedule has been developed (if required by the Contract).
3. Within **10 days** of a request by City, a schedule of estimated monthly payments which shall be due CONTRACTOR under the **Agreement**.

B. Values employed in making up any of these schedules are subject to the City's written approval and will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from contract price.

1. Unless otherwise agreed in writing, payment for CONTRACTOR's mobilization costs shall be cost loaded as follows:

Mobilization Payment Schedule	
Upon Mobilization	50% of Mobilization item may be billed for bonding, insurance and yard set-up costs
25%	10% of Mobilization item may be billed
50%	10% of Mobilization item may be billed
75%	10% of Mobilization item may be billed
100% (clean up completed)	20% remaining to pay for de mobilization

14.4 ALLOWANCES

A. The following costs shall be included in all allowances;

1. Cost of the product to CONTRACTOR or Subcontractor, less applicable trade discounts.
2. Delivery to the site.



3. Applicable taxes.
- B. CONTRACTOR costs included in the Contract Sum include, but are not limited to;
1. Arrangement of product(s) shipping and handling at site, including unloading, uncrating, and storage.
  2. Protection of products from the elements and from damage.
  3. Labor for installation, adjustments and finishing products.
  4. Product warranties.
  5. Scheduling changes and updates.
  6. Other expenses required to complete installation.
  7. CONTRACTOR and Subcontractor(s) overhead and profit.
- C. The adjustments in costs will be made if the net cost is more or less than the specified amount of the allowance. The net cost of the adjustment shall be the amount of the difference between the specified allowance and the actual cost of the material, with the exception of a not-to-exceed fifteen percent (15%) mark-up for overhead and profit. The Contract Sum will be adjusted by Change Order.
1. Submit any claims for anticipated additional costs, or other expenses caused by the selection of the allowance, prior to execution of the Work.
  2. Submit documentation for actual additional costs, or other expenses caused by the selection the allowance, prior to execution of the Work.
  3. Failure to submit claims within the designated time will constitute a waiver of claims for additional costs.
- D. City may separately bid the materials, subject to the specified allowances. The successful bidder will be assigned to CONTRACTOR, and shall be considered a Subcontractor to the CONTRACTOR. Upon assignment, the CONTRACTOR shall all make the necessary submittals, prepare necessary shop drawings and coordinate all related Work. CONTRACTOR shall make all necessary adjustments and revisions to the Project Schedule for such allowances and Subcontractor assignments.

#### 14.5 WAIVER, CONDITIONAL RELEASE, RELEASE OF CLAIMS

- A. Commensurate with the statutes of Public Contract Code section 7100 et seq., provisions in public works contracts with public entities which provide that acceptance of a payment otherwise due a CONTRACTOR is a waiver of all claims against the public entity arising out of the Work performed under the contract or which condition the right to payment upon submission of a release by the CONTRACTOR of all claims against the public entity arising out of performance of the public Work are against public policy and null and void. This section shall not prohibit a public entity from placing in a public works contract and enforcing a contract provision which provides that payment of undisputed contract amounts is contingent upon the CONTRACTOR furnishing the public entity with a release of all claims against the public entity arising by virtue of the public works contract related to those amounts. The CONTRACTOR from the operation of the release may specifically exclude disputed contract claims in stated amounts.
- B. Neither the City nor original CONTRACTOR by any term of their contract, or otherwise, shall waive, affect, or impair the claims and liens of other persons whether with or without notice except by their written consent, and any term of the contract to that effect

shall be null and void. Any written consent given by any claimant pursuant to this subdivision shall be null, void, and unenforceable unless and until the claimant executes and delivers a waiver and release. Such a waiver and release shall be binding and effective to release the City, construction lender, and surety on a payment bond from claims and liens only if the waiver and release follows substantially one of the forms set forth in this section and is signed by the claimant or his or her authorized agent, and, in the case of a conditional release, there is evidence of payment to the claimant. Evidence of payment may be by the claimant's endorsement on a single or joint payee check that has been paid by the bank upon which it was drawn or by written acknowledgment of payment given by the claimant.

- C. No oral or written statement purporting to waive, release, impair or otherwise adversely affect a claim is enforceable or creates any estoppel or impairment of a claim unless:
  - 1. It is pursuant to a waiver and release prescribed herein, or
  - 2. The claimant had actually received payment in full for the claim.
- D. This section does not affect the enforceability of either an accord and satisfaction regarding a bona fide dispute or any agreement made in settlement of an action pending in any court provided the accord and satisfaction or agreement and settlement make specific reference to the, stop notice, or bond claims.
- E. The waiver and release given by any claimant hereunder shall be null, void, and unenforceable unless it follows substantially the following forms in the following circumstances. Each waiver in this provision shall contain the following language, in at least as large a type as the largest type otherwise on the document:

-ARTICLE CONTINUES ON NEXT PAGE -

Item 5.

- Where the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the form:

**CONDITIONAL WAIVER AND RELEASE UPON "PROGRESS PAYMENT"**

Upon receipt by the undersigned of a check from: \_\_\_\_\_  
 (Maker of Check)  
 in the sum of \$ \_ payable to: \_\_\_\_\_ (Amount of Check)  
 (Payee or Payees of Check)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of

\_\_\_\_\_ located at: \_\_\_\_\_  
 (CITY) (Job Description)

to the following extent. This release covers a progress payment for labor, services, equipment, or material furnished to

\_\_\_\_\_ through: \_\_\_\_\_  
 (Your Customer) (Date)

only and does not cover any retention's retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon Work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of the document relies on it, said party should verify evidence of payment to the undersigned.

\_\_\_\_\_  
 (Company Name) (Date)

By: \_\_\_\_\_  
 (Title)

**Exclusions:** Listing of Claims, of which Notice has been given:

- Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
- Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
- Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
- Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
- Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_

Item 5.

- Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant asserts in the waiver it has, in fact, been paid the progress payment, the waiver and release shall follow substantially the following form:

**UNCONDITIONAL WAIVER AND RELEASE UPON "PROGRESS PAYMENT"**

The undersigned has been paid and has received a progress payment in the sum of \$ \_\_\_\_\_ for labor, services, equipment, or material furnished to

\_\_\_\_\_  
(Your Customer)

on the job of: \_\_\_\_\_ located at: \_\_\_\_\_  
(CITY) (Job Description)

and does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to

\_\_\_\_\_ through: \_\_\_\_\_  
(Your Customer) (Date)

only and does not cover any retention's retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon Work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

\_\_\_\_\_  
(Company Name) (Date)

By: \_\_\_\_\_  
(Title)

**Exclusions:** Listing of Claims, of which Notice has been given:

- Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
- Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
- Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
- Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
- Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_

**"NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM."**

Item 5.

- 3. Where the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the form:

**CONDITIONAL WAIVER AND RELEASE UPON "FINAL PAYMENT"**

Upon receipt by the undersigned of a check from \_\_\_\_\_

in the sum of \$ \_\_\_\_\_ payable to: \_\_\_\_\_

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of

\_\_\_\_\_ located at: \_\_\_\_\_  
(CITY) (Job Description)

This release covers the final payment to the undersigned for all labor, services, equipment, or material furnished on the job, except for disputed claims for additional Work in the amount of \$ \_\_\_\_\_

Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

\_\_\_\_\_  
(Company Name) (Date)

By: \_\_\_\_\_  
(Title)

**Exclusions:** Listing of Claims, of which Notice has been given:

- 1. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
- 2. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
- 3. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
- 4. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
- 5. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_

Item 5.

- 4. Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver it has, in fact, been paid the final payment, the waiver and release shall follow substantially the form:

**UNCONDITIONAL WAIVER AND RELEASE UPON "FINAL PAYMENT"**

The undersigned has been paid in full for all labor, services, equipment or material

furnished to: \_\_\_\_\_  
(Your Customer)

on the job of: \_\_\_\_\_ located at: \_\_\_\_\_  
(CITY) (Job Description)

and does hereby waive and release any right to a mechanic's lien, stop notice, or any right against a labor and material bond on the job, except for disputed claims for extra Work in the amount of \$ \_\_\_\_\_.

\_\_\_\_\_  
(Company Name) (Date)

By: \_\_\_\_\_  
(Title)

**Exclusions:** Listing of Claims, of which Notice has been given:

- 1. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
- 2. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
- 3. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
- 4. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
- 5. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_

**"NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM."**

14.6 RETENTION. The City shall retain 5% percent of the estimated value of the Work done as part security for the fulfillment of the CONTRACT by the CONTRACTOR.

14.7 SUBSTITUTION OF SECURITIES, ESCROW ACCOUNT

- A. Pursuant to the requirements of Public Contract Code Section 22300, upon CONTRACTOR's request, the City will make payment to CONTRACTOR of any earned retention funds withheld from payments under this Agreement if CONTRACTOR deposits with the City or in escrow with a California or federally chartered bank acceptable to the City, securities eligible for the investment pursuant to Government Code Section 16430 or bank or savings and loan certificates of deposit, upon the following conditions:
1. CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.
  2. All expenses relating to the substitution of securities under Section 22300 and under this Article, including, but not limited to the City's overhead and administrative expenses, and expenses of the escrow agent shall be the responsibility of the CONTRACTOR.
  3. If CONTRACTOR shall choose to enter into an escrow agreement, such agreement form shall be provided by the City upon request, and which shall allow for the conversion to cash to provide funds to meet defaults by the CONTRACTOR including, but not limited to, termination of the CONTRACTOR's control over the Work, stop notices filed pursuant to law, assessment of liquidated damages or amounts to be kept or retained under the provisions of the Project Documents.
  4. Securities, if any, shall be returned to CONTRACTOR only upon satisfactory completion of the Agreement.
- B. To minimize the expense caused by such substitution of securities, CONTRACTOR shall, prior to or at the time CONTRACTOR requests to substitute security, deposit sufficient security to cover the entire amount to be then withheld and to be withheld under the General Conditions of this Agreement. Should the value of such substituted security at any time fall below the amount for which it was substituted, or any other amount which the City determines to withhold, CONTRACTOR shall immediately and at CONTRACTOR's expense deposit additional security qualifying under Section 22300 until the total security deposited is no less than equivalent to the amount subject to withholding under the Agreement.
- C. In the alternative, under Section 22300, the CONTRACTOR may request City to make payment of earned retentions directly to the escrow agent at the expense of the CONTRACTOR. Also at the CONTRACTOR's expense, the CONTRACTOR may direct investment of the payments in securities, and the CONTRACTOR shall receive interest earned on such investment upon the same conditions as provided for securities deposited by CONTRACTOR. Upon satisfactory completion of the contract, CONTRACTOR shall receive from the escrow agent all securities, interest and payments received by escrow agent from the City pursuant to the terms of Section 22300. If CONTRACTOR elects to receive interest on monies withheld in retention by the City, CONTRACTOR shall, at the request of any subcontractor, make that option available to the subcontractor regarding any monies withheld in retention by the CONTRACTOR from the subcontractor. If the CONTRACTOR elects to receive any interest on any monies withheld in retention by the City, then the subcontractor shall receive the identical rate of interest received by the

Item 5.

Contractor on any retention monies withheld from the subcontractor by the CONTRACTOR, less any actual pro rata costs associated with administering and calculating that interest. In the event the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the CONTRACTOR elects to substitute securities in lieu of retention, then, by mutual consent of the CONTRACTOR and subcontractor, the subcontractor may substitute securities in exchange for the release of monies held in retention by CONTRACTOR. This shall apply only to those subcontractors performing more than five percent (5%) of the CONTRACTOR's total bid. The CONTRACTOR shall not require any subcontractor to waive any provision of this section.

- D. If any provision of this Article shall be found to be illegal or unenforceable, then, notwithstanding, the remainder of this Article shall remain in full force and effect, and only such provision shall be deemed stricken.

#### 14.8 CONTRACTOR'S WARRANTY OF TITLE, ASSIGNMENT OF ANTITRUST ACTIONS.

- A. Public Contract Code Section 7103.5 provides:

1. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the CONTRACTOR or Subcontractor offers and agrees to assign to the awarding body (the City) all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the CONTRACTOR, without further acknowledgment by the parties.
2. CONTRACTOR, for itself and all Subcontractors, agrees to assign to the City all rights, title, and interest in and to all such causes of action CONTRACTOR and all Subcontractors may have under the Agreement. This assignment shall become effective at the time the City tenders final payment to the CONTRACTOR, and CONTRACTOR shall require assignments from all Subcontractors to comply herewith.

#### 14.9 REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT

- A. The City's designee will, within **7 days** after receipt of each Application for Payment, either indicate approval by counter-signature on the application for progress payment, or return the application to the CONTRACTOR indicating in writing the City's reasons for refusing to recommend payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the application. **30 days** after presentation of the Application for Payment with the City's recommendation, the amount recommended will become due and when due, will be paid by the City to the CONTRACTOR.
- B. The City may withhold a sufficient amount or amounts of any payment or payments otherwise due to CONTRACTOR, as in its judgment may be necessary to cover:
  1. Payments which may be past due and payable for just claims against CONTRACTOR or any Subcontractors, or against and about the performance of Work on the Project.
  2. The cost of defective or incomplete or damaged Work which CONTRACTOR has not remedied.



Item 5.

3. Liquidated damages assessed against CONTRACTOR.
4. Penalties for violation of labor laws.
5. The cost of materials ordered by the City pursuant to Article 13.
6. The cost of completion of this Agreement if there exists a reasonable doubt that this Agreement can be completed for the balance then unpaid to CONTRACTOR.
7. Damage caused by CONTRACTOR to another contractor.
8. Site clean-up provided by the City (or others on contract to the city) on behalf of the CONTRACTOR for failure of the CONTRACTOR to provide timely and adequate clean up as required by the Project Documents, in the opinion of the City.
9. Payments to indemnify, defend, or hold harmless the City.
10. Any payments due to the City including but not limited to payments for failed tests, utilities or imperfections.
11. Extra services for the Engineer, including but not limited to, services rendered in the evaluation of CONTRACTOR substitution requests, Requests For Information (RFI's), Change Order Requests (COR's) and Claims.
12. Extra services for the INSPECTOR including but not limited to re-inspection required due to CONTRACTOR's failed tests or installation of unapproved or defective materials and CONTRACTOR's requests for inspection and CONTRACTOR's failure to attend the inspection, and Work performed after regular Work hours, or during weekend and/or holidays.
13. Stop Notices/Liens have been filed in connection with the Work and the City has exercised its discretion to not accept a specific Bond intended to discharge of such Liens.
14. Claims by third party entities and/or individuals.
15. Persistent failure to comply with directions given to perform.
16. Costs and/or damages resulting from delay, termination and/or other causes which increase or which may increase the City's costs in administering the contract.
17. There are other items entitling the City to a set-off against the amount recommended.

The City must give the CONTRACTOR written notice stating the reasons for such action and pay the CONTRACTOR in the next application for progress payment, the amount so withheld, or any adjustment thereto agreed to by the City and CONTRACTOR, when CONTRACTOR corrects to the City's satisfaction the reason for such action.

- C. If the above grounds are in the opinion of the City removed by or at the expense of CONTRACTOR, payment shall be made for amounts withheld because of them.
- D. **PAYMENTS WITHHELD.** The City may apply such withheld amount or amounts to payment of such claims or obligations at its discretion. In so doing, the City shall make such payments on behalf of CONTRACTOR. If any payment is so made by the City, then such amount shall be considered as a payment made under contract by the City to CONTRACTOR and the City shall not be liable to CONTRACTOR for such payments

made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The City will render CONTRACTOR an accounting of such funds disbursed on behalf of CONTRACTOR. To minimize/avoid claims of interference and/or that proposed payment was improper, the City shall endeavor to communicate to CONTRACTOR as to the CONTRACTOR's opinion regarding any proposed payment to a third party individual/entity, prior to City making the same. If CONTRACTOR fails to respond in writing detailing the reason(s) for making any such payment within two (2) working days, City shall have the right, but not the duty, to make any such payment without concern that CONTRACTOR will later claim such payment was improper and/or interfered with CONTRACTOR's relationship and/or prospective economic advantage. In such event, all such claims by CONTRACTOR shall be deemed waived.

- E. As an alternative to payment of such claims or obligations, the City, in its sole discretion, may reduce the total contract price as provided in the Article 13.

#### 14.10 PARTIAL OCCUPATION /UTILIZATION

- A. The City reserves the right to occupy buildings and/or portions of the site at any time before completion, and such occupancy shall not constitute final acceptance of any part of Work covered by this Agreement, nor shall such occupancy extend the date specified for completion of the Work, nor shall any such occupancy affect any liquidated damages. The City shall have the right to utilize or place into service any item of equipment or other usable portion of the Work prior to completion of the Work. Whenever the City plans to exercise said right, the CONTRACTOR will be notified in writing by the City, identifying the specific portion or portions of the Work to be so utilized or otherwise placed into service.
- B. It shall be understood by the CONTRACTOR that until such written notification is issued, all responsibility for care and maintenance of all of the Work shall be borne by the CONTRACTOR. Upon issuance of said written notice of Partial Utilization, the City will accept responsibility for the protection and maintenance of all such items or portions of the Work described in the written notice.
- C. The CONTRACTOR shall retain full responsibility for satisfactory completion of the Work, regardless of whether a portion thereof has been partially utilized by the City, and the CONTRACTOR's 1 year correction period shall commence only after the date of Project Completion for the entire Work.

#### 14.11 PROJECT COMPLETION

- A. The City shall accept completion of the Agreement and have the Notice of Completion recorded when the entire Work including CONTRACTOR's Punch List(s) and City's final review comments shall have been completed to the satisfaction of the City. The Work may only be accepted as complete by action of the Escondido City Council. Completion means final completion, and the concept of substantial completion shall not apply to this Agreement.

- B. However, the City, at its sole option, may accept completion of the Agreement and have the Notice of Completion recorded when the entire Work including individual portions of the Work shall have been completed to the satisfaction of the City, except for minor corrective items, as distinguished from incomplete items.
- C. A final walk through of the Project to determine completion of the Agreement and to record the Notice of Completion shall occur only upon a valid claim by CONTRACTOR that the Project is complete except for minor corrective items. Any erroneous claims of completion by CONTRACTOR resulting in a premature walk through shall be at CONTRACTOR's sole cost and expense and the City shall make adjustments to the Contract Price by reducing the amount thereof to pay for any costs incurred by the City due to the erroneous claims by the CONTRACTOR that the Project is complete. Minor corrective items shall be identified in the final walk through of the Project.
- D. If the CONTRACTOR fails to complete the minor corrective items prior to the expiration of the **35 day** period immediately following recording of the Notice of Completion, the City shall withhold from the final payment an amount equal to twice the estimated cost, as determined by the City, of each item until such time as the item is completed. At the end of such **35 day** period, if there are items remaining to be corrected, the City may elect to proceed as provided in the Article 13.

14.12 FINAL APPLICATION FOR PAYMENT. After the CONTRACTOR has completed all of the Work, the punch-list, and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up as-built record documents and other documents, all as required by the Project Documents, and after the Engineer and the City have indicated that the Work is acceptable, the CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective unconditional waiver releases (Reference Article 14.5) by CONTRACTOR and all SUBCONTRACTORS/suppliers that filed preliminary notices of all previous progress payments, conditional waiver and release upon "final payment", and waivers or releases of all Liens arising out of or filed in connection with the Work.

14.13 FINAL PAYMENT AND ACCEPTANCE

- A. If, on the basis of the City's observation of the Work during construction and final inspection, and the City's review of the final Application for Payment and accompanying documentation, all as required by the Contract Documents, the City is satisfied that the Work has been completed and the CONTRACTOR's other obligations under the Contract Documents have been fulfilled, the City designee will recommend payment of the final application for progress payment.
- B. After acceptance of the Work by the Escondido City Council, the City will make final disposition to the CONTRACTOR of the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract Documents, including the following items:
  - 1. Liquidated damages, as applicable; and
  - 2. Amounts withheld by the City under Article 14.9.B. which have not been released.
- C. As a condition of final payment, the CONTRACTOR shall be required to execute a release releasing the City from any and all claims of liability for payment on the Project except for such amounts as may be specifically described and excluded from the release.

14.14 **RELEASE OF RETENTION AND OTHER DEDUCTIONS.** After recording the Notice of Completion with the San Diego County Recorder's Office to initiate the Lien period, and not more than **55 calendar days** thereafter, the City will release to the CONTRACTOR the retention funds withheld pursuant to the Agreement, less any deductions to cover pending claims against the City.

## ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

### 15.1 CITY'S RIGHT TO TERMINATE AGREEMENT

- A. If the CONTRACTOR refuses or fails to complete the Work or any separable part thereof with such diligence as will ensure its completion within the time specified or any extension thereof, or fails to complete said Work within such time, or if the CONTRACTOR should file a petition for relief as a debtor, or should relief be ordered against CONTRACTOR as a debtor under Title 11 of the United States Code, or if CONTRACTOR should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if it should refuse or should fail to supply enough properly skilled workers or proper materials to complete the Work in the time specified, or if CONTRACTOR should fail to make prompt payment to Subcontractors for materials or labor, or disregard laws or ordinances or instructions of the City, or if CONTRACTOR or its Subcontractors should otherwise violate any provision of this Agreement, including, but not limited to, the performance of defective Work, disregard or violate the Laws or Regulations of any public body having jurisdiction; disregard or violate provisions of the Contract Documents or City's instructions; fail to prosecute the Work according to the approved progress schedule; fail to provide a qualified superintendent, competent workmen, or materials or equipment meeting the requirements of the Contract Documents; or disregard the authority of the City, then the City may, without prejudice to any other right or remedy, serve written notice upon CONTRACTOR and its surety of City's intention to terminate this agreement. Such notice shall contain the reasons for such intention to terminate. Unless within **seven (7) days** after the service of such notice such condition shall cease or such violation shall cease and arrangements satisfactory to the City for the correction thereof have been made, this Agreement shall cease and terminate. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished to the City's satisfaction.
- B. In the event of any such termination, the City shall immediately serve written notice thereof upon surety and CONTRACTOR, and surety shall have the duty to take over and perform this Agreement, provided, however, that if surety within **7 days** after service upon it of notice of termination does not give the City written notice of its intention to unqualifiedly by honor its duty to take over and perform this Agreement, or does not commence actual, on site performance thereof within **15 days** after service of the notice of termination by the City on surety, the City may take over the Work and prosecute it to completion by Agreement or by any other method it may deem advisable for the account and at the expense of CONTRACTOR, and CONTRACTOR and its surety shall be liable to the City for any excess cost or other damages, including the added time devised by City personnel and/or consultants, including attorneys, occasioned by the City thereby. Time is of the essence in this Agreement. If the City takes over the Work as herein above provided, the City may, without liability for so doing, take possession of and utilize in completing the Work such materials, supplies, equipment and other property belonging to the CONTRACTOR as may be on the site of the Work and necessary therefore.

- C. If the expense of finishing the Work, including compensation for additional engineering, architectural, managerial, legal, consulting, personnel, and administrative services, shall exceed the unpaid balance of the Agreement, CONTRACTOR and/or its surety shall pay the difference to the City. Expense incurred by the City as herein provided, and damage incurred through CONTRACTOR's default, shall be certified to City by the Engineer, or ARCHITECT if applicable. If the unpaid balance under the Agreement shall exceed the expense of finishing the Work, including compensation for additional architectural, managerial, legal, consulting, personnel, and administrative services, such excess shall be paid to CONTRACTOR or its creditor(s).
- D. If the CONTRACTOR fails to remedy the conditions constituting default within the time allowed, the City may then issue the notice of termination.
- E. In the event that sufficient funds are not appropriated to complete the Project or the City determines that sufficient funds are not available to complete the Project, the City may terminate or suspend the completion of the Project at any time by giving written notice to the CONTRACTOR. In the event that the City exercises this option, the City shall pay for any and all Work and materials completed or delivered onto the site, and the value of any and all Work then in progress and orders actually placed which cannot be canceled up to the date of notice of termination. The value of Work and materials paid for shall include a factor of fifteen percent (15%) for the CONTRACTOR's overhead and profit and there shall be no other costs or expenses paid to CONTRACTOR. All Work, materials and orders paid for pursuant to this provision shall become the property of the City. The City may, without cause, order CONTRACTOR in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as the City may determine. Adjustment shall be made for increases in the cost of performance of the Agreement caused by suspense, delay or interruption.
- F. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the City.

15.2 TERMINATION OF AGREEMENT BY THE CITY FOR CONVENIENCE

- A. Upon **7 days** written notice to the CONTRACTOR the City may, without cause and without prejudice to any other right or remedy of the City, elect to terminate the Agreement. In such case, the CONTRACTOR shall be paid (without duplication of any items):
  - 1. For completed and acceptable Work executed in accordance with the Contract Documents, prior to the effective date of termination, including fair and reasonable sums for overhead and profit of such Work;
  - 2. For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
  - 3. For all reasonable claims, costs, losses, and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
  - 4. For reasonable expenses directly attributable to termination.
- B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

**ARTICLE 16 – CONSTRUCTION CLAIMS, WAIVER AND RELEASE FORMS, DISPUTES, FALSE CLAIMS ACT.**

**16.1 CONTRACTOR CLAIMS**

- A. **NOTICE.** If the CONTRACTOR shall claim compensation for any damage sustained by reason of the acts of the City or its agents, or if the CONTRACTOR disagrees with the City's or Engineer's/Architect's decisions regarding a CONTRACTOR's Change Order Request (COR), the CONTRACTOR shall provide written "Notice" to the City **within 5 days** after sustaining of such damage, or being notified of an adverse decision, and provide within **14 days** of the event the factual basis supporting the claim (unless otherwise specified). The written "Notice" shall state the summary points for which the factual bases will support the claim and cite in detail the Project Documents (including plans and specifications) upon which the claim is to be based. CONTRACTOR's failure to notify the City within such a period shall be deemed a waiver and relinquishment of such a claim. If such notice is given within the specified time, the procedure for its consideration shall be as stated above in these General Conditions.
  
- B. **WAIVER AND RELEASE FORMS.** In addition, on or before the end of the month for which the claim has been filed, the CONTRACTOR shall also file with the City the **WAIVER AND RELEASE FORMS**, for which the claim and the amount of the claim is identified. If the claim is not indicated on the **WAIVER AND RELEASE FORMS**, CONTRACTOR's claim shall be forfeited and invalidated and it shall not be entitled to consideration for time or payment on account of any such claim.
  
- C. **REQUIRED DOCUMENTATION FOR CLAIMS FOR TIME:** Fragnet – Sometimes known as a "Sub-network". A Fragnet will be required for time impact analysis and time extensions. CONTRACTOR's failure to provide a "Notice of Delay" within **24 hours**, and submit a Fragnet for time impact analysis and time extension(s) on or within **14 days** of the delaying event, shall forfeit and invalidate all considerations for time and/or payment. The costs to prepare Fragnets and schedule updates resulting from approved Fragnets are part of the Work, regardless of number and difficulty. The City will provide a response to the Fragnet on or within **14 days** from the completed submission.
  
- D. Except for tort claims, all claims by the CONTRACTOR for a time extension, payment of money or damages arising from Work done by, or on behalf of, the CONTRACTOR pursuant to the Agreement and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or as to the amount of payment which is disputed by the City of \$375,000 or less, is subject to the settlement and arbitration provisions procedures set forth in Public Contract Code Section 20104, et seq. The text of those provisions are provided in full in Article 17.
  
- E. All of the following claims by the CONTRACTOR are subject to the claim resolution procedures set forth in Public Contract Code Section 9204. The text of that section is provided in full in Article 17.
  - 1. A time extension;
  - 2. Payment of money or damages arising from Work done by, or on behalf of, the CONTRACTOR pursuant to the Agreement and payment of which is not otherwise expressly provided for, or CONTRACTOR is not otherwise entitled to; and
  - 3. Payment of an amount that is disputed by the City.

- F. Any claim must be a separate demand sent by registered mail or certified mail with return receipt requested. The CONTRACTOR shall furnish reasonable documentation to support the claim, which shall include all of the materials described in Section 16.1.
- G. The City shall conduct a reasonable review of the claim within **45 days** and shall provide the CONTRACTOR a written statement identifying what portion of the claim is disputed and what portion is undisputed. The City and the CONTRACTOR may, by mutual agreement, extend the time period for response. Any payment due on an undisputed portion of the claim shall be processed and made within **60 days** after the City issues its written statement.
- H. If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim because of privity of contract does not exist, the CONTRACTOR may present a claim to the City on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing that the CONTRACTOR present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the City shall furnish reasonable documentation to support the claim, which shall include all of the materials described in Section 16.1. Within **45 days** of receipt of this written request, the CONTRACTOR shall notify the subcontractor in writing as to whether the CONTRACTOR presented the claim to the City. If the CONTRACTOR did not present the claim, the CONTRACTOR must provide the subcontractor with a statement of the reasons for not presenting the claim to the City.

#### 16.2 DISPUTES –THE CITY'S AND ENGINEER'S DECISIONS

- A. If the CONTRACTOR disputes the City's written response to the claim, or if the City does not respond to the claim within the time prescribed, the CONTRACTOR may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. The CONTRACTOR must send the demand by registered mail or certified mail, return receipt requested. Upon receipt, the City shall schedule a meet and confer conference within **30 days** for settlement of the dispute.
- B. If any portion of the claim remains in dispute after the meet and confer conference, the City shall provide the CONTRACTOR a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed within **10 business days** following the conclusion of the conference. Any payment due on an undisputed portion of the claim shall be processed and made within **60 days** after the City issues its written statement. Any disputed portion of the claim, as identified by the CONTRACTOR in writing, shall be submitted to nonbinding mediation. The City shall conduct a reasonable review of the claim within **45 days** and shall provide the CONTRACTOR a written statement identifying what portion of the claim is disputed and what portion is undisputed. The City and the CONTRACTOR may, by mutual agreement, extend the time period for response. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the City issues its written statement.
- C. The City and CONTRACTOR shall mutually agree to a mediator within **10 business days** after the disputed portion of the claim has been identified in writing. The City and the CONTRACTOR shall share the associated costs of mediation equally. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside Section 9204. The mediation

conducted shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

D. Failure by the City to respond to a claim from the CONTRACTOR within the time periods described above or to otherwise meet the time requirements described above shall result in the claim being deemed rejected in its entirety.

E. Amounts not paid in a timely manner as outlined above will bear interest at 7% per year.

16.3 FALSE CLAIMS ACT CERTIFICATION. All claims submitted by the CONTRACTOR shall be accompanied by a notarized certificate containing the following language:

Under penalty perjury and with specific reference to the California False Claims Act, Government Code Section 12650 et. seq., the undersigned,

\_\_\_\_\_  
(name) \_\_\_\_\_ of  
(title) \_\_\_\_\_  
(company) \_\_\_\_\_

hereby certifies that the claim for the additional compensation and time, if any, made herein for the Work on this Contract is a true statement of the actual costs incurred or estimated future costs, and time sought, and is fully documented and supported under the Agreement.

Dated \_\_\_\_\_

/s/ \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day

of \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
My Commission Expires \_\_\_\_\_

Failure to submit the notarized certificate will be sufficient cause for denying the claim.

**ARTICLE 17 – MISCELLANEOUS**

**17.1 GIVING NOTICE**

A. Any notice from one party to the other or otherwise under the Agreement shall be in writing and shall be dated and signed by party giving such notice or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners, and copied to the City:

1. If notice is given to the City, by personal delivery thereof to the City or by deposit in the United States mail, enclosed in a sealed envelope addressed to the City, and sent by registered or certified mail with postage prepaid;
2. If notice is given to CONTRACTOR, by personal delivery thereof to said CONTRACTOR or to CONTRACTOR's superintendent at the site of the Project,



or by deposit in the United States mail, enclosed in a sealed envelope addressed to said CONTRACTOR at its regular place of business or at such address as may have been established for the conduct of Work under this Agreement, and sent by registered or certified mail with postage prepaid;

3. If notice is given to the surety or other persons, by personal delivery to such surety or other person or by deposit in the United States mail, enclosed in a sealed envelope, addressed to such surety or person at the address of such surety or person last communicated by the surety or other person to the party giving notice, and sent by registered or certified mail with postage prepaid.

- 17.2 **TITLE TO MATERIALS FOUND ON THE WORK.** The City reserves the right to retain title to all soils, stone, sand, gravel, and other materials developed and obtained from excavations and other operations connected with the Work. Unless otherwise specified in the Contract Documents, neither the CONTRACTOR nor any Subcontractor shall have any right, title, or interest in or to any such materials. The CONTRACTOR will be permitted to use in the Work, without charge, any such materials which meet the requirements of the Contract Documents.
- 17.3 **RIGHT TO AUDIT.** If the CONTRACTOR submits a claim to the City for additional compensation, the City shall have the right, as a condition to considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled, to audit the CONTRACTOR's Documents and books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted. The right to audit shall include the right to inspect the CONTRACTOR's plant, or such parts thereof, as may be or have been engaged in the performance of the Work. The CONTRACTOR further agrees that the right to audit encompasses all subcontracts and is binding upon Subcontractors. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the City deems desirable during the CONTRACTOR's normal business hours at the office of the CONTRACTOR. The CONTRACTOR shall make available to the City for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the City.
- 17.4 **SURVIVAL OF OBLIGATIONS.** All representations, indemnifications, warranties, and guaranties made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work or termination or completion of the Agreement.
- 17.5 **CONTROLLING LAW.** This Agreement is to be governed by the law of the state of California, in which the Project is located, with venue in North San Diego County.
- 17.6 **SEVERABILITY.** If any term or provision of this Agreement is declared invalid or unenforceable by any court of lawful jurisdiction, the remaining terms and provisions of the Agreement shall not be affected thereby and shall remain in full force and effect.
- 17.7 **WAIVER.** The waiver by the City of any breach or violation of any term, covenant or condition of this Agreement or of any Agreement provision, ordinance, or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent payment of any monies or fee by the City which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by CONTRACTOR or any term, covenant, condition of this Agreement or of any applicable law or ordinance.

17.8 PROHIBITED INTERESTS. No official of the City who is authorized in such capacity and on behalf of the City to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, shall become directly or indirectly interested financially in this Project or in any part thereof. No officer, employee, Engineer, attorney, architect or inspector of or for City who is authorized in such capacity and on behalf of the City to exercise any executive, supervisory or other similar functions in connection with construction of Project shall become directly or indirectly interested financially in this Project or in any part thereof. CONTRACTOR shall receive no compensation and shall repay the City for any compensation received by or from CONTRACTOR hereunder, should CONTRACTOR aid, abet or knowingly participate in violation of this Article.

17.9 California Public Contract Code § 9204. Legislative findings and declarations regarding timely and complete payment of contractors for public works projects; claims process.

- (a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
- (b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
- (c) For purposes of this section:
  - (1) “Claim” means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
    - A. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
    - B. Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
    - C. Payment of an amount that is disputed by the public entity.
  - (2) “Contractor” means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
  - (3) A. “Public entity” means, without limitation, except as provided in subparagraph B., a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.
    - B. “Public entity” shall not include the following:
      - (i) The Department of Water Resources as to any project under the jurisdiction of that department.
      - (ii) The Department of Transportation as to any project under the jurisdiction of that department.
      - (iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

- (iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
  - (v) The Military Department as to any project under the jurisdiction of that department.
  - (vi) The Department of General Services as to all other projects.
  - (vii) The High-Speed Rail Authority.
- (4) “Public works project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.
- (5) “Subcontractor” means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.
- (d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.
- (B) The claimant shall furnish reasonable documentation to support the claim.
- (C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.
- (D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.
- (2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- (B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection

- with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.
- (C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.
  - (D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
  - (E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.
- (3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.
  - (4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.
  - (5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.
  - (e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.
  - (f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.
  - (g) This section applies to contracts entered into on or after January 1, 2017.
  - (h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.
  - (i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

17.10 California Public Contract Code § 20104. Application of article; provisions included in plans and specifications.

- (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.
- (a) (2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.
- (b) (1) "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.
- (b) (2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.
- (c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.
- (d) This article applies only to contracts entered into on or after January 1, 1991.

17.11 California Public Contract Code § 20104.2. Claims; requirements; tort claims excluded.

For any claim subject to this article, the following requirements apply:

- (a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
- (b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
- (b) (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
- (b) (3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.
- (c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
- (c) (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
- (c) (3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.
- (d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local

agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

- (e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
- (f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

17.12 California Public Contract Code § 20104.4. Civil action procedures; mediation and arbitration; trial de novo; witnesses.

The following procedures are established for all civil actions filed to resolve claims subject to this article:

- (a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.
- (b)
  - (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.
  - (2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.
  - (3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.
- (c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

17.13 California Public Contract Code § 20104.6. Payment on undisputed portion of claim; interest on arbitration awards or judgments.

- (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.
- (b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.



Bond No.: 108061531  
Premium: \$14,940.00  
Premium subject to adjustment  
based on final contract price

### FAITHFUL PERFORMANCE BOND

KNOW ALL BY THESE PRESENTS,

WHEREAS, The City Council of the City of Escondido, State of California, and Filanc, a \_\_\_\_\_ ("Principal"), have entered into that certain Public Improvement Agreement dated \_\_\_\_\_ ("Agreement," hereby referred to and made a part hereof), whereby Principal has agreed to install and complete certain designated public improvements associated with the Emergency Trunk Sewer Replacement 2024 Project.

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

NOW, THEREFORE, we, the Principal and Travelers Casualty and Surety Company of America, a surety organized and existing under the laws of the State of Connecticut and authorized to act as a surety in the State of California ("Surety"), are held and firmly bound unto the City of Escondido, a California municipal corporation ("City") in the penal sum of One Million Seven Hundred Ninety-Five Thousand Five Hundred Thirty Four dollars and zero cents (\$1,795,534.00), lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

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

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

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



IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, as of this 19th day of July, 2024.

Filanc \_\_\_\_\_

Name of Principal

740 N. Andreasen Drive, Escondido, CA 92029

Address of Principal

By:   
Signature of Person Signing on Behalf of Principal

DAVID J. KIESS  
Name of Person Signing on Behalf of Principal

VICE PRESIDENT  
Title of Person Signing on Behalf of Principal

Travelers Casualty and Surety Company of America

Name of Surety

21688 Gateway Center Drive, Diamond Bar, CA 91765

Address of Surety

By:   
Signature of Person Signing on Behalf of Surety

Lawrence F. McMahon  
Name of Person Signing on Behalf of Surety

Attorney-in-Fact  
Title of Person Signing on Behalf of Surety

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

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

BY: 

Date: 08 / 07 / 2024

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

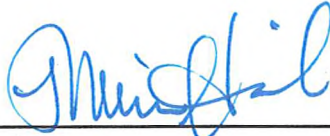
State of California  
County of San Diego )

On July 19, 2024 before me, Minna Huovila, Notary Public  
(insert name and title of the officer)

personally appeared Lawrence F. McMahon,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

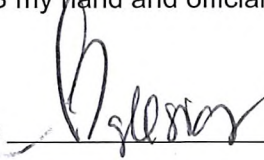
State of California  
County of San Diego )

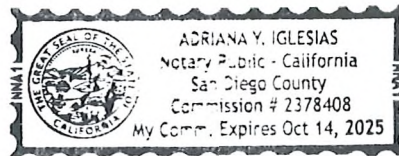
On July 23 2024 before me, Adriana Y. Iglesias, Notary Public  
(insert name and title of the officer)

personally appeared David Kiess,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 





**Travelers Casualty and Surety Company of America  
Travelers Casualty and Surety Company  
St. Paul Fire and Marine Insurance Company**

**POWER OF ATTORNEY**

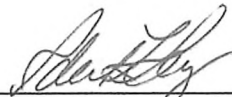
**KNOW ALL MEN BY THESE PRESENTS:** That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **LAWRENCE F MCMAHON** of **SAN DIEGO**, California, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**IN WITNESS WHEREOF**, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this 21st day of April, 2021.



State of Connecticut

City of Hartford ss.

By:   
Robert L. Raney, Senior Vice President

On this the 21st day of April, 2021, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

**IN WITNESS WHEREOF**, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2026



  
Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 19th day of July, 2024.



  
Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.**

**Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.**



Bond No.: 108061531  
Premium: Included in Performance  
Bond

## LABOR AND MATERIALS BOND

KNOW ALL BY THESE PRESENTS,

WHEREAS, The City Council of the City of Escondido, State of California, and Filanc, a \_\_\_\_\_ ("Principal"), have entered into that certain Public Improvement Agreement dated \_\_\_\_\_ ("Agreement," hereby referred to and made a part hereof), whereby Principal has agreed to install and complete certain designated public improvements associated with the Emergency Trunk Sewer Replacement 2024 Project.

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

NOW, THEREFORE, the Principal and Travelers Casualty and Surety Company of America, a surety organized and existing under the laws of the State of Connecticut and authorized to act as a surety in the State of California ("Surety"), are held firmly bound unto the City and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the Agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of One Million Seven Hundred Ninety-Five Thousand Five Hundred Thirty Four dollars and zero cents (\$1,795,534.00), lawful money of the United States of America, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

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

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

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or to the work to be performed thereunder or the

Item 5.

specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, as of this 19th day of July, 2024.

Filanc \_\_\_\_\_  
Name of Principal

740 N. Andreasen Drive, Escondido, CA 92029  
Address of Principal


By:   
Signature of Person Signing on Behalf of Principal

DAVID J. KIESS  
Name of Person Signing on Behalf of Principal

VICE PRESIDENT  
Title of Person Signing on Behalf of Principal

Travelers Casualty and Surety Company of  
America

Name of Surety  
21688 Gateway Center Drive, Diamond Bar,  
CA 91765  
Address of Surety

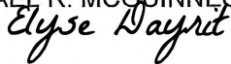
By:   
Signature of Person Signing on Behalf of Surety

Lawrence F. McMahon  
Name of Person Signing on Behalf of Surety

Attorney-in-Fact  
Title of Person Signing on Behalf of Surety

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

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

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

Date: 08 / 07 / 2024  
\_\_\_\_\_

142

### ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

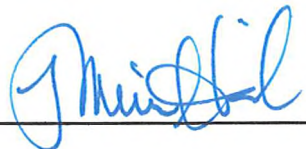
State of California  
County of San Diego )

On July 19, 2024 before me, Minna Huovila, Notary Public  
(insert name and title of the officer)

personally appeared Lawrence F. McMahon,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)





**Travelers Casualty and Surety Company of America**  
**Travelers Casualty and Surety Company**  
**St. Paul Fire and Marine Insurance Company**

**POWER OF ATTORNEY**

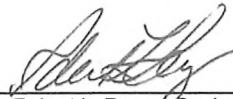
**KNOW ALL MEN BY THESE PRESENTS:** That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **LAWRENCE F MCMAHON** of **SAN DIEGO, California**, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**IN WITNESS WHEREOF**, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **21st** day of **April, 2021**.



State of Connecticut

City of Hartford ss.

By:   
Robert L. Raney, Senior Vice President

On this the **21st** day of **April, 2021**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

**IN WITNESS WHEREOF**, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June, 2026**



  
Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

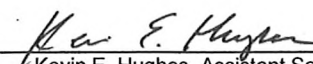
**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 19th day of July, 2024.



  
Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.**  
**Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.**



### ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

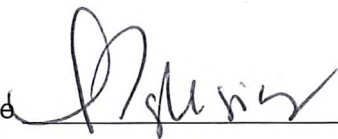
State of California  
County of San Diego )

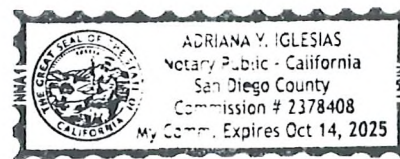
On July 23 2024 before me, Adriana Y. Iglesias, Notary Public  
(insert name and title of the officer)

personally appeared David Kiess,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 



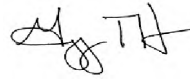
**RECORD OF PROCEEDING**

**CONSENT OF DIRECTORS OF  
J.R. FILANC CONSTRUCTION COMPANY  
IN LIEU OF SPECIAL MEETING OF  
December 18, 2023**

In lieu of a special meeting of the Board of Directors of J.R. Filanc Construction Company (the "Company") on December 18, 2023, the undersigned, being all of the Directors of said Company, do hereby consent and agree:

1. BE IT RESOLVED, the Directors hereby approve, adopt and ratify the attached Operational Limits of Authority;
2. BE IT RESOLVED, the Directors hereby approve, adopt, ratify and confirm, that Greg Hesser, Kevin Williams, Mark Filanc, Omar Rodea are hereby authorized to sign documents on behalf of Filanc in accordance with the attached Operational Limits of Authority. Refer to the Operational Limits for additional limited individuals.

Executed at St. Louis County, Missouri, this 18th day of December 2023.



\_\_\_\_\_  
Gregory T. Hesser



\_\_\_\_\_  
Richard Jagers



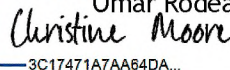
\_\_\_\_\_  
Michael Burke



DocuSigned by:  
Kevin L. Williams

  
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DocuSigned by:  
Omar Rodea

  
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Christine Moore




All the Directors of  
J.R. Filanc Construction Company



Title	City of Escondido - PIA for Signature - Filanc
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# STAFF REPORT

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August 28, 2024  
File Number 0600-95

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## SUBJECT

### **NOTICE OF COMPLETION FOR EMERGENCY REPAIR OF THE ESCONDIDO LAND OUTFALL**

## DEPARTMENT

Utilities Department, Wastewater Division

## RECOMMENDATION

Request the City Council adopt Resolution No. 2024-119, authorizing the Director of Utilities to file a Notice of Completion for Emergency Repair of the Escondido Land Outfall Project.

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

Presenter: Stephanie Roman, Interim Assistant Director of Utilities, Construction & Engineering

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

**COUNCIL PRIORITY** – Improve Public Safety

## FISCAL ANALYSIS

The total cost of the emergency repair work of the Escondido Land outfall was \$465,701.84. The project was funded from the Wastewater Capital Project (“CIP”) budget for Outfall Maintenance, CIP No. 800079.

## PREVIOUS ACTION

On April 30, 2024, City Council adopted Resolution No. 2024-52, ratifying Proclamation No. 2024-01, affirming that it was appropriate for City staff to forego competitive bidding procedures and award a contract in an amount not to exceed \$1,681,802 with CCL Contracting, Inc. on a ‘time and materials’ basis to perform the emergency repair of the Escondido Land Outfall to safeguard life, health or property. In addition, City Council approved a Budget Adjustment in the amount of \$1,700,000.

On May 15, 2024, City Council adopted Resolution No. 2024-57, reaffirming that there was a need to continue the emergency repairs of the Land Outfall.

## BACKGROUND

The City of Escondido (“City”) owns and operates a 14-mile Land Outfall that conveys secondary treated wastewater effluent westerly from Hale Avenue Resource Recovery Facility (“HARRF”) to San Elijo Joint Powers Authority (“SEJPA”) Ocean Outfall via a regulating vault that is owned, operated and maintained

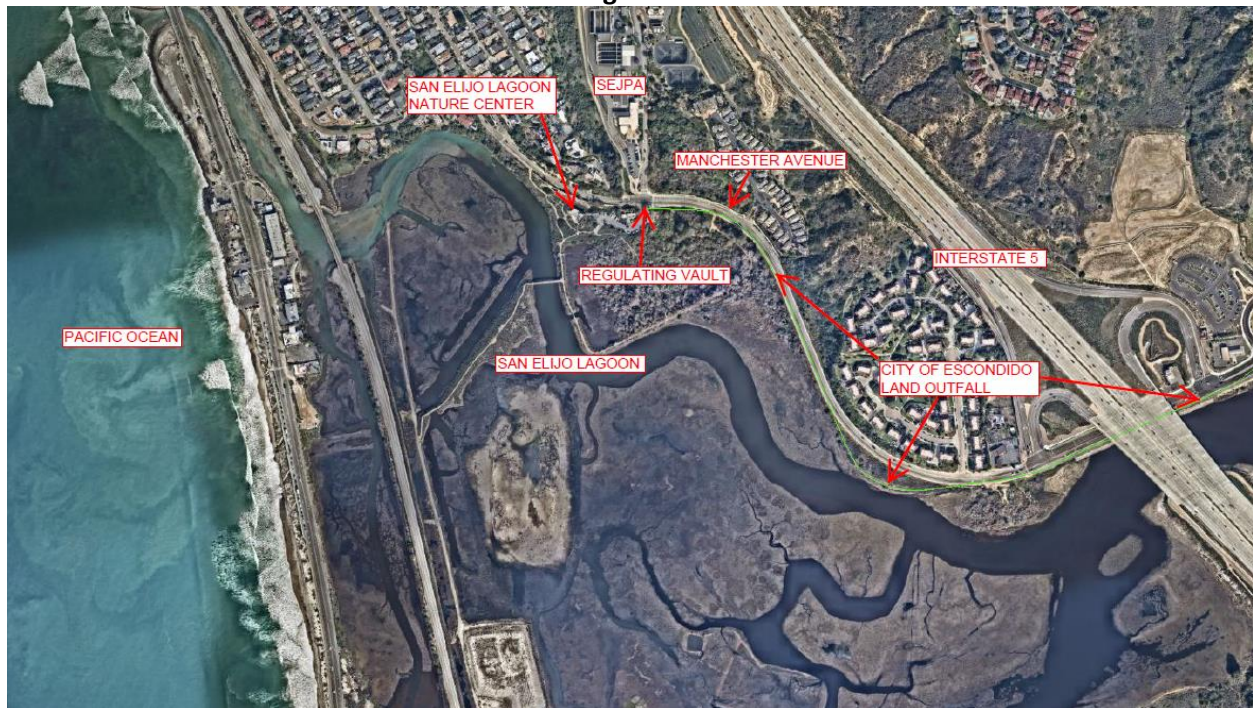


# CITY of ESCONDIDO

## STAFF REPORT

by SEJPA. The regulating vault is located west of Interstate 5 and Manchester Avenue, and north of the San Elijo Lagoon, as shown in **Figure 1**. Seventy-nine percent of the Ocean Outfall's capacity is leased to the City. The Land Outfall pipeline was constructed in 1974.

**Figure 1**



On April 16, 2024, Utilities Staff was notified by staff from the SEJPA and the County of San Diego Department of Parks and Recreation ("County DPR")/San Elijo Lagoon Nature Center that water was surfacing on the ground near an area where the City's Land Outfall is located. The weeping of the Land Outfall was located near the San Elijo Lagoon Nature Center at the northern border of the San Elijo Lagoon, west of Interstate 5 and south of Manchester Road. City Staff responded immediately to assess the situation. Water samples were collected and analyzed to determine the likely source of the water, and mitigation measures were taken to contain and prevent travel of leaking secondary effluent. Laboratory test results were consistent with HARRF secondary effluent water quality parameters, indicating that there was a leak on the Land Outfall.

On April 25, 2024, the City Manager, acting in his role as Director of Emergency Services, pursuant to Chapter 7 of the Escondido Municipal Code, specifically Section 7-6(a)(1), made findings of an emergency due to the existence or threatened existence to life, health or property, and approved under his authority the initiation of City Staff efforts to immediately secure a contractor available and competent to perform needed repair to the Escondido Land Outfall.



# CITY of ESCONDIDO

## STAFF REPORT

As required by the Regional Board, Utilities Staff: prepared and submitted a report of non-compliance for National Pollutant Discharge Elimination System ("NPDES") permit violation; prepared a pre-disturbance damage assessment of the anticipated affected area due to both the weeping of the Land Outfall within the San Elijo Nature Center and the construction associated with repairing the Land Outfall; and continued to collect and analyze water samples, in addition to collection and mitigation of travel leak source water.

On May 13, 2024, the leak was found on the Escondido Land Outfall and repair work began. On May 15, 2024, a condition assessment of the exposed portion of the Escondido Land Outfall was performed by a consultant specializing in pipeline assessment to evaluate its condition. Potential threats to the Escondido Land Outfall pipeline's integrity were generally low, with soil and groundwater corrosion and stray current being the most likely source of failure with the pipeline joints being at higher risk.

The repair of the Escondido Land Outfall was completed by May 16, 2024. **Figures 2, 3, and 4** show the final stages of repair to the Escondido Land Outfall.

**Figure 2**



**Figure 3**



**Figure 4**



Restoration and clean-up efforts followed with backfilling and compacting of the trench, restoration of the street, sidewalk, and pedestrian trail. A 25-month post-construction revegetation effort to the affected San Elijo Nature Center to mitigate impacts caused by the emergency repairs and includes: planting, irrigation, maintenance, survivorship monitoring and mortality replacement planting. The disturbance consists of 0.11-acre of graded land that previously contained coastal sage scrub and southern willow scrub habitats. The goal of the mitigation project is to revegetate the area with native species consistent with the vegetation communities that existed during pre-construction conditions.

### RESOLUTIONS

- a. Resolution No. 2024-119

## RESOLUTION NO. 2024-119

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE DIRECTOR OF UTILITIES TO FILE A NOTICE OF COMPLETION FOR THE EMERGENCY LAND OUTFALL REPAIR

WHEREAS, a section of the City's Land Outfall was at risk of imminent, catastrophic failure; and

WHEREAS, on April 30, 2024, the City Council adopted Resolution No. 2024-52, confirming that this risk constitutes an emergency, and authorizing staff to purchase services without adopting plans, specifications, working details, or giving notice of bids to award contracts; and

WHEREAS, staff subsequently entered into a Public Improvement Agreement with CCL Contracting, Inc. in an amount not to exceed \$1,681,802 to perform the repair work; and

WHEREAS, pursuant to Resolution No. 2024-57, the City Council declared that emergency repairs should continue; and

WHEREAS, the emergency repairs were completed by CCL Contracting, Inc. in June 2024; and

WHEREAS, the City of Escondido staff and the Director of Utilities deem the filing of the Notice of Completion to be valid at this time; and

WHEREAS, this City Council desires at the time and deems it to be in the best public interest to approve the filing of the Notice of Completion.

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 accepts the recommendation of the Director of Utilities.
3. That the City Council hereby approves the request to file a Notice of Completion for the  
Emergency Land Outfall repair.



# STAFF REPORT

August 14, 2024

File Number 0600-10; A-3525

## SUBJECT

**AGREEMENT OF PURCHASE AND SALE BETWEEN THE CITY OF ESCONDIDO AND 1501 AUTO PARKWAY, LLC (“BUYER”) AND DECLARATION OF EXEMPT SURPLUS LAND**

## DEPARTMENT

Economic Development

## RECOMMENDATION

Request the City Council adopt Resolution No. 2024-122 authorizing and approving the execution of an Agreement of Purchase and Sale between the City of Escondido and 1501 Auto Parkway, LLC (“Buyer”) for real property located at or about 707 S. Hale Avenue, Escondido, California (“Property”).

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

Presenter: Jennifer Schoeneck, Director of Economic Development

**ESSENTIAL SERVICE** – Yes, Land Use/Development

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

## FISCAL ANALYSIS

The City received \$66,827.28 in annual rent between August 1, 2023 and July 31, 2024, which equates to \$5,568.94 per month for 46,936 square feet of flood control channel land. Proceeds from the sale, amounting to \$433,000, will be deposited into the General Fund.

## PREVIOUS ACTION

On June 28, 2000, the City Council adopted Resolution No. 2000-121, authorizing the first lease for the subject Property. On July 20, 2016, the City Council adopted Resolution No. 2016-107, authorizing the current lease for the Property.

## BACKGROUND

On June 28, 2000, the City Council adopted Resolution No. 2000-121, authorizing the lease of approximately 28,000 square feet of land adjacent to the City’s Flood Control Channel and 1501 Auto Parkway to EJE, Inc., doing business as North County Kia (“Kia”), for vehicle parking. On July 20, 2016, the City



# CITY *of* ESCONDIDO

## STAFF REPORT

Council adopted Resolution No. 2016-107, allowing North County Kia to expand its leased premises by an additional 18,639 square feet and extend the lease term through July 2026.

The City received an offer from the adjacent property owner, 1501 Auto Parkway LLC (“Buyer”), to purchase the Property for \$433,000, based on an appraisal commissioned by the City. The Property meets the definition of “exempt surplus land” under California Government Code Section 54221(f)(1)(E) as it is surplus land that was a former street, right-of-way, or easement and is being conveyed to the owner of an adjacent property.

The City has no current need for the Property, other than for its existing underground utilities, which will not be impacted by this sale. Therefore, the City will reserve a permanent and perpetual easement across, over, under, and upon the Property for access, ingress, egress, operation, maintenance, repair, construction, installation, abandonment, replacement, and/or alteration of existing City infrastructure and associated appurtenances, both above and below ground.

The sale of this Property to Kia reflects the fair market value for the current highest and best use of the Property.

### RESOLUTIONS

- a. Resolution No. 2024-122
- b. Resolution No. 2024-122 Exhibit “A”- Agreement of Purchase and Sale and Joint Escrow Instructions

## RESOLUTION NO. 2024-122

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, THE AGREEMENT OF PURCHASE AND SALE OF CITY-OWNED REAL PROPERTY, AT 707 S HALE AVENUE, ESCONDIDO, CALIFORNIA, TO 1501 AUTO PARKWAY LLC AND ANY RELATED DOCUMENTS NECESSARY FOR THE SALE; AND DECLARING THE SUBJECT PROPERTY AS EXEMPT SURPLUS PROPERTY

WHEREAS, the City of Escondido is the owner of that certain real property, generally located at 707 S Hale Avenue, Escondido, California 92029, which is a portion of assessor's parcel numbers 232-372-21-00 and 232-542-15-00 ("Property"); and

WHEREAS, the Surplus Lands Act (Gov. Code Section 54220, *et seq.*) ("Act") requires local agencies, prior to disposing of surplus real property, to provide a notice of availability of that property to certain entities for specified uses, including affordable housing, parks and recreation, or open space; and

WHEREAS, the Act defines "surplus land" as "land owned in fee simple by any local agency for which the local agency's governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency's use;" and

WHEREAS, certain surplus lands, however, are exempt from the noticing requirements under the Act; and

WHEREAS, the Property meets the definition of "exempt surplus land" under California Government Code Section 54221(f)(1)(E) in that it is surplus land that is a former street, right-of-way, or easement, and is being conveyed to an owner of an adjacent property; and

WHEREAS, none of the characteristics listed under California Government Code Section 54221(f)(2) apply to the property in that it is not within a coastal zone, adjacent to a historical unit of the State Parks System, listed on or determined by the State Office of Historic Preservation to be eligible for the National Register of Historic Places, or within the Lake Tahoe region; and

WHEREAS, this City Council finds, determines, and declares that the Property is “exempt surplus land” and deems it to be in the best public interest to dispose of the Property; and

WHEREAS, the City received an offer from the adjacent property owner, 1501 Auto Parkway LLC (“Buyer”) to purchase the property for \$433,000, based on an appraisal commissioned by the City; and

WHEREAS, the City wishes to sell the Property at \$433,000 and to enter into a purchase agreement with the Buyer; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve the Agreement of Purchase and Sale of the Property to Buyer.

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

1. That the above recitations are true.
2. That the City Council finds, determines and declares that the subject Property is exempt surplus land under the California Government Code.
3. That the City Council authorizes the mayor to execute, on behalf of the City, the Agreement of Purchase and Sale and Joint Escrow Instructions of the City-owned Property, generally located at 707 S Hale Avenue, Escondido, California 92029 to 1501 Auto Parkway LLC, a Delaware limited liability company, and any related documents necessary for the sale. A copy of the Purchase and Sale Agreement is attached hereto as Exhibit “A” and is incorporated by this reference.



APN Portions of 232-542-15  
and 232-372-21

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AGREEMENT OF PURCHASE AND SALE AND  
JOINT ESCROW INSTRUCTIONS

**TABLE OF CONTENTS**

**SECTION 1 DEFINITION OF TERMS ..... 1**

**SECTION 2 PROPERTY ..... 3**

**SECTION 3 PURCHASE PRICE ..... 3**

**SECTION 4 ESCROW ..... 4**

**SECTION 5 TITLE..... 4**

**SECTION 6 CONDITIONS TO CLOSE ESCROW ..... 5**

**SECTION 7 BUYER’S OBLIGATIONS ..... 6**

**SECTION 8 CITY’S OBLIGATIONS..... 8**

**SECTION 9 RIGHT TO ENTER ONTO THE PROPERTY ..... 8**

**SECTION 10 COSTS..... 10**

**SECTION 11 TERMINATION ..... 10**

**SECTION 12 SOLE RELIANCE..... 11**

**SECTION 13 AS IS, WHERE IS..... 11**

**SECTION 14 ATTORNEY’S FEES, COSTS AND EXPENSES ..... 12**

**SECTION 15 ASSIGNMENT ..... 12**

**SECTION 16 MISCELLANEOUS ..... 12**

# CITY OF ESCONDIDO AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS

This **Agreement** is made as of March 19, 2024 between the City of Escondido (**City**) and 1501 Auto Parkway, LLC, a Delaware limited liability company (**Buyer**).

## RECITALS

The City is the owner of that certain real property, generally located at 707 S Hale Avenue, Escondido CA 92029, and is a portion of assessor’s parcel numbers 232-372-21-00 and 232-542-15-00 (defined herein as the “Property”). The City desires to sell and Buyer desires to purchase the Property upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Buyer agree that the terms and conditions of this Agreement and the instructions to Escrow Holder with regard to the Escrow, created pursuant hereto are as follows:

### **Section 1 Definition of Terms**

The following words in this Agreement shall have the significance attached to them in this Section unless otherwise apparent from their context.

- 1.1 **Agreement.** Agreement means this Agreement of Purchase and Sale and Joint Escrow Instructions.
- 1.2 **Approved Conditions of Title.** Approved Conditions of Title means only those conditions to title as provided in Section 5.2 of this Agreement.
- 1.3 **Buyer.** Buyer means 1501 Auto Parkway, LLC, a Delaware limited liability company and does not include its heirs, assigns, or successors-in-interest.
- 1.4 **City.** The City means the City of Escondido, a California general law City.
- 1.5 **Close of Escrow.** Close of Escrow means the date provided in Section 4.2 of this Agreement.
- 1.6 **County.** County means the County of San Diego, State of California.
- 1.7 **Deposit.** Deposit means the total sum of the funds deposited, as described in Section 3.1 of this Agreement.
- 1.8 **Due Diligence Materials.** Due Diligence Materials means those materials specifically described in Exhibit B, attached hereto and incorporated herein by this reference.



- 1.9 **Effective Date.** Effective Date means the date this Agreement is countersigned by the Mayor of the City.
- 1.10 **Escrow Holder.** Escrow Holder means Chicago Title and Escrow, attn Meg Kilfoil-Dick. With office located at 2111 Palomar Airport Road, Suite 260, Carlsbad, California, 92008, 760-581-7007, mkdick@ctt.com.
- 1.11 **Feasibility Period.** Feasibility Period means the period commencing upon the Effective Date of this Agreement and expiring thirty (30) days thereafter.
- 1.12 **General and Special Real Estate Taxes.** General and Special Real Estate Taxes means all non-delinquent taxes and charges of the type customarily evidenced by a secured tax bill issued by the Tax Collector of the County, including, but not limited to, amounts allocated to (i) County or City general governmental purposes; (ii) bonded indebtedness of the County or City; (iii) bonded or other indebtedness and operating expenses of any school, college, sewer, water, irrigation, hospital, library, utility, county service, community facilities district, or other district; and (iv) any other lawful purpose. The Parties acknowledge that prior to the Close of Escrow, the Property may not be subject to General and Special Real Estate Taxes because the Property is owned by a public entity, but such fact shall not be construed to release or relieve Buyer from the obligation to assume responsibility for General and Special Real Estate Taxes as of the Close of Escrow.
- 1.13 **Grant Deed.** Grant Deed means the recorded grant deed transferring ownership from the City to Buyer.
- 1.14 **Hazardous Materials.** Hazardous Materials means any chemical, material, or substance now or hereafter defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, extremely hazardous waste, restricted hazardous waste, toxic substances, pollutant or contaminant, imminently hazardous chemical substance or mixture, hazardous air pollutant, toxic pollutant, or words of similar import under any local, state, or federal law or under the regulations adopted or publications promulgated pursuant thereto applicable to the Property, including, without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. (“**CERCLA**”); the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.; and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq. (“**RCRA**”). The term Hazardous Materials shall also include any of the following: any and all toxic or hazardous substances, materials, or wastes listed in the United States Department of Transportation Table (49 CFR Part 302) and in any and all amendments thereto in effect as of the Close of Escrow; oil, petroleum, petroleum products (including, without limitation, crude oil or any fraction thereof), natural gas, natural gas liquids, liquefied natural gas or synthetic gas

usable for fuel, not otherwise designated as a hazardous substance under CERCLA; any substance that is toxic, explosive, corrosive, reactive, flammable, infectious, or radioactive (including any source, special nuclear or by-product material as defined at 42 U.S.C. § 2011 et seq.), carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority; asbestos in any form; urea formaldehyde foam insulation; transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls; radon gas; or any other chemical, material, or substance (i) that poses a hazard to the Property, to adjacent properties, or to persons on or about the Property; (ii) that causes the Property to be in violation of any of the aforementioned laws or regulations; or (iii) the presence of which on or in the Property requires investigation, reporting, or remediation under any such laws or regulations.

- 1.15 **Opening of Escrow.** Opening of Escrow means the date as provided in Section 4.1 of this Agreement.
- 1.16 **Party(ies).** Buyer or the City may be referred to individually as a Party or collectively as the Parties.
- 1.17 **Property.** Property means that certain real property generally located at 707 S Hale Avenue, Escondido CA 92029, and is a portion of assessor’s parcel numbers (APN) 232-372-21-00 and 232-542-15-00, as further described in Exhibit A, attached hereto and incorporated herein by this reference, reserving therefrom a perpetual easement for the benefit of the City.
- 1.18 **Purchase Price.** Purchase Price means the purchase price for the Property as provided in Section 3.2 of this Agreement.
- 1.19 **Report.** Report means a standard preliminary title report issued by the Title Insurer with respect to the Property within five (5) days following the Opening of Escrow.
- 1.20 **Surplus Land.** Surplus Land means “surplus land” as defined in the Surplus Land Act, California Government Code § 54220 et seq.
- 1.21 **Title Insurer.** Title Insurer means Chicago Title.
- 1.22 **Title Policy.** Title Policy means the title policy as set forth in Section 5.1 of this Agreement.

## Section 2 Property

The City shall sell the Property to Buyer and Buyer shall purchase the Property from the City on the terms and conditions stated in this Agreement.

## Section 3 Purchase Price

- 3.1 **Deposit.** Concurrently with the Opening of Escrow, Buyer shall deliver to Escrow Holder the First Deposit sum of FIFTY THOUSAND DOLLARS (\$50,000.00)

which shall be held by Escrow Holder until the expiration of the Feasibility Period, at which time it shall be delivered to the City. If either Party terminates this Agreement prior to the expiration of the Feasibility Period, then the Deposit shall be returned to Buyer.

3.2 Purchase Price. City agrees to sell and Buyer agrees to purchase the Property for the Purchase Price of FOUR HUNDRED THIRTY-THREE THOUSAND DOLLARS (\$433,000.00).

3.3 Payment of Purchase Price. Buyer shall deposit with Escrow Holder in cash, at least one business day before the Closing Date, the Purchase Price, less the amount of the Deposit.

#### **Section 4 Escrow**

4.1 Opening of Escrow. For purposes of this Agreement, the Escrow shall be deemed opened on the latter date of (i) Escrow Holder receiving the Deposit from Buyer, and (ii) Escrow Holder receiving an executed counterpart of this Agreement from both Buyer and the City. Escrow Holder shall notify Buyer and City, in writing, of the date Escrow is opened. Buyer and City agree to execute, deliver, and be bound by any reasonable or customary supplemental escrow instructions of Escrow Holder or other instruments as may reasonably be required by Escrow Holder in order to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend, or supersede any portions of this Agreement. If there is any inconsistency between such supplemental instructions and this Agreement, this Agreement shall control.

4.2 Close of Escrow. Close of Escrow shall occur on or sooner by City giving Buyer a five (5) day notice of such date, provided in no event shall such notice reduce any period granted Buyer under the terms of this Agreement and in no event shall the Close of Escrow take place on a date that is fewer than sixty (60) days following the Opening of Escrow. If Escrow Holder cannot close escrow on or before the Close of Escrow, Escrow Holder shall nevertheless close this escrow when all conditions have been satisfied or waived unless, prior to the Close of Escrow, Escrow Holder receives a written notice to terminate this escrow from a Party who, at the time the notice is delivered, is not in default under this Agreement.

#### **Section 5 Title**

5.1 Policy. As a condition to the Close of Escrow, title shall be evidenced by the willingness of the Title Company to issue its ALTA Owner's Policy of Title Insurance with extended coverage, inclusive of any endorsements requested or required by Buyer or its lender, in the amount of the Purchase Price showing title to the Property vested in Buyer upon conveyance of the Grant Deed subject to the Approved Conditions of Title and such other exceptions to title as may be set forth

in the Report and not objected to by Buyer.

5.2 Condition of Title. At the Close of Escrow, title to the Property shall be conveyed to Buyer by the City, and the Grant Deed granting the property subject to the City's reservation of an easement, shall be recorded in the Official Records of the Recorder of San Diego County, California, subject only to the following Approved Conditions of Title:

- A. a lien to secure payment of real estate taxes and assessments, not delinquent;
- B. the lien of supplemental taxes;
- C. matters affecting title to the Property created by or with the written consent of Buyer or that are waived or deemed approved by Buyer;
- D. all matters that would be disclosed by an inspection or survey of the Property as approved by Buyer; and
- E. all exceptions that are disclosed by the Report, and that are also approved by Buyer in accordance with this Agreement.

5.3 Title Exceptions. The Parties acknowledge and agree that the listing of the Approved Conditions of Title shall be subject to Buyer's approval during the Feasibility Period, which approval shall be deemed approved if Buyer (i) does not terminate the Agreement at or prior to the end of the Feasibility Period or (ii) otherwise objects thereto as set forth in any Buyer's notice given by Buyer to City pursuant to Section 7.3 of this Agreement.

## Section 6 **Conditions to Close Escrow**

6.1 Conditions to Buyer's Obligations. Buyer's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following conditions for Buyer's benefit or Buyer's waiver thereof, on or prior to the dates designated below for the satisfaction of such conditions:

- A. City's Obligations. As of the Close of Escrow, City shall have performed all of the obligations required to be performed by City under this Agreement.

6.2 Conditions to City's Obligations. For the benefit of the City, the Close of Escrow shall be conditioned upon the occurrence and/or satisfaction of each of the following conditions (or City's waiver thereof, it being agreed that City may waive any or all of such conditions, in its sole and absolute discretion):

- A. Buyer's Obligations. Buyer shall have timely performed all of the obligations required by the terms of this Agreement to be performed by

Buyer including, without limitation, the timely deposit of all monies required to be deposited by Buyer under this Agreement.

## **Section 7 Buyer's Obligations**

### 7.1 Review of the physical condition and records.

- A. Buyer shall have the Feasibility Period, to satisfy itself in its sole and absolute discretion, with all physical, legal, and investment aspects of the Property and its condition and suitability for Buyer (including, without limitation, zoning; the environmental and physical condition of the Property; and any other portion of the Property.
- B. If, prior to the expiration of the Feasibility Period, Buyer notifies City and Escrow Holder in writing of Buyer's disapproval of the Property, such disapproval shall act to terminate this Agreement and the Escrow created pursuant hereto, in which event Buyer and City hereby direct Escrow Holder to pay the Deposit to Buyer. If, prior to the expiration of the Feasibility Period, Buyer notifies City in writing of Buyer's approval of the Property, or if Buyer fails to notify City and Escrow Holder of Buyer's approval of the Property on or before the end of the Feasibility Period, such approval shall satisfy this condition. Upon satisfaction of this condition, Buyer's Deposit to the City shall become non-refundable but for seller's breach.
- C. Buyer agrees not to disclose any confidential or proprietary information contained in any such document or material reviewed by or provided to Buyer except to the extent that such disclosure is required by any judicial proceeding (including a court order), federal, state or local law or is to Buyer's officers, attorneys, prospective lenders, agents or employees (provided that Buyer shall require each of the same to hold such information as confidential). Buyer's obligation under the immediately preceding sentence shall survive any termination of this Agreement. Buyer shall have until the end of the Feasibility Period to satisfy itself as to the review and approval of such documents and materials and the condition and suitability of the Property.
- D. Buyer hereby agrees to indemnify, defend, protect and hold the City, its agents, officers, and legislators, and the Property harmless from and against any and all claims, liabilities, obligations, costs, losses, damages and/or expenses, of any kind or nature (including, without limitation, reasonable attorney's fees and costs), arising out of or resulting from any submittal(s) affecting the Property by or for Buyer and/or any such entry and/or activities upon the Property by Buyer, its employees, agents, contractors and/or

subcontractors and Buyer agrees, at its sole cost and expense, to restore the Property to its condition existing prior to the conduct of any such activities upon the Property by Buyer, its employees, agents, contractors and/or subcontractors. The provisions of this section shall survive the termination of this Agreement and the Close of Escrow and delivery of the Grant Deed.

7.2 Buyer's Review of Title.

- A. Buyer shall receive a standard preliminary title report issued by the Title Company with respect to the Property within five (5) days following the Opening of Escrow. Buyer shall have until the Feasibility Period to give City and Escrow Holder written notice of Buyer's disapproval or conditional approval of any matters shown in the Report. The failure of Buyer to give notice on or before the Feasibility Period shall be deemed to constitute Buyer's approval of the condition of title to the Property unless Buyer shall have terminated this Agreement.
  - B. If Buyer disapproves or conditionally approves any matter of title shown in the Report, then on or before the expiration of thirty (30) days from the date of City's receipt of Buyer's notice, the City may elect to eliminate or ameliorate to Buyer's satisfaction the disapproved or conditionally approved title matters. City shall give Buyer written notice not later than thirty (30) days after City's receipt of Buyer's notice of those disapproved or conditionally approved title matters, if any, which City agrees to either eliminate from the Title Policy as exceptions to title to the Property or to ameliorate to Buyer's satisfaction by the Close of Escrow. If the City does not elect to eliminate or ameliorate to Buyer's satisfaction any disapproved or conditionally approved title matters, or if City is unable to eliminate or ameliorate to Buyer's satisfaction all such disapproved matters prior to the Close of Escrow, then Buyer shall elect by written notice to City and Escrow Holder on or before the Feasibility Period, to: (1) waive its prior disapproval, in which event said disapproved matters shall be deemed approved; or (2) terminate this Agreement and the Escrow created pursuant hereto, in which event, Escrow Holder shall disburse the amount of the First Deposit together with any interest accrued thereon to Buyer.
- 7.3 Buyer shall deposit or cause to be deposited with Escrow Holder, the Deposit, as provided in Section 3.1.
- 7.4 The Closing Statement, signed by Buyer.
- 7.5 Any transfer tax form, affidavit, or declaration required by any laws with respect to the transfer of title to the Property, signed by Buyer in a form for filing with the applicable governmental authority.

7.6 Such other sums required hereunder or reasonably required by the Title Company for the Close of Escrow and such other documentation and/or instruments required hereunder or reasonably required by City or the Title Company for the Close of Escrow.

## Section 8 City's Obligations

8.1 Deposits by City. At least one (1) business day prior to the Close of Escrow, City shall deposit or cause to be deposited with Escrow Holder the following documents and instruments: Grant Deed. The Grant Deed, duly executed by City and acknowledged, in the form attached hereto as Exhibit C, which is incorporated herein by this reference.

- A. Settlement Statement. A closing statement prepared (or approved) by the Title Company and approved by City and Buyer, signed by City.
- B. Transfer Tax Documentation. Any transfer tax form, affidavit or declaration required by any laws with respect to the transfer of title to the Property, signed by City in form for filing with the applicable governmental authority.
- C. Other Documentation. Such other documentation and/or instruments required hereunder or reasonably required by Buyer or the Title Company for the Close of Escrow (it being understood that City and Buyer shall not be required to execute or deliver any document or instrument that materially increases any Party's obligations or materially decreases any Party's rights under the terms and provisions of this Agreement).

## Section 9 Right to Enter onto the Property

9.1 Right to Enter the Property. Buyer and its employees, agents, and independent contractors may, prior to the Close of Escrow, reasonably go upon the Property to, at Buyer's sole cost, inspect, survey, and test the Property and conduct other similarly related activities. Should Buyer's right to purchase the Property terminate, Buyer will, immediately after such termination, at Buyer's sole cost, return the Property to its physical condition immediately before Buyer's first entrance onto the Property to conduct any of the aforementioned activities. Buyer agrees to give City at least five (5) business days prior written notice before entering the Property when the purpose of such entry is to conduct an environmental or hazardous materials survey or study. Buyer shall not conduct any borings or other invasive testing on or about the Property without first obtaining the prior written consent of City, which consent shall not be unreasonably withheld; provided, however, that Buyer shall provide City with copies of all tests and reports received by Buyer in

connection therewith and Buyer shall return the Property to its former condition at the conclusion of such tests and borings.

9.2 Indemnification. Other than in a case of Seller's negligence Buyer will indemnify, defend, and hold City and the Property harmless from any claim, loss, cost, damage, liability, lien, action or judgment (including, without limitation, City's reasonable attorney's fees and court costs) arising in connection with the acts or omissions of Buyer or any of its employees, agents, or independent contractors when entering and/or occupying the property Termination of this Agreement will not terminate Buyer's obligations hereunder.

9.3 Insurance. Buyer must have insurance at least as broad as the following prior to entry on the Property and at all times until Close of Escrow:

- A. *Commercial General Liability.* Insurance Services Office ("ISO") Form CG 00 01 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than \$2,000,000 per occurrence/\$4,000,000 general aggregate
- B. Automobile liability insurance of \$1 Million combined single-limit per accident for bodily injury and property damage; and
- C. *Workers' Compensation.* Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
- D. Each policy must name the City specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation policy.
- E. Buyer agrees to deposit with City, prior to entry to the Site, one Certificate of Insurance for each of the policy or policies necessary to satisfy the insurance provisions of the Feasibility Period and to keep such insurance in effect during the entire Feasibility Period. Said Certificate of Insurance shall be reviewed by, and acceptable to, the City Attorney, prior to entry. Buyer will also deposit with the City prior to entry, an Additional Insured Endorsement for the Commercial General Liability and Automobile Liability policies naming the City (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page



## Section 10 Costs

- 10.1 City's Charges. City shall pay (i) the CLTA Standard owner's title policy premium or its equivalent (but not the added premium for an extended coverage ALTA policy), (ii) one-half (1/2) of Escrow Holder's fee, and (iii) usual City's document-drafting and recording charges.
- 10.2 Buyer's Charges. Buyer will pay (i) one-half (1/2) of Escrow Holder's fee, (ii) the extra premium for any ALTA title policy or any added endorsements (ordered by Buyer in the manner permitted by the terms of this Agreement) over and above that of the premium of the CLTA Standard owner's title policy or its equivalent, (iii ) any documentary transfer tax imposed by the County, and (v) usual Buyer's document-drafting and recording charges.
- 10.3 Broker. Each party represents that no person, corporation, or partnership acting as a real estate broker, finder, or real estate agent has brought about this Agreement. Buyer shall pay any earned commission due and payable to any Broker. Buyer hereby agrees to indemnify, save harmless, protect, and defend City from and against any claims for brokers' or finders' fees for the consummation of this Agreement. The provisions of this section shall survive the termination of this Agreement, Close of Escrow, and delivery of the Grant Deed.

## Section 11 Termination

- 11.1 Termination. This Agreement must be executed by Buyer within 30 days of the approval of this Agreement by the City Council
- 11.2 Liquidated Damages. BUYER AND CITY AGREE THAT THE DEPOSIT IS A REASONABLE ESTIMATE OF CITY'S DAMAGES IF ESCROW FAILS TO CLOSE DUE TO THE DEFAULT OF BUYER. IN THE EVENT THE CLOSE OF ESCROW DOES NOT OCCUR AS HEREIN PROVIDED BY REASON OF ANY DEFAULT BY BUYER, BUYER AND CITY AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH CITY MAY SUFFER. THEREFORE, BUYER AND CITY HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT CITY WOULD SUFFER IN THE EVENT THAT BUYER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AND SHALL BE AN AMOUNT EQUAL TO THE LIQUIDATED DAMAGES AMOUNT. EXCEPT AS EXPRESSLY PROVIDED ELSEWHERE IN THIS SECTION, SAID AMOUNT SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY BUYER OF ITS OBLIGATION TO PURCHASE THE PROPERTY. UPON SUCH DEFAULT BY BUYER, CITY'S OBLIGATIONS

UNDER THIS AGREEMENT SHALL BE TERMINATED AND CITY SHALL HAVE THE RIGHT TO COLLECT SUCH LIQUIDATED DAMAGES FROM BUYER AND/OR ESCROW HOLDER. IN ADDITION TO SUCH LIQUIDATED DAMAGES, CITY SHALL BE ENTITLED TO (I) ENFORCE ITS REMEDIES UNDER ANY INDEMNIFICATION CONTAINED IN THIS AGREEMENT, AND (II) COLLECT ANY ATTORNEY’S FEES OR OTHER COSTS INCURRED IN ENFORCING THE PROVISIONS OF THIS PARAGRAPH.

\_\_\_\_\_  
Buyer's Initials

\_\_\_\_\_  
City's Initials

**Section 12 Sole Reliance.**

Except as expressly set forth herein, Buyer represents and warrants that it is relying solely upon its own inspection, investigation, and analyses of the Property in purchasing the Property and is not relying in any way upon any representations, statements, agreements, warranties, studies, reports, descriptions, guidelines, or other information, documentation, or material furnished by City or its representatives, whether oral or written, express or implied, or arising by operation of law, of any nature whatsoever regarding any of the foregoing matters.

**Section 13 As is, Where is.**

Except as expressly set forth herein, Buyer represents and warrants that it is acquiring the Property on an “as is,” “where is,” and “with all faults” basis without representation or warranty by City whatsoever including, without limitation, in connection with Hazardous Materials, substances, or conditions; the water, soil, and geology, and the suitability thereof and of the Property for any and all activities and uses which Buyer may elect to conduct thereon; habitability, merchantability, or fitness for a particular purpose of the Property; the manner, construction, condition, and state of repair or lack of repair of the improvements or any other portion of the Property; compliance with laws, statutes, codes, ordinances, orders, decisions, rules and/or regulations; the leases and superior instruments and/or other restrictions, obligations, rights of way or conditions affecting the ownership, use, operation, development or operation of the Property. Further, and without limiting any of the foregoing, Buyer represents and warrants that no patent or latent condition affecting the Property in any way, discoverable or hereafter discovered, shall affect Buyer’s obligation to purchase the Property or any of Buyer’s other obligations contained in this Agreement, nor shall any such condition give rise to any right of damages, rescission or otherwise against City. Further, and without limiting any of the foregoing, Buyer acknowledges that City has not warranted and does not hereby warrant that any improvements will meet or comply with the requirements of any

health, fire, building, zoning, or safety code, ordinance, or regulation of the state of California, or any other authority or jurisdiction, and that City has not warranted and does not hereby warrant that the Property will meet or satisfy any particular use, purpose, development, or operation, and that City has not made any warranty and does not hereby make any warranty regarding any Hazardous Materials. Further, and without limiting any of the foregoing, Buyer hereby releases City from all risks and liability (and agrees that City shall not be liable for any special, direct, indirect, consequential, or other damages) resulting or arising from or relating to the ownership, use, condition, location, maintenance, repair, or operation of the Property and City shall under no circumstances be liable for any special, indirect, or consequential damages in the event of any breach by City. The provisions of this section shall survive closing hereunder. Nothing in this section shall in any manner be construed as any representation, assurance or warranty of any kind by City.

### **Section 14 Attorney’s Fees, Costs and Expenses**

In the event legal action is brought to enforce the terms of or to declare a termination of this Lease for reason of breach thereof, the unsuccessful Party shall pay all of the successful Party’s costs of such action, together with reasonable attorney's fees, in an amount to be fixed by the court.

### **Section 15 Assignment**

Buyer shall not assign, transfer, or convey its rights and/or obligations under this Agreement and/or with respect to the Property without the prior written consent of City, which consent City may withhold in its sole and absolute discretion. Any attempted assignment without the prior written consent of City shall be void and Buyer shall be deemed in default hereunder.

### **Section 16 Miscellaneous**

- 16.1 Governing Law. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Venue for all actions arising from this Agreement shall be exclusively in the North County Division of the San Diego County Superior Court or federal courts located in San Diego County, California.
- 16.2 Time of Essence. Time is of the essence of each and every term, condition, obligation, and provision of this Agreement.
- 16.3 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, may be assembled into and shall be construed as one document.
- 16.4 Captions. Any captions to, or headings of, the sections, subsections, paragraphs, or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or the meaning of any provision of this Agreement.

- 16.5 No Third Party Beneficiaries. Except as otherwise expressly stated herein, this Agreement is entered into solely for the benefit of the Parties hereto, and no third party shall be entitled to directly, or indirectly, base any claim, or to have any right arising from, or related to, this Agreement.
- 16.6 Amendment. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties.
- 16.7 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.
- 16.8 Fees and Other Expenses. Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement.
- 16.9 Entire Agreement. This Agreement contains the entire agreement and understanding concerning the subject of this Agreement and supersedes and replaces all prior negotiations or proposed agreements, written or oral. Each of the Parties acknowledges that no other Party, nor the agents nor the attorneys for any Party, has made any promise, representation, or warranty whatsoever, express or implied, not contained herein, to induce the execution of this Agreement, and each of the Parties acknowledges that this Agreement has not been executed in reliance upon any promise, representation, or warranty not contained herein.
- 16.10 Advice of Counsel. The Parties acknowledge that they have executed this Agreement after having the opportunity to consult with, and receive the advice of, their own counsel.
- 16.11 Severability. If any portion of this Agreement as applied to either Party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way effect the legality, validity, applicability, or enforceability of the remaining portions of this Agreement.
- 16.12 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties.
- 16.13 Preparation of Agreement. Buyer and City acknowledge that the provisions and language of this Agreement have been negotiated, and agree that no provision of this Agreement shall be construed against either Party by reason of such Party having drafted such provision or this Agreement.
- 16.14 Execution of Agreement. This Agreement is transmitted for examination only and does not constitute an offer, and the Agreement shall not become effective until a fully executed original hereof shall be delivered to Buyer and City.
- 16.15 No Equitable Ownership. Prior to the conveyance of title to the Property to Buyer,

Buyer shall not acquire, assume, or otherwise obtain any equitable ownership claim or interest in the Property in any manner whatsoever.

IN WITNESS WHEREOF, the Parties below are authorized to act on behalf of their organizations, and have executed this Agreement as of the date set forth below.

**1501 AUTO PARKWAY, LLC, A DELAWARE  
LIMITED LIABILITY COMPANY**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

**CITY OF ESCONDIDO**

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

\_\_\_\_\_  
Dane White, Mayor

APPROVED AS TO FORM:

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

By: \_\_\_\_\_

## EXHIBIT A

Real property, generally located at 707 S Hale Avenue, Escondido CA 92029, and is a portion of assessor's parcel numbers 232-372-21-00 and 232-542-15-00 (defined herein as the "Property").

## EXHIBIT B

Within five business days of the Opening of Escrow, Seller will, to the extent the same are within Seller's possession or control, deliver to Buyer copies of the following:

- Phase I report
- Phase II report
- Engineering Studies
- Improvement Plans
- Consultant Reports
- ALTA Surveys
- Appraisals
- Market Research
- Financial Projections
- Site & Landscape Plans



EXHIBIT C



# STAFF REPORT

August 28, 2024

File Number 0600-10; A-3526

## SUBJECT

### AWARD CONSULTING AGREEMENT FOR DESIGN OF THE WESTSIDE PARK SKATE SPOT PROJECT

## DEPARTMENT

Development Services

## RECOMMENDATION

Request the City Council adopt Resolution No. 2024-129 authorizing the Mayor to execute a Consulting Agreement for the design of the Westside Park Skate Spot Project (“Project”) with New Line Skateparks, Inc., determined to be the most qualified and responsive proposal, in the amount of \$260,196.

Staff Recommendation: Approval (Chris McKinney, Director of Development Services, and Jonathan Schauble, City Engineer)

Presenter: Jonathan Schauble, City Engineer

**ESSENTIAL SERVICE** – Yes, Parks Facilities/Open Spaces

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

## FISCAL ANALYSIS

Park Development Funds have been programmed in the Capital Improvement Program budget and are sufficient to fund this agreement and its administration.

## PREVIOUS ACTION

N/A

## BACKGROUND

The Project will design and construct a new skate spot at Westside Park located at 4<sup>th</sup> Avenue and Spruce Street. This neighborhood park currently includes children’s play equipment, picnic areas, a basketball court, potable water station, restrooms and a covered picnic shelter. The proposed new skate spot at this park is ideal as it will enhance and serve the needs of the community, and supporting infrastructure is already in place.



# CITY of ESCONDIDO

## STAFF REPORT

The proposed square footage of the skate spot will be between 7,000 – 10,000 square feet of hard wheel concrete that will provide a safe, designated place for users to develop their skills and enjoy the company of their peers, especially the youth from the neighborhood. It will be a state-of-the-art facility based on the latest skate park design principles and constructed with high-quality materials to ensure durability and longevity. The design should feature a mix of street and transition-style terrain, with elements designed for all age groups and ability levels. The design will meet the ultimate needs of the community, while still allowing for other potential uses in the open lawn area i.e., pick up soccer, while also incorporating Crime Prevention through Environmental Design (“CPTED”) principles.

The design of this skate spot will be based on input from various stakeholders, including staff from the City’s Community Services, Police, Planning, Public Works and Engineering Departments, as well as input received from park users and the community. The public outreach will consist of the following meetings: an initial meeting consisting with conceptual designs, a second meeting with a design at 30 percent completion, and a third meeting with a design at 60 percent completion. Once public outreach has been completed, construction documents will be prepared and the Project will be advertised for construction bids.

On July 16, 2024, three proposals were received in response to the advertised request for proposals for the Project. After evaluating all proposals received, City staff concluded that New Line Skateparks, Inc. was the most qualified team because they have extensive experience and they successfully designed the Washington Park Skate Spot. After selection of New Line Skateparks, Inc., staff negotiated the detailed scope of work and fee for designing and conducting public outreach for a new skate spot at Westside Park.

Staff recommends that a Consulting Agreement be awarded to New Line Skateparks, Inc. in the amount of \$260,196.

### RESOLUTIONS

- a. Resolution No. 2024-129
- b. Resolution No. 2024-129 – Exhibit “A” – Consulting Agreement

RESOLUTION NO. 2024-129

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, A CONSULTING AGREEMENT WITH NEW LINE SKATEPARKS, INC. FOR DESIGN OF WESTSIDE PARK SKATE SPOT PROJECT

WHEREAS, the City Council has allocated funding in the adopted Capital Improvement Program budget for the Westside Park Skate Spot (“ Project”); and

WHEREAS, three (3) proposals were received in response to the Notice of Request for Proposals dated July 16, 2024, and New Line Skateparks Inc. was determined to be the most qualified consultant; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to authorize the Mayor to execute a consulting agreement with New Line Skateparks, Inc. in the amount of \$260,196.

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

1. That the above recitations are true.
2. That Mayor is authorized to execute, on behalf of the City, a consulting agreement with New Line Skateparks Inc., which is attached and incorporated to this Resolution as Exhibit “A”, and subject to final approval as to form by the City Attorney.



CITY OF ESCONDIDO  
CONSULTING AGREEMENT

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

Between: CITY OF ESCONDIDO  
a California municipal corporation  
201 N. Broadway  
Escondido, CA 92025  
Attn: Michael Tully Project Manager  
760-839-4011  
("CITY")

And: New Line Skateparks FL, Inc.  
a Florida corporation  
2305 Historic Decatur Road Suite 102  
San Diego, CA, 92106  
Attn: Kanten Russell  
866-463-9546  
("CONSULTANT").

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

WHEREAS, the CITY has determined that it is in the CITY's best interest to retain the professional services of a consultant to provide expert level research, planning, design and development of a permanent, custom, concrete, hard wheel, skate spot with lights to be located at Westside Park located at 333 S. Spruce St., Escondido, CA 92025;

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

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

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

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

2. Compensation. In exchange for CONSULTANT's completion of the Services, the CITY shall pay, and CONSULTANT shall accept in full, an amount not to exceed the sum of **\$260,196**. CONSULTANT shall be compensated only for performance of the Services described in this Agreement. No compensation shall be provided for any other work or services without the CITY's prior written consent. If this Agreement is amended at any time, additional compensation of CONSULTANT contained in any subsequent amendments shall not exceed a cumulative total of 25% of the maximum payment provided for in this Section 2, unless approved by resolution of the City Council.
3. Performance. CONSULTANT shall faithfully perform the Services in a proficient manner, to the satisfaction of the CITY, and in accord with the terms of this Agreement. CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other information furnished by CONSULTANT pursuant to this Agreement, except that CONSULTANT shall not be responsible for the accuracy of information supplied by the CITY.
4. Personnel. The performance of the Services by certain professionals is significant to the CITY. As such, CONSULTANT shall only assign the persons listed on Attachment "B", attached to this Agreement and incorporated herein by this reference ("Personnel List"), to perform the Services. CONSULTANT shall not add or remove persons from the Personnel List without the City's prior written consent. If CONSULTANT has not designated a person to perform a component of the Services, CONSULTANT shall not assign such component of the Services to a person without obtaining the City's prior written consent. CONSULTANT shall not subcontract any component of the Services without obtaining the City's prior written consent.
5. Termination. The Parties may mutually terminate this Agreement through a writing signed by both Parties. The CITY may terminate this Agreement for any reason upon providing CONSULTANT with 10 days' advance written notice. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of any notice of termination. If the CITY terminates this Agreement due to no fault or failure of performance by CONSULTANT, then CONSULTANT shall be compensated based on the work satisfactorily performed at the time of such termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the Services.
6. City Property. All original documents, drawings, electronic media, and other materials prepared by CONSULTANT pursuant to this Agreement immediately become the exclusive property of the CITY, and shall not be used by CONSULTANT for any other purpose without the CITY's prior written consent.
7. Insurance Requirements.
  - a. CONSULTANT shall procure and maintain, at its own cost, during the entire term of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services, and the results of such work, by CONSULTANT, its agents, representatives, employees, or subcontractors. Insurance coverage shall be at least as broad as the following:
    - (1) *Commercial General Liability.* Insurance Services Office ("ISO") Form CG 00 01 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 general aggregate.
    - (2) *Automobile Liability.* ISO Form CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage, unless waived by the CITY and approved in writing by the CITY's Risk and Safety Division.

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

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

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

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

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

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



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

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

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

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

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

CITY OF ESCONDIDO

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

\_\_\_\_\_  
Dane White, Mayor

NEW LINE SKATEPARKS, INC.

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

\_\_\_\_\_  
Kyle Dion, Principal

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

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

DATE: \_\_\_\_\_

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

## ATTACHMENT "A"

### Scope of Work

#### A. **General**

New Line Skateparks FL, Inc., a Florida corporation ("Consultant") will provide the City of Escondido, a California municipal corporation ("City") with expert level research, planning, design, and development of a permanent, custom, concrete, hard wheel, skate spot with lights to be located at Westside Park ("Project").

#### B. **Location**

Consultant to provide services in relation to the Westside Skate Park located at 4<sup>th</sup> Avenue and South Spruce Street in Escondido, CA 92033.

#### C. **Services**

Consultant shall provide services per Consultant's proposal, which is attached hereto as Exhibit 1 and incorporated by this reference. In the event of a conflict between this Agreement (including this Scope of Work) and Exhibit 1, the terms of this Agreement shall prevail. Services shall include:

1. Consultant shall create a design concept that is focused on skateboarding, but allows the potential impact of a mixed-use public skatepark, a sense of community, a quality street-skating environment, an engaging and aesthetically pleasing design, environmentally sustainable design, and a cohesive sense of place.
2. Consultant shall prepare Project specifications, incorporating the City's General Provisions with consultant prepared special provisions and technical specifications, using the Greenbook (Standard Specifications for Public Works Construction and related amendments) format. The City will provide project specific General Provisions to the awarded consultant/contractor.
3. Consultant shall provide survey services for the Project and provide base map data needed to advance design and develop construction drawings. All City benchmarks for elevation and vertical control are based on the National Geodetic Vertical Datum of 1929. Horizontal control surveying we request that nearby survey boundary and Right of Way monuments be searched for and be used for control before any ties are made to the California Coordinate System of 1983 (CCS-83). Please see link to Vertical Control Benchmarks below: <https://www.escondido.org/DocumentCenter/View/1500/City-Benchmarks-PDF>
4. Consultant shall prepare a storm water quality management plan (SWQMP) for a priority development project. Please see link to Priority Development Project (PDP) SWQMP below: <https://www.escondido.gov/DocumentCenter/View/2832/PDP-SWQMP-Template-PDF?bidId=>
5. Consultant shall prepare a construction phase storm water pollution prevention plan (SWPPP) and erosion and sediment control plan.
6. Consultant shall develop a community outreach plan with corresponding materials and facilitate a minimum of five community meetings. (e.g. potentially Appearance Committee, City Council, and 3 design workshops with the community). The community outreach plan must include types and numbers of meetings and work products that will be generated to engage community members. The outreach plan must also identify approach to facilitation of, and participation, in all community meetings.
7. Consultant shall identifying features to mimic natural street-skating and skatepark environments (including ledges, pads, banks, rails, stair-sets, and other natural transitions) as guided by the City and the community.
8. Consultant shall review and evaluate all aspects, content, and comments from various engagement activities and City staff. Update and revise conceptual designs based on local and

City Appearance Committee input, and produce clear and scaled design development drawings for City review and approval.

9. The Project design generated by Consultant shall include and coordinate with City of Escondido Public Works on irrigation, sod installation around skate park footprint, tree removal, and tree replacement as needed.
10. The Project design shall include a lighting design with photometric analysis study of the proposed lights as part of the overall design plan set which will include proper design installation of shielding based off of study. In addition, Consultant shall also conduct utility coordination between San Diego Gas and Electric for power hook up prior to installation of the lights.
11. The Project location shall not be placed over or in close proximity to the existing sewer line that runs through the middle of the park, please reference Utility Reference Map at the following website. [Public Utilities Plan Finder \(arcgis.com\)](https://arcgis.com).
12. The Consultant will fill out Plot Plan Application which can be found on City of Escondido's website please see link below:  
<https://escondido.org/DocumentCenter/View/581/Plot-Plan-Application-PDF>
13. A noise memo study will need to be conducted showing decibel levels from the proposed skate park location and what those decibel levels will be at the residential homes that abut the park.
14. Produce schematic designs that identify sections of terrain, access, circulation and elevations.
15. Prepare a detailed breakdown of estimated construction costs based on quantities and unit pricing to construct all park features.  
Submit the PDF sets at 30%, 60%, 90%, and 100% final construction complete plans and specifications with cost estimates. Design shall include grading, lighting, landscaping, irrigation and security plans including coordination of service points and securing service orders. 60% and 90% and 100% submittals shall include technical specifications, cost estimate and special provisions. Specifications and bid documents shall be prepared considering City's general conditions, Greenbook (Standard Specifications for Public Works Construction) and using City's standard bid forms. Final Plans, Specifications and Estimates are due in 6 months from the Effective Date of this Agreement.
16. Provide bid and construction support, respond to bidder questions, review submittals and assure all work is completed in accordance with approved design and specifications.
17. Final deliverables expected: Final specifications shall be in Microsoft Word, and the final design shall be submitted in PDF format. All studies, charts, graphs, and materials used in preliminary and public review processes shall become the property of the City of Escondido. In addition, the Consultant team shall provide the final textual documents in a format consistent with the word processing program in use by the City at the time of final document delivery.

#### **D. Scheduling**

Consultant to schedule specific dates of work in advance by contacting Staff Michael Tully at 760-839-4011 or michael.tully@escondido.gov. Further instructions will be provided upon scheduling.

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

The contract price shall not exceed **\$260,196**. Consultant shall submit monthly invoices to the City, and the City shall pay Consultant for invoiced services within 30 days of receipt of an invoice. Consultant shall not bill the City for any transportation costs associated with travel to and from the Project site.

#### **F. Term**

The term of this Agreement shall be from the Effective Date of the Agreement through **August 30, 2026**.

**G. Other**

Consultant's duties and services under this Agreement shall not include preparing or assisting the City with any portion of the City's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the City. The City entering this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this Project. Consultant's participation in the planning, discussions, or drawing of Project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Consultant shall cooperate with the City to ensure that all bidders for a subsequent contract on any subsequent phase of this Project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant pursuant to this Agreement.

## ATTACHMENT "B" Personnel List

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

1. Kyle Dion, Principal, [kyle@newlineskateparks.com](mailto:kyle@newlineskateparks.com), New Line Skateparks; and
2. Kanten Russell, Design Project Director / PM, [kanten@newlineskateparks.com](mailto:kanten@newlineskateparks.com), New Line Skateparks; and
3. Andy Stone, Site Manager, [andy@newlineskateparks.com](mailto:andy@newlineskateparks.com), New Line Skateparks; and
4. Chris Long, Civil Designer, [chrisl@newlineskateparks.com](mailto:chrisl@newlineskateparks.com), New Line Skateparks; and
5. Mary Sori, Senior Skatepark Designer, [ryanc@newlineskateparks.com](mailto:ryanc@newlineskateparks.com), New Line Skateparks; and
6. Trevor Morgan, VP / Community Needs Support, [trevor@newlineskateparks.com](mailto:trevor@newlineskateparks.com), New Line Skateparks; and
7. Megan Ulrey, Civil Lead, [megan.ulrey@kimley-horn.com](mailto:megan.ulrey@kimley-horn.com), Kimley Horn (subconsultant); and
8. Kaylan Burke, Civil Design/ADA, [kaylan.burke@kimley-horn.com](mailto:kaylan.burke@kimley-horn.com), Kimley Horn (subconsultant); and
9. Kirk Ammerman, Constructability, [kirk.ammerman@kimley-horn.com](mailto:kirk.ammerman@kimley-horn.com) Kimley Horn (subconsultant); and
10. Randall Kopff, LA + Irrigation, [Randall.Kopff@kimley-horn.com](mailto:Randall.Kopff@kimley-horn.com), Kimley Horn (subconsultant); and
11. Rich Lucera, Drainage and Stormwater Quality, [Rich.Lucera@kimley-horn.com](mailto:Rich.Lucera@kimley-horn.com), Kimley Horn (subconsultant); and
12. Ace Malisos, Noise Study, [Ace.Malisos@kimley-horn.com](mailto:Ace.Malisos@kimley-horn.com), Kimley Horn (subconsultant); and
13. Jackson Modrak, Lighting, [Jason.Modrak@kimley-horn.com](mailto:Jason.Modrak@kimley-horn.com), Kimley Horn (subconsultant).

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

Acknowledged by:

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

\_\_\_\_\_  
Kyle Dion, Principal

**Phase 1: Community Consultation and Conceptual Design**

Timeline

Task	Specific Objective	Timeline
1.	<b>Project Initiation, Site and Program Review:</b> The Design Team will meet with the Owner to review the intended program for the skatepark development. At this time, project goals and objectives will be confirmed, timelines set, processes reviewed, lines of communication and protocol established (including a suggested weekly update meeting day and time), safety and ISO 9001 compliant quality assurance measures outlined. The Design Team will then work with the City to review all base data for the site. This will include survey and geotechnical information as well as other pertinent data related to grades, irrigation, existing vegetation, current and future site development as-needed. This information will contribute to the base for all planning and design work.	<i>Week 1 Anticipated August 21, 2024</i>
2.	<del><b>Create Final Base Maps and Site Analysis Drawings for Review with Project Team</b></del>	<del><i>Week 1</i></del>
3.	<b>'Skateparks 101' Design Workshop #1 - Public Input Session 1</b> Prior to engaging in conceptual design development, the Design Team will conduct the first stakeholder/public information session and design workshop. This ~2hr session usually takes place in the early evening at a time convenient to both parents and youth. The workshop will begin with a presentation introducing the project team and objectives, an overview of the skatepark development journey. Once attendees are familiarized with the project parameters and vast array of skatepark development options and have had chance to participate in a Q&A session with our team, the workshop will transition into a 'hands on' component consisting of a 'dotmocracy' exercise, + sketching, writing, and interactive discussion regarding and ideas for terrain prioritization, thematic / artistic elements and site integration options. A digital survey will be published for those unable to attend and/or who are more comfortable responding online.	<i>Week 1</i>
4.	<del><b>Preparation of Preliminary Concept Options and Internal Review with Project Team (including preliminary cost estimates)</b></del>	
5.	<b>Community Design Workshop 2 (30% Schematic):</b> 2D renderings of the preliminary concept design options will be brought back to the community for feedback through an interactive design workshop on a weekday evening convenient for parents and youth. The concept presentation will consist of a PowerPoint aided overview of the development process to date, a discussion of the guiding principles established at the first participatory workshop (conducted in our previous scope of work), and a thorough review of the site-specific concept design developed for the park. This will be followed by a general Q&A session and opportunity for attendees to provide any final comments for consideration in written feedback and digital forms.	<i>Week 5</i>
6.	<del><b>Preparation of Preferred Concept and Internal Review with Project Team (including updated cost estimate)</b></del>	
7.	<b>Community Design Workshop 3 (60% Schematic) :</b> Comprehensive photorealistic 3D renderings of the preferred concept design will be brought back to the community for any final feedback through a third interactive design workshop. This will be followed an opportunity for attendees to provide any last comments for consideration in written feedback forms and an online survey.	<i>Week 8</i>
8.	<b>Submission of Final Concept Design and Phase 1 Summary Report:</b> Any last modifications as a result of the concept design presentation will be prioritized for implementation and our team will prepare the final concept design and budget estimate for Project Team review and approval. We will update our drafts so that detailed design considerations are resolved for the site and technical drawings can proceed with ease. The final concept design and budget estimate will be submitted to the City/Owner in digital and hardcopy form and we will stand by for approval to proceed with technical design.	<i>Week 9</i>
<b>Phase 2: Technical Design, Working Drawings and Permitting</b>		
10.	<del><b>Begin Working Drawings and Specifications:</b> We will begin work in earnest to complete the technical specifications and working drawings for the youth park project. We anticipate a time frame of 3 weeks until we can submit 60% drawings for discussion and review with City/Owner.</del>	<del><i>Week 10</i></del>
11.	<del><b>Complete Construction Drawings Reviews:</b> The Technical Design Team will complete all construction detailing, construction documents and specifications for the skatepark project. Drawing sets and cost estimates will be sent to the City and relevant approval bodies for full red line review and approvals at 60%, 90%, and 100%. Update meetings to review and approve potential in-kind donations will also be conducted at each drawing review milestone.</del>	
12.	<b>Delivery of Final Construction Drawings:</b> Any last amendments will be included in Issue for Construction (IFC) documents and specifications. Final sealed drawings, specifications, and final budget package will be sent to the Owner in accordance with the desired file scheme. Any changes made during construction will be provided via 'as built' drawings upon completion.	<i>Week 17</i>
<b>Phase 3: Construction Administration</b>		
13.	<b>Bid Assistance, Project Inspections and Reporting, Submittal Reviews</b> Our comprehensive Contract Administration program is prepared provide the following services: bid assistance and evaluation, review of concrete mix design/miscellaneous metals/shop drawing submittals, preparation of site instructions, contemplated change notices and change orders as needed, construction progress meetings and reports, substantial and final completion certification, project close-out documentation, and warranty inspections. Administration staff will ensure construction specifications are adequately satisfied and report to the Owner' Project Manager on progress as it relates to the intended design requirements. Final scope of construction administration program to be negotiated through contract with the City.	<i>Estimated Total Construction Timeline Week 192</i>



# PROPOSED FEE STRUCTURE

Item 8.

firm	NLS	NLS	NLS	NLS	NLS	Orie	KHA	KHA	KHA	KHA	KHA	KHA		
*individual	Kyle Dion Principal In Charge	Andy Stone Skate Spot Civil Engineer	Kanten Russell Design Director / PM	Chris Long Design Manager	Mary Soria Technical Design	James Orie Structural Engineer	Senior Professional Level II	Senior Professional Level I	Professional Level I	Analyst Level II	Analyst Level I	Support Staff	DIRECT COSTS	TOTAL
	\$150.00	\$150.00	\$130.00	\$120.00	\$110.00	\$150.00	\$360.00	\$325.00	\$235.00	\$205.00	\$165.00	\$155.00		
Stage 1:ProjectInitiation,Site Analysis,Pre-Design/Program Confirmation														
Start Up Meeting, Program and Onsite Reviews and Opinion on Prospective Site Area	1	4	8	10	20	1	1	8	8		6	5		Travel and Accommodation
Create Base Maps, Site Analysis Drawings and Summary of Key Design + Budget Considerations		4	8	10	20			8	8		8	5		
Technical Review Meeting / Planning and Pre-Design Meeting with City			1	1				1						
Prepare and Submit Preliminary Program Outline and Design + Budget Brief	1	4	9	9	20	1		1	5		8	8		
<b>TOTAL HOURS</b>	<b>2</b>	<b>12</b>	<b>26</b>	<b>30</b>	<b>60</b>	<b>2</b>	<b>1</b>	<b>18</b>	<b>21</b>	<b>0</b>	<b>22</b>	<b>18</b>		<b>212</b>
	\$300.00	\$1,800.00	\$3,380.00	\$3,600.00	\$6,600.00	\$300.00	\$360.00	\$5,850.00	\$4,935.00	\$0.00	\$3,630.00	\$2,790.00	\$0.00	\$33,545.00
Stage 2:StakeholderConsultation,Concept Development and Schematic Design														
Skateparks 101' Design Workshop (Community / Key Stakeholder Meeting #1)			2	2	2								\$250.00	large format printing and travel
Development of Preliminary Design Concepts	1		10	8	10				2		4			
Technical Review of Preliminary Concept and Budget Options with City		2	2	2	2			1	2		4			
Presentation of Preliminary Concept Options (Community / Key Stakeholder Meeting #2)			2	2	2								\$250.00	large format printing and travel
Development of Preferred Design Concept	1	2	10	10	10				2		4			
Technical Review of Preferred Design Concept with City / Appearance Committee														
Presentation of Preferred Concept (Community / Key Stakeholder Open House #3)													\$250.00	large format printing and travel
Preparation and Submission of Final Concept Summary Report / 30% Plans (Includes Council Meeting)		2	2	2	2		1	2	4		12			
Preparation and Submission of 30% Schematic / Permit Drawings			13	10	18									
<b>TOTAL HOURS</b>	<b>2</b>	<b>6</b>	<b>41</b>	<b>36</b>	<b>46</b>	<b>0</b>	<b>1</b>	<b>3</b>	<b>10</b>	<b>0</b>	<b>24</b>	<b>0</b>		<b>169</b>
	\$300.00	\$900.00	\$5,330.00	\$4,320.00	\$5,060.00	\$0.00	\$360.00	\$975.00	\$2,350.00	\$0.00	\$3,960.00	\$0.00	\$750.00	\$24,305.00
Stage 3:TechnicalDesign and Construction Drawings														
Preparation and Review of 60% Technical Drawing Package / Specifications / Cost Estimate / Permitting	1	4	10	10	20		4	10	18		46			
Preparation and Review of 90% Technical Drawing Package / Specifications / Cost Estimate / Permitting														
Preparation and Review of 100% Technical Drawing Package / Specifications / Cost Estimate / Permitting	1	4	10	10	20	6	3	6	11		19			
Submission of IFC Drawings/ Specifications / Final Cost Estimate For Bidding	1	4	10	10	20	6								
<b>TOTAL HOURS</b>	<b>3</b>	<b>12</b>	<b>30</b>	<b>30</b>	<b>60</b>	<b>12</b>	<b>7</b>	<b>16</b>	<b>29</b>	<b>0</b>	<b>65</b>	<b>0</b>		<b>264</b>
	\$450.00	\$1,800.00	\$3,900.00	\$3,600.00	\$6,600.00	\$1,800.00	\$2,520.00	\$5,200.00	\$6,815.00	\$0.00	\$10,725.00	\$0.00	\$0.00	\$43,410.00
Stage 4:Bidding and Construction Support														
Bidding Support / Respond to Questions	1		2	2	2	2								
Construction Progress and Milestone Reviews			6	6	6									
Shop Drawing and Submittal Reviews	1		4	8	8	4								
Site Visits and Project Close-Out			18	19	14									
<b>TOTAL HOURS</b>	<b>2</b>	<b>0</b>	<b>30</b>	<b>35</b>	<b>30</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		<b>103</b>
	\$300.00	\$0.00	\$3,900.00	\$4,200.00	\$3,300.00	\$900.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$12,600.00
<b>Skatepark Specific Design Fees Sub-Total</b>													<b>\$113,860.00</b>	
OtherSupport ServicesRequested Perthe RFP														
Electrical Engineering / Lighting Design [KHA]								4	20		40			
Local Landscape Architecture (Landscape & Irrigation) [KHA]								8	10	15	15			
Storm Water Quality Management Plan (SWQMP + HMP) [KHA]							3	40	10		270			
Conceptual Storm Water Pollution Prevention Plan (CSWPPP) [KHA]								3	16		55			
Noise Technical Memorandum [KHA]								10		22	30			
<b>TOTAL HOURS</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>65</b>	<b>56</b>	<b>37</b>	<b>410</b>	<b>0</b>		<b>571</b>
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,080.00	\$21,125.00	\$13,160.00	\$7,585.00	\$67,650.00	\$0.00	\$0.00	\$110,600.00
<b>Topographic Field Survey [Aguirre &amp; Associates]</b>													<b>\$ 16,836.00</b>	
<b>Provision ofGeotechnicalStudy forConfirmed Site [Ninyo &amp; Moore]</b>													<b>\$ 18,900.00</b>	
<b>TOTAL PROJECT HOURS</b>	<b>9</b>	<b>30</b>	<b>127</b>	<b>131</b>	<b>196</b>	<b>20</b>	<b>12</b>	<b>102</b>	<b>116</b>	<b>37</b>	<b>521</b>	<b>18</b>		<b>1,319</b>
<b>Total Design Not To Exceed Fees</b>													<b>\$260,196.00</b>	

Should the City to elect to exceed the 50% pervious to impervious surface guidelines, New Line Skateparks will retain the right to renegotiate the scope and fees outlined in this proposal.

ORDINANCE NO. 2024-10R

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING ESCONDIDO MUNICIPAL CODE SECTIONS 28-154 AND 28-155 TO REGULATE RECREATIONAL VEHICLE PARKING

WHEREAS, the parking or storing of recreational vehicles, whether motorized or towed, on City of Escondido (“City”) streets and municipal parking lots can negatively affect traffic safety and quality of life for those who live and work in this City; and

WHEREAS, traffic safety impacts of recreational vehicles parked or stored on City streets and municipal parking lots include impaired visibility of pedestrians and drivers, impaired access to driveways and cross-traffic on narrow residential streets, and impaired sight distance for pedestrians and drivers if the recreational vehicle is parked close to an intersection or on a curve; and

WHEREAS, quality of life impacts of recreational vehicles parked or stored on City streets and municipal parking lots include illegal discharge of wastewater onto streets, municipal parking lots, or the storm water system, trash or litter left by the recreational vehicle owners, and reduced parking on streets and municipal parking lots for passenger vehicles for residents and business customers; and

WHEREAS, allowing recreational vehicles to park on City streets for no more than one 24-hour period at a time, and then, only when parked within 100 yards of the address listed on the recreational vehicle’s Department of Motor Vehicle registration balances the needs of recreational vehicle owners in the City with other users of public streets and municipal parking lots; and

WHEREAS, pursuant to California Vehicle Code section 4159, any registered owner of a vehicle who moves or acquires a new address different from the address shown upon the registration card issued for the vehicle shall within 10 days notify the Department of Motor Vehicles of the old and new address; and

WHEREAS, pursuant to California Vehicle Code section 4160, any registered owner of a vehicle who moves or acquires a new address different from the address shown upon the registration card issued for the vehicle shall within 10 days change the address on the registration card; and

WHEREAS, allowing for City parking lots to be posted as exempt from the prohibition gives the ability to create additional alternate parking as needed; and

WHEREAS, City Resolution No. 2022-176 delegates authority to the City Manager to monitor and regulate by signage and enforcement the usage of all municipal parking lots to ensure that the municipal parking lots are used to their highest and best use for the benefit of local businesses and customers and as otherwise required by law; and

WHEREAS, Chapter 33, Article 25 of the Escondido Municipal Code regulates the parking of recreational vehicles in residential zones when not within completely enclosed structures, permitting such parking in the residential agriculture (R-A), residential estates (R-E), and single-family residential (R-1) zones, and on a property developed with a single-family residence in the multifamily zones (R-2, R-3 and R-4) subject to specific development standards; and

WHEREAS, the City of Escondido offers recreational vehicle parking in the Dixon Lake Campground; and

WHEREAS, there is a permitted and licensed travel trailer park renting space to recreational vehicles within Escondido boundaries; and

WHEREAS, there are multiple travel trailer parks renting space to recreational vehicles throughout the County of San Diego; and

WHEREAS, the availability of alternate recreational vehicle parking balances the needs of all recreational vehicle owners with all City residents and other users of public streets and municipal parking lots; and

WHEREAS, California Vehicle Code section 22507 authorizes local authorities, by resolution or by ordinance, to restrict the parking of certain vehicles on certain streets during all or certain hours of the day, including designating certain streets upon which preferential parking privileges are given to residents and merchants adjacent to streets for their use and enjoyment; and

WHEREAS, pursuant to California Vehicle Code section 22507, such a parking restriction shall not apply until signs or markings giving adequate notice thereof are placed; and

WHEREAS, pursuant to California Vehicle Code section 22507, a resolution or ordinance adopted pursuant to this section may contain provisions that are reasonable and necessary to ensure the effectiveness of the parking restriction; and

WHEREAS, pursuant to California Vehicle Code section 22651(n), a peace officer may remove a vehicle located within their jurisdiction if a vehicle is parked or left standing where a local authority, by resolution or ordinance, prohibited parking and authorized the removal of vehicles, provided that signs are posted giving notice of the removal; and

WHEREAS, Escondido Police Department Instruction 4.2 establishes policy for vehicle impounds if authorized under the authority of the California Vehicle Code; and

WHEREAS, prohibiting the parking or storing of recreational vehicles on city streets and municipal parking lots promotes the health, safety and general welfare of the community by preserving the residential character of neighborhoods, preserving the commercial character of business areas, preventing the illegal discharge of wastewater from recreational vehicles into storm water systems, preventing the illegal disposal of trash on streets or easements, and preventing traffic safety problems associated with recreational vehicles parking or being stored on city streets and municipal parking lots such as impaired visibility for pedestrians and drivers or impaired access to driveways.

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

SECTION 1. That the above recitations are true.

SECTION 2. That Escondido Municipal Code section 28-154 Stopping, Standing, Parking in Alley, is hereby amended and renumbered as section 28-154(a).

SECTION 3. That Escondido Municipal Code section 28-155 Stopping, Standing, Parking in Parkway, is hereby amended and renumbered as section 28-154(b).

SECTION 4. That Escondido Municipal Code section 28-155 is amended with a title of "Recreational Vehicle Parking Restrictions" and to read as follows:

(a) No person shall park any recreational vehicle, as defined in subsection (b), upon any highway, street, alley, public way, public place, or municipal parking lot in the city of Escondido except:

(1) A recreational vehicle may be allowed to park for a total of 48 hours before and 48 hours after a trip to facilitate the loading and unloading of that vehicle or trailer, provided that the vehicle is parked within 100 yards of the address to which it is registered with the California Department of Motor Vehicles.

(2) If that vehicle is involved in an emergency, or that vehicle is being repaired under emergency conditions. However, a vehicle that cannot be readily repaired and moved may be impounded pursuant to California Vehicle Code section 22651(n).

(3) If that vehicle is parked in a municipal parking lot where a sign is posted authorizing recreational vehicle parking.

(4) If that vehicle is owned by a federal, state, or local agency.

(5) If the Director of Emergency Services has declared a local state of emergency pursuant to Chapter 7 of the Code, the Director of Emergency Services may temporarily suspend subsection (a) as part

of that declaration. The suspension of subsection (a) shall expire upon the termination of the local state of emergency unless an earlier time for expiration is provided in the proclamation of local emergency.

(6) When the City of Escondido has issued a special event permit that authorizes the parking of such vehicles in designated areas.

(b) For the purposes of subsection (a), the term “recreational vehicle,” includes, but is not limited to, the following:

- (1) A “recreational vehicle” (California Health & Safety Code section 18010);
- (2) A “camp trailer” (California Vehicle Code section 242);
- (3) A “fifth-wheel travel trailer” (California Vehicle Code section 324);
- (4) A “house car” (California Vehicle Code section 362);
- (5) A “trailer coach” (California Vehicle Code section 635);
- (6) A “mobilehome” (California Vehicle Code section 396);
- (7) A “semi-trailer” (California Vehicle Code section 550).
- (8) Boats and/or trailers;
- (9) Trailers used for the transport of equipment, vehicles, or animals; and
- (10) Folding camper trailers.

(c) A violation of subsection (a) is punishable as an infraction.

(d) Any recreational vehicle stopped, parked or left standing in violation of subsection (a) may be removed and impounded 22651(n).

SECTION 5. SEPARABILITY. If any section, subsection, sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 6. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

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

## ORDINANCE NO. 2024-11

## AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING A GENERAL PLAN AMENDMENT FOR CONSISTENCY CHANGES TO THE LAND USE AND COMMUNITY FORM CHAPTER AND EAST VALLEY PARKWAY AREA PLAN

WHEREAS, the State of California requires cities and counties adopt a comprehensive long-term General Plan for the social, physical, and economic development of the City; and

WHEREAS, the General Plan expresses the community's development goals and embodies public policy relative to the distribution of future land uses, both public and private; and

WHEREAS, Government Code section 65301(b) authorizes jurisdictions to develop and adopt Area Plans to address a particular region or community within the General Plan's planning area; and

WHEREAS, the City of Escondido's City Council approved the East Valley Parkway Area Plan on September 22, 2004 through Resolution No. 2004-136; and

WHEREAS, on July 19, 2023 City Council adopted Ordinance No. 2023-10 establishing the East Valley Specific Plan and rezoning a portion of the East Valley Parkway area from General Commercial (CG), Hospital Professional (HP), and Commercial Professional (CP), to Specific Plan (S-P); and

WHEREAS, the rezoning of land uses by the EVSP created discrepancies between the previously adopted East Valley Parkway Area Plan and the General Plan's Land Use and Community Form chapter; and

WHEREAS, California Government Code section 65359 requires that any specific plan or other plan of the city or county that is applicable to the same areas or matters affected by a General Plan



amendment shall be reviewed and amended as necessary to make the specific or other plan consistent with the General Plan; and

WHEREAS, chapter II of the Governor's Office of Planning and Research's 2017 General Plan Guidelines identifies Area Plans to be part of the General Plan. Therefore, an Area Plan may be amended through the General Plan Amendment process; and

WHEREAS, the City of Escondido is amending the General Plan and East Valley Parkway Area Plan under Planning Case No. PL24-0007, for the purposes of clean up and consistency with the East Valley Specific Plan; and

WHEREAS, on June 25, 2024, the Planning Commission held a duly noticed public hearing as prescribed by law, at which time the Planning Commission received and considered document consistency text amendments and recommendation of the Planning Division and gave all persons full opportunity to be heard and to present evidence and testimony regarding the Project; and

WHEREAS, Planning Commission voted 5-0 approving the Planning Division's proposed text amendments, with two Commissioners absent; and

WHEREAS, pursuant to 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 Project; and

WHEREAS, on August 7, 2024, the City Council of the City of Escondido did hold a duly noticed public hearing as prescribed by law. At said hearing, this City Council received and considered the reports and recommendations of the Planning Commission and City staff, and gave all persons full

opportunity to be heard and to present evidence and testimony respecting said matter. Evidence was submitted to and considered by the City Council, including, without limitation:

a. Written information including revisions to maps, text, graphical information, and other material, submitted as part of the Project;

b. Oral testimony from City staff, interested parties, and the public;

c. The staff report, dated August 7, 2024, with its attachments as well as City staff's recommendation on the Project;

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

SECTION 1. That the above recitations are true.

SECTION 2. Proper notices of a public hearing have been given and public hearings have been held before the Planning Commission and City Council on this issue.

SECTION 3. After consideration of all evidence presented, and studies and investigations made by the City Council and on its behalf, the City Council makes the following substantive findings and determinations, attached hereto as Exhibit "A," relating to the information that has been considered.

SECTION 4. That the proposed amendments to the East Valley Parkway Area Plan and General Plan Land Use and Community Form chapter are consistent with the Escondido General Plan and applicable Elements were reviewed as part of the amendment drafting process to ensure consistency.

SECTION 5. The General Plan Amendment is not considered a "Project" under the California Environmental Quality Act ("CEQA") and is therefore exempt from further review, as further

described in the staff report. The General Plan Amendment would not, in and of itself, result in development or any other material change to the environment.

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

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

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

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

## EXHIBIT "A"

### PLANNING CASE NO. PL24-0007.

#### FACTORS TO BE CONSIDERED / 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 General Plan Amendment to the East Valley Parkway Area Plan and General Plan is not considered a "project" under Article 20, Section 15378, of the CEQA Guidelines. The term project refers to a whole of an action which has a potential for resulting in either a direct physical change or a reasonably foreseeable indirect physical change in the environment. A project does not include organizational or administrative activities of governments that will not result in changes in the environment.
3. The General Plan Amendment to the East Valley Parkway Area Plan and General Plan is solely to create consistency between the aforementioned documents and the newly adopted East Valley Specific Plan ("EVSP"). A Program Environmental Impact Report ("PEIR") was previously prepared June 2023 to address potentially significant impacts resulting from the implementation of the EVSP.

##### Amendments (Escondido Zoning Code Section 33-1263):

1. *That the public health, safety and welfare will not be adversely affected by the proposed change;*

The General Plan Amendment corrects internal inconsistencies, improves readability, and creates references to the recently adopted EVSP. The proposed changes will improve health, safety and welfare of the community by making it easier for staff, decisionmakers, developers, and the public to understand the City of Escondido's land uses, standards, and vision for the East Valley community.

2. *That the property involved is suitable for the uses permitted by the proposed amendments in that;*

The General Plan Amendment does not apply to a project-specific site. The proposed text amendments would be Citywide and would only affirm already adopted changes for properties within the EVSP and East Valley Parkway Area Plan.

- 3. That the uses permitted by the proposed change would not be detrimental to surrounding properties;*

The General Plan Amendment does not affirm any changes to uses permitted within the City, as the amendments would not impact already adopted and permitted uses from the EVSP, East Valley Parkway Area Plan, and General Plan. The amendment only clarifies and ensures consistency of information between documents.

- 4. That the proposed amendments are consistent with the adopted general plan;*

The General Plan Amendment creates a section for the newly adopted EVSP, and provides an updated vision in line with the EVSP and East Valley Parkway Area Plan that seeks to revitalize areas of the East Valley Parkway communities. The proposed changes are consistent with the General Plan's Land Use Goal No. 17 which seeks to develop a dynamic General Plan that is responsive to community values, visions, needs, economic conditions, resource availability, and state and federal legislation.

- 5. That the proposed change does not establish a residential density below 70% of the maximum permitted density of any lot or parcel of land previously zoned R-3, R-4, or R-5 unless the exceptions regarding dwelling unit density can be made pursuant to the provisions set forth in Article 6;*

The General Plan Amendment corrects internal inconsistencies, improves readability, and creates references to the recently adopted EVSP. The EVSP accommodates and increases residential, mixed-use, and general commercial land uses. This General Plan Amendment does not affect densities but only provides clarification and consistency across City policy documents.

- 6. That the relationship of the proposed change is applicable to specific plans.*

The General Plan Amendment reinforces the City's Specific Plan standards by clarifying inconsistencies between EVSP and East Valley Parkway Area Plan boundaries, zoning labels, allowable uses, and standards.

# II. Land Use and Community Form



## Introduction

How land uses are arranged in a community helps establish its identity and character. Although Escondido is largely developed, there is a diversity of newly constructed and established urban, suburban, and rural neighborhoods with unique qualities such as views; landscaping; types of streets and housing; commercial activity; lively public spaces; schools; and civic buildings that combine to create a unique “small town” character.

Escondido’s General Plan Land Use Element arranges major land uses to preserve and enhance the integrity and character of established residential neighborhoods, provide opportunities for future growth to meet the community’s vision, and strengthen the economic viability of employment areas and commercial activity centers. Policies in this Land Use Element will guide Escondido’s efforts to become a more integrated, walkable, and sustainable community that will enrich and improve residents’ quality of life.

## The Land Use / Community Form Element’s Purpose

The Land Use Element is one of seven elements required by state law to be included in California General Plans. The Element guides citizens, planners, and decision makers on the desired pattern of growth, development and change in the community. The purpose is to ensure that a balance of residential, employment, commercial, recreational, civic/cultural and open space land uses are provided at appropriate intensities, locations and combinations to enhance Escondido’s sustainability.

Goals identified in the Land Use / Community Form Element foster Escondido’s role as an urban center. The Plan emphasizes the revitalization of the downtown area and established neighborhoods, promotes economic development in the form of attractive, sustainable, economically viable industrial and commercial areas, and concentrates high-intensity activities in the urban core.

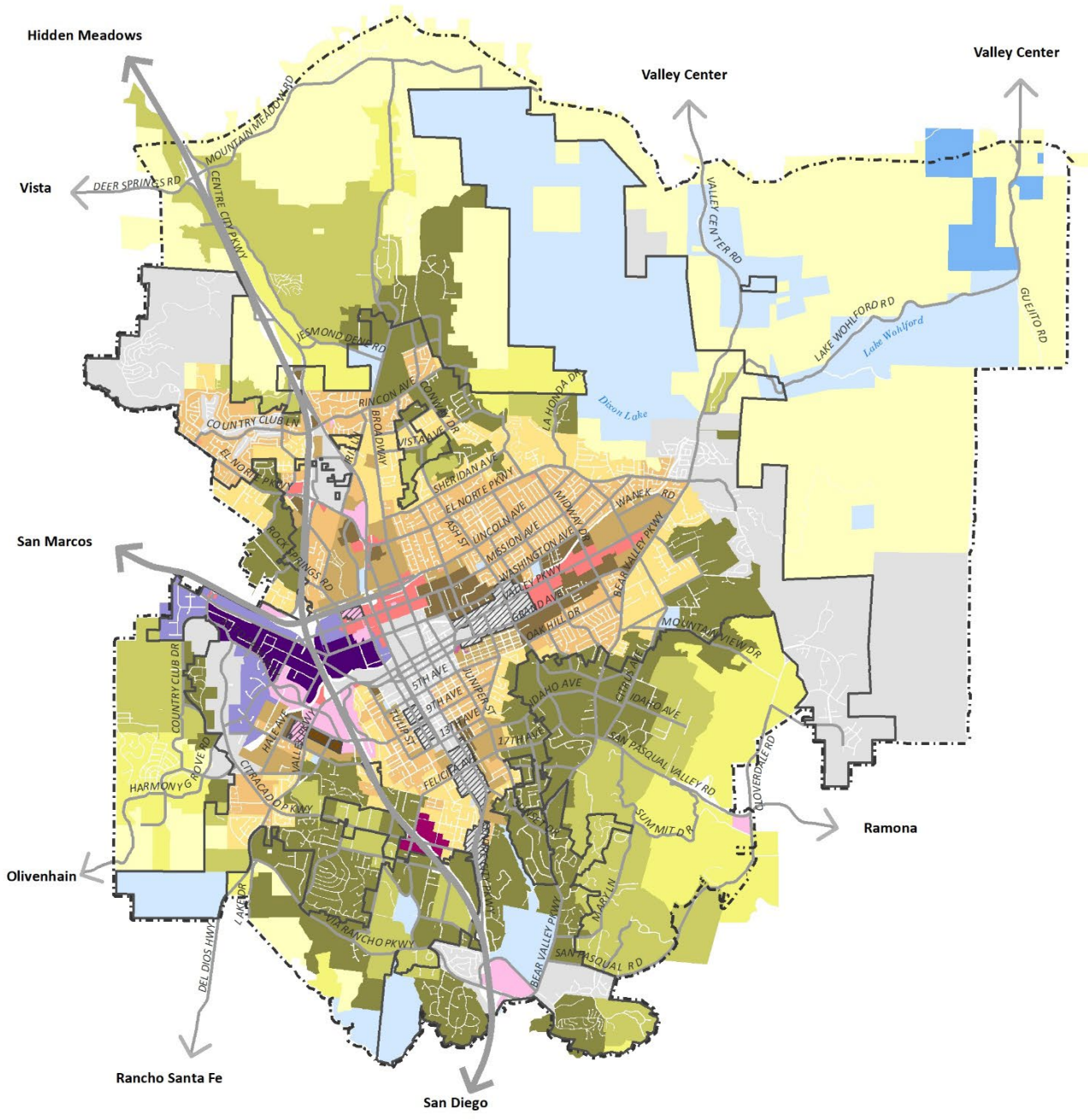


## A. Relationship to Other Elements in the General Plan

The Land Use and Community Form Element serves as a guide for future development. The Element's relationship to other General Plan components is central for many important aspects regarding the community's growth. For example, different land uses influence the capacity and service levels of transportation and utility systems discussed in the Mobility and Infrastructure Element. Residential standards described in this General Plan Element relate to the city's housing goals, programs and objectives, discussed in the Housing Element. Land use decisions also affect Escondido's economy and have direct bearing on the policies and strategies outlined in the Economic Prosperity Element.

The General Plan includes development strategies for several new employment nodes, and advocates intensification of certain areas as mixed use and higher intensity employment centers to provide a stronger jobs-housing balance. Escondido's growth and development patterns are to be managed in a way that does not overwhelm or reduce the quality of community services, safety and protection provided by the city. The goals and policies of the Community Services, Community Safety, Public Utilities, Noise, and Growth Management Elements are related to land use because they affect property designations and requirements. An essential feature of this Element is the General Plan Land Use Map (Figure II-1) that identifies the location of all land uses in the planning area and key for directing land use decisions that integrate the community's vision.

*Escondido's Street Fair  
Grand Avenue at Broadway*



**GENERAL PLAN LAND USES**

- RESIDENTIAL**
- Rural I: 1 du/ 4, 8, 20 acres
  - Rural II: 1 du/ 2, 4, 20 acres
  - Estate I: 1 du/ 1, 2, 4, 20 acres
  - Estate II: 1 du/ 0.5, 1, 20 acres
  - Suburban: Up to 3.3 du/acre
  - Urban I: Up to 5.5 du/acre
  - Urban II: Up to 12 du/acre
  - Urban III: Up to 18 du/acre
  - Urban IV: Up to 24 du/acre
  - Urban V: Up to 30 du/acre

- COMMERCIAL**
- General Commercial
  - Neighborhood Commercial
  - Office
  - Planned Commercial
  - Planned Office

- INDUSTRIAL**
- Light Industrial
  - General Industrial
  - Industrial Office

- OTHER**
- Public Land/Open Space
  - Tribal Lands
  - Specific Plan Area
  - Mixed Use Overlay

- Highway
- General Plan Boundary
- City Limits
- Lakes

0 0.5 1 Mile



**Escondido General Plan**

Land Uses

Figure II-1







## B. Escondido's Community Character

Escondido's geographic setting, characterized by hills and mountains surrounding an open valley bisected by Escondido Creek, governs the manner in which the community has matured over its long history. Expanding out from its historic downtown and urban core (with their traditional street grid patterns) are established single and multi-family neighborhoods that have long since replaced agricultural groves. Densities and intensities diminish and streets follow topographic contours in outlying areas as the community transitions to higher elevations where agricultural operations remain in many areas. In this outer area there are also several large natural expanses of preserved open space that buffer Escondido from surrounding communities. The community's primary employment area parallels Highway 78 and the rail line first constructed in the 1880s that links Escondido to the coast. Interstate 15 bisects Escondido in a north-south direction that provides connections to San Diego and Riverside County.

*Escondido as viewed from  
Lake Dixon Regional Park*

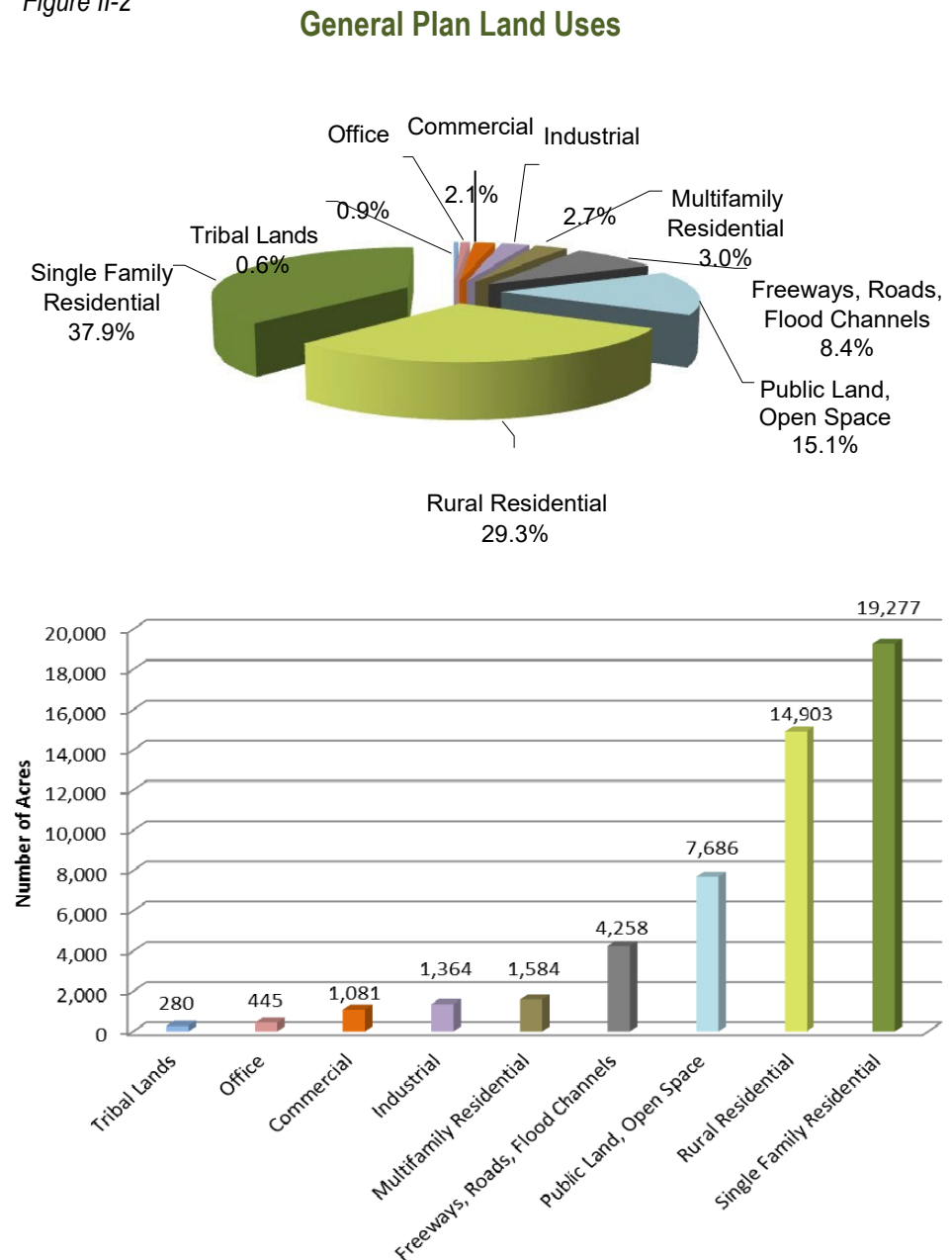
*"For every site there is an ideal use.  
 For every use there is an ideal site."*

John Ormsbee Simonds  
 Landscape Architect  
 and City Planner

## C. Land Use Distribution

Escondido’s current land uses are arranged in a pattern largely defined by the community’s historic growth and transition from an agricultural center at the terminus of a rail line to a town core surrounded by residential neighborhoods with supporting businesses and services. Based on an inventory conducted for the updated General Plan land use categories, single and multifamily residential uses represented the dominate land uses occupying 36,145 acres and 71% percent of Escondido’s General Plan. The pie chart and bar graph in Figure II-2 identify the division of General Plan land uses.

Figure II-2



## D. Land Uses, Standards and Character

State planning law requires that General Plans establish land use designations for the various areas in the plan as well as standards of population density and building intensity. The city's Zoning Ordinance also specifies standards for development, such as set-backs, lot coverage, parking, open space thresholds, etc. that directly bear on properties' development density and / or intensity. In concert with Smart Growth principles, the Land Use Matrix (Figure II-6) identifies each General Plan land use designation and specifies (1) Urban Form Standards, (2) Description of Uses, and (3) Urban Form Characteristics described below.

### 1. Urban Form Standards

Urban form standards prescribe the maximum density for residential uses, and building intensity for nonresidential and mixed-use developments and the maximum building height (Figure II-3a). Standards of building density for residential uses are stated as the allowable range (i.e. minimum and maximum) of dwelling units per net acre are further elaborated in policies at the end of the Land Use Element.

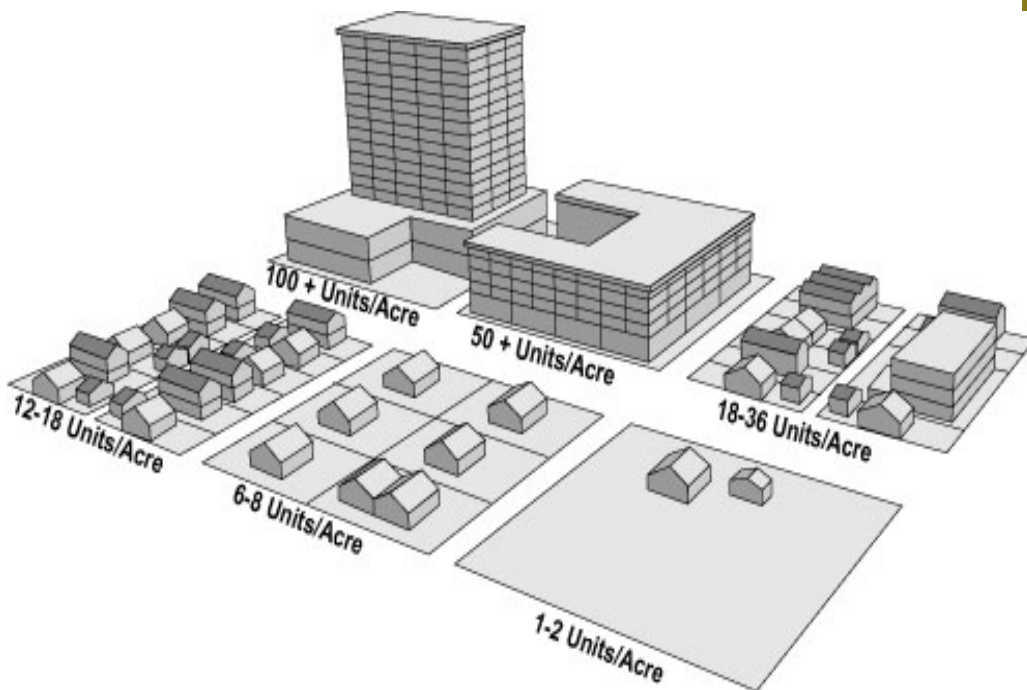


Figure II-3a

Figure II-3a  
Example of various densities for residential development on a similarly sized parcel.

In the case of mixed-use developments that include residential components, the FAR includes residential building square footage, and the density range is not applicable.

Standards of building intensity for nonresidential and mixed-use, commercial, and industrial development are expressed as floor-area ratios (FARs). The FAR is the ratio of gross floor area of a building on a lot in relation to the area of the net lot (or parcel), exclusive of existing or proposed streets and rights-of-way. The gross floor area of a building is the sum of the square feet of each floor of the building, excluding cellars and square feet in open balconies. In the case of mixed-use developments that include residential components, the FAR includes residential building square footage, and the density range is not applicable.

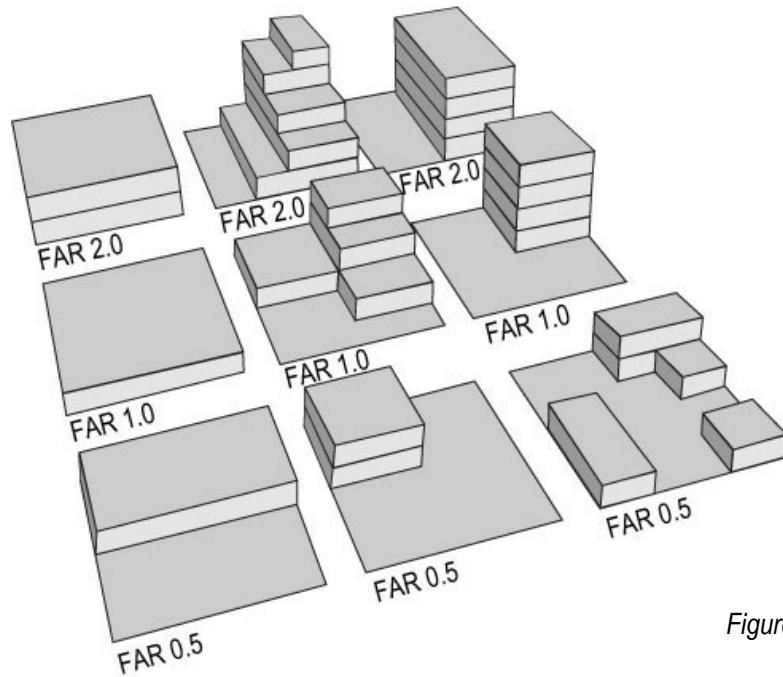
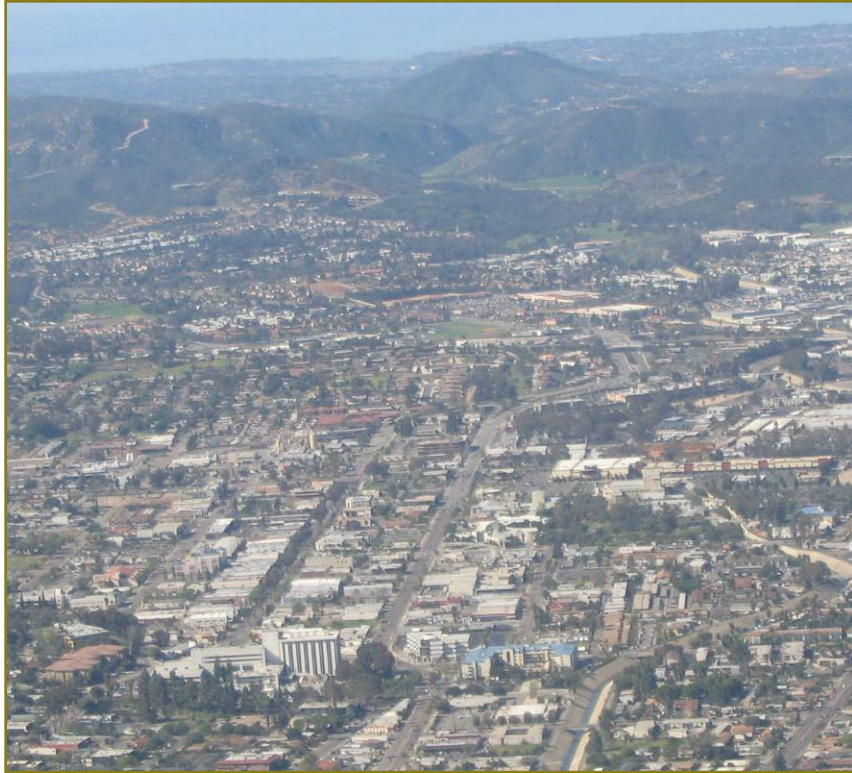


Figure II-3b  
Various building configurations represented by different Floor Area Ratios (FARs) of 0.5, 1.0 and 2.0.

Figure II-3b

As illustrated in Figure II-3b, features such as building square footage, building height, FAR, and the percent of lot coverage are interrelated. As an example, a building with 20,000-square feet of useable space on a 40,000-net square foot parcel yields a 0.50 FAR. This could describe a variety of building scenarios including a single-story building occupying half the parcel, a two-story building occupying approximately one-fourth of the parcel, or a collection of buildings occupying approximately one-third of the parcel.

While FAR provides for the overall development size and intensity, it does not specify the form or character of the building. Different interpretations of the same FAR can result in buildings of very different character. The urban form characteristics for each land use designation describe key physical form attributes envisioned for the designation. In addition, city regulations such as zoning, design guidelines, height limits, building setbacks, open space requirements, etc. will guide the form of buildings within a given FAR range.



## 2. Description of Uses

The Land Use Matrix (Figure II-6) outlines the types of allowed uses permitted in each of the General Plan's land use categories. The major categories of land use types in Escondido include residential, commercial, office, industrial, mixed-use, public facilities, parks/open space, and tribal lands. Corresponding zoning specifies the permitted and conditional uses for each category as well as applicable development standards.

## 3. Urban Form Characteristics

Urban form characteristics describe key physical features and attributes envisioned for each land use designation to help developers, decision makers, and the public share a common understanding of the qualities that contribute to good design. The guidelines also assist in understanding the implications of individual project design on the form and character of the community as a whole. These qualities include characteristics such as the height and bulk of buildings, the location of buildings on their parcels, the relationship of buildings to streets, the height of buildings relative to adjacent neighborhoods, and the location and character of parking and pedestrian facilities. Unlike the Description of Uses and Urban Form Standards described above, Urban Form Characteristics are stated as recommendations, not as required standards.

Urban form characteristics described in the Land Use Matrix are recommended key physical features and attributes envisioned for each land use designation to help developers, decision makers, and the public share a common understanding of the qualities that contribute to good design.

*Aerial view of Escondido looking west with Palomar Hospital and downtown in the foreground*



*Residential construction in Downtown Escondido. Housing is a cornerstone of downtown development, a key ingredient of a strong downtown economy and will facilitate the implementation of the General Plan's Core Themes. Downtown residents create and expand the market for downtown businesses by demanding a diverse mix of products and services including retail, restaurant and entertainment facilities, thus enhancing opportunities to live, work and play. Downtown and 'urban core area' housing take the pressure off intensifying densities in established single family neighborhoods, thus preserving the community's character. Downtown and 'urban core area' housing also involves a more efficient use of the city's infrastructure, reducing reliance on the automobile which conserves and sustains resources.*

## **E. Core Themes of the Land Use and Community Form Element**

Three core themes emerged as citizens articulated their vision for Escondido's future during the General Plan's collaborative process of conducting public outreach and gathering community input. The themes centered on: 1) Opportunities to Live, Work and Play; 2) Protect, Preserve and Revitalize Neighborhoods; and 3) Conserve and Sustain Resources. The Land Use and Community Form Element incorporates these themes as a central focus and has identified strategies for addressing these themes to implement the community's vision.

### **1. Opportunities to Live, Work and Play**

The ability for Escondido to be a community where residents can live, work and play was an important theme expressed at General Plan public outreach sessions. Many residents desire to work in the community but commute elsewhere due to insufficient local employment opportunities. Land use studies revealed Escondido's low percentage of land area devoted for employment purposes compared with neighboring communities. This results in an 'out migration' of many residents who leave Escondido as part of their daily commuting pattern. In addition, 2010 census data revealed that Escondido's per capita income and educational attainment lagged behind surrounding communities, suggesting a need for providing citizens more opportunities to enhance their job skills.

While there are a number of recreational and entertainment venues in the community, many citizens expressed a desire for more varied options that would attract a wider audience and have broader social appeal. Parents expressed a desire for activities and facilities that would enhance their grown children's desire to remain in the community. School-age students and younger adults expressed a desire for more 'fun things to do.' Promoting educational and job training opportunities were raised in concert with the importance of ensuring a safe and healthy community environment. A focus on recreational amenities, and community facilities, such as libraries, open space and parkland were viewed as opportunities for residents to lead a more active and educated way of life.



## 2. Protect, Preserve, and Revitalize Neighborhoods

Throughout the public participation process it was evident that residents take pride in their community and value Escondido's small-town atmosphere. Essential for Escondido being a desirable place to live revolves around residents' satisfaction that their neighborhoods are safe, livable and aesthetically pleasing. The community's desires to protect neighborhoods from crime, blight, and incompatible adjacent land uses that negatively affect their quality of life were identified as important priorities.

In addition, recognizing that many homes and neighborhoods are over 75 years in age, and that Escondido is a community with historical significance, residents acknowledged that protecting and preserving local history is vital for blending the strength of the past with the promise of the future. Residents also expressed a desire to incorporate additional features and land uses that would be unique to Escondido. Conversations centered on features such as gateways, distinctive land use districts, and public places that would allow residents to gather and socialize. Such features would set Escondido apart from other communities and introduce a "sense of arrival" and "sense of place" unique to other areas and revitalize the community.

*Revitalizing Escondido Creek as 6+ mile 'Urban Linear Park' through the entire community facilitates the General Plan's Core Themes. The path links residential neighborhoods to shopping, healthy recreation, education and employment opportunities. The Creek's improvement will expand the community's opportunities for live, work and play, and serve as a tool for revitalizing neighborhoods and shopping areas. The creek path serves as a convenient and centralized alternative transportation route and reduces reliance on the automobile thus conserving and sustaining resources.*





*“Sustainability is meeting the needs of the present without compromising the ability of future generations to meet their needs.”*

World Commission on Environment and Development (WCED)

*Escondido’s 5,300 acres of permanent natural open space are a central component of the General Plan’s core theme of conserving and sustaining natural resources; Daley Ranch is the largest conservation preserve accessible to the public totaling over 3,000 acres and includes over 300 plant and animal species and diverse habitat communities.*

### 3. Conserve and Sustain Resources

Residents acknowledge that Escondido is part of a larger regional environment with only finite resources available for current and future generations. Conserving and sustaining community resources have become an important topic in light of the challenging economic climate of the time and the obligation to plan for the future. Economic sustainability includes supporting economic growth in the city, expanding jobs and markets, relying on local businesses, and promoting an economically thriving community.

The concept of conserving and sustaining resources dovetails with residents’ desires to protect, revitalize and preserve existing neighborhoods, open space areas, and quality of life. Bolstering local recreational, educational and occupational opportunities also allows residents to drive less and spend more dollars locally, thereby promoting economic sustainability as well as enhancing physical and social opportunities closer to home.



## F. Strategies to Address the Core Themes for Implementing the Community Vision

Strategies for addressing the three core themes include: 1) application of smart growth principles; 2) development of new and revitalized opportunity areas; 3) mixed-use transit-oriented development; and 4) educational promotion. The strategies are in concert with updated planning principles that refocus attention on existing infrastructure investments rather than extending new and costly facilities into undeveloped territories.

Areas have been identified in the General Plan where these strategies will be focused to achieve the community's long-term goals. The strategies work together to: provide more opportunities for Escondido residents, conserve resources, provide greater housing choices, offer options for alternative transportation and reduce environmental impacts, thereby creating a greater sense of community resulting in an enhanced quality of life.

### 1. Smart Growth Principles

Escondido is largely built-out with limited vacant land available for new development. Updated General Plan policies will guide citizens, developers, city staff, and decisions makers over the next decades to facilitate the community's long-term vision. The plan's smart growth principles represent a shift in focus from 'how to develop vacant land' to 'how to reinvest in existing neighborhoods.'

*"Smart growth development is guided by a set of principles that promote strong communities with a range of opportunities for all residents."*

Designing for Smart Growth  
SANDAG publication

*Smart Growth developments like the shopkeeper units in 'Via Roble' on Escondido Boulevard are an effective strategy for implementing the community vision, expanding housing options, fostering business, reducing sprawl, conserving infrastructure, and revitalizing existing neighborhoods*

### Escondido's Smart Growth Strategy

Capitalize on the city's infrastructure investment by:

- Preserving and enhancing single family development patterns in established neighborhoods;
- Maintaining residential densities in outlying areas to accommodate growth; and,
- Guiding additional employment and residential growth toward downtown and urbanized sectors along key transportation corridors.

Escondido's smart growth principles preserve and enhance single family development patterns in established neighborhoods, maintains residential densities in outlying areas to accommodate growth, and guide additional employment and residential growth toward downtown and urbanized sectors along key transportation corridors. This strategy ensures housing options for all residents, capitalizes on the city's infrastructure investment, and provides opportunities for achieving Escondido's vision. Basic smart growth principles include:

- Fostering an attractive community with a strong sense of place, including such features as gateways, public art, landscaping and unique land use districts;
- Strengthening and enhancing existing neighborhoods;
- Preserving open space, natural beauty, and critically sensitive areas;
- Incorporating "Complete Streets" features to create walkable and bikeable neighborhoods;
- Creating a range of housing opportunities and choices;
- Providing a mix of compatible land uses;
- Taking advantage of more compact, vertical, higher density and higher intensity building design;
- Integrating residential, employment, entertainment, shopping, and services in close proximity to reduce reliance on the automobile;
- Providing a variety of transportation choices;
- Making decisions predictable, fair and cost effective; and
- Encouraging community and stakeholder collaboration in development decisions.

## 2. New and Revitalized Opportunity Areas

Opportunity Areas are key locations for implementing the community's vision that respond to citizens' core theme of enhancing Escondido's livability. A sufficient supply of employment producing land is a critical component of a healthy and prosperous city. In order to enhance economic quality of life an adequate supply of land offering a variety of employment opportunities for residents of all skills and educational levels must be available. Also critical are redevelopment opportunities for increasing employee densities in areas where buildings and properties are underutilized.

The General Plan strives to achieve these objectives by increasing its employment land base in several new areas to accommodate the types and amount of economic development and growth anticipated in the future, while encouraging efficient and sustainable use of public facilities and infrastructure. New areas include: 1) Interstate 15 at Felicita Road, 2) North and south of the Escondido Research and Technology Center SPA #8, and 3) Interstate 15 at El Norte Parkway SPA #13.



New employment areas that foster a better jobs/housing balance and improve the community's median income include the area around Interstate 15 and Felicita Road Interchange for Corporate and Professional Office land uses

Additionally, the General Plan seeks to revitalize employment and activity opportunities in five areas currently designated commercial or industrial: 1) Downtown SPA #9, 2) Downtown Transit Station; 3) Westfield Shoppingtown; 4) Highway 78 at Broadway; 5) Promenade Retail Center and Vicinity; and 6) South Quince Street (also refer to Section J “General Plan Opportunity Areas” in this Element).



*Figure II-4a  
A “before” and “after” example  
illustrating how smart growth  
mixed use transit oriented  
development can transform the  
area around Escondido’s multi-  
modal transit station into a  
dynamic employment center.*

### 3. Mixed Use Transit Oriented Development

Mixed use development refers to the blending of multi-family residential development with other compatible uses, such as commercial and/or office in a horizontal and/or vertical arrangement (Figure II- 4a). The goal of mixed use overlay areas is to integrate employment, retail, entertainment and community amenities within close proximity to create vibrant urban areas and enhance Escondido’s housing opportunities while establishing desirable places for people to live, work, shop, and play.

Successfully integrating residential, employment, entertainment, shopping, and services in a mixed use overlay is effective in reducing reliance on the automobile as residents are able to conveniently access facilities and services. Mixed use buildings can be vertically mixed,

with commercial or office space on the first floors and housing space on upper floors. Horizontal mixed use is also desirable at some locations, where commercial uses may be adjacent to offices or residences within the same master planned development.



*Figure II-4b  
A “before” and “after” example similar to East Valley Parkway illustrating how smart growth mixed use transit oriented development involving constructing residential units above ground floor retail and/or office areas can transform an uninviting street into a pedestrian-friendly community.*

Escondido’s Downtown Specific Plan Area contains mixed use development standards that have been adopted for many years. This General Plan incorporates mixed use overlays in additional areas: 1) Escondido Boulevard at Felicita Avenue, 2) Centre City Parkway at Brotherton Avenue, and 3) East Valley Parkway (refer to Section J “General Plan Opportunity Areas” in this Element).

Mixed use overlay areas are transit oriented in nature by incorporating features such as bus stops and multi-modal connections that promote the use of alternative transportation (Figure II-4b). In addition, mixed use overlay areas are pedestrian friendly environments that incorporate trails, pathways, bikeways, and safe crosswalks to connect neighboring uses.



#### 4. Educational Promotion

Being economically competitive is synonymous with being educationally competitive. Studies consistently link growth of a local economy with access to higher education. In today’s global economy, it is advantageous for local governments to support residents’ “continuous learning” in order to enhance employability, strengthen job skills and generate opportunities for increasing per capita income. While education broadens residents’ knowledge base and achieves personal economic stability, a highly skilled and educated community is also viewed by employers as a desirable environment for establishing and expanding their businesses.

The General Plan strives to achieve these objectives by including policies that promote educational access for residents and identifying areas for attracting facilities that provide post-secondary education. The area between Palomar College’s satellite campus (East Valley Parkway at Midway Drive) and Palomar Hospital’s downtown facility is a target area for establishing an “educational enclave.” This area will focus evaluating opportunities to attract and cluster educational institutions, technical colleges, vocational schools, and job training facilities and foster Escondido’s economic sustainability and promote a more educationally competitive environment that provides a direct path to employment.

*Palomar College’s satellite  
East Valley Parkway campus*

## G. General Plan Land Use Designations and Development Capacity

Figure II-5 identifies the existing and projected levels of development associated with Escondido’s planned distribution of land uses (Figure II-6). The table identifies the anticipated full implementation of the land use policies established by this General Plan, as well as anticipated growth by 2035; the planning horizon year. Land uses and intensities will gradually align with the intent of the Land Use and Community Form Element as properties develop and redevelop over time. Given Escondido’s largely built out character, and the varying ages and conditions of buildings, significant redevelopment activities may not occur until toward the end of the planning horizon year.

*Figure II-5*  
**General Plan (GP) Development Capacity**

	Single Family (Units)	Multi-Family (Units)	Retail (Square Feet)	Office (Square Feet)	Industrial / Other (Square Feet)	Open Space, Parks / Misc. (Acres)
2010 City Area in GP	31,107	16,477	13,001,000	4,091,000	12,389,000	9,000
2010 County Area in GP	6,450	0	0	0	0	3,500
2010 City and County Combined	37,557	16,477	13,001,000	4,091,000	12,389,000	12,500
Build out of City Area in GP	35,350	31,132	32,558,000	24,064,000	20,182,000	10,500
Build out of County Area in GP	7,800	0	300,000	0	0	4,500
Build out City and County Combined	43,150	31,132	32,858,000	24,064,000	20,182,000	15,000
2035 City Area in GP	32,875	24,133	17,886,000	9,628,000	15,467,000	9,500
2035 County Area in GP	6,950	0	150,000	0	0	4,000
2035 City and County Combined	39,825	24,133	18,036,000	9,628,000	15,467,000	13,500
2010 – 2035 Net Change	2,268	7,656	5,035,000	5,537,000	3,078,000	1,000



*Figure II-6*  
**General Plan Land Use Designations**





Land Use Designation	Required Standards: <i>Density and Design</i> <i>Minimum Lot Size</i> <i>Maximum Building Height</i> <i>(Also refer to policies)</i>	General Description of Uses	Recommended Urban Form Characteristics
<b>Large Lot Single Family Residential</b>			
<p><b>Rural</b></p> <p>This designation applies to areas that are not intended to receive substantial urban services, distant from the developed valley floor; or steep (generally over 25% in slope) or contain sensitive natural resources. Development clustering is permitted pursuant to General Plan Residential Clustering Policies</p>			
<p><b>Rural I</b></p> 	<p>Maximum densities allowed on the following slope categories:                      0-25% - 1 du/4 ac;                      25-35% - 1 du/8 ac; and                      35%+ - 1 du/20 ac.</p> <p>Min lot size: 4 ac                      Building Height: 1-2 stories                      Zoning: Residential Agriculture (R-A)</p>	<p>A rural living environment in areas of agricultural production, rugged terrain, and/or environmentally constrained lands that are the most remote from urban development. This designation is typified by large lot single-family homes.</p>	<ul style="list-style-type: none"> <li>▪ Large residential lots with low building coverage</li> <li>▪ Maintains the natural and open space character of the parcel</li> <li>▪ Agricultural properties</li> <li>▪ Informal streets with rustic character</li> </ul>
<p><b>Rural II</b></p> 	<p>Maximum densities allowed on the following slope categories:                      0-25% - 1 du/2 ac;                      25-35% - 1 du/4 ac; and                      35%+ - 1 du/20 ac;</p> <p>Min lot size: 2 ac                      Building Height: 1-2 stories                      Zoning: Residential Agriculture (R-A)</p>	<p>A rural living environment in areas of agricultural production or rugged terrain that is remote from urban development. This designation is typified by large lot single-family homes.</p>	
<p><b>Estate</b></p> <p>This designation accommodates detached single-family homes on large lots. This designation applies to areas that are on the edge of urban development or in areas that are already characterized by an estate development pattern. Development clustering is permitted pursuant to General Plan Residential Clustering Policies</p>			
<p><b>Estate I</b></p> 	<p>Maximum densities allowed on the following slope categories:                      0-15% - 1 du/1 ac;                      15-25% - 1 du/2 ac;                      25-35% - 1 du/4 ac; and                      35%+ - 1 du/20 ac.</p> <p>Min lot size: 40,000 sf                      Building Height: 1-2 stories                      Zoning: Residential Estate (R-E)</p>	<p>Large-lot, spaced single family development in areas bordering land designated as Rural.</p>	<ul style="list-style-type: none"> <li>▪ Large residential lots with low building coverage</li> <li>▪ Units set back from the street with extensive on-site landscaping</li> <li>▪ Could include agricultural properties</li> <li>▪ Informal streets with rustic character</li> </ul>
<p><b>Estate II</b></p> 	<p>Maximum densities allowed on the following slope categories:                      0-25% - 2 du/1 ac;                      25-35% - 1 du/1 ac; and                      35%+ - 1 du/20 ac.</p> <p>Min lot size: 20,000 sf                      Building Height: 1-2 stories                      Zoning: Residential Estate (R-E)</p>	<p>Spaced single family development on relatively large lots and properties that transition between more intensive suburban development and Estate I areas.</p>	<ul style="list-style-type: none"> <li>▪ Large residential lots with low building coverage</li> <li>▪ Units set back from the street with extensive on-site landscaping</li> <li>▪ Semi-formal streets</li> </ul>



Figure II-6

**General Plan Land Use Designations**

Land Use Designation	Required Standards: <i>Density and Design</i> <i>Minimum Lot Size</i> <i>Maximum Building Height</i> <i>(Also refer to policies)</i>	General Description of Uses	Recommended Urban Form Characteristics
<b>Single Family Residential</b>			
<b>Suburban</b>			
This designation applies to areas that generally surround the urbanized core of the community and accommodates single family detached homes on relatively large lots. Development clustering is permitted pursuant to General Plan Residential Clustering Policies			
<p style="text-align: center;"><b>Suburban</b></p> 	<p>Maximum densities allowed on the following slope categories:                  0-25% - 3.3 du/ac;                  25-35% - 1.5 du/ac; and                  35%+ - 1 du/20 ac.                  Min lot size: 10,000 sf                  Building Height: 1-2 stories                  Street designs support pedestrian and bicycle use along with vehicular circulation                  Zoning: R-1-10 or higher</p>	<p>Single family homes with a traditional residential neighborhood character.</p> 	<ul style="list-style-type: none"> <li>▪ Interconnected curvilinear street system facilitating traffic flow</li> <li>▪ Community services and neighborhood parks within walking distance of local residents, where feasible</li> <li>▪ Established street tree canopy providing shade and enhanced neighborhood character</li> </ul>
<b>Urban I</b>			
This designation applies to residential areas of the main Escondido “valley floor” and accommodates single family detached homes on smaller urban lots. Development clustering is permitted pursuant to General Plan Residential Clustering Policies			
<p style="text-align: center;"><b>Urban I</b></p> 	<p>Maximum densities allowed:                  5.5 du/ac;                  Min lot size: 6,000 sf                  Building Height: 1-3 stories                  Street designs support pedestrian and bicycle use along with vehicular circulation                  Zoning: R-1-9 or lower</p>	<p>Single family homes in a more urban, medium-density living environment, characteristic of much of Escondido. Mobile homes, patio homes, and zero-lot-line developments are also permitted.</p> 	<ul style="list-style-type: none"> <li>▪ Highly interconnected linear street system facilitating traffic flow</li> <li>▪ Community services and neighborhood parks within walking distance of local residents, where feasible</li> <li>▪ Established street tree canopy providing shade and enhanced neighborhood character</li> <li>▪ Range of housing types and design consistent with existing forms and patterns where appropriate</li> <li>▪ Streets in older neighborhoods maintain limited curb cuts with rear, alley, and side garage access</li> </ul>

*Figure II-6*  
**General Plan Land Use Designations**

Land Use Designation	Required Standards: <i>Density and Design</i> <i>Minimum Lot Size</i> <i>Maximum Building Height</i> <i>(Also refer to policies)</i>	General Description of Uses	Recommended Urban Form Characteristics
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**Medium Density Multi-Family Residential**

**Urban II and Urban III**

These designations accommodate a wide range of housing types and generally apply to transitional areas that exist between single family neighborhoods and higher density residential and commercial areas.

<p align="center"><b>Urban II</b></p> 	<p>Maximum densities allowed: 12 du/ac</p> <p>Building Height: 1-3 stories</p> <p>Street designs support pedestrian and bicycle use along with vehicular circulation</p> <p>Zoning R-2-12</p>	<p>Single family, multi-family units and mobile homes. Development at the lower end of the density range would be appropriate adjacent to existing single family residential areas and characterized primarily by detached housing units, patio homes, and zero-lot-line projects. Higher densities are more appropriate adjacent to parks and open space, along transit routes and major and secondary thoroughfares, and near recreational activity centers, libraries, shopping centers, and entertainment areas. Higher densities would also be appropriate adjacent to existing and planned higher density development (e.g., mixed-use districts) to include semidetached or attached units, with duplexes, triplexes, and fourplexes.</p>	<ul style="list-style-type: none"> <li>■ Highly interconnected linear street system facilitating traffic flow</li> <li>■ Community services and neighborhood parks within walking distance of local residents, where feasible</li> <li>■ Range of housing types and design consistent with existing forms and patterns, where appropriate</li> <li>■ Established street tree canopy providing shade and enhanced neighborhood character</li> <li>■ Streets in older neighborhoods maintain limited curb cuts with rear, alley, and side garage access</li> <li>■ Larger parcels may incorporate multiple buildings with a coordinated vehicular and pedestrian circulation plan</li> </ul>
<p align="center"><b>Urban III</b></p> 	<p>Maximum densities allowed: 18 du/ac</p> <p>Minimum densities allowed: 12.6 du/ac</p> <p>Building Height: 2-4 stories</p> <p>Street designs support pedestrian and bicycle use along with vehicular circulation</p> <p>Zoning: R-3-18</p>	<p>Multi-family residential units, town homes and apartments, flats and condominiums. This designation is appropriate in proximity to major community facilities and employment opportunities, and along major thoroughfares.</p>	<ul style="list-style-type: none"> <li>■ Multi-family development includes common open space and recreational amenities</li> </ul>





*Figure II-6*  
**General Plan Land Use Designations**

Land Use Designation	Required Standards: <i>Density and Design</i> <i>Minimum Lot Size</i> <i>Maximum Building Height</i> <i>(Also refer to policies)</i>	General Description of Uses	Recommended Urban Form Characteristics
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**High Density Multi-Family Residential**

**Urban IV and Urban V**

These designations accommodate higher densities for urban multifamily housing characterized by taller structures in more densely developed areas that provide convenient access to a wider range of facilities and services.

<p align="center"><b>Urban IV</b></p> 	<p>Maximum densities allowed: 24 du/ac</p> <p>Minimum densities allowed: 16.8 du/ac</p> <p>Building Height: 2-4 stories</p> <p>Street designs support pedestrian and bicycle use along with vehicular circulation</p> <p>Zoning: R-4-24</p> 	<p>Multi-family residential units, town homes and apartments, flats and condominiums. This designation is appropriate along major thorough-fares in close proximity to transit stops, shopping centers, entertainment, community facilities and employment opportunities to provide residents the opportunity to live near work and amenities.</p>	<ul style="list-style-type: none"> <li>▪ Highly interconnected linear street system facilitating traffic flow</li> <li>▪ Community services and neighborhood parks within walking distance of local residents, where feasible</li> <li>▪ Range of housing types and design consistent with existing forms and patterns, where appropriate</li> <li>▪ Established street tree canopy providing shade and enhanced neighborhood character</li> <li>▪ Buildings located and designed to orient to primary street frontages, with either individual entries for each unit, or a common lobby entrance to access individual units</li> <li>▪ Larger parcels may incorporate multiple buildings with a coordinated vehicular and pedestrian circulation plan</li> </ul>
<p align="center"><b>Urban V</b></p> 	<p>Maximum densities allowed: 30 du/ac</p> <p>Minimum densities allowed: 21 du/ac</p> <p>Building Height: 2-4 stories</p> <p>Street designs support pedestrian and bicycle use along with vehicular circulation</p> <p>Zoning R-5-30</p> 	<p>Higher density multi-family residential units, town homes and apartments, flats and condominiums. This designation is appropriate near the downtown core, transit stations, along major thorough-fares in close proximity to shopping centers, entertainment, community facilities and employment opportunities to provide residents the opportunity to live near work and amenities.</p>	<ul style="list-style-type: none"> <li>▪ Multi-family development includes common open space and recreational amenities</li> <li>▪ Off-street parking is integrated into the building or in separate parking structures</li> <li>▪ Direct access to transit may be incorporated into the development</li> <li>▪ Streets in older neighborhoods maintain limited curb cuts with rear, alley, and side garage access</li> </ul>

*Figure II-6*  
**General Plan Land Use Designations**

Land Use Designation	Required Standards: <i>Density and Design</i> <i>Minimum Lot Size</i> <i>Maximum Building Height</i> <i>(Also refer to policies)</i>	General Description of Uses	Recommended Urban Form Characteristics
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**Commercial**

**Neighborhood Commercial**

This designation accommodates very small scale neighborhood-oriented limited retail and office activities designed to serve residents in the immediate vicinity.

**Neighborhood Commercial**



Maximum Intensity: 0.35 FAR  
 Building Height: 1 story  
 Maximum Lot Size: 5 ac  
 Location: Minimum One (1) mile from any other commercial center or commercial zone, and fronting on Major or Prime Arterial roadway.  
 Design: Details of location, intensity, height, scale, circulation, signage architecture, and lighting to be provided upon application. Appropriate landscaped buffer adjacent to residential.  
 Pedestrian- and bicycle-friendly with convenient non-vehicular access provided.  
 Dispensing motor fuel prohibited.  
 Zoning:  
 Commercial Neighborhood (C-N)

Small scale limited service uses permitted in every land use category including large Specific Planning Areas (SPAs) but may not be an appropriate land use in many residential or industrial areas. Businesses are intended to serve the immediate neighborhood and may include child care facilities.



- Low scale, low intensity, low impact design
- Signage, lighting, landscaping, businesses and hours of operation compatible with the surrounding residential densities and intensities
- Parking areas heavily landscaped to reduce radiant heat effects

**General Commercial**

This designation accommodates a wide variety of retail and service activities intended to serve a broad customer base.

**General Commercial**




Maximum Intensity: 0.5 FAR  
 Building Height: 1-4 stories  
 Buildings taller than 3 stories may be appropriate for tourist-serving facilities or in mixed use overlay areas  
 Maximum Lot Size: None  
 Location: Along major thoroughfares and in higher intensity urban nodes.  
 Design: Details of location, scale, intensity, height, signage, lighting, circulation, and architecture shall be provided during application.  
 Zoning: (C-G)  
 Commercial General

A broad range of retail and service activities, including local-serving commercial, community shopping/ office complexes, automobile sales and service, eating and drinking establishments, entertainment facilities.





- Designed to promote pedestrian activity characterized by "store front" window displays and extensive landscaping
- Located and designed to be compatible and transition with adjacent uses in scale, bulk, height
- Buildings designed to orient to primary street frontages, with individual building entries
- Parking areas heavily landscaped to reduce radiant heat effects
- Internal vehicular access between sites is coordinated to facilitate parking and minimize curb cuts where feasible.

Figure II-6  
**General Plan Land Use Designations**

Land Use Designation	Required Standards: <i>Density and Design</i> <i>Minimum Lot Size</i> <i>Maximum Building Height</i> <i>(Also refer to policies)</i>	General Description of Uses	Recommended Urban Form Characteristics
<b>Commercial</b>			
<b>Planned Commercial</b> This designation accommodates a variety of commercial activities within a self-contained comprehensively planned development.			
<p><b>Planned Commercial</b></p> 	<p>Maximum Intensity: 1.5 FAR                      Building Height: 1-4 stories  <i>(Amended by PHG 16-0006, Ordinance 2016-11)</i>                      Maximum Lot Size: None                      Location: At city gateways, along major thoroughfares, at major roadway intersections and in higher intensity urban nodes served by transit.</p> <p>Design: Details regarding businesses, location of all buildings, height, architecture and building materials, landscaping, development features, scale, intensity, orientation for light and air, circulation and parking patterns, signage, lighting, land uses, buffers, open space, market analysis shall be provided during application.</p> <p>Zoning:                      Planned Development (P-D)</p>	<p>A variety of commercial activities within a unified planned commercial center. Appropriate uses may include general and professional offices, tourist serving facilities, specialty and automobile retail, and similar retail/service businesses.</p> <p>Refer to Planned Commercial Section of this Element for details on specific properties designated Planned Commercial.</p>	<ul style="list-style-type: none"> <li>▪ Designed to integrate multiple buildings and uses to be identifiable as a distinct place</li> <li>▪ Unified framework of pedestrian walkways, public plazas, open spaces, courtyards, and other elements are developed</li> <li>▪ Designed to promote pedestrian activity characterized by “store front” window displays and extensive landscaping</li> <li>▪ Public and internal right-of-ways developed with landscaping, street trees, and amenities to enhance character and identity</li> <li>▪ Site specific improvements may be required to preserve unique qualities and ensure compatibility with surrounding areas</li> <li>▪ Parking areas heavily landscaped to reduce radiant heat effects</li> </ul>

**Figure II-6  
 General Plan Land Use Designations**

Land Use Designation	Required Standards: <i>Density and Design</i> <i>Minimum Lot Size</i> <i>Maximum Building Height</i> <i>(Also refer to policies)</i>	General Description of Uses	Recommended Urban Form Characteristics
<b>Office</b>			
<b>General Office, Planned Office</b>			
This designation accommodates a variety of activities in an office environment and in Mixed Use Overlay areas and is intended to prevent the proliferation of individual isolated offices.			
<p align="center"><b>General Office</b></p> 	<p>Maximum Intensity: 2.0 FAR                  Building Height: 2-6 stories                  Maximum Lot Size: None                  Location: Along major thoroughfares, at roadway intersections and in higher intensity urban nodes served by transit.                  Zoning:                  Commercial Professional(C-P)                  Hospital Professional (H-P)</p>	<p>Administrative and professional offices; business support services; financial, insurance, and real estate services; supportive commercial uses such as restaurants.                  Medical offices and health care services, short-term convalescent and long-term care facilities, research labs, medical supply, and similar uses.</p>	<ul style="list-style-type: none"> <li>■ Compatible intensity with adjacent uses to maintain the character in scale, bulk, and height</li> <li>■ Buildings oriented to the street frontage and designed to promote pedestrian interest through architectural articulation, attractive landscaping, and similar techniques</li> <li>■ Parking located behind or within buildings, or accommodated in separate parking structures</li> <li>■ Public and semi-public outdoor spaces such as plazas and courtyards are encouraged</li> <li>■ Sidewalks incorporate landscaping, street furniture, lighting, public art, and similar amenities to establish an attractive place for walking and community activity</li> <li>■ Parking areas heavily landscaped to reduce radiant heat effects</li> </ul>
<p align="center"><b>Planned Office</b></p> 	<p>Maximum Intensity: 2.0 FAR                  Building Height: 1-3 stories                  Maximum Lot Size: None                  Location: City gateways, next to freeways and interchanges, along major thoroughfares, at major roadway intersections and in higher intensity urban nodes served by transit.                  Design: Details of building height location, architecture and landscaping, scale, intensity, light and air orientation, circulation and parking patterns, signage, lighting, land uses, buffers, open space, market analysis shall be provided during application                  Zoning:                  Planned Development (P-D)</p>	<p>Bio-technology, research and development, corporate office and related support office uses in a campus-like setting. Limited Support retail and service uses, such as restaurants, dry cleaners, gym / fitness centers, markets, and office services (e.g., printing / copying / shipping) as well as compatible public uses are also appropriate if integrated into larger facilities.                  Refer to Office Land Use Policies and Target Area Land Use Policies of this Land Use Element for details on specific properties designated Planned Office.</p>	<ul style="list-style-type: none"> <li>■ Designed to integrate multiple buildings into a master planned development with coordinated architecture, lighting, signage, landscaping, etc. and a unifying theme that is identifiable as a distinct place</li> <li>■ Buildings located and designed to promote pedestrian activity along their frontages</li> <li>■ Parking located behind or within buildings, or accommodated in separate parking structures</li> <li>■ Public and semi-public outdoor spaces are encouraged such as plazas and courtyards</li> <li>■ Parking areas heavily landscaped to reduce radiant heat effects</li> </ul>

*Figure II-6*  
**General Plan Land Use Designations**


Land Use Designation	Required Standards: <i>Density and Design</i> <i>Minimum Lot Size</i> <i>Maximum Building Height</i> <i>(Also refer to policies)</i>	General Description of Uses	Recommended Urban Form Characteristics
<b>Industrial</b>			
<b>Industrial Office</b>			
This designation accommodates a variety of activities in an industrial environment adjacent to downtown near the transit station.			
<p><b>Industrial Office</b></p> 	<p>Maximum Intensity: 2.0 FAR                  Building Height: 1-4 stories                  Maximum Lot Size: None                  Location: Southwest of the Downtown Specific Planning Area between Centre City Parkway and Redwood Street north of Sixth Avenue.</p> <p>Land Uses: Manufacturing, warehouse / distribution, assembling, wholesaling, and support type uses on sites which are zoned M-2 &amp; M-1 zones. This land use designation accommodates the widest range of Industrial activities which conform to environmental laws and industry standards. It will also provide for Industrial Office land uses, as specified in the zoning code, on properties which transition from the existing M-2 or M-1 zones, to the I-O zone.</p> <p>Provisions: Properties may not "up-zone" from M-1 to M-2, but may "down-zone" from M-2 to M-1, or from M-1 and M-2 to I-O. While the I-O zone will contain stricter standards than the M-1 and M-2 zone (i.e. no outdoor storage), a wider range of permitted land uses will provide incentive to re-zone to I-O which will allow this industrial area to recycle to less intensive uses without creating non-conforming use restrictions on existing M-2 &amp; M-1 zoned properties.</p> <p>Zoning:                  Industrial Office (I-O)                  Light Industrial (M-1)                  General Industrial (M-2)</p>	<p>Office uses transitioning from older manufacturing uses (adjacent to downtown and in a more urban setting) with nearby residential uses and convenient access to transit.</p>	<ul style="list-style-type: none"> <li>▪ Generally buildings with ceiling heights to accommodate production and storage</li> <li>▪ Develop pedestrian connections to nearby transit</li> <li>▪ More articulation, detailing, and fenestration on facades visible from major thoroughfares and freeways</li> <li>▪ Landscaping and wall treatments incorporated to buffer adjacent sensitive uses</li> </ul>

Figure II-6

**General Plan Land Use Designations**

Land Use Designation	Required Standards: <i>Density and Design</i> <i>Minimum Lot Size</i> <i>Maximum Building Height</i> <i>(Also refer to policies)</i>	General Description of Uses	Recommended Urban Form Characteristics
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**Industrial**

**Light Industrial, General Industrial**

These designations accommodate a variety of activities in an industrial environment.

<p><b>Light Industrial</b></p> 	<p>Maximum Intensity: 1.0 FAR                      Building Height: 1-4 stories                      Maximum Lot Size: None                      Location: Generally south side of Highway 78, west of Centre City Parkway and north of Escondido Creek.                      Land Uses: Manufacturing, warehousing, distributing, assembling, and wholesaling in a setting more restrictive than the General Industrial land use designation. This includes sites for lighter Industrial and office uses which can comply with the stricter development requirements of the Light Industrial (M-1) and Industrial Park (I-P) zones.                      Zoning:                      Light Industrial (M-1)                      Industrial Park (I-P)</p>	<p>Light manufacturing, warehouse, distribution, assembly, and wholesale uses in a more restrictive setting than the General Industrial designation. Lighter industrial and office type uses are intended as well as industries that generate moderate daytime and minimum nighttime noise levels, and require limited or no outside storage. Uses that provide supporting products or services for the primary businesses are also allowed.</p>	<ul style="list-style-type: none"> <li>▪ Generally buildings with ceiling heights to accommodate production and storage</li> <li>▪ Develop pedestrian connections to nearby transit</li> <li>▪ More articulation, detailing, and fenestration on facades visible from major thoroughfares and freeways</li> <li>▪ Landscaping and wall treatments incorporated to buffer adjacent sensitive uses</li> </ul>
<p><b>General Industrial</b></p> 	<p>Maximum Intensity: 1.0 FAR                      Building Height: 1-2 stories                      Maximum Lot Size: None                      Location: Generally south side of Highway 78, west of Centre City Parkway and north of Escondido Creek.                      Land Uses: Manufacturing, warehouse, distribution, assembling, and wholesaling accommodating a wide range of heavier industrial activities which conform to environmental laws and Industry standards. Also included are sites for companies which provide supporting products or services for the primary businesses of the zone.                      Zoning:                      General Industrial (M-2)</p>	<p>Intense manufacturing, warehouse and distribution, assembly, and wholesale industrial opportunities and allows outside storage. Uses that provide supporting products or services for the primary businesses are also allowed. This designation should generally not be located in proximity to residential uses.</p>	



Figure II-6  
**General Plan Land Use Designations**

Land Use Designation	Required Standards: <i>Density and Design</i> <i>Minimum Lot Size</i> <i>Maximum Building Height</i> <i>(Also refer to policies)</i>	General Description of Uses	Recommended Urban Form Characteristics
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**Mixed Use Residential Overlay**

**Vertical Mixed Use Overlay, Horizontal Mixed Use Overlay**

These overlay designations accommodate a combination of commercial and/or office activities that include a residential component within a self-contained comprehensively planned development in specified General Plan locations.

<p><b>Vertical Mixed Use</b></p> 	<p>Minimum: 1.5 FAR                      Maximum 3.0 FAR                      Percentage non-residential:                      Minimum: 20% FAR                      Maximum: 35% FAR                      Location: At specified General Plan locations.                      Zoning: Mixed Use Overlay (M-U)</p> 	<p>Mixed-use structures that vertically integrate housing above ground floor commercial, office, other pedestrian-active uses.                      For mixed use structures, commercial uses characterized by noise, vibration, odors, or other activities that would adversely impact on-site residential units are prohibited.                      Details regarding businesses, location, intensity, height, scale, circulation, signage architecture, materials, and lighting shall be provided during application.</p>	<ul style="list-style-type: none"> <li>Buildings located along and oriented toward street frontages, whose cumulative mass, establishes an "urban" or "village" character</li> <li>Buildings designed to promote pedestrian interest through architectural articulation, attractive landscaping, and similar techniques</li> <li>Parking located behind or within buildings, or accommodated in separate parking structures</li> <li>Encourage pedestrian-oriented uses such as outdoor cafes in the ground floor of buildings</li> <li>Internal and external sidewalks and walkways improved to establish an attractive place for walking and community activity including such elements as landscaping, street furniture, lighting, public art, and similar amenities</li> </ul>
<p><b>Horizontal Mixed Use</b></p> 	<p>Mixed use development with combined exclusively residential and nonresidential buildings:                      Intensity of Exclusively Non Residential Buildings:                      Minimum: 0.5 FAR                      Maximum: 1.0 FAR                      Density of Exclusively Residential Buildings:                      Minimum: 30 units/acre                      Maximum: 80 units/acre</p> <p>Mixed-Use Buildings:                      Minimum: 1.5 FAR                      Maximum 2.0 FAR                      Percentage non-residential:                      Minimum: 20% FAR                      Maximum: 35% FAR                      Location: At specified General Plan locations                      Zoning: Mixed Use Overlay (MU-O)</p>	<p>A Mixed use development that horizontally distributes a mix of land uses, which may include residential, commercial, office, and/or buildings that may include vertically integrated land uses.                      For mixed use structures, commercial uses characterized by noise, vibration, odors, or other activities that would adversely impact on-site residential units are prohibited.                      Details regarding businesses, location, intensity, height, scale, circulation, signage architecture, materials, and lighting shall be provided during application.</p>	<ul style="list-style-type: none"> <li>Develop pedestrian connections to nearby transit stations</li> <li>Public and semi-public outdoor spaces such as plazas and courtyards are encouraged</li> <li>Separate secured entrances and parking for residential and non-residential land uses</li> <li>Adequate provisions to ensure compatibility with issues related to service deliveries, odors, trash, etc.</li> </ul>

*Figure II-6*  
**General Plan Land Use Designations**

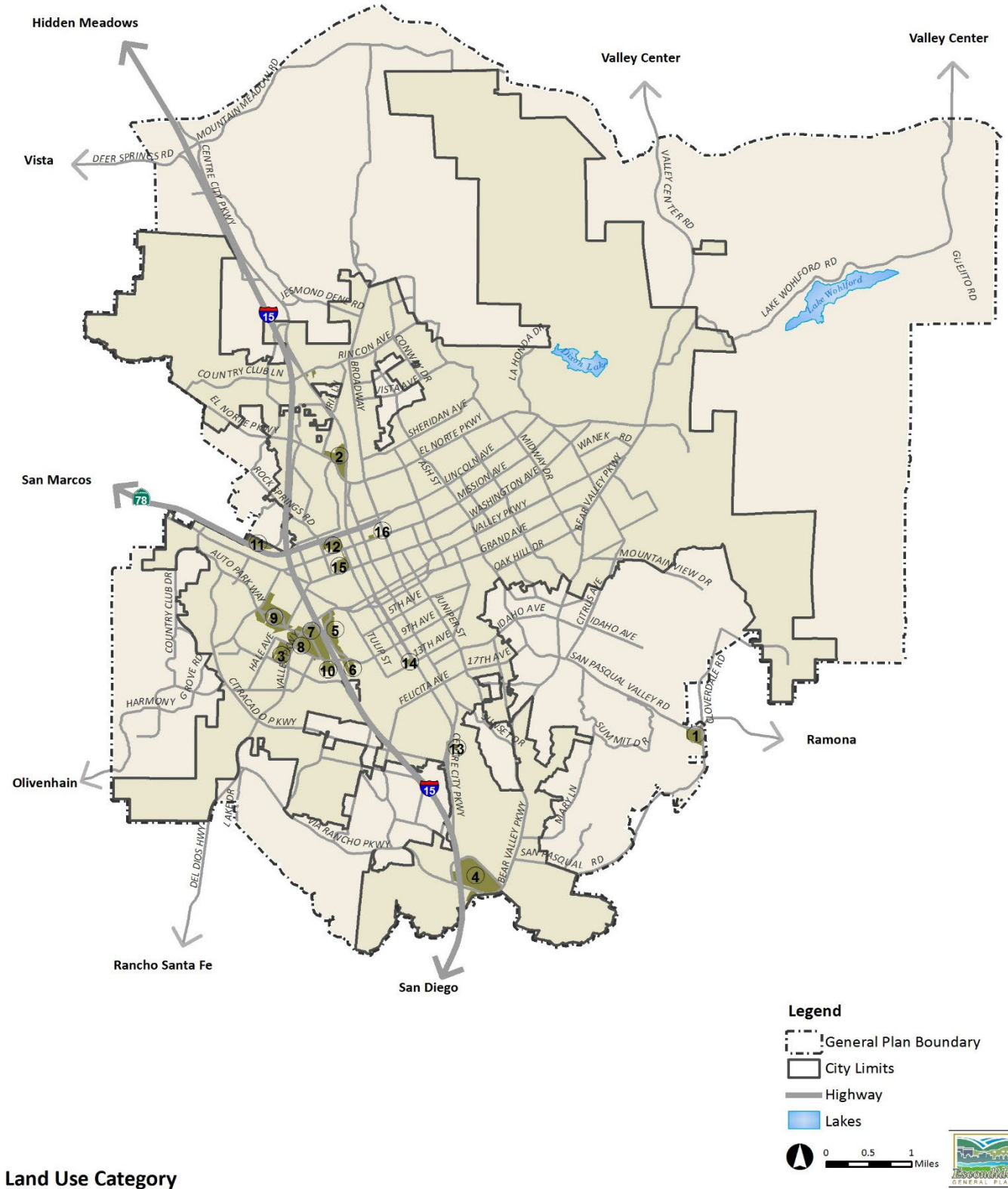
Land Use Designation	Required Standards: <i>Density and Design Minimum Lot Size Maximum Building Height (Also refer to policies)</i>	General Description of Uses	Recommended Urban Form Characteristics
<b>Other Land Uses</b>			
<b>Specific Planning Areas.</b>			
<b>Specific Planning Areas</b>	Development shall comply with adopted Planned Development or Specific Plan or standards which shall be provided during application processing as prescribed in this General Plan. Refer to General Plan Map and text for development application requirements.  Zoning: Specific Plan (S-P)	Accommodates areas which require submittal of Planned Development or Specific Plans prior to development as described in this General Plan.  Refer to Specific Plan land use policies for details on specific properties designated Specific Planning Area.	<ul style="list-style-type: none"> <li>▪ Applications should demonstrate community benefit and furthering the community's interests</li> </ul>
<b>Public Facility Overlay.</b>			
<b>Public Facilities</b>	Public facility design details shall be provided during application processing  Zoning: Public Facility Overlay (PF-O) applies single-use facilities, underlying General Plan designation applies if land use is eliminated.	Overlay accommodates public facilities including government facilities, libraries, community centers, and schools.	<ul style="list-style-type: none"> <li>▪ Public buildings designed to promote pedestrian interest through architectural articulation, attractive landscaping, and similar techniques</li> <li>▪ Pedestrian- and bicycle-friendly with convenient non-vehicular access provided as appropriate</li> <li>▪ Parking areas heavily landscaped to reduce radiant heat effects</li> </ul>
			
<b>Parks and Open Space.</b>			
<b>Parks and Open Space</b>	Parks and open space design details shall be provided during application processing  Zoning: Open Space-Park (OS-P)	Accommodates land for public recreational activity and habitat preservation. Permitted uses include active and passive parks as well as land to protect, maintain, and enhance the community's natural resources and include detention basins and creek corridors.	<ul style="list-style-type: none"> <li>▪ Buildings with public parks designed to promote pedestrian interest through architectural articulation, attractive landscaping, and similar techniques</li> <li>▪ Pedestrian- and bicycle-friendly with convenient non-vehicular access provided</li> <li>▪ Parking areas heavily landscaped to reduce radiant heat effects</li> </ul>
			
<b>Native American Tribal Lands.</b>			
<b>Tribal Lands</b>		Accommodates lands that are federally recognized reservations or Indian Villages. The city has no land use authority over Tribal Lands.	



*The Escondido Auto Park is a comprehensively planned regional commercial land use specializing in the sale, lease and maintenance of automobiles*

## H. Planned Commercial Land Use Areas

Planned Commercial sites allow a variety of commercial activities within a self-contained, comprehensively planned center including office and professional uses, tourist serving facilities, specialty retail, and other retail/service businesses (Figure II-7). Each Planned Commercial site has guiding principles that are designed to preserve unique qualities and to ensure compatibility with existing and surrounding land uses. Planned Commercial sites #4, #7, #8, #10, #12, #13, and #14 have been incorporated into larger “Target Areas” (described in Section J of this Element) that provide unique opportunities for achieving the General Plan vision.



**Land Use Category**

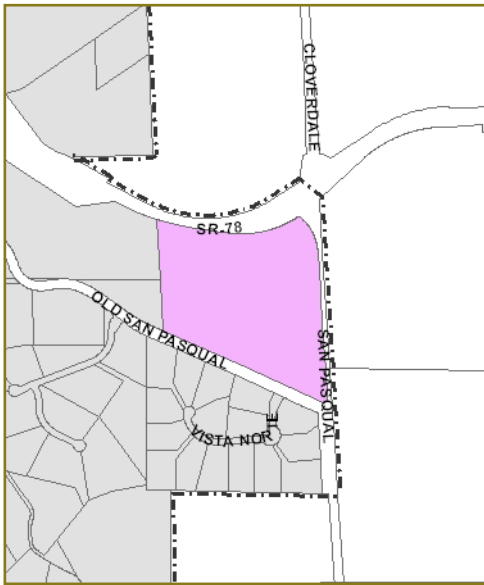
Planned Commercial

Source: City of Escondido

**Escondido General Plan**

Planned Commercial Areas

Figure II-7



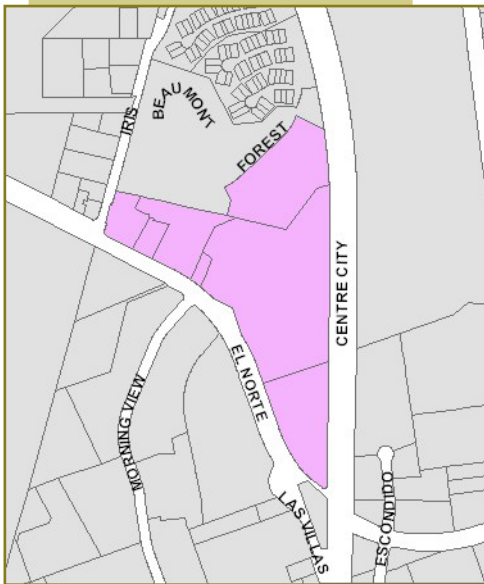
### 1. Highway 78 / Cloverdale Road

**Location:** Southwestern corner of Cloverdale Road and Highway 78

**Size:** Approximately 15 acres (Figure II-7, Area #1).

**Planned Commercial Development 1 Guiding Principles:**

The site shall be developed as a neighborhood shopping center to serve the surrounding planned residential development. The facility shall be aesthetically designed with high quality building and landscaping features, increased setbacks, and minimal grading impacts. The design shall be rural in character, compatible with the San Dieguito River Valley Regional Open Space Park, and shall include amenities that are accessible to users of the park, such as trail access and picnic areas. Uses shall relate directly with the needs of the neighborhood and the rural setting. For example, a ranch style market would be more appropriate than a supermarket.



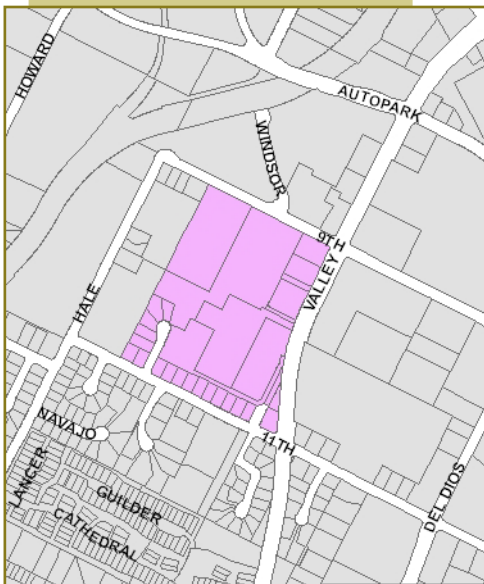
### 2. Iris Lane / El Norte Parkway

**Location:** Northeastern corner of Iris Lane and El Norte Parkway

**Size:** Approximately 23 acres (Figure II-7, Area #2).

**Planned Commercial Development 2 Guiding Principles:**

Land uses shall include a mixture of office, restaurant, and retail with a comprehensively planned architecture and signage plan. Heavily landscaped buffers and separation shall be maintained and shall substantially shield views of the site from surrounding residential development.



### 3. West Valley Parkway / Ninth Avenue

**Location:** Southwestern corner of W. Valley Parkway and Ninth Avenue

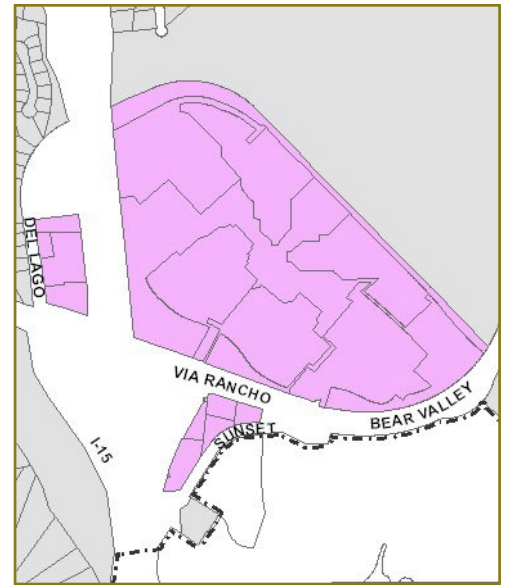
**Size:** Approximately 26 acres (Figure II-7, Area #3).

**Planned Commercial Development 3 Guiding Principles:**

Traffic, circulation, and pedestrian patterns shall be coordinated with development in the vicinity to promote walkability. Provisions for adequate pedestrian access and lighting shall be maintained in the overall design of the site.

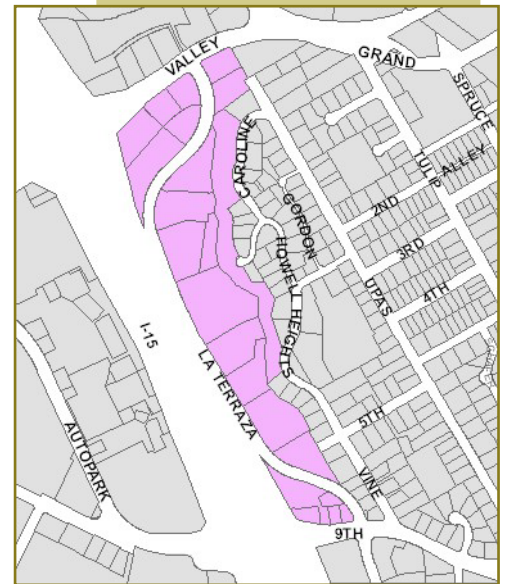
#### 4. Westfield Regional Shopping Center

**Location:** Interstate 15 at Via Rancho Parkway  
**Size:** Approximately 83 acres (Figure II-7, Area #4).  
**Planned Commercial Development 4 Guiding Principles:**  
Refer to Target Area ‘g’ in Section J



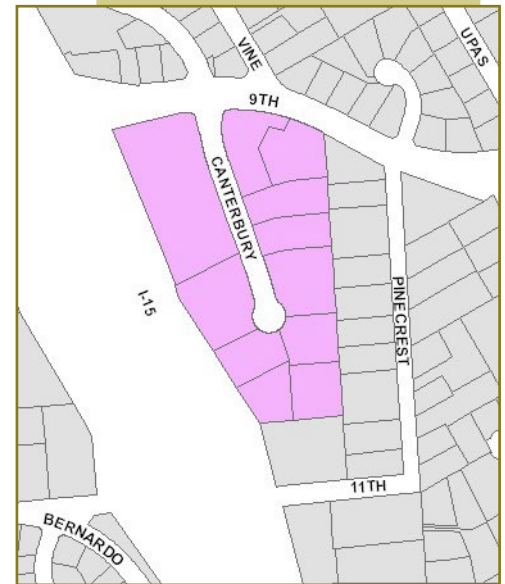
#### 5. La Terraza

**Location:** La Terraza Boulevard and West Valley Parkway  
**Size:** Approximately 41 acres (Figure II-7, Area #5).  
**Planned Commercial Development 5 Guiding Principles:**  
Land uses shall include office, hotel, restaurant, and retail. The hotel will be a high quality, full service hotel with supporting improvements, such as room service and conference / recreational facilities.

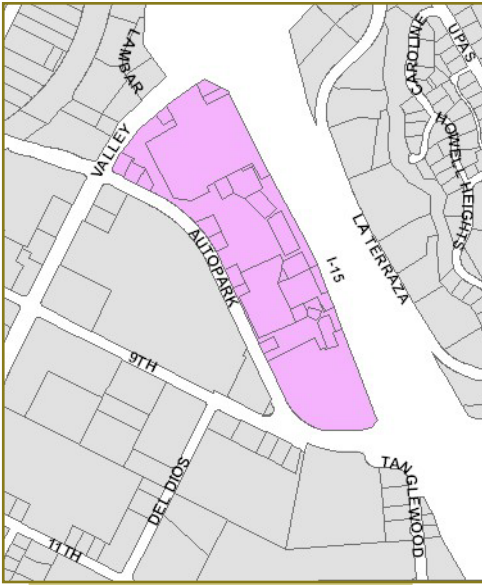


#### 6. Canterbury Place

**Location:** Canterbury Place, south of Ninth Avenue  
**Size:** Approximately 15 acres (Figure II-7, Area #6).  
**Planned Commercial Development 6 Guiding Principles:**  
Development shall incorporate high quality, unified design elements and superior architectural details that are sensitive to adjacent single-family zoning to the south and east. Development plans shall incorporate substantial buffers to provide an attractive view from both I-15 and Ninth Avenue, as well as incorporate high quality landscaping throughout the project which exceeds normal city requirements in terms of size, quantity, and overall amounts. The scale of development and nature of uses shall be limited as necessary in order to generate no more than 3,690 vehicle trips per day based upon standards accepted by the City Engineer.



Development on the eastern and southern portions of the site shall be restricted to office uses and shall prevent overlooking of adjacent residential properties, limit noise and lighting impacts, and shall be heavily screened through a combination of mounding, walls, and landscaping. Retail uses should be freeway oriented and be integrated with office uses rather than located in large single tenant, freestanding buildings. Any future restaurant uses shall be full service rather than a fast-food or drive-through variety.



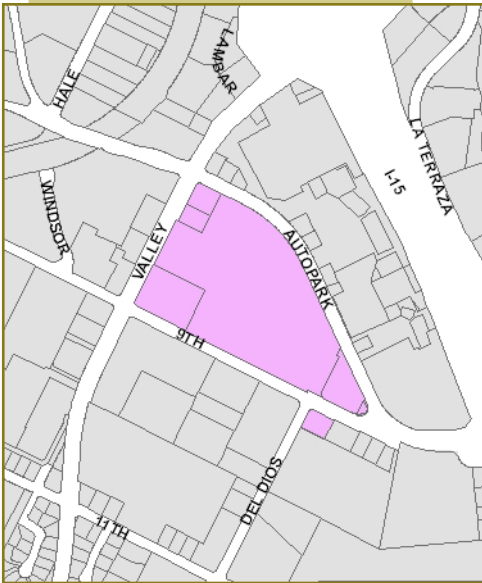
### 7. Promenade Shopping Center

**Location:** West side of Interstate 15 at Via Rancho Parkway

**Size:** Approximately 32 acres (Figure II-7, Area #7).

**Planned Commercial Development 7 Guiding Principles:**

Refer to Target Area ‘i’ in Section J



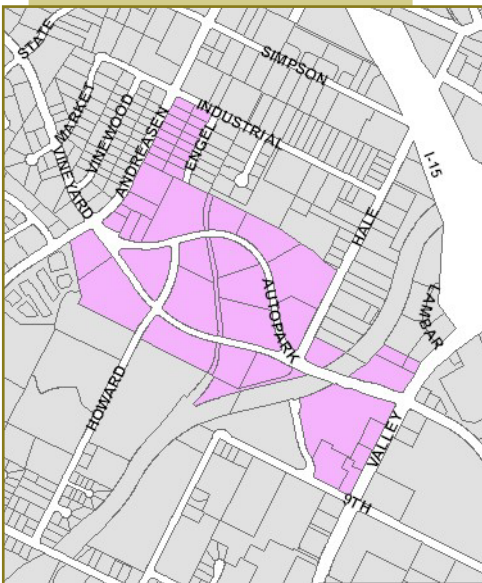
### 8. Del Dios Middle School

**Location:** West side of Auto Park Way North of Ninth Avenue

**Size:** Approximately 15 acres (Figure II-7, Area #8).

**Planned Commercial Development 8 Guiding Principles:**

Refer to Target Area ‘i’ in Section J



### 9. Escondido Auto Park

**Location:** Auto Park Way between Valley Parkway / Andreason Dr.

**Size:** Approximately 85 acres (Figure II-7, Area #9).

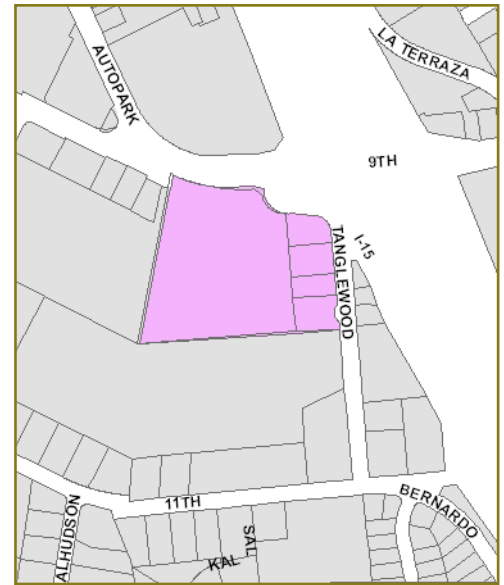
**General Plan Designation:** Planned Commercial

**Planned Commercial Development 9 Guiding Principles:**

Land uses shall include auto dealerships, other automotive / commercial related uses and a variety of commercial and office facilities. The auto dealers and auto related uses shall be located west of Escondido Creek with general commercial uses located on the Valley Parkway frontage and at the entrance to the auto dealerships west of the creek. Land uses and design features will be reviewed by the city for Master Plan consistency.

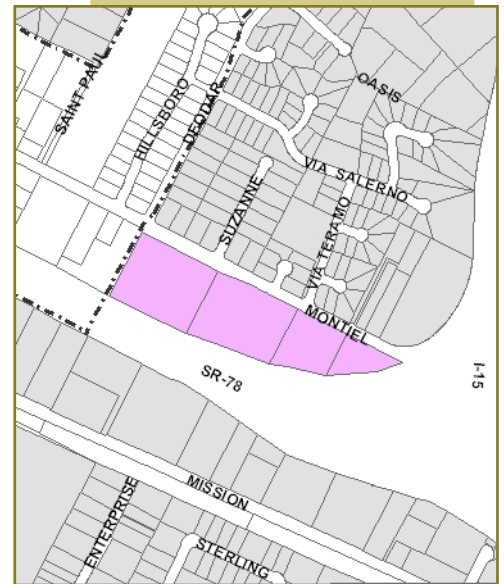
### 10. Auto Park Way / Tanglewood Drive

**Location:** South side of Auto Park Way at Tanglewood Drive  
**Size:** Approximately 8 acres (Figure II-7, Area #10).  
**General Plan Designation:** Planned Commercial  
**Planned Commercial Development 10 Guiding Principles:**  
Refer to Target Area ‘i’ in Section J



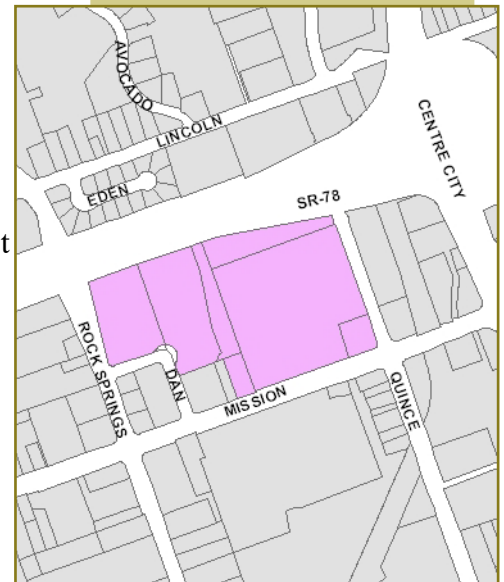
### 11. Montiel Road

**Location:** South side of Montiel Road, north of Highway 78  
**Size:** Approximately 15 acres (Figure II-7, Area #11).  
**General Plan Designation:** Planned Commercial  
**Planned Commercial Development 11 Guiding Principles:**  
Land uses shall include limited light manufacturing and commercial establishments. Large landscaped setbacks shall be maintained to ensure compatibility with surrounding areas.

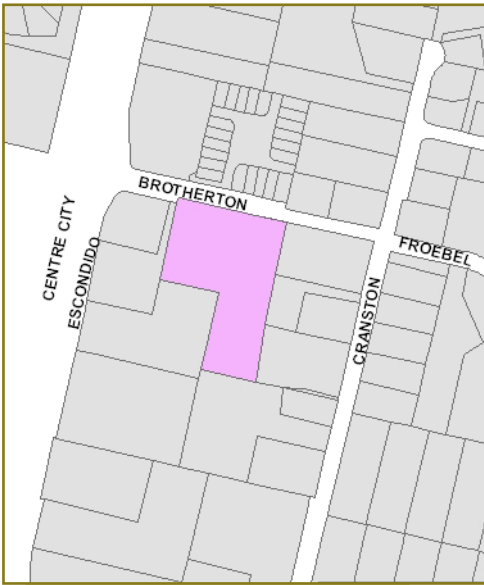


### 12. Mission Avenue / Quince Street

**Location:** Northwestern corner of Mission Avenue and Quince Street  
**Size:** Approximately 17.8 acres (Figure II-7, Area #12).  
**Planned Commercial Development 12 Guiding Principles:**  
Refer to Target Area ‘a’ in Section J







### 13. Brotherton Road

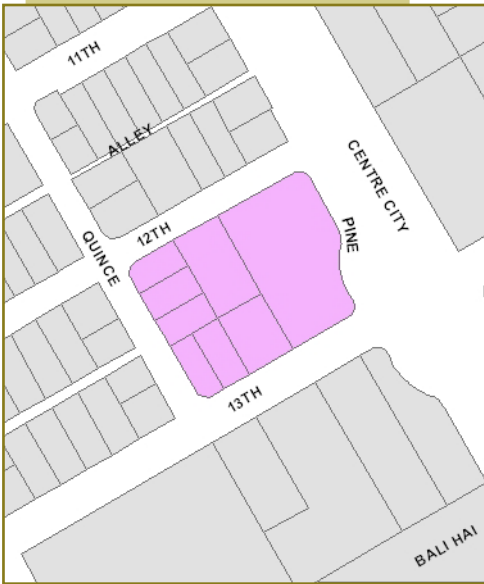
**Location:** Southern side of Brotherton Road, east of Escondido Boulevard

**Size:** Approximately 1.8 acres (Figure II-7, Area #13).

**General Plan Designation:** Planned Commercial

**Planned Commercial Development 13 Guiding Principles:**

Refer to Target Area ‘f’ in Section J



### 14. 13<sup>th</sup> Avenue / Pine Street

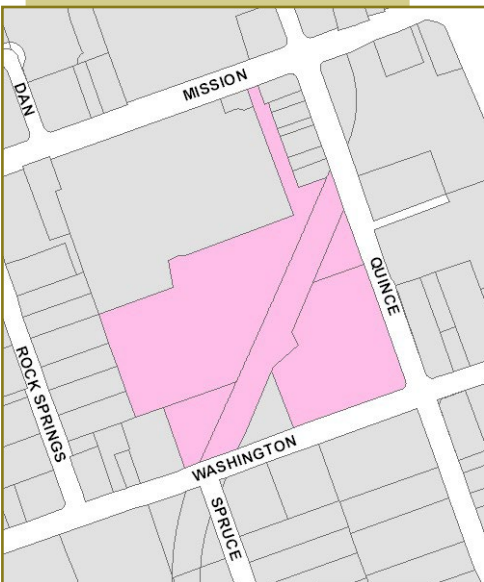
**Location:** Block bounded by 12<sup>th</sup>, 13<sup>th</sup> Avenues, Pine and Quince Streets

**Size:** Approximately 2.75 acres (Figure II-7, Area #14).

**General Plan Designation:** Planned Commercial

**Planned Commercial Development 14 Guiding Principles:**

Refer to Target Area ‘c’ in Section J



### 15. Washington Avenue / Quince Street

**Location:** Northwestern corner of Washington Avenue and Quince Street bisected by Reidy Creek

**Size:** Approximately 15 acres (Figure II-7, Area #15).

**Planned Commercial Development 15 Guiding Principles:**

Refer to Target Area ‘a’ in Section J

## 16. Mission Avenue

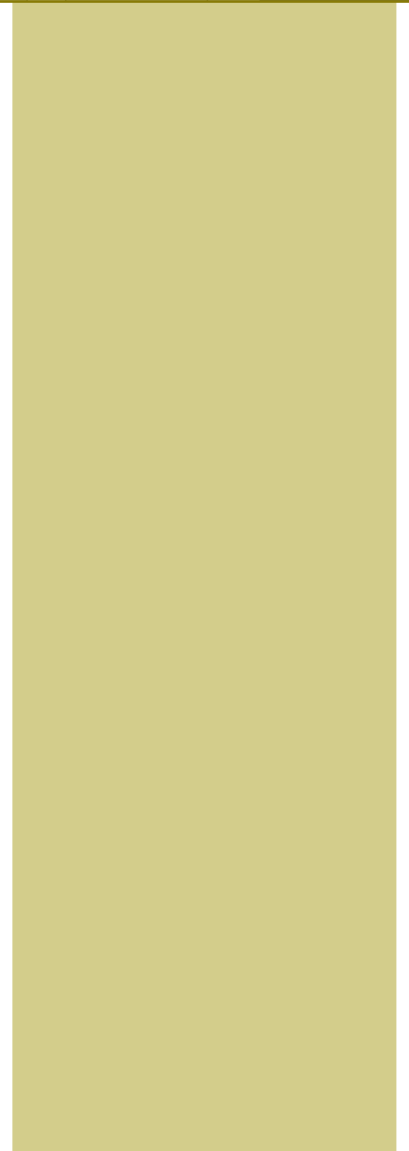
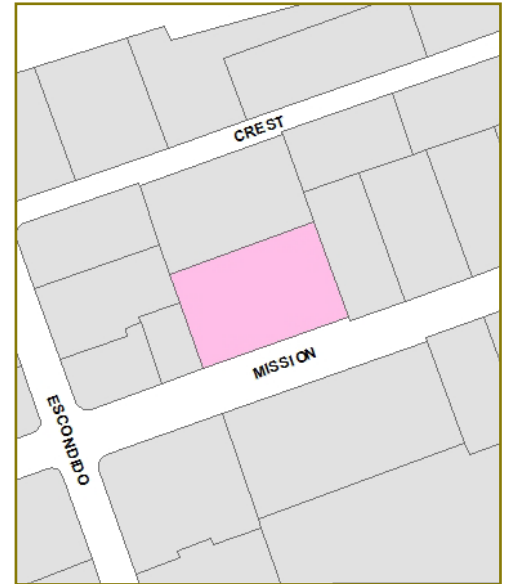
**Location:** Northern side of Mission Avenue, east of Escondido Boulevard

**Size:** Approximately 1.57 acres (Figure II-7, Area #16)

**General Plan Designation:** Planned Commercial

**Planned Commercial Development 16 Guiding Principles:** Refer to Target Area 'b' in Section J

*(Amended by PHG 16-0006, Ordinance No. 2016-11)*







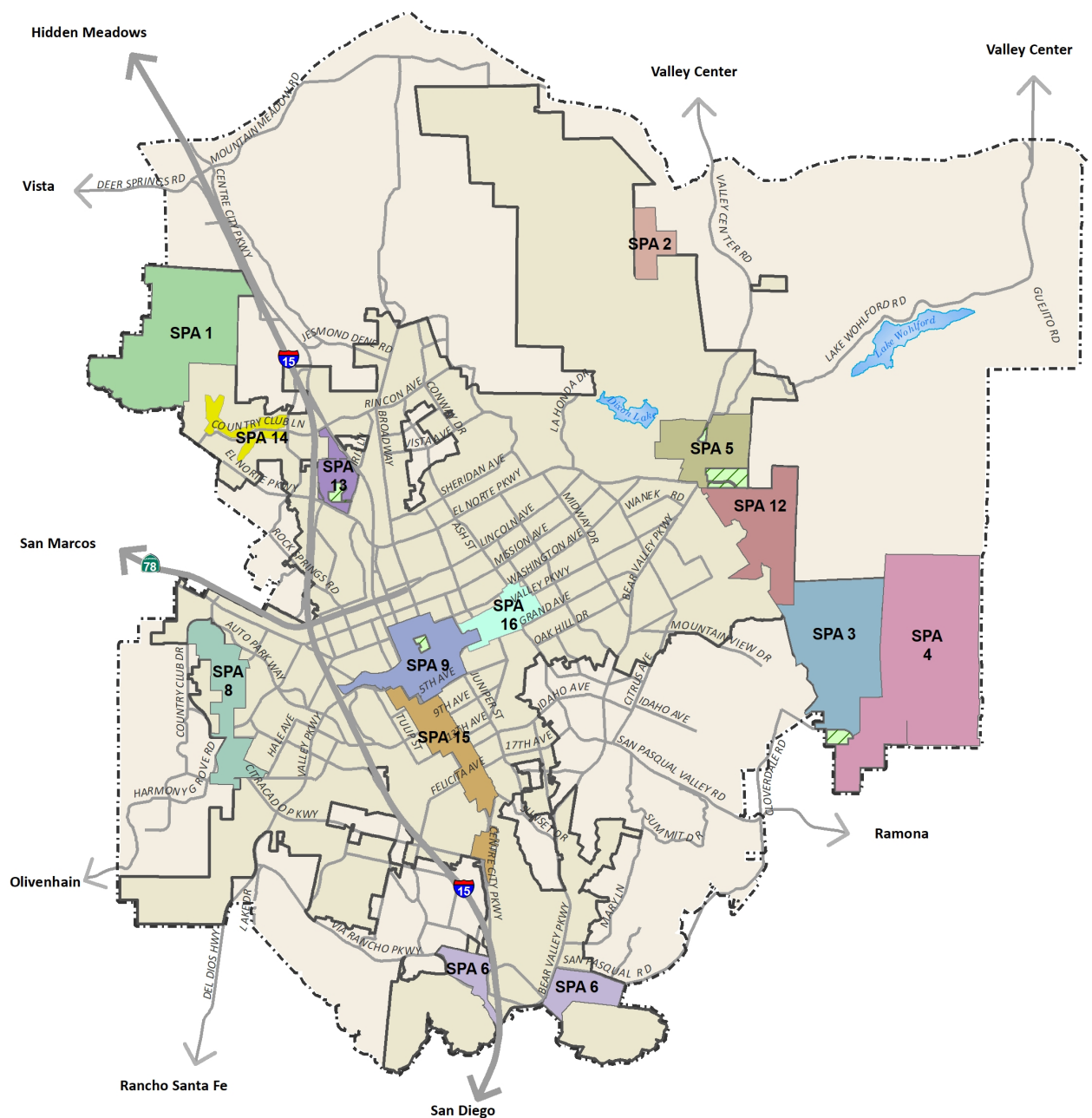
## I. Specific Planning Areas

A Specific Planning Area (SPA) is a land use category defined in the General Plan that is applied in unique situations where comprehensive planning for an area is important to achieve a desired vision. Specific Plans are authorized by State Government Code Section 65450. Required components of Specific Plans include a separately approved document and map that comprehensively prescribe the distribution, location, extent and intensity of major components of development, utilities, transportation, and facilities associated with the SPA. Standards and criteria describing the process for approving private and public development projects within the SPA are also included.















This Element identifies Specific Planning Areas within Escondido's General Plan and provides a narrative for the SPA's character of development. Certain SPAs have not undergone processing for a Specific Plan document as prescribed above. Policies, standards, and guidelines for these particular SPAs may be refined at the time of Specific Plan adoption. These refinements shall not entail changes to the basic land uses or the character of development envisioned in the SPA narrative.

Specific Planning Areas #8, #9, and #13 are identified as "Opportunity Areas" where the city will focus infrastructure improvements to promote development (and redevelopment), enhance job growth, increase housing options, and revitalize the community (also refer to Section J of this Element).






*Rancho San Pasqual  
(Specific Planning Area #3)  
is a Master Planned  
Community that incorporated  
clustering to preserve  
hillsides and incorporate  
public and private amenities*



**Specific Plan Areas**

- |   |  |  |  |
|---|--|--|--|
|  SPA 1 |  SPA 5  |  SPA 12 |  Public Parks Within SPA Boundaries |
|  SPA 2 |  SPA 6  |  SPA 13 |  |
|  SPA 3 |  SPA 8  |  SPA 14 |  |
|  SPA 4 |  SPA 9  |  SPA 15 |  |
|   |  SPA 16 |  |  |

**Legend**

-  General Plan Boundary
-  City Limits
-  Highway
-  Lakes
-  0 0.475 0.95 Miles



**Escondido General Plan**

Specific Plan Areas

Source: City of Escondido

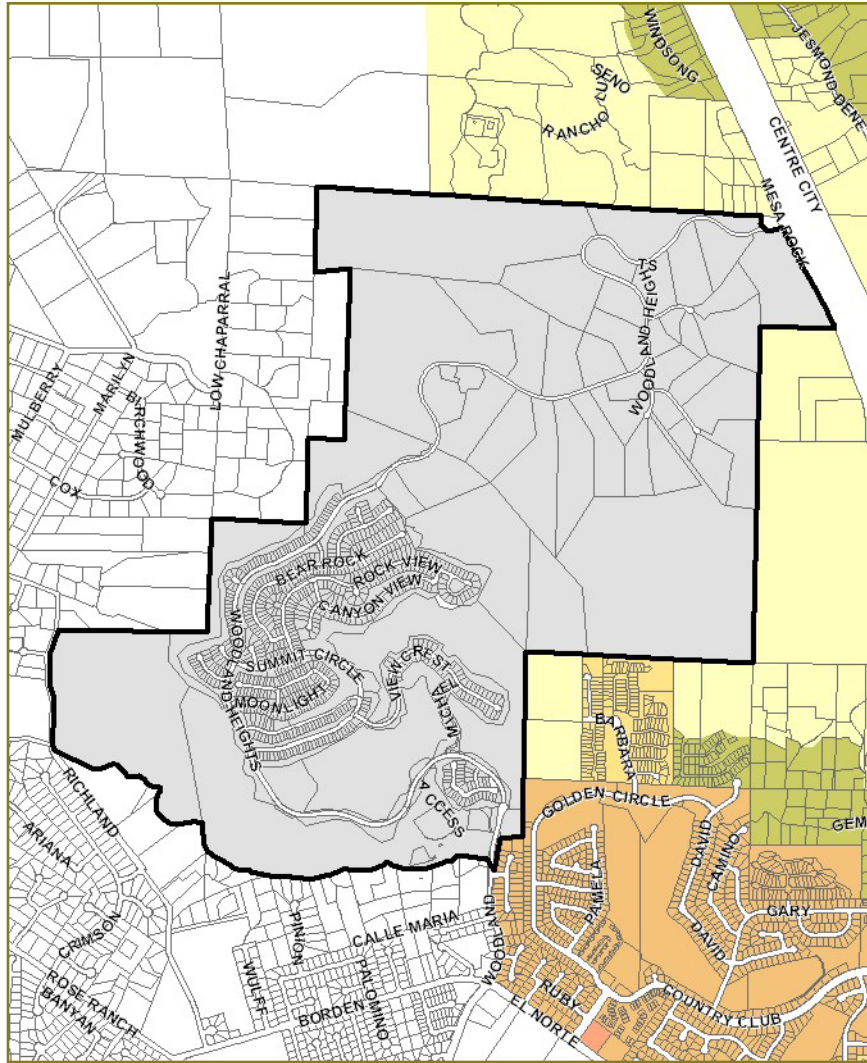


Figure II-9



## 1. Emerald Heights (Palos Vista) SPA #1

**Location:** In the northwestern portion of the planning area, at the terminus of Woodland Parkway, north of El Norte Parkway.

**Size:** Approximately 980 gross acres (Figure II-9).

**Current Status:** The Specific Plan Area is developed with 692 single family homes accessed from Woodland Parkway. Thirty-nine (39) agricultural estate lots have been graded in the northern portion with access from Mesa Rock Road with a portion of the units completed.

**Adopted Plan Details:** The Palos Vista Specific Plan establishes development standards and guidelines for this SPA. The project is a planned community with a mixture of residential land use densities and large open space areas in three Neighborhood Planning Areas:

- Neighborhood 1 contains approximately 416.3 acres, is built out with 692 units, community center, tennis courts, sports courts, swimming pool and picnic areas with approximately 70 percent of the neighborhood dedicated as permanent open space. The maximum height of any residential unit is 30 feet and the maximum size of any residential unit is 3,000 square feet. The maximum heights of recreational buildings are limited to 50 feet, and the maximum size of any such individual building is 10,000 square feet.
- Neighborhood 2 involves 63.5 acres of land dedicated as open space with no additional development potential.
- Neighborhood 3 involves approximately 500 acres with 39 agricultural estate lots ranging from 1.7 to 88 acres. The maximum height of any residential unit is 35 feet.

**SPA 1 Guiding Principles:**

A variety of design features have been incorporated to establish a strong sense of community identity. Guidelines are established in the Specific Plan for project entries, signs and lighting. Grading is limited to that necessary for construction of the infrastructure, circulation system and building sites. Major canyon slopes and floors remain in their native state with a total of approximately 70 percent of the project preserved in its natural state. Development adheres to the requirements of the City of Escondido’s grading ordinance with exceptions enlisted within the text of the specific plan.

Architectural guidelines intended to provide a consistent level of design throughout the community include a Spanish-Mediterranean style with variation in the roofs, massing, color, and detail to ensure variety throughout the project. Landscaping, irrigation and maintenance details for the site have been included within the Specific Plan for appropriate plant and tree species, for landscaping of street, project entries, slopes, ground cover and for screening.



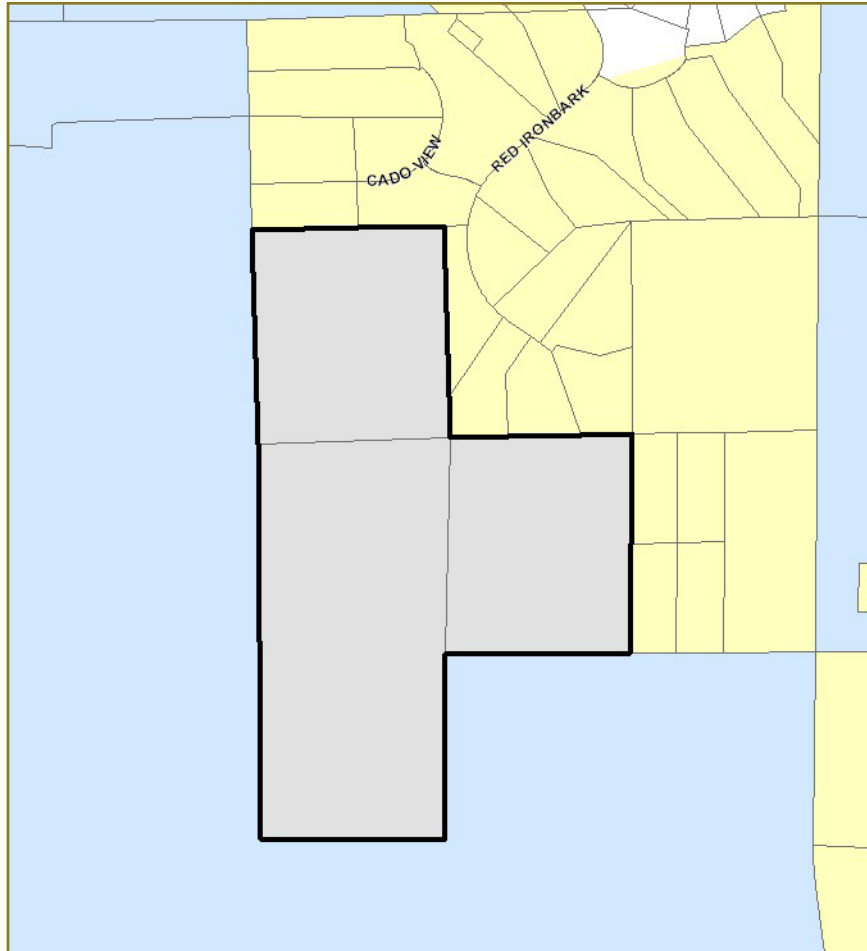


Figure II-10

## 2. Sager Ranch (Daley Ranch) SPA #2

**Location:** In the northeastern portion of the planning area, primarily accessed from Valley Center Road.

**Size:** Approximately 150 gross acres (Figure II-10).

**Current Status:** The Specific Plan Area is undeveloped.

**Adopted Plan Details:** None

### SPA 2 Guiding Principles:

Based on several varying factors, including those enumerated in Item C below, the ultimate density of the project may range from Rural I (one unit per 4, 8 and 20 acres) to Estate I (one unit per 1, 2, 4 and 20 acres). Development of the property may also include a rural resort / equestrian facility. The specific use(s), density and/or intensity of development shall be specified in the Sager Ranch Specific Plan which shall be supported by site specific technical studies, regarding public services, utilities and traffic, and environmental review to determine the appropriate use, density and intensity.





Should such technical studies demonstrate that the factors enumerated in Item 3 below will be satisfied, the project may include residential densities in excess of those delineated above up to a maximum of 100 units and/or non-residential use(s) which are compatible with surrounding uses, including the Daley Ranch.

In addition to meeting the specific plan requirements of the State Government Code, Sager Ranch shall be developed under the following conditions:

A. Residential/Rural-Equestrian Resort Facility:

1. The design of all development shall be subject to consistently applied architectural review to avoid adverse impacts.
2. Trail connections from Sager Ranch into Daley Ranch shall be coordinated with the City's Master Plan of Trails and located to the satisfaction of the City to avoid creating new trails within Daley Ranch.

B. Conservation:

1. Adequate measures shall be implemented to ensure against contamination of Lake Dixon and the Lake Dixon drainage areas and to protect the same from the impacts of runoff and waste water.
2. Adequate measures shall be developed to minimize grading requirements and avoid development on steep slopes and ridge lines.

C. Public Services:

1. Appropriate levels of public services and utilities shall be provided that shall be a factor in determining the ultimate density for the project:
  - a) Vehicular routes to and from the Specific Planning Area onto the adjacent road network;
  - b) Sewage facilities and infrastructure;
  - c) Water facilities and infrastructure for potable and irrigation uses;
  - d) Storm water and drainage facilities and infrastructure;
  - e) Public schools;
  - f) Fire and police protection;
  - g) Parks and recreation areas; and
  - h) Any other public facilities and services reasonably necessary to assist applicable public agencies in fulfilling their respective obligations to provide service to residents within the Specific Planning Area.



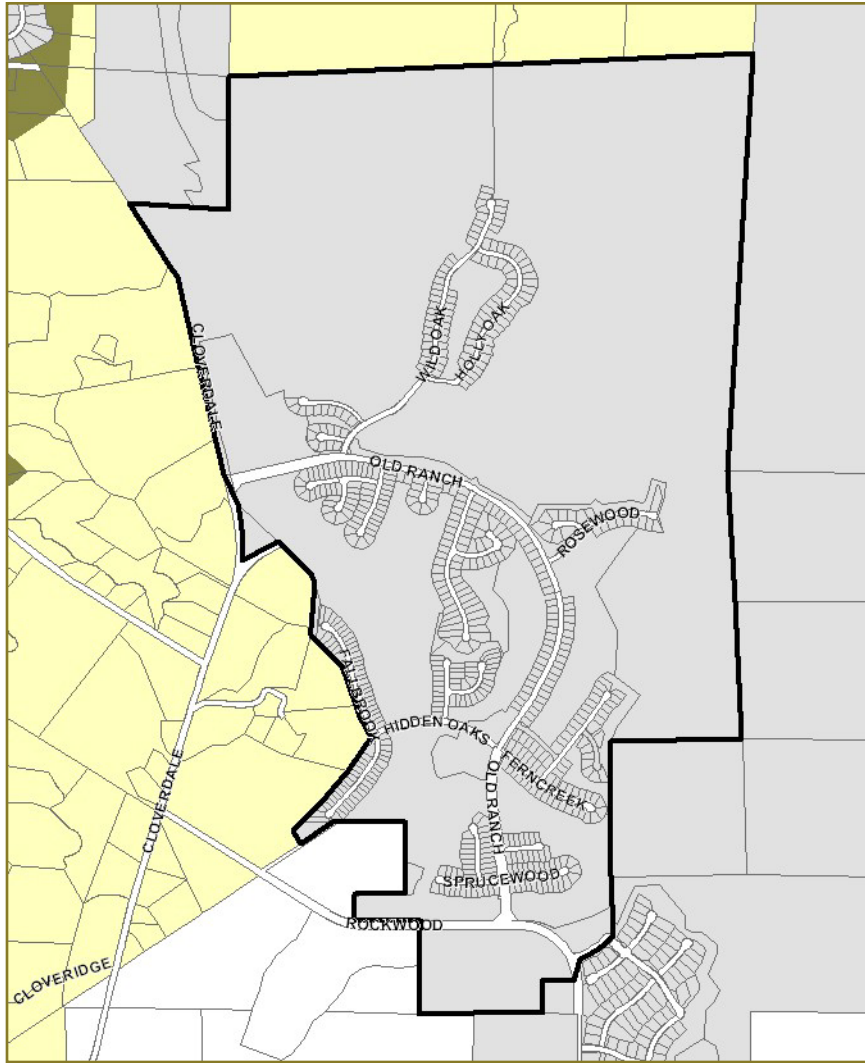


Figure II-11

### 3. Rancho San Pasqual (Eagle Crest) SPA #3

**Location:** In the eastern portion of the planning area, accessed from Cloverdale Road and Rockwood Road.

**Size:** Approximately 872 gross acres (Figure II-11).

**Current Status:** The Specific Plan Area is developed with 580 single family homes.

**Adopted Plan Details:** The Eagle Crest Specific Plan establishes development standards and guidelines for this SPA. The project is a planned community with a mixture of residential land use densities, a golf course and club house. A 32-acre public community park located on the south side of Rockwood Road with hiking trails and a staging area are included as features of the Specific Plan.



### **SPA 3 Guiding Principles:**

Single-family residential units are integrated into a cohesive community structure that addresses compatibility with existing and planned surrounding land uses; planning objectives of the city; prevailing and forecasted marketing trends; topographic and other important natural features. The Specific Plan incorporates a sensitive grading design, preservation of skyline ridges, significant natural resources and visually prominent hillside areas with residential and recreational uses.

The open space system provides an implementing mechanism to protect important natural resources, major ridgelines and hillside areas in their natural state through the homeowners' association as approved by the Community Development Director. Provisions for open space transition areas, recreation corridors into adjacent properties and recreation uses for the community are also included. The open space plan is comprised of conservation viewshed and scenic areas, golf course, community facilities and major roadways.

The circulation system for the Specific Plan includes a private gated roadway designed to city standards, based upon a loop concept that takes access from Cloverdale Road and Rockwood Road. The system connects directly to all residential neighborhoods within the project through private streets. Regional access to the Specific Plan is provided by San Pasqual Valley Road. Municipal utilities and services (water, sewer, police, and fire) are provided to the site.



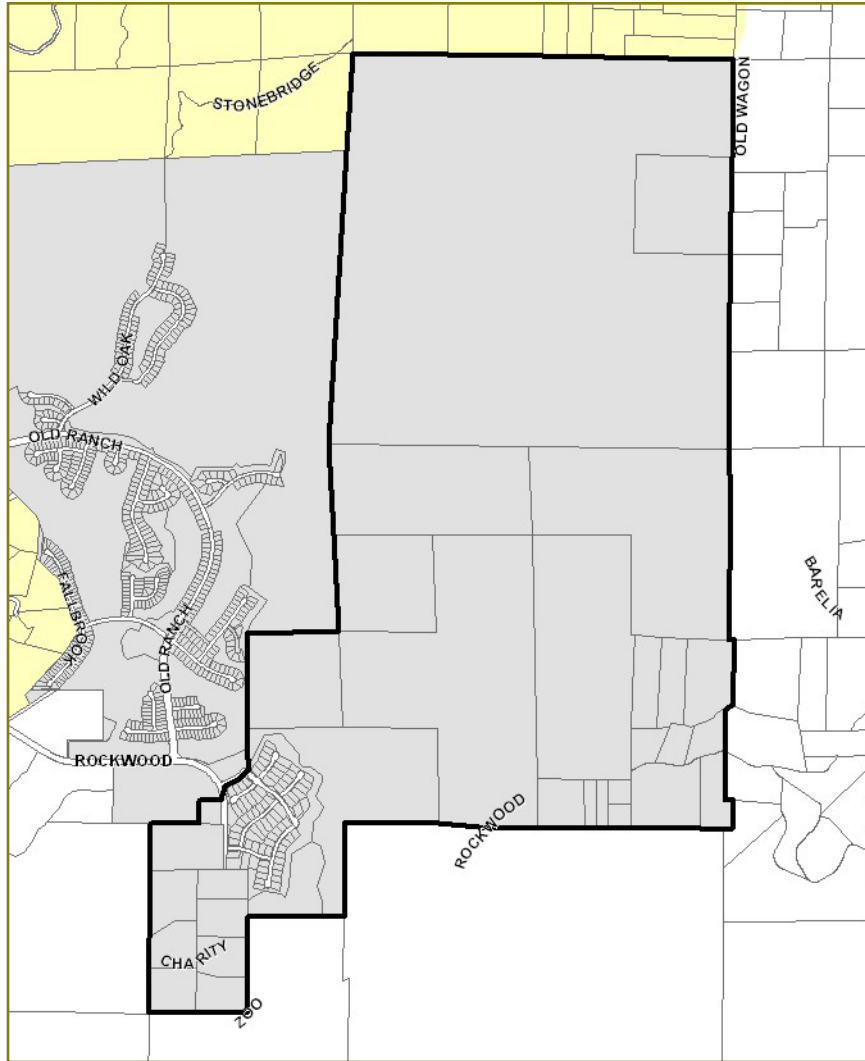


Figure II-12

#### 4. Valley View SPA #4

**Location:** In the eastern portion of the planning area, accessed from Rockwood Road.

**Size:** Approximately 1,590 gross acres (Figure II-12).

**Current Status:** The Specific Plan Area is partially developed.

**Adopted Plan Details:** The Rancho Vista Monte Specific Plan establishes development standards and guidelines for a portion of this SPA. The project includes a planned community on 133 acres involving 80 single family units with 81 acres of the site preserved as open space. Remaining portions of the SPA do not have an approved Specific Plan.



### **SPA 4 Guiding Principles:**

The SPA envisions an upscale, large lot single-family residential community, organized around a comprehensively planned open space system. The development may include a golf course and luxury resort hotel with extensive amenities in exchange for residential units determined to have the same impact. The aesthetic and rural character of the area will be maintained in accordance with strict site planning, architectural, and landscaping standards. The luxury resort, if proposed, shall fully mitigate all fiscal, environmental, and public facility impacts to the satisfaction of the city.

Development as described above shall not be permitted in this area unless a Specific Plan is adopted by the City Council, pursuant to requirements of the State Government Code. A property owner within the SPA may elect to develop his/her property prior to adoption of a Specific Plan through a development application to the County. The development permitted should be of a low density so as not to preclude the desired land use pattern described above.

The Specific Plan shall address the following issues:

#### **A. Land Use:**

1. The maximum theoretical yield of any Specific Plan within the SPA shall be determined by applying the slope density formula of the Rural II designation. Increased yield may be granted by the City Council through approval of a development agreement which will result in on-site and/or off-site community benefits above and beyond the impacts of the project(s). This potential increased yield shall not result in a total of more than 800 dwelling units for the entire SPA.
2. No development shall be permitted on slopes greater than 35 percent. Lands in this area shall be preserved as open space.
3. All residential development shall be detached, single-family units. The minimum lot size shall be 1 acre, unless smaller lots are approved only in conjunction with a development agreement.
4. Recreation facilities to serve the needs of the residential community shall be provided in conveniently located sites.



B. Traffic Circulation:

The Specific Plan shall comprehensively analyze the traffic and emergency access demands placed on Circulation Plan roadways, recognizing the impacts to adjacent developments. A circulation system shall be implemented that will provide safe access for residents within the SPA and maintain a level of service standard of "C" on roadways beyond the SPA to the satisfaction of the city. The improvement of Rockwood Road shall be closely coordinated with development.

C. Public Facilities:

The Specific Plan shall include a comprehensive analysis of public service and utility requirements and establish appropriate financing mechanisms and phasing programs to meet such requirements to the satisfaction of the city.

E. Design Considerations:

1. The Specific Plan shall contain a system of open spaces, including recreation areas, trails, and permanent open space areas and appropriate mechanisms to develop and maintain the open space system.
2. The Specific Plan shall contain development standards and guidelines to minimize grading requirements and to prohibit development on steep slopes and skyline ridges.
3. The Specific Plan shall include landscaping guidelines that maximize the use of native vegetation.
4. Development and open space areas shall be coordinated with the San Dieguito River Valley Regional Open Space Park and appropriate regional open space planning efforts.

E. Development of Areas within the Specific Planning Area, but Without an Adopted Specific Plan:

The "maximum theoretical density" of any development within the Valley View Specific Planning Area but without an adopted specific plan shall be determined by applying the slope density formulas of the Rural I category for areas over 25 percent slope, and Rural II for areas under 25 percent slope. Said development shall satisfy all public facility impacts and may require additional technical studies to determine specific mitigation measures.

**GENERAL PLAN LAND USES**

**Residential**

- Rural I: 1 du/ 4,8,20 acres (R1)
- Rural II: 1 du/ 2,4,20 acres (R2)
- Estate I: 1 du/ 1,2,4,20 acres (E1)
- Estate II: 1 du/ 0.5, 1,20 acres (E2)
- Suburban: Up to 3.3 du/acre (S)
- Urban I: Up to 5.5 du/acre (U1)
- Urban II: Up to 12 du/acre (U2)
- Urban III: Up to 18 du/acre (U3)
- Urban IV: Up to 24 du/acre (U4)
- Urban V: Up to 30 du/acre (U5)

**Commercial**

- General Commercial (GC)
- Neighborhood Commercial (NC)
- Planned Commercial (PC)
- Office (O)
- Planned Office (PO)

**Industrial**

- Light Industrial (LI)
- General Industrial (GI)
- Industrial Office (IO)

**Other**

- Public Land/Open Space (P)
- Specific Plan Area (SPA)
- SPA Boundary

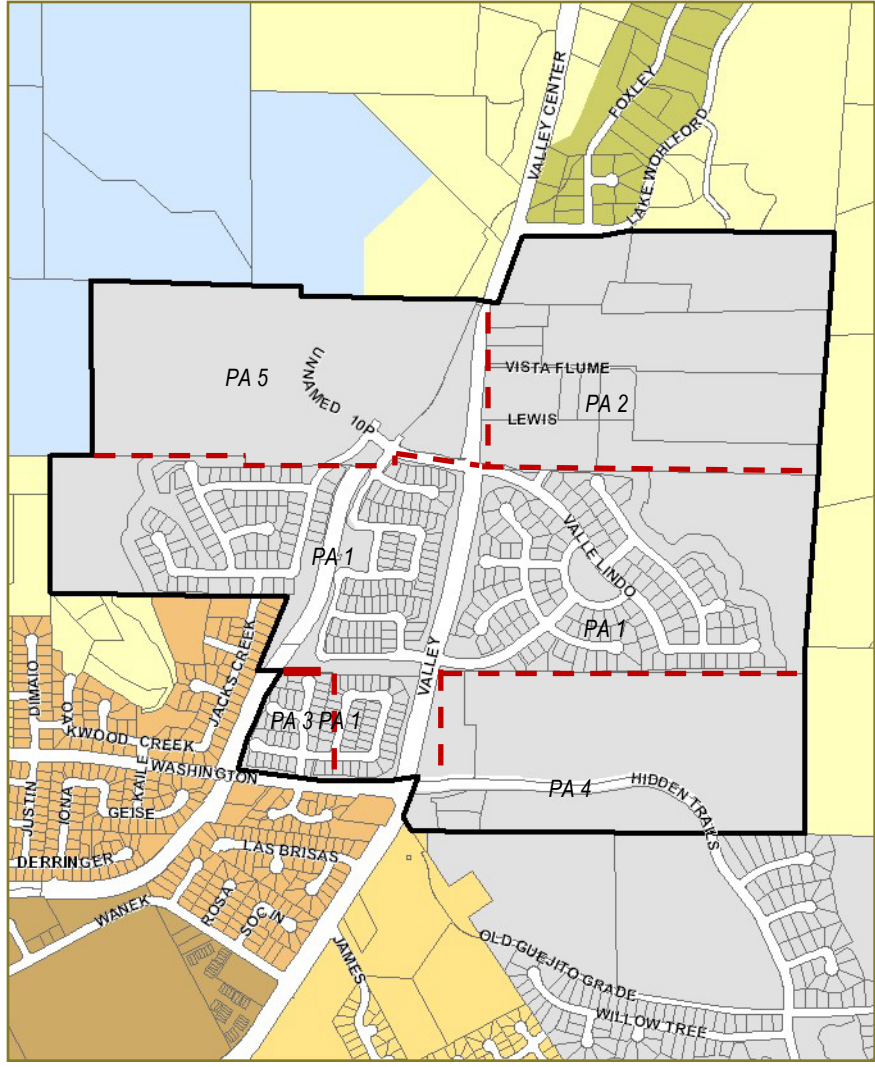


Figure II-13

**5. Northeast Gateway SPA #5**

**Location:** In the northeastern portion of the planning area, accessed from East Valley Parkway.

**Size:** Approximately 418 gross acres (Figure II-13).

**Current Status:** The Specific Plan is partially developed and divided into five (5) Planning Areas with individually approved projects in portions of the SPA.

**Adopted Plan Details:** The Northeast Gateway Specific Plan establishes lot sizes, development standards and guidelines for the entire area allowing a maximum of 517 dwelling units that may be transferred throughout the site subject to city approval.

**SPA 5 Guiding Principles:**

The SPA envisions an upscale, large lot single-family residential development integrated with parks, trails and open space, and Ryan Community Park serving as a focal point. Alignment for hiking trails within the SPA shall conform to the City’s Master Plan of Trails. Special emphasis shall be placed on criteria assuring high-quality architectural design for the residences, preservation of all slopes over 25% as open space, and sensitivity to views along Valley Parkway and other public streets. Nonresidential uses within the SPA may develop under a Conditional Use Permit without the benefit of a specific plan provided such uses establish compatibility with surrounding uses. Details regarding each Planning Area (PA) include:

- PA 1: A total of 340 units have been approved for this area.
- PA 2: The design of the residences and parkway design shall be compatible with Planning Area 1. The development in this area will be at a lower density than Planning Area 1.
- PA 3: A total of 30 units have been approved for this area.
- PA 4: Includes Ryan Community Park, a public high school and residential land uses (adjacent to the southeastern corner of Hidden Trails Drive and Valley Parkway). The minimum lot size shall be one acre.
- PA 5: This area is primarily be devoted to open space, recreational or other similar uses determined appropriate by the City.





**GENERAL PLAN LAND USES**

**Residential**

- Rural I: 1 du/ 4,8,20 acres (R1)
- Rural II: 1 du/ 2,4,20 acres (R2)
- Estate I: 1 du/ 1,2,4,20 acres (E1)
- Estate II: 1 du/ 0.5, 1,20 acres (E2)
- Suburban: Up to 3.3 du/acre (S)
- Urban I: Up to 5.5 du/acre (U1)
- Urban II: Up to 12 du/acre (U2)
- Urban III: Up to 18 du/acre (U3)
- Urban IV: Up to 24 du/acre (U4)
- Urban V: Up to 30 du/acre (U5)

**Commercial**

- General Commercial (GC)
- Neighborhood Commercial (NC)
- Planned Commercial (PC)
- Office (O)
- Planned Office (PO)

**Industrial**

- Light Industrial (LI)
- General Industrial (GI)
- Industrial Office (IO)

**Other**

- Public Land/Open Space (P)
- Specific Plan Area (SPA)
- SPA Boundary

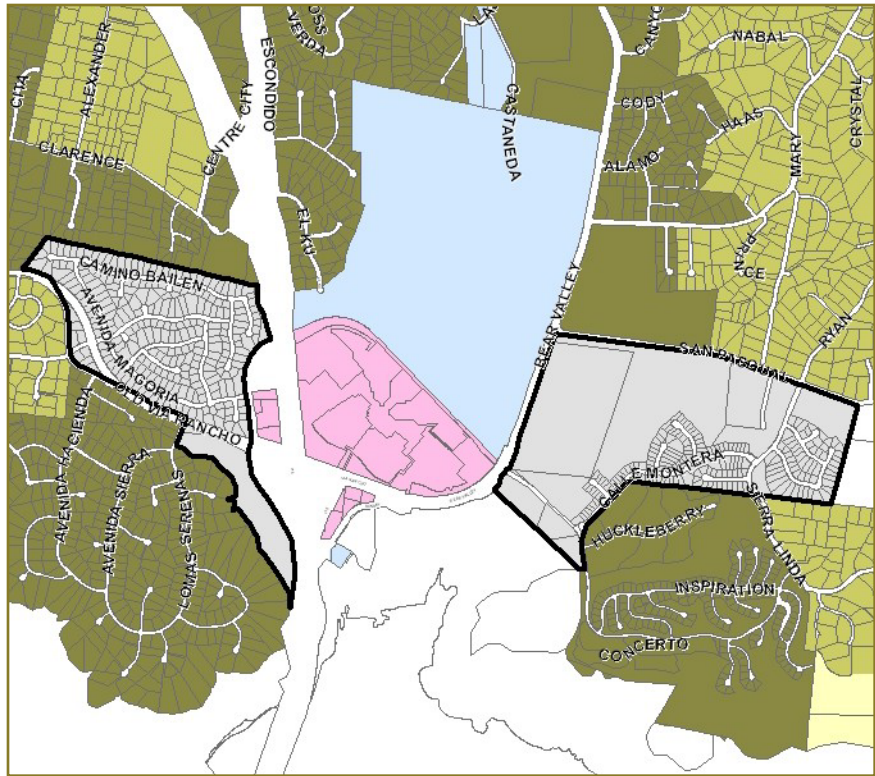


Figure II-14

## 6. Lomas Del Lago SPA #6

**Location:** Two distinct areas located on the west side of Interstate 15 (on both sides of Via Ranch Parkway) and at the southeastern corner of Bear Valley Parkway and San Pasqual Road.

**Size:** Approximately 300 total gross acres (Figure II-14).

**Current Status:** The Specific Plan is built-out.

**Adopted Plan Details:** The Lomas Del Lago Specific Plan establishes lot sizes, development standards and guidelines for the SPA. The project contains 256 single family units and an 18-hole municipal golf course on the east side of interstate 15. A total of 178 single family units are located on the west side of Interstate 15.

### SPA 6 Guiding Principles:

The SPA involves an upscale, gated community with single family homes on a variety of lot sizes. Private gated streets serve on-site streets on both sides of Interstate 15. The municipal 18-hole golf course provides the community with a recreational facility while also preserving the 130 acre area as permanent open space. Municipal utilities and services (water, sewer, police, and fire) are provided to the site.

## 7. Bernardo Mountain SPA #7 (Deleted)

**Location:** On the northern shore of Lake Hodges, west of Interstate 15 and accessed from Via Rancho Parkway.

**Size:** Approximately 317 gross acres.

**Current Status:** The Specific Plan is vacant.

**Adopted Plan Details:** None

### SPA 7 Guiding Principles:

The SPA formerly had development opportunity but was subsequently purchased by the San Dieguito River Park Joint Powers Authority as open space and integrated into the park system. No commercial or residential development is anticipated for the SPA and it is identified as "Open Space / Parks" on the General Plan Land Use Map.



**GENERAL PLAN LAND USES**

**Residential**

- Rural I: 1 du/ 4,8,20 acres (R1)
- Rural II: 1 du/ 2,4,20 acres (R2)
- Estate I: 1 du/ 1,2,4,20 acres (E1)
- Estate II: 1 du/ 0.5, 1,20 acres (E2)
- Suburban: Up to 3.3 du/acre (S)
- Urban I: Up to 5.5 du/acre (U1)
- Urban II: Up to 12 du/acre (U2)
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- Urban V: Up to 30 du/acre (U5)

**Commercial**

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- Planned Office (PO)

**Industrial**

- Light Industrial (LI)
- General Industrial (GI)
- Industrial Office (IO)

**Other**

- Public Land/Open Space (P)
- Specific Plan Area (SPA)
- SPA Boundary

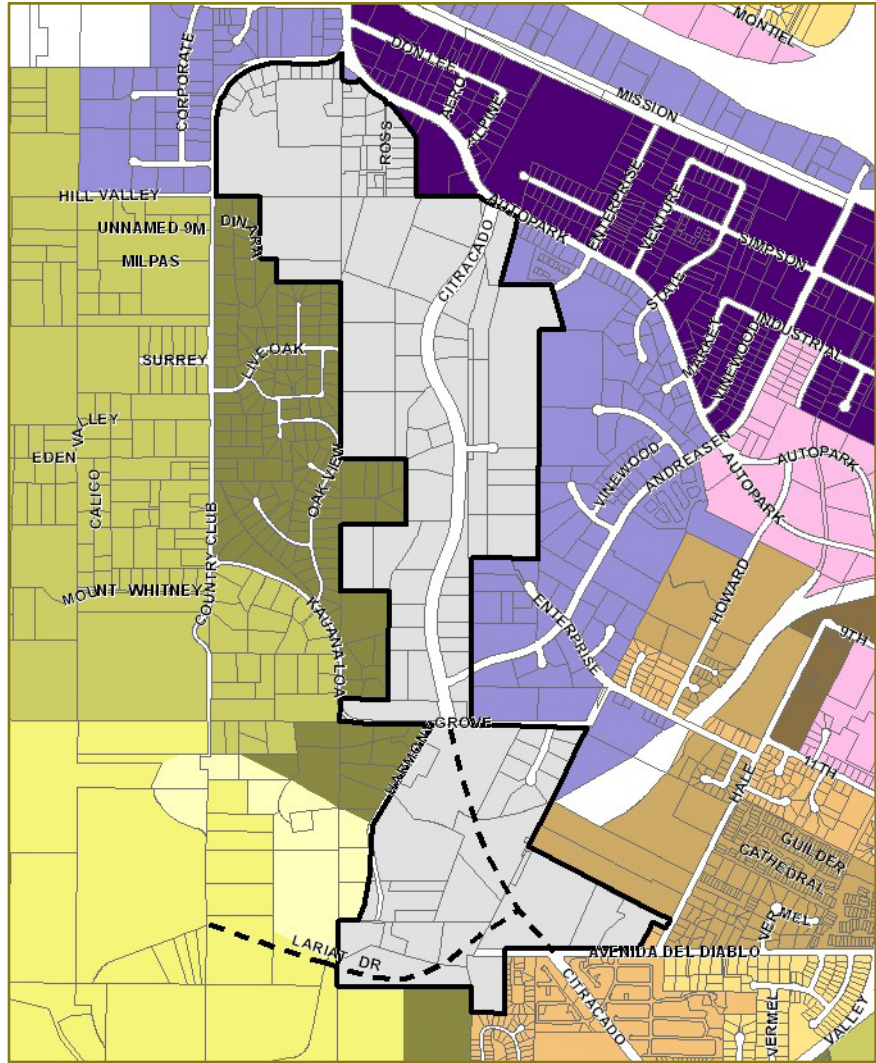


Figure II-15

## 8. Escondido Research Technology Center (Harmony Grove) SPA #8

**Location:** On the western side of the Planning Area along Citracado Parkway between Auto Park Way and Avenida del Diablo.

**Size:** Approximately 476 gross acres (Figure II-15).

**Current Status:** The Specific Plan is partially developed.

**Adopted Plan Details:** The Escondido Research Technology Center (ERTC) Specific Plan, and The Harmony Grove Industrial Park Specific Plan establish development standards and guidelines for 186 acres and 15 acres respectively. Both projects include employment land uses on lots ranging from approximately 1-40 acres. The remaining properties within the SPA require Specific Plan approval to establish development standards and guidelines.

### **SPA 8 Guiding Principles:**

The project envisions a high quality business park, encouraging clean research and development, medical office and Industrial Park uses to expand Escondido's employment base, increase median incomes and improve the community's jobs/housing balance. Specific Plan(s) shall include attractive design standards, landscape features, integrated recreation, and compatible land uses. General guidance for these development standards may be similar to and derived from the ERTC and Harmony Grove Specific Plans.

Increased building heights and intensities shall be focused along Citracado Parkway and in areas more distanced from residential uses to ensure compatibility. Primary access to non-residential areas within the Specific Plan Area south of Andreason Street shall be from Citracado Parkway and Lariat Drive. Vehicular access to nonresidential land uses from Harmony Grove Road west of Citracado Parkway shall be prohibited. Attention shall be given to buffer the semi-rural residential areas along "edges" near Harmony Grove Road (west of Citracado Parkway), Kauana Loa Drive and in the Eden Valley area by incorporating land uses, building heights, architectural materials, building orientations, setbacks, colors, screening, lighting and signage that are harmonious with adjacent lower intensity land uses.

The Specific Plan(s) shall include programs addressing legal non-conforming residential uses that ensure their eventual integration into future planned business park operations while allowing their continued operation prior to transitioning to non-residential uses. Criteria and standards for proposed grading, multimodal transportation, and utility extensions shall be included to avoid adverse impacts and allow integration of adjacent SPA properties.

The drainage areas running north and south through the center of this Specific Planning Area, as well as Escondido Creek, represent a desirable visual amenity. The Specific Plan shall include provisions for the enhancement of riparian areas and for the incorporation of the Escondido Creek Trail into the ultimate development plans while minimizing impacts to these resources.



**GENERAL PLAN LAND USES**

**Residential**

- Rural I: 1 du/ 4,8,20 acres (R1)
- Rural II: 1 du/ 2,4,20 acres (R2)
- Estate I: 1 du/ 1,2,4,20 acres (E1)
- Estate II: 1 du/ 0.5,1,20 acres (E2)
- Suburban: Up to 3.3 du/acre (S)
- Urban I: Up to 5.5 du/acre (U1)
- Urban II: Up to 12 du/acre (U2)
- Urban III: Up to 18 du/acre (U3)
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- Light Industrial (LI)
- General Industrial (GI)
- Industrial Office (IO)

**Other**

- Public Land/Open Space (P)
- Specific Plan Area (SPA)
- SPA Boundary

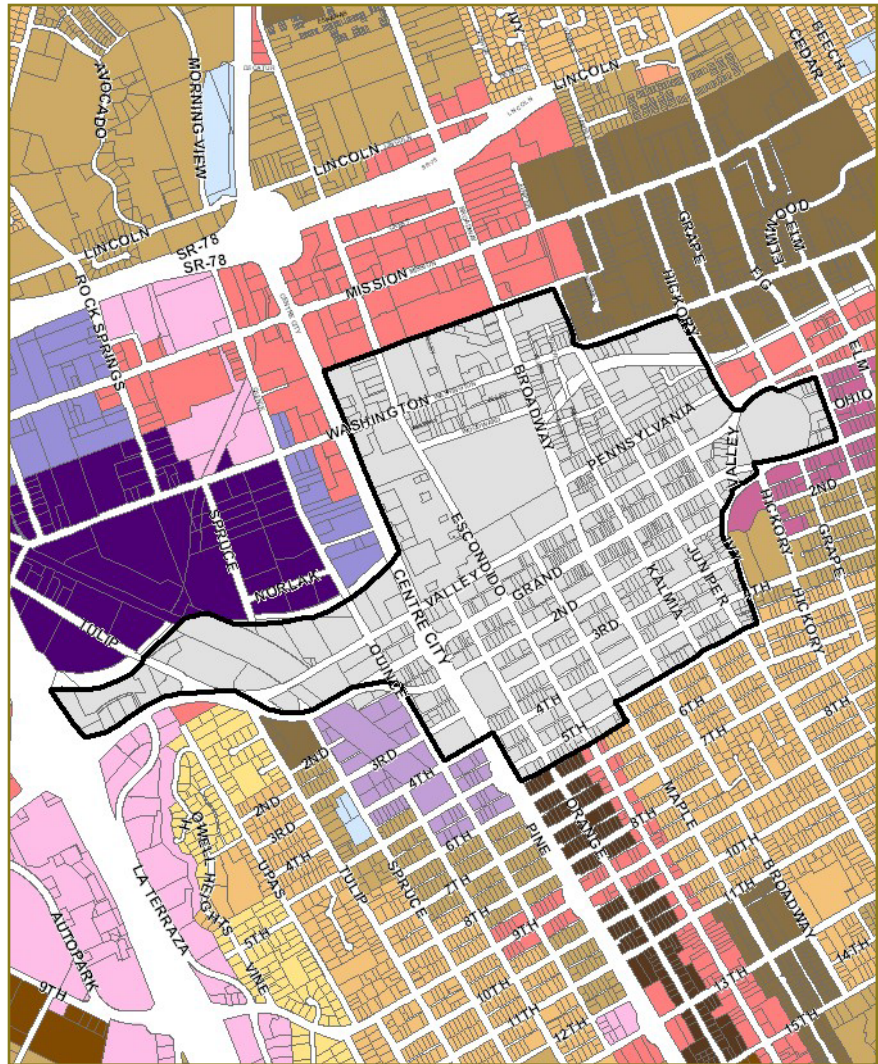


Figure II-16

### 9. Downtown SPA #9

**Location:** Central Escondido generally located east of Interstate 15, north of 6<sup>th</sup> Avenue, south of Mission Avenue and west of Fig Street

**Size:** Approximately 475 gross acres (Figure II-16).

**Current Status:** The Specific Plan is divided into seven (7) Districts. The area includes a historic walkable retail and service core around Grand Avenue with suburban-style shopping centers on the western and northern sides. A historic residential neighborhood borders the downtown on the south with office and retail to the east.

**Adopted Plan Details:** The Downtown Escondido Specific Plan establishes development standards and guidelines for the SPA. Projects are approved based on their conformance with Specific Plan standards, guidelines, and principles allowing up to 5,275 dwelling units.

**SPA 9 Guiding Principles:**

- 1) Downtown’s vision embraces a dynamic, attractive, economically vital city center providing social, cultural, economic, and residential focus while respecting its history.
- 2) The environment shall focus on pedestrian orientation to attract and accommodate local and non-local visitors to experience an atmosphere that is entertaining and vibrant with activity occurring through the day, evening and weekend hours.
- 3) The Specific Plan policies shall foster increased employment densities and encourage the attraction of businesses with salaries that raise the city’s median income and improve the jobs /housing balance. The Specific Plan also promotes:
  - a) Prioritizing infrastructure improvements to accommodate growth.
  - b) Targeting residential development around Grape Day Park.
  - c) Expanding Grape Day Park to Washington Avenue to foster additional recreation opportunities and facilitate more convenient access from northern areas.
  - d) Expanding the “Grand Avenue” pedestrian environment throughout downtown by encouraging vertical mixed use developments.
  - e) Strengthening the Escondido Creek path connection with downtown.
  - f) Providing convenient transit access, innovative housing options and pedestrian-oriented design.
  - g) Linking downtown to the development of future regional attraction(s) within Target Area #1 by providing attractive and safe pedestrian access.



## 10. SPA #10 (Deleted)

This SPA was deleted from the General Plan pursuant to General Plan Amendment 95-02 / Resolution #96-32

## 11. Montreaux SPA #11 (Deleted)

The SPA formerly had development opportunity but was subsequently purchased by the County of San Diego as open space and integrated into the regional open space system. No commercial or residential development is anticipated for the SPA and it is identified as "Open Space / Parks" on the General Plan Land Use Map.



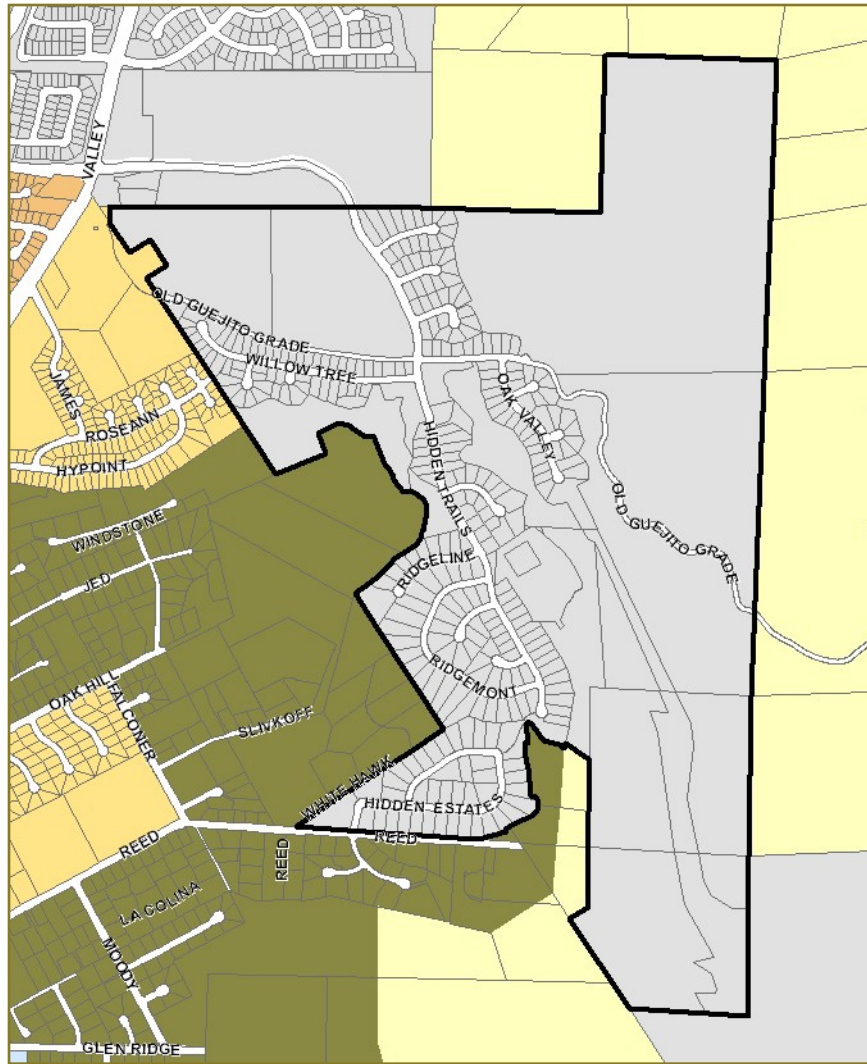


Figure II-17



## 12. Hidden Trails (East Grove) SPA #12

**Location:** In the eastern portion of the planning area, accessed from Hidden Trails Road.

**Size:** Approximately 500 gross acres (Figure II-17).

**Current Status:** The Specific Plan Area is developed with 291 single family homes (completed) and up to six (6) agricultural home sites that are partially built out (297 total units).

**Adopted Plan Details:** The East Grove Specific Plan establishes development standards and guidelines for this SPA. The project is a planned community with a mixture of residential land use densities clustered on the more level portions of the site and surrounded by steeper open space and agricultural areas.



### **SPA 12 Guiding Principles:**

The Hidden Trails Specific Plan integrates residential neighborhoods into a cohesive community structure and stresses the preservation of skyline ridges and significant natural resources by incorporating these features with recreational trails while allowing ongoing viable agriculture uses. Open space and circulation linkages provide separation and connectivity between each residential neighborhood, as well as providing access to surrounding areas. The project includes strict provisions for the protection and preservation of important biological habitat.

The Plan's circulation system includes public streets designed to city standards, with two primary access points; Hidden Trails Road on the north, and Reed Road on the south. All streets are consistent with the Circulation Element and city design standards. In addition, the Specific Plan includes 3+ miles of public recreational trails along the Cloverdale and Old Guejito Grade Road alignment as detailed in the Specific Plan.



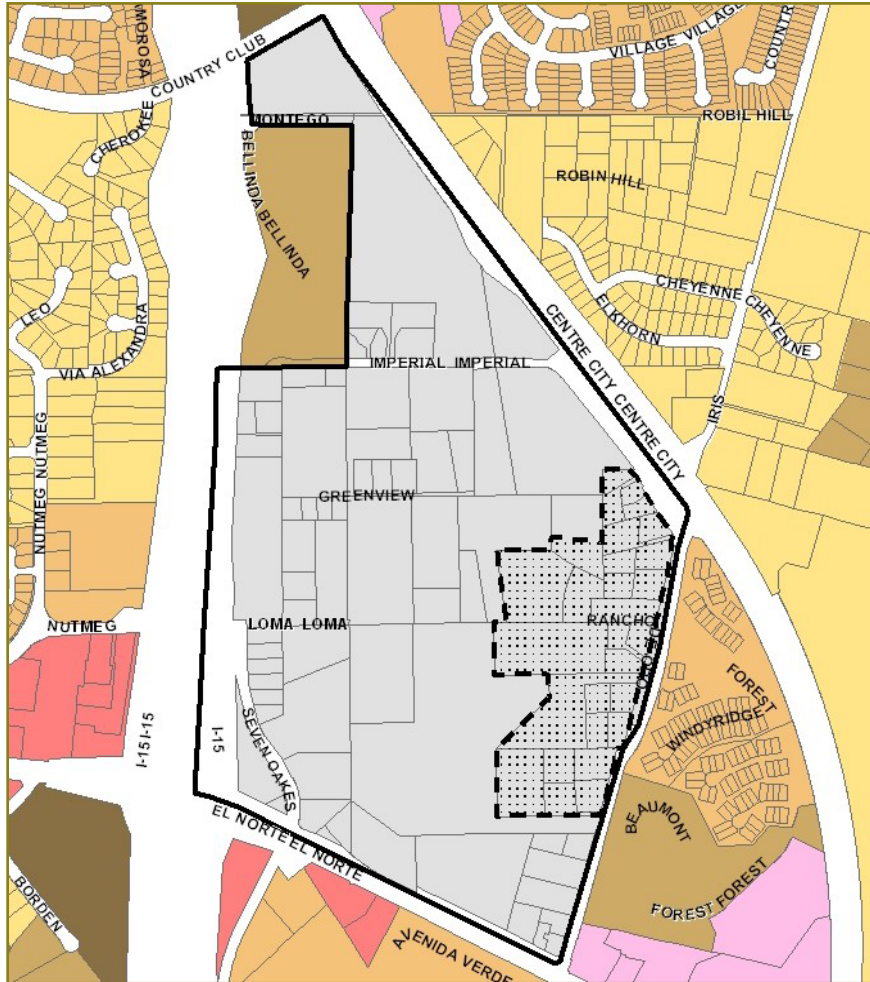


Figure II-18

### 13. Imperial Oakes Corporate Center SPA #13

**Location:** In the northern portion of the planning area, bounded by Interstate 15 on the west, Country Club Lane on the north, El Norte Parkway on the south, Iris Lane and Centre City Parkway on the east.

**Size:** Approximately 163 gross acres (Figure II-18).

**Current Status:** The Specific Plan Area is developed with visitor service and general retail uses, church, office, Rod McLeod Community Park, single family residential and vacant land. The site is bisected by SDGE overhead utility lines and there is limited access to the interior.

**Adopted Plan Details:** None

#### SPA 13 Guiding Principles:

- 1) The Specific Plan shall establish provisions for a comprehensively planned development focused on high paying, high employee density employment opportunities.



- 2) The Plan shall include Smart Growth principles, and provide details regarding the appropriate access points, unifying design themes, attractive development standards and guidelines, land uses, and the prioritization of infrastructure improvements to accommodate growth. In addition, opportunities for a public trail system or other public recreational amenity that will link to Rod McLeod Community Park shall be integrated into the plan.
- 3) Increased building heights and intensities shall be focused along Interstate 15 and in areas more distanced from the residential uses area to ensure compatibility. Employment uses shall integrate specific features to ensure compatibility with ~~semi-rural~~ the residential areas accessed from South Iris Lane by incorporating appropriate lower intensity land uses, building materials, heights, separation, orientation, colors, heights, screening, lighting and signage. Maximum densities in the residential area of the Specific Plan (identified in the map) shall be consistent with the Urban I single family land use designation.
- 4) The Specific Plan(s) shall include programs addressing legal non-conforming residential uses that ensure their eventual integration into future planned business park operations while allowing their continued operation prior to transitioning to non-residential uses. Criteria and standards for proposed grading, circulation, and utility extensions shall be included to avoid adverse impacts and allow integration of adjacent SPA properties.



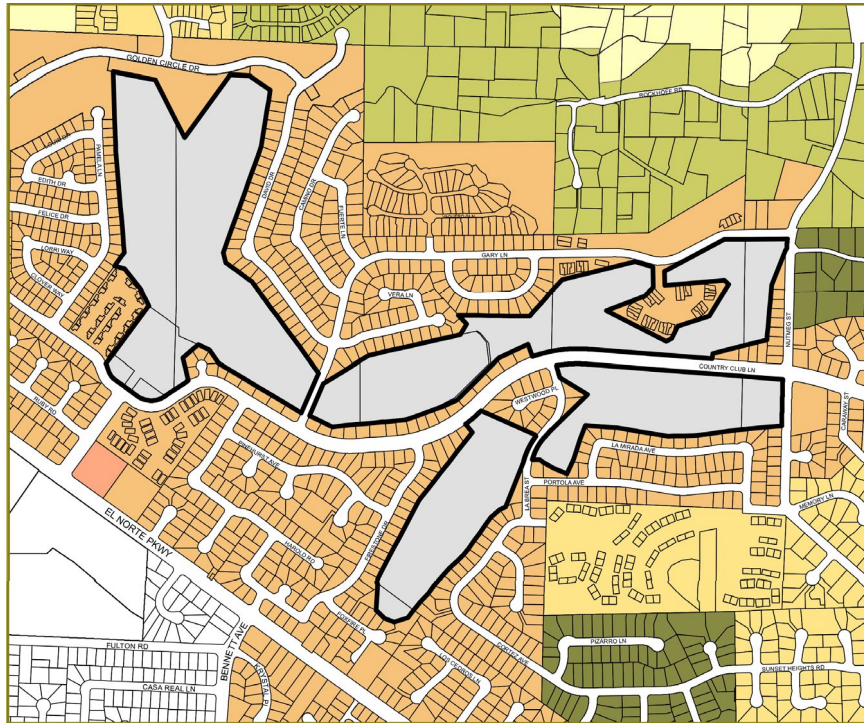


Figure II-19

## 14. The Villages SPA #14

**Location:** The Project site is located in the northwest portion of the City, along both sides of West Country Club Lane, west of Nutmeg Street.

**Size:** Approximately 109.3 acres (Figure II-19).

**Current Status:** privately owned land consisting primarily of an abandoned 18-hole golf course.

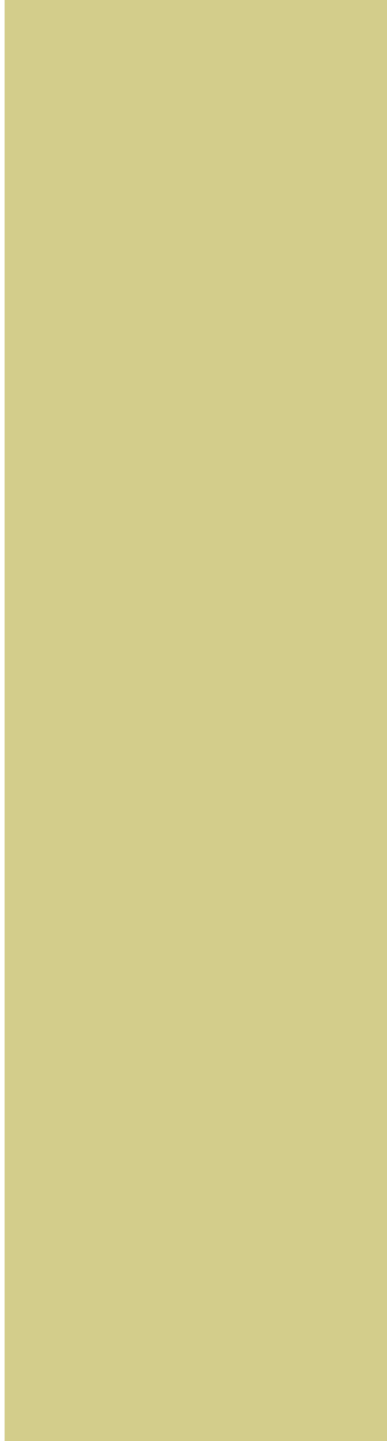
**Adopted Plan Details:** The Villages Specific Plan establishes developments standards and guidelines for this SPA. The project is a planned community with that includes a total of 380 residential homes at 3.5 dwelling units per acre; approximately 48.9 acres of permanent open space with active greenbelts; 3.5 acre of parks; and recreational, social, and community amenities in a VillageCenter

### SPA 14 Guiding Principles:

The subject site provides a unique opportunity to allow for a compact mixed-use village in an already urbanized area, with existing infrastructure in place. The Specific Plan shall confer citywide benefits of infill development through goals and policies designed to incorporate smart growth principles.



The Specific Plan shall also establish provisions for comprehensively planned development, focused on context sensitivity, to ensure to ensure that the new development is compatible with existing community character.



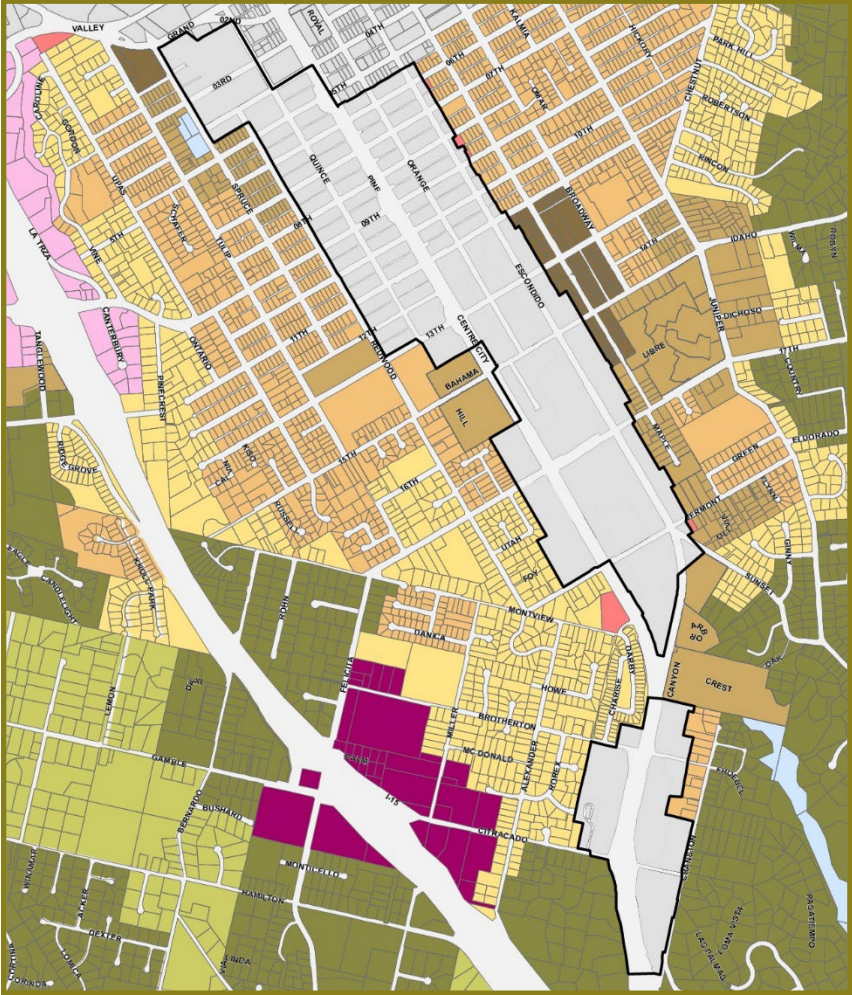


Figure II-20

**15. South Centre City SPA #15**

**Location:** The planning area extends 2.25 miles along Centre City Parkway and Escondido Boulevard, located in southwest Escondido.

**Size:** The planning area consists of about 420 acres of land in the neighborhoods surrounding Quince Street, South Escondido Boulevard, and Centre City Parkway (Figure II-20)

**Current Status:** Privately owned land consisting of various residential, commercial, and industrial/employment land uses and activities.

**Adopted Plan Details:** The South Centre City Specific Plan establishes goals, policies, allowable land uses, development standards and guidelines for this area, with a focus of guiding future investments to protect our quality of life.



### SPA 15 Guiding Principles:

The South Centre City Specific Plan brings together detailed regulations into a focused development scheme to improve community health, safety, sustainability, and economic prosperity, while respecting the unique character of South Centre City and preserving the southern gateway character. The guiding principles of the Specific Plan are to:

- 1) Incorporate smart growth principles which promote compact, walkable development patterns in close proximity to transit and strong multi-modal connections. Some areas within the planning area are envisioned to be future activity centers that are close to a mixture of land uses, including housing, schools, retail and services, and public amenities
- 2) Identify sites for specific types of development of a variety of sizes and intensities, and include both new single use/type development in mixed-use settings, as well as more comprehensive mixed-use projects.
- 3) The Specific Plan shall preserve the character of established residential neighborhoods along South Centre City Parkway and adjacent streets, while encouraging positive changes and revitalization. Increased building intensities and use types shall be focused along future activity centers. Maximum residential densities shall be 30 units per acre. New development standards and design guidelines will make sure that new development fits into its physical setting and transitions in scale and mass.
- 4) The Specific Plan shall establish opportunities for urban linear parks, a shared use trail for pedestrians and bicyclists, and venues for public art.

Four (4) contiguous General Plan Target Areas were combined for the South Centre City Specific Plan, including the South Quince Street Target Area, the South Escondido Boulevard/Centre City Parkway Target Area, the South Escondido Boulevard/Felicita Avenue Target Area, and the Centre City Parkway/Brotherton Road Target Area. By design, the Specific Plan implements the principal core themes and associated "Guiding Principles" of each Target Area. Through detailed development regulations, the Specific Plan also ensures that future projects and investments within the planning area contribute to achieving the build-out vision of each Target Area.



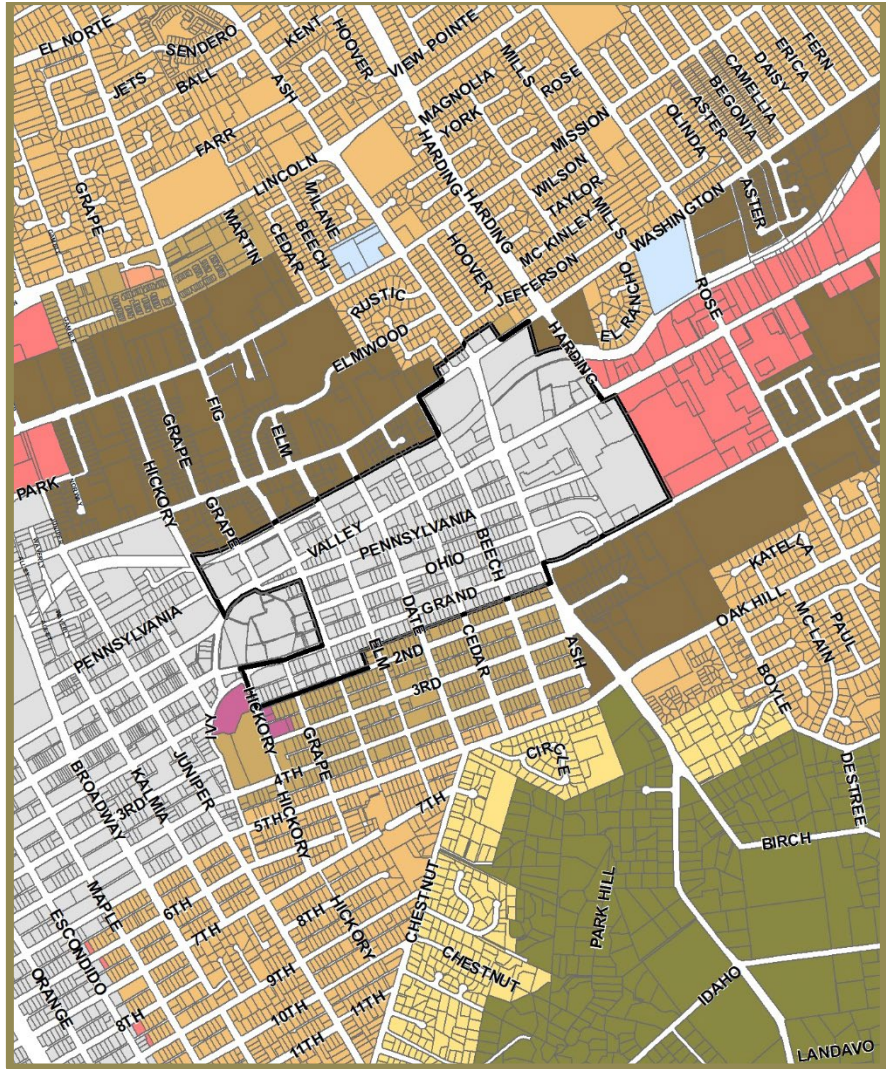


Figure II-21

## 16. East Valley SPA #16

**Location:** The planning area is located in central Escondido, immediately adjacent to, and east of downtown. The area extends approximately 1-mile along Escondido Creek, a concrete-lined flood control channel.

**Size:** The plan area covers approximately 191 acres within the City of Escondido.

**Current Status:** Commercial development characterizes a majority of the planning area. Big and mid-box retail, grocery, and food service establishments are located within the planning area vicinity. Medical office buildings are also present due to the influence of the former Palomar Health Medical campus, which was demolished late 2021. Since the medical campus demolition, there has been an increase in vacancies within the surrounding office spaces.





**Plan Details:** The East Valley Specific Plan establishes goals, policies, allowable land uses, development standards and guidelines for a wealth of topics are addressed as part of the plan including: mobility, open space and trails, economic development, sustainable and equitable development, and design.

**Guiding Principles:** The East Valley Specific Plan’s goals incorporate a dynamic mix of land uses to ensure planned residential, commercial, and open space uses are linked together through multi-modal transportation corridor. Connections to Escondido Creek Trail and aspiration to provide a unique and artistic identity seeks to revitalize the area and attract residents and businesses.





## J. General Plan Opportunity Areas

General Plan Opportunity Areas (Target Areas and Specific Planning Areas) identify where land use changes are anticipated and encouraged to implement core themes of: a) opportunities to live, work, and play; b) protect, preserve and revitalize neighborhoods; and c) conserve and sustain resources (Figure II-19). Opportunity Areas incorporate smart growth principles that promote compact, walkable development patterns in close proximity to transit and strong multi-modal connections. In these areas the city will focus infrastructure improvements to promote development (and redevelopment), enhance job growth, increase housing options, and revitalize the community.

### 1. Specific Planning Areas

Refer to Section “I” for Specific Plan Opportunity Areas:

1. Escondido Research and Technology Center SPA #8
2. Downtown Escondido SPA #9
3. Imperial Oakes Corporate Center SPA #13

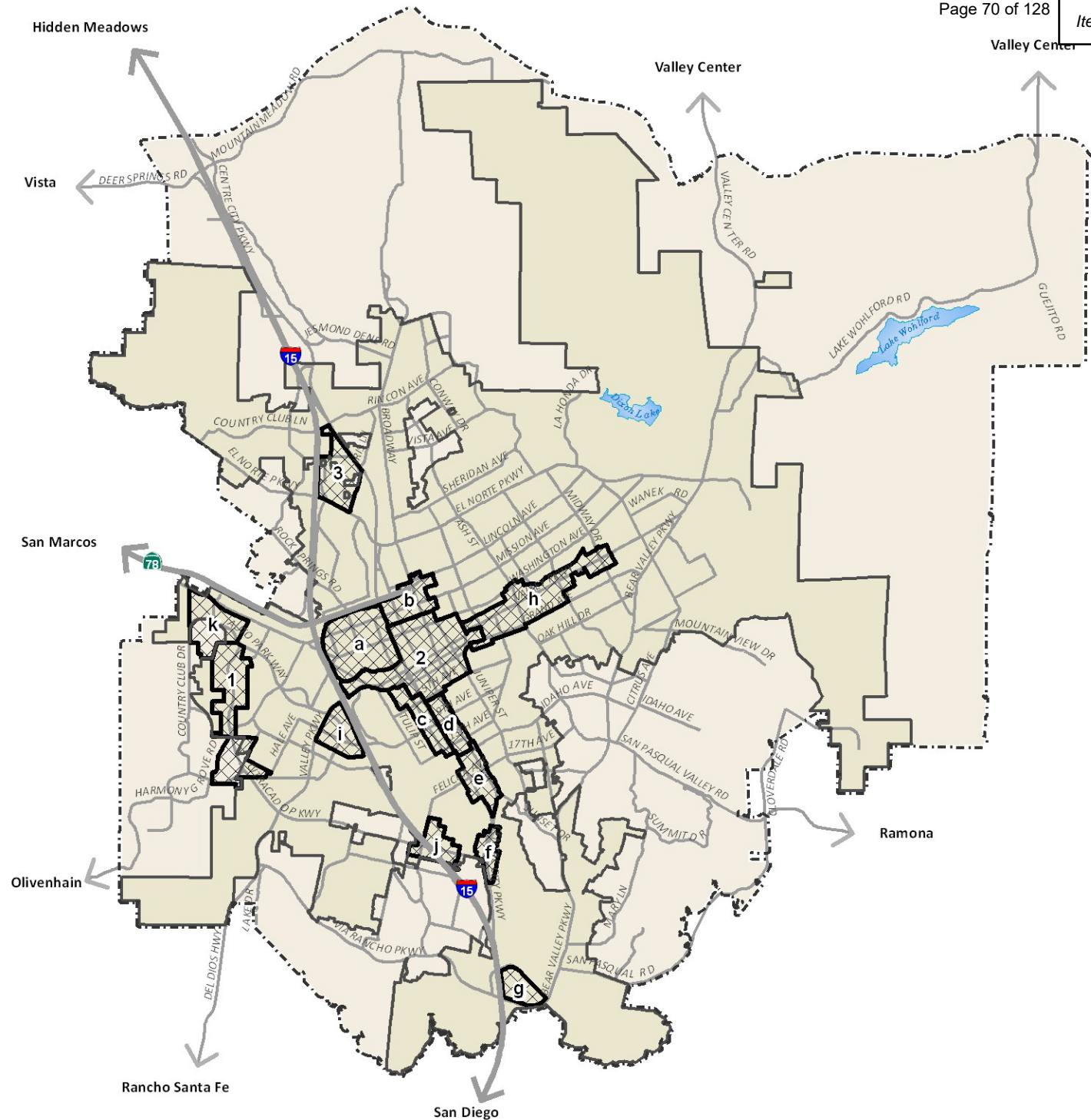
### 2. Target Areas

Target Areas include “Guiding Principles” for achieving the build-out vision. Underlying zoning will define land uses in concert with an “Area Plan” overlay to help guide development:

- a. Downtown Transit Station
- b. Highway 78 at Broadway
- c. South Quince Street
- d. S. Escondido Boulevard / Centre City Parkway
- e. S. Escondido Boulevard / Felicita Avenue
- f. Centre City Parkway / Brotherton Road
- g. Westfield Regional Shopping Center
- h. East Valley Parkway
- i. Promenade Retail Center and Vicinity
- j. Felicita Corporate Office Center
- k. Nordahl Road Transit Station

*Aerial view of Downtown Escondido and East Valley Parkway which are identified as General Plan Opportunity Areas*

Item 10.



**Target Areas**

- a. Downtown Transit Station
- b. Hwy 76/ Broadway
- c. S. Quince Street
- d. S. Escondido Blvd/ Centre City Pkwy
- e. S. Escondido Blvd/ Felicitia Ave
- f. Centre City Pkwy/ Brotherton Rd
- g. Westfield Shoppingtown
- h. East Valley Parkway
- i. Promenade Retail Center & Vicinity
- j. Felicitia Corporate Office
- k. Nordahl Road Transit Station

**Specific Planning Areas**

- 1. Escondido Research Technology Center SPA #8
- 2. Downtown SPA #9
- 3. Imperial Oakes Corporate Center SPA #13

Opportunity Areas

**Legend**

- General Plan Boundary
- City Limits
- Highway
- Lakes
- 0 0.5 1 Miles



**Escondido General Plan**

Opportunity Areas  
 Figure II-19

Source: City of Escondido

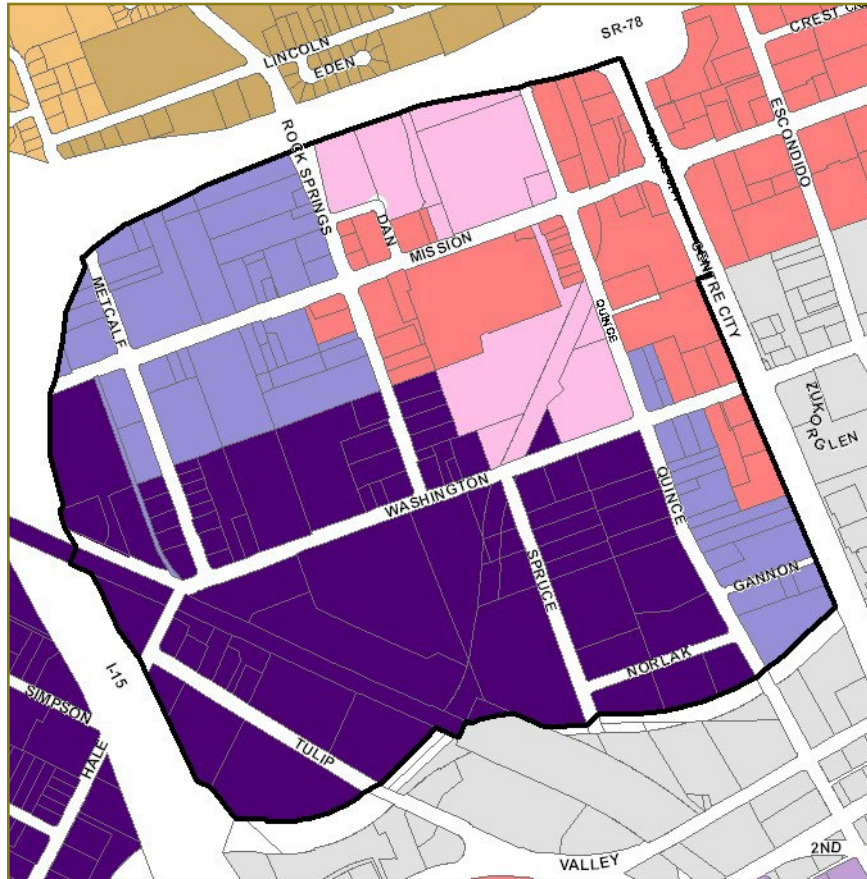


Figure II-20

**a. Downtown Transit Station Target Area**

**Location:** Southeast of Interstate 15 and Highway 78

**Size:** 296 acres (Figure II-20).

**General Plan Designation:** General Commercial (68 acres) Planned Commercial (14 acres) General Industrial (148 acres); Light Industrial (66 acres)

**Current Status:** Developed with low intensity general and auto-related and home improvement retail, restaurants, manufacturing, commercial / industrial services, building / landscaping / irrigation supply, concrete / asphalt production.

**Target Area 1 Guiding Principles:**

- 1) Establish the area north of the transit station and east of Reidy Creek and Rock Springs Road for locating a regional attraction involving entertainment, employment, commercial and residential uses incorporating unified development standards and design guidelines that also provide strong pedestrian connections to downtown.
- 2) Consider opportunities and incentives for increasing employment densities and attracting businesses with salaries that raise the city’s median income and improving the jobs/housing balance.



- 3) Allow existing construction material manufacturing, trash transfer, and agricultural supply land uses west of Reidy Creek to continue operating and prohibit similar new uses.

**Guiding Principles for Mission Avenue / Quince Street  
(Planned Commercial #12):**

Land use shall include mid- to big-box retailers or other uses that could anchor revitalization efforts in the area. Design standards shall maintain a common architectural theme with colors, materials and landscaping that unifies the development.

**Guiding Principles for Washington Avenue / Quince Street  
(Planned Commercial #15):**

The site may continue to operate as an outdoor swap meet in accordance with the previously approved Conditional Use Permits for the use until such time the site is redeveloped, and also may be used or developed in ways consistent with existing zoning designations. Development of any parcel that requires a zone change or requests city participation in the nature of fee reductions, off-site improvements, or tax sharing shall require a Planned Development approval.

The site may be developed with a mix of commercial, office, retail, restaurant, and light industrial uses that support revitalization efforts throughout the area and take advantage of the Escondido Transit Center and SPRINTER Light Rail located two blocks to the south along Quince Street. New development should encourage consolidation of properties and incorporate “smart growth” design principles. The development also may include crossing or covering of the existing flood control channel. Enhancement along the channel (such as decorative fencing, landscaping, pedestrian-oriented features/amenities, etc.) also should be incorporated into future projects where appropriate. Traffic circulation and pedestrian patterns shall be coordinated when future development of the site is proposed to provide integrated access points and to ensure appropriate vehicular and pedestrian access between the individual parcels and adjacent streets.

In order to maintain appropriate levels-of-service on the surrounding street system and minimize potential air-quality impacts, the scale of development and nature of the uses shall be limited as necessary in order to generate no more than a cumulative total of 12,160 vehicle trips per day. Specific site and technical studies may be required, to address and/or mitigate any project specific impacts related to traffic/circulation, utilities, air quality, noise and hazardous materials associated with future development of the site, and as identified in the Mitigated Negative Declaration.



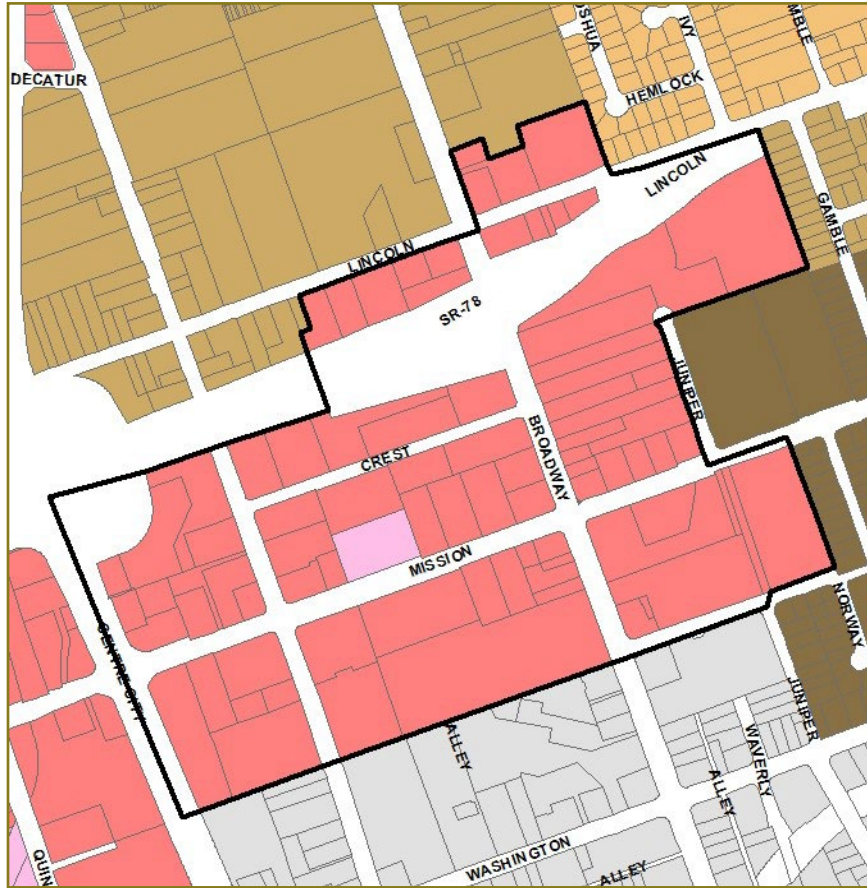


Figure II-21

## b. Highway 78 / Broadway Target Area

**Location:** Terminus of Highway 78, north of downtown, east of Centre City Parkway, west of Juniper Street

**Size:** 122 acres (Figure II-21).

**General Plan Designation:** General Commercial (148 acres)

**Current Status:** Low intensity general and auto-related retail, restaurants, office and commercial services and supply

### Target Area 2 Guiding Principles:

- 1) Evaluate opportunities to enhance vehicular entrance to the community along Highway 78 and consider a gateway element to the city along Lincoln Avenue.
- 2) Promote higher intensities along Broadway and consider establishing a unifying architectural and landscaping theme as a means to improve the overall image and serve as an entry into downtown.
- 3) Consider opportunities and incentives for increasing employment densities and attracting businesses with salaries that raise the city's median income and improving the jobs/housing balance.



**Guiding Principles for Mission Avenue  
(Planned Commercial Area #16):**

Land uses planned for this site include a self-storage facility up to four stories in height with limited retail/restaurant tenant area on the ground floor of the structure. Development standards shall include a Floor Area Ratio of 1.5 and building setbacks approximately 30 feet in width on all sides. On-site parking requirements for the various land uses shall be established through a site-specific parking study reviewed as part of a proposed Maser Development Plan for the project.

*(Amended by PHG 16-0006, Ordinance 2016-11)*







**GENERAL PLAN LAND USES**

**Residential**

- Rural I: 1 du/ 4,8,20 acres (R1)
- Rural II: 1 du/ 2,4,20 acres (R2)
- Estate I: 1 du/ 1,2,4,20 acres (E1)
- Estate II: 1 du/ 0.5,1,20 acres (E2)
- Suburban: Up to 3.3 du/acre (S)
- Urban I: Up to 5.5 du/acre (U1)
- Urban II: Up to 12 du/acre (U2)
- Urban III: Up to 18 du/acre (U3)
- Urban IV: Up to 24 du/acre (U4)
- Urban V: Up to 30 du/acre (U5)

**Commercial**

- General Commercial (GC)
- Neighborhood Commercial (NC)
- Planned Commercial (PC)
- Office (O)
- Planned Office (PO)

**Industrial**

- Light Industrial (LI)
- General Industrial (GI)
- Industrial Office (IO)

**Other**

- Public Land/Open Space (P)
- Specific Plan Area (SPA)
- Mixed-Use Overlay
- Target Area Boundary

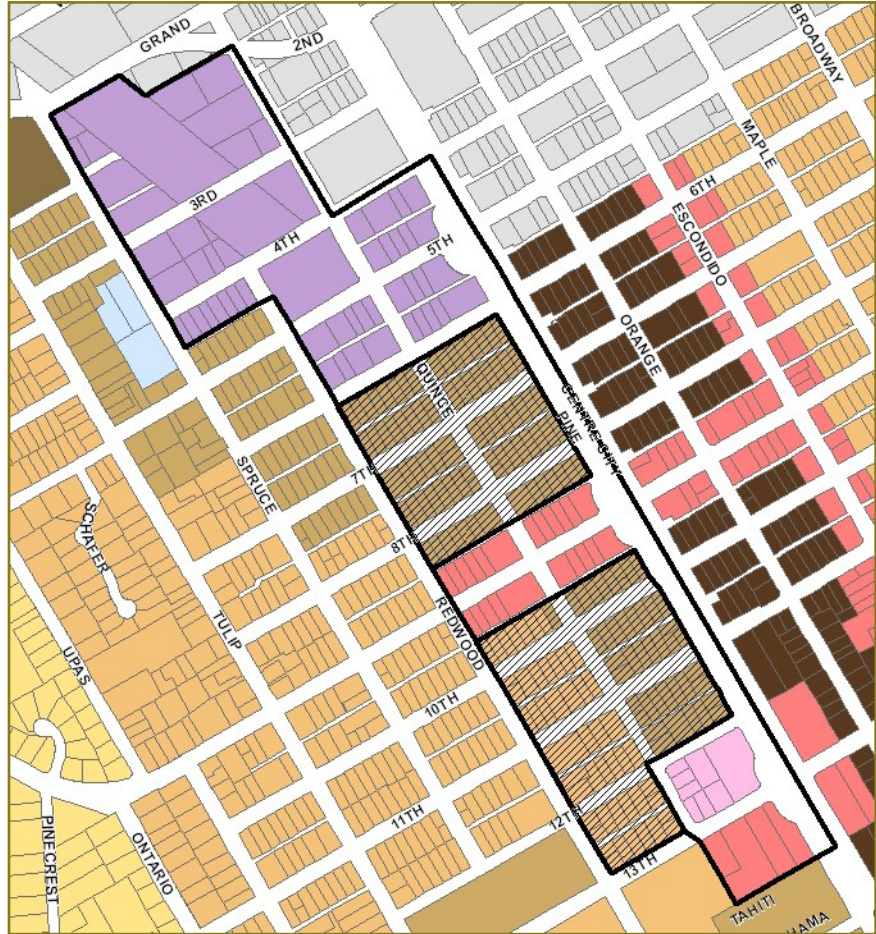


Figure II-22

**c. South Quince Street Target Area**

**Location:** South of downtown north of 15<sup>th</sup> Avenue along both sides of Quince Street.

**Size:** 104 acres (Figure II-22).

**General Plan Designations:** Urban I (20 acres); Urban II (25 acres); Planned Commercial (5 acres); General Commercial (15 acres); Industrial Office (39 acres)

**Current Status:** Mid-range density multi-family, low intensity general retail, office restaurants, small scale industrial and manufacturing services.

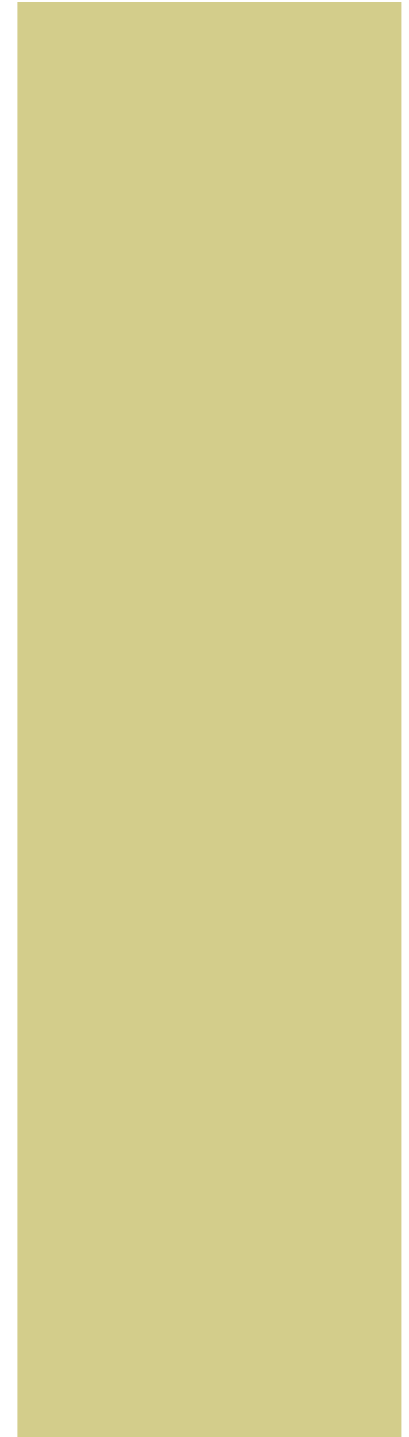
**Target Area 3 Guiding Principles:**

- 1) Establish an Area Plan that incorporates smart growth principles, promotes increased density and intensity near the transit center, encourages façade improvements, property revitalization and integrates public/private recreational space.
- 2) Consider opportunities and incentives for increasing employment densities and attracting businesses with salaries that raise the city’s median income and improving the jobs/housing balance.

- 3) Incorporate provisions for a commercial and office mixed-use overlay in the residential portions of the Area Plan to allow compatible non-residential land uses with the neighborhood.

**Guiding Principles for 13<sup>th</sup> Avenue / Pine Street  
(Planned Commercial #14):**

Land uses shall include retail uses that are compatible with adjacent residential neighborhood. Development standards shall include decorative masonry walls to screen trash enclosures and loading areas of commercial uses. Reciprocal access for the entire project shall be provided through the existing commercial parking lot to the satisfaction of the Planning Department. All buildings and lighting shall be unified in design, single story and orient away from residential uses on Quince Street and 12th Avenue. Delivery schedules for the commercial uses shall be structured so as not to occur during with late night or early morning hours, and delivery areas shall be oriented away from residential areas.



**GENERAL PLAN LAND USES**

**Residential**

- Rural I: 1 du/ 4,8,20 acres (R1)
- Rural II: 1 du/ 2,4,20 acres (R2)
- Estate I: 1 du/ 1,2,4,20 acres (E1)
- Estate II: 1 du/ 0.5,1,20 acres (E2)
- Suburban: Up to 3.3 du/acre (S)
- Urban I: Up to 5.5 du/acre (U1)
- Urban II: Up to 12 du/acre (U2)
- Urban III: Up to 18 du/acre (U3)
- Urban IV: Up to 24 du/acre (U4)
- Urban V: Up to 30 du/acre (U5)

**Commercial**

- General Commercial (GC)
- Neighborhood Commercial (NC)
- Planned Commercial (PC)
- Office (O)
- Planned Office (PO)

**Industrial**

- Light Industrial (LI)
- General Industrial (GI)
- Industrial Office (IO)

**Other**

- Public Land/Open Space (P)
- Specific Plan Area (SPA)
- Target Area Boundary

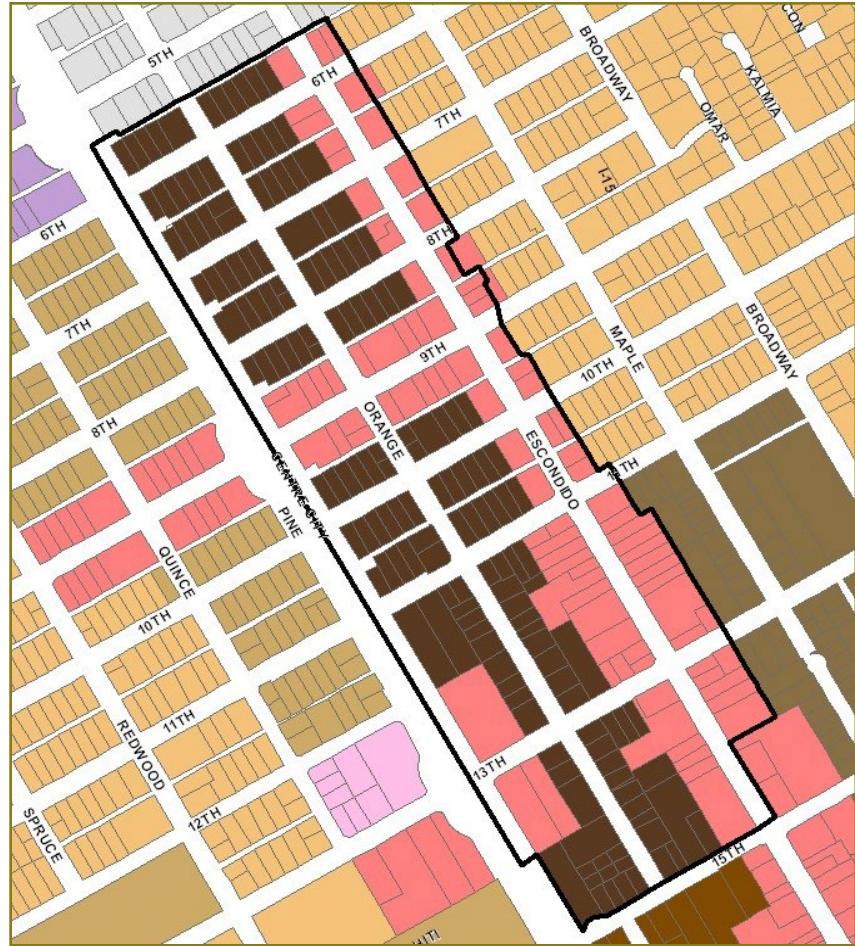


Figure II-23

**d. S. Escondido Blvd/Centre City Pkwy Target Area**

A Land Use Area Plan will be maintained for the residential area between Fifth and Sixteenth Avenues, Centre City Parkway and Escondido Boulevard (Figure II-23). The neighborhood is predominately characterized by older single and multifamily housing stock. The area plan shall address the following objectives:

- a. Promote a wide range of housing opportunities.
- b. Provide adequate infrastructure.
- c. Establish development standards and design guidelines to ensure quality architecture and landscaping, adequate off-street parking, on-site open space, and recreation areas.
- d. Include strategies for the development of neighborhood parks within the area.
- e. Create standards to facilitate the establishment of child care homes and centers.
- f. Establish a density range where maximum densities can only be attained through lot consolidation and consistency with the above goals.

**(Amendment to this policy will continue to require voter approval)**

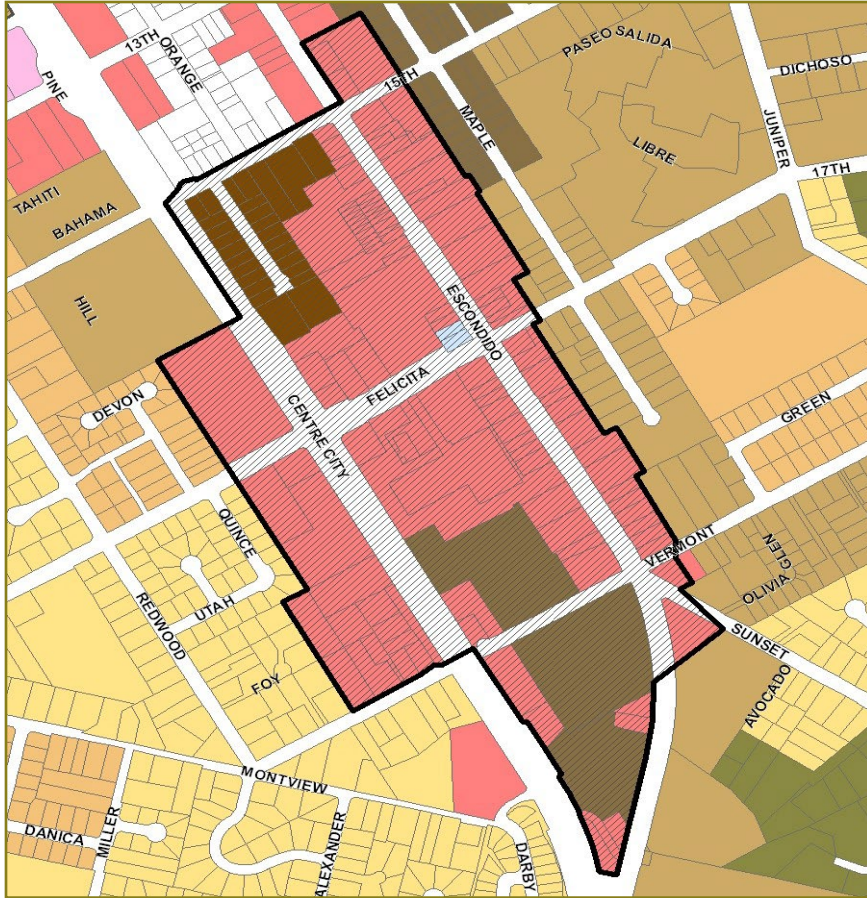


Figure II-24

**e. S. Escondido Blvd / Felicita Avenue Target Area**

**Location:** 15<sup>th</sup> Avenue, Escondido Boulevard, Centre City Parkway

**Size:** 167 acres (Figure II-24).

**General Plan Designations:** Urban III (29 acres); Urban IV (12 acres); General Commercial (126 acres); Mixed Use Overlay (minimum 30 units per acre)

**Current Status:** Multi-family, low intensity suburban shopping, general retail, office, restaurants, and small scale services.

**Adopted Plans:** S. Escondido Boulevard Commercial Area Plan

**Target Area 5 Guiding Principles:**

- 1) Update the existing Area Plan for the Target Area to include smart growth principles; strong connections to transit and integration of public/private recreational space, and criteria for considering exclusively residential development along Escondido Boulevard.
- 2) Establish a mixed use overlay with increased density and intensity in close proximity to transit and services. Ensure compatibility with adjacent lower density residential with appropriate building heights, intensities, and buffers.

**GENERAL PLAN LAND USES**

**Residential**

- Rural I: 1 du/ 4,8,20 acres (R1)
- Rural II: 1 du/ 2,4,20 acres (R2)
- Estate I: 1 du/ 1,2,4,20 acres (E1)
- Estate II: 1 du/ 0.5,1,20 acres (E2)
- Suburban: Up to 3.3 du/acre (S)
- Urban I: Up to 5.5 du/acre (U1)
- Urban II: Up to 12 du/acre (U2)
- Urban III: Up to 18 du/acre (U3)
- Urban IV: Up to 24 du/acre (U4)
- Urban V: Up to 30 du/acre (U5)

**Commercial**

- General Commercial (GC)
- Neighborhood Commercial (NC)
- Planned Commercial (PC)
- Office (O)
- Planned Office (PO)

**Industrial**

- Light Industrial (LI)
- General Industrial (GI)
- Industrial Office (IO)

**Other**

- Public Land/Open Space (P)
- Specific Plan Area (SPA)
- Mixed-Use Overlay
- Target Area Boundary

**GENERAL PLAN LAND USES**

**Residential**

- Rural I: 1 du/ 4,8,20 acres (R1)
- Rural II: 1 du/ 2,4,20 acres (R2)
- Estate I: 1 du/ 1,2,4,20 acres (E1)
- Estate II: 1 du/ 0.5,1,20 acres (E2)
- Suburban: Up to 3.3 du/acre (S)
- Urban I: Up to 5.5 du/acre (U1)
- Urban II: Up to 12 du/acre (U2)
- Urban III: Up to 18 du/acre (U3)
- Urban IV: Up to 24 du/acre (U4)
- Urban V: Up to 30 du/acre (U5)

**Commercial**

- General Commercial (GC)
- Neighborhood Commercial (NC)
- Planned Commercial (PC)
- Office (O)
- Planned Office (PO)

**Industrial**

- Light Industrial (LI)
- General Industrial (GI)
- Industrial Office (IO)

**Other**

- Public Land/Open Space (P)
- Specific Plan Area (SPA)
- Mixed-Use Overlay
- Target Area Boundary

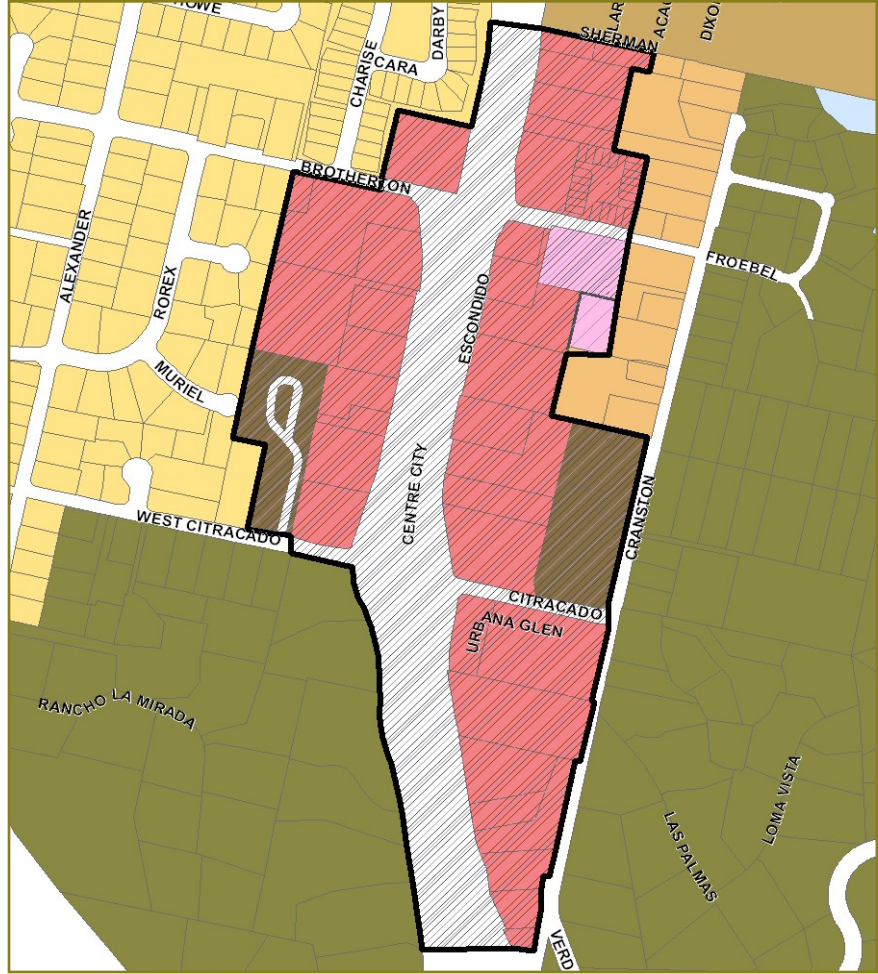


Figure II-25

**f. Centre City Parkway/Brotherton Road Target Area**

**Location:** In the vicinity of Brotherton Road and Citracado Parkway on both sides of Centre City Parkway.

**Size:** 55 acres (Figure II-25).

**General Plan Designations:** Urban III (7 acres); General Commercial (48 acres); Planned Commercial (1.8 acres) Mixed Use Overlay (minimum 30 units per acre)

**Current Status:** Mid-range density mixed use, low intensity suburban shopping, general retail, office, and small scale services.

**Adopted Plans:** S. Escondido Boulevard Commercial Area Plan

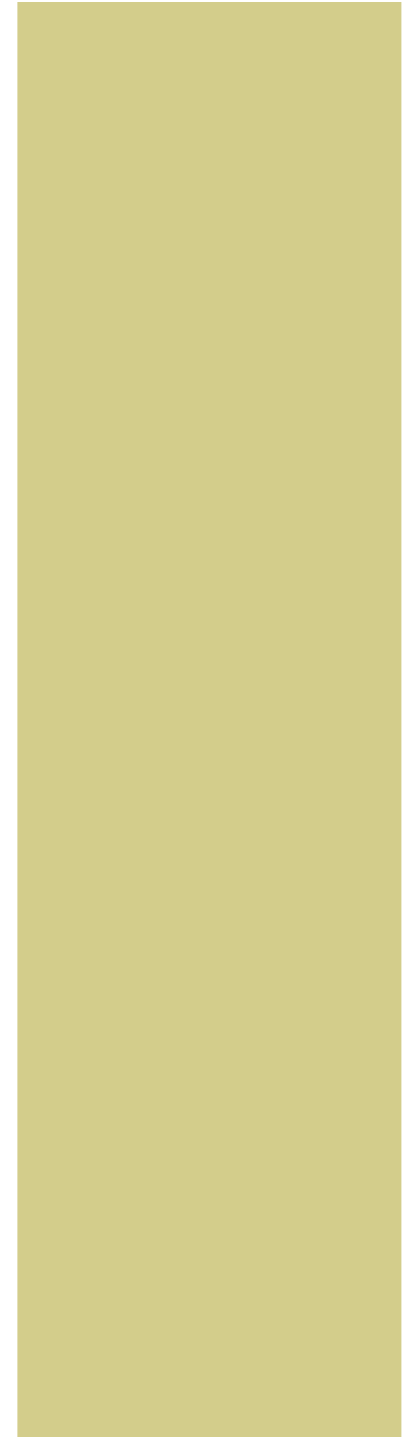
**Target Area 6 Guiding Principles**

- 1) Update the existing Area Plan for the Target Area to include smart growth principles; a gateway element for the city, aesthetic enhancements along Centre City Parkway, strong connections to transit, integration of public/private recreational space, criteria for considering exclusively residential development along Escondido Boulevard, and features to ensure pedestrian safety.

- 2) Establish a mixed use overlay with increased density and intensity in close proximity to transit and services. Ensure compatibility with adjacent lower density residential with appropriate building heights, intensities, and buffers.

**Guiding Principles for Brotherton Road  
(Planned Commercial #13):**

Land uses planned for this site shall be limited to mini-storage units or other uses compatible with adjacent residential properties subject to the provisions set forth in the Zoning Code. Development standards shall include a 6-foot-high block wall, in combination with a minimum 20-foot-wide heavily landscaped buffer utilizing mature non-deciduous trees and shrubs with dense foliage to be incorporated along the property abutting residentially zoned property to create a visual buffer upon installation. All structures shall provide roof coverings, similar to and compatible with surrounding residential development. Site studies, to the satisfaction of the Planning Department may also be required to ensure surrounding residential properties are not impacted.



**GENERAL PLAN LAND USES**

**Residential**

- Rural I: 1 du/ 4,8,20 acres (R1)
- Rural II: 1 du/ 2,4,20 acres (R2)
- Estate I: 1 du/ 1,2,4,20 acres (E1)
- Estate II: 1 du/ 0.5,1,20 acres (E2)
- Suburban: Up to 3.3 du/acre (S)
- Urban I: Up to 5.5 du/acre (U1)
- Urban II: Up to 12 du/acre (U2)
- Urban III: Up to 18 du/acre (U3)
- Urban IV: Up to 24 du/acre (U4)
- Urban V: Up to 30 du/acre (U5)

**Commercial**

- General Commercial (GC)
- Neighborhood Commercial (NC)
- Planned Commercial (PC)
- Office (O)
- Planned Office (PO)

**Industrial**

- Light Industrial (LI)
- General Industrial (GI)
- Industrial Office (IO)

**Other**

- Public Land/Open Space (P)
- Specific Plan Area (SPA)
- Target Area Boundary

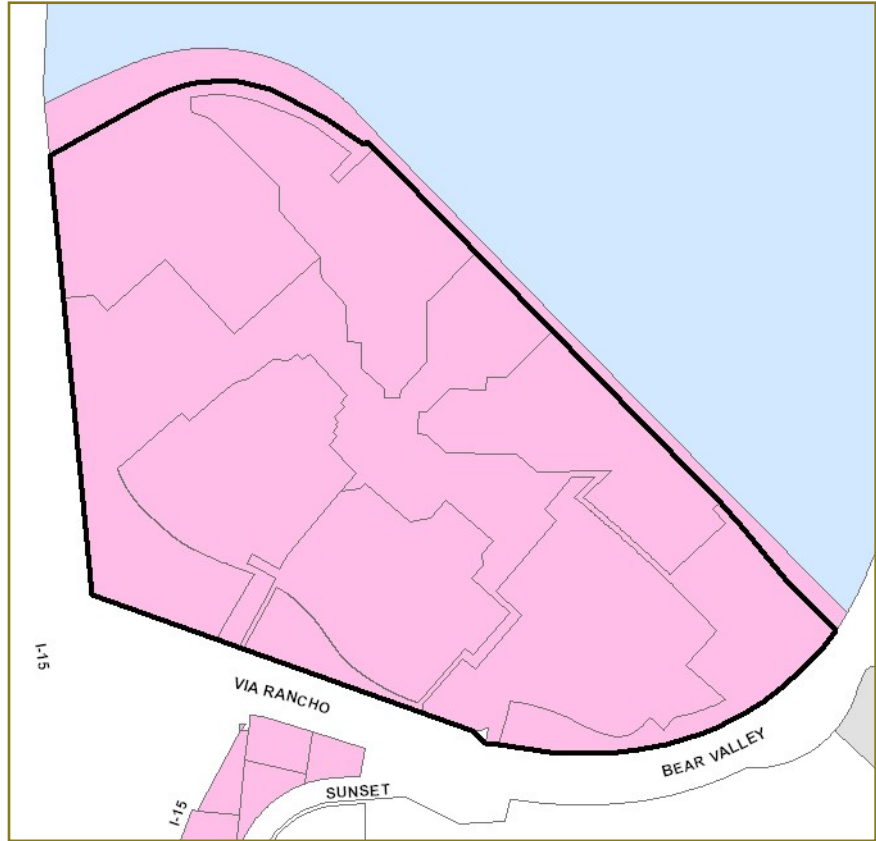


Figure II-26

### g. Westfield's Regional Shopping Center

**Location:** Interstate 15 and Via Rancho Parkway interchange

**Size:** 77 acres (Figure II-26).

**General Plan Designations:** Planned Commercial #4

**Current Status:** Multistory regional shopping center with several anchor tenants, smaller in-line shops and free-standing up-scale dining establishments. Site is owned by the city under long-term lease contract to a private developer.

**Target Area 7 Guiding Principles:**

- 1) Continue to coordinate future shopping center expansion efforts that attract a regional customer base and support city revenues.
- 2) Consider opportunities and incentives that increase employment densities and attract businesses including office, theater, hotel, entertainment and visitor serving uses that complement existing retail and offer salaries that raise the city's median income and improve the jobs/housing balance.
- 3) Promote transit access and connection for the site and consider opportunities for amending parking requirements as transit use to and from the site increases.

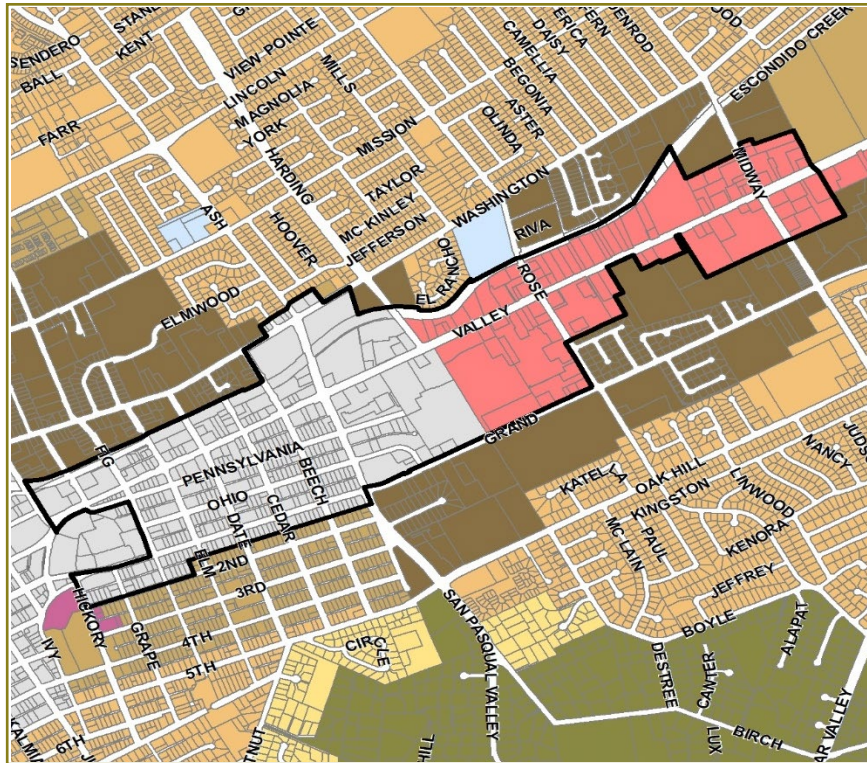


Figure II-27

## h. East Valley Parkway Target Area

**Location:** Generally, between Escondido Creek and Grand Avenue, between Palomar Hospital and Midway Drive.

**Size:** 331 acres (Figure II-27).

**General Plan Designations:** Office (70 acres); General Commercial (261 acres), Mixed Use Overlay (minimum 30 units per acre).

**Current Status:** Low intensity general retail, office, restaurants, and small-scale service businesses.

**Adopted Plans:** East Valley Parkway Area Plan and East Valley Specific Plan

### Target Area 8 Guiding Principles:

- 1) Update the Area Plan for the Target Area to include smart growth principles as well as improved vehicular access and enhanced aesthetics from Highway 78 along Lincoln Avenue and Ash Street. Strengthen Escondido Creek path connections, and better integrate public / private recreational spaces.
- 2) Promote opportunities and incentives for attracting job training and technical/vocational schools and educational institutions that enhance employment opportunity for residents.
- 3) Establish a mixed-use overlay between Palomar Hospital and Ash Street to focus residential growth with increased building heights and intensities, distanced from lower density residential and appropriate buffers to ensure compatibility.





**GENERAL PLAN LAND USES**

**Residential**

- Rural I: 1 du/ 4,8,20 acres (R1)
- Rural II: 1 du/ 2,4,20 acres (R2)
- Estate I: 1 du/ 1,2,4,20 acres (E1)
- Estate II: 1 du/ 0.5,1,20 acres (E2)
- Suburban: Up to 3.3 du/acre (S)
- Urban I: Up to 5.5 du/acre (U1)
- Urban II: Up to 12 du/acre (U2)
- Urban III: Up to 18 du/acre (U3)
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- Urban V: Up to 30 du/acre (U5)

**Commercial**

- General Commercial (GC)
- Neighborhood Commercial (NC)
- Planned Commercial (PC)
- Office (O)
- Planned Office (PO)

**Industrial**

- Light Industrial (LI)
- General Industrial (GI)
- Industrial Office (IO)

**Other**

- Public Land/Open Space (P)
- Specific Plan Area (SPA)
- Mixed-Use Overlay
- Target Area Boundary

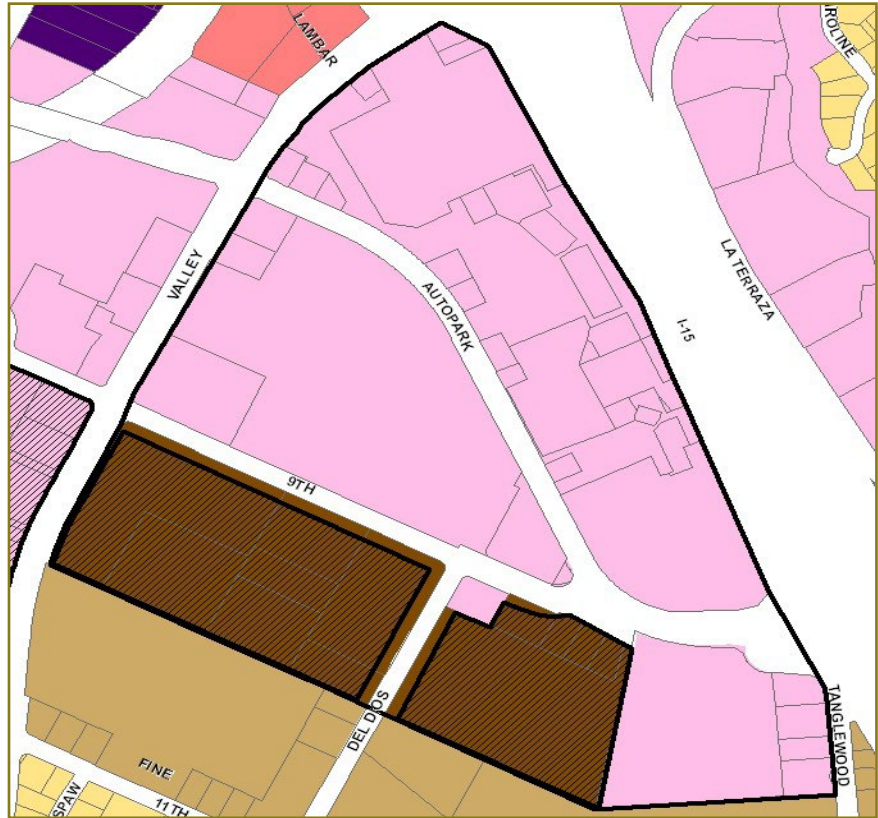


Figure II-28

**i. Promenade Retail Center and Vicinity Target Area**

**Location:** Interstate 15, Auto Park Way and Valley Parkway

**Size:** 106 acres (Figure II-28).

**General Plan Designations:** Planned Commercial, Urban IV (Multi-family, up to 24 units per acre)

**Current Status:** Retail shopping center with several anchor tenants, smaller in-line shops, auto dealership, middle school, apartments.

**Target Area 9 Guiding Principles:**

- 1) Work with the school district to coordinate any transition to retail use. Establish high quality, unified architectural design features for new development with particular attention to visibility from Interstate 15 and southern residential areas.
- 2) Consider opportunities and incentives for increasing employment densities and attracting businesses including offices, theaters, hotels, entertainment and visitor serving uses that complement existing retail and offer salaries that raise the city’s median income and improving the jobs/housing balance.
- 3) Commercial uses shall include automobile sales and compatible uses. Single family residential uses near I-15 shall transition to commercial through separate development applications.
- 4) Mixed-use development shall be permitted south of Ninth Avenue and shall orient toward Ninth Avenue and Del Dios Highway.

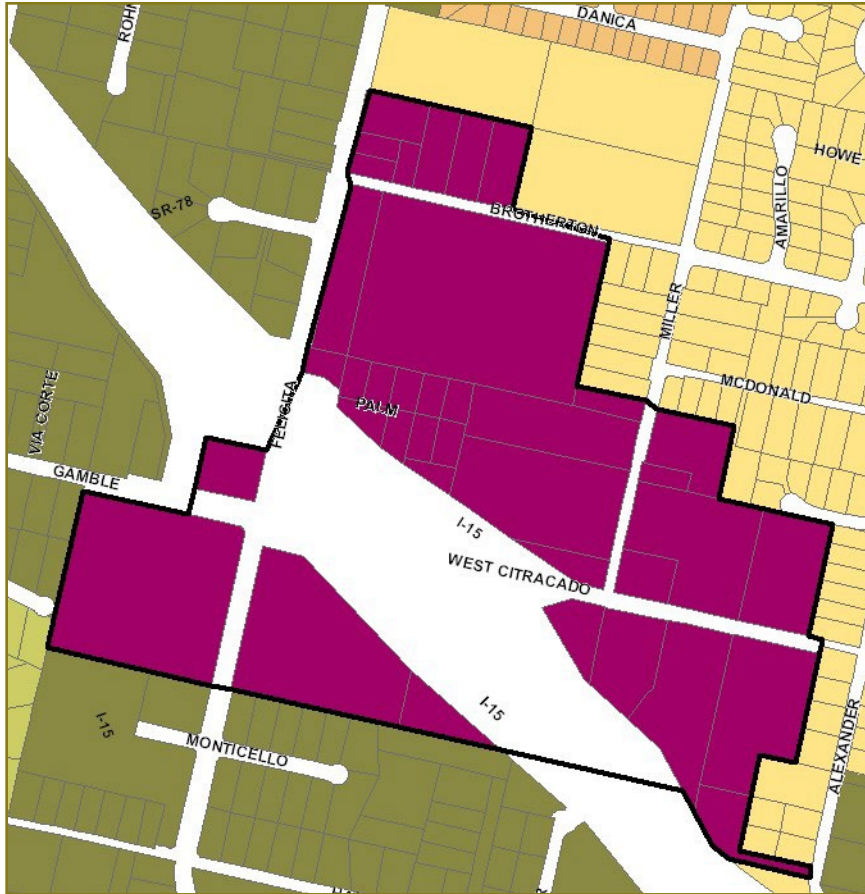


Figure II-29

**j. Felicita Corporate Office Target Area**

**Location:** Interstate 15 and Felicita Road Interchange area.

**Size:** 87 acres (Figure II-29).

**General Plan Designations:** Planned Office

**Current Status:** Low intensity medical offices, single family units, churches, agriculture, vacant.

**Target Area 10 Principles:**

- 1) Promote opportunities and incentives for increasing employment densities and attracting businesses with salaries that raise the city’s median income and improving the jobs/housing balance.
- 2) Land uses shall be consistent with the Planned Office designation with a focus on attracting high paying, high employee density employment opportunities.
- 3) Development shall include high quality, unified design elements that provide for superior architecture and features such as building height, mass, colors, materials, signage, landscaping, lighting, parking and circulation that are sensitive to adjacent single-family zoning. Increased building heights and intensities shall be located closer to the freeway in areas that are more distanced from lower density residential with compatible buffers provided.



**GENERAL PLAN LAND USES**

**Residential**

- Rural I: 1 du/ 4,8,20 acres (R1)
- Rural II: 1 du/ 2,4,20 acres (R2)
- Estate I: 1 du/ 1,2,4,20 acres (E1)
- Estate II: 1 du/ 0.5,1,20 acres (E2)
- Suburban: Up to 3.3 du/acre (S)
- Urban I: Up to 5.5 du/acre (U1)
- Urban II: Up to 12 du/acre (U2)
- Urban III: Up to 18 du/acre (U3)
- Urban IV: Up to 24 du/acre (U4)
- Urban V: Up to 30 du/acre (U5)

**Commercial**

- General Commercial (GC)
- Neighborhood Commercial (NC)
- Planned Commercial (PC)
- Office (O)
- Planned Office (PO)

**Industrial**

- Light Industrial (LI)
- General Industrial (GI)
- Industrial Office (IO)

**Other**

- Public Land/Open Space (P)
- Specific Plan Area (SPA)
- Target Area Boundary

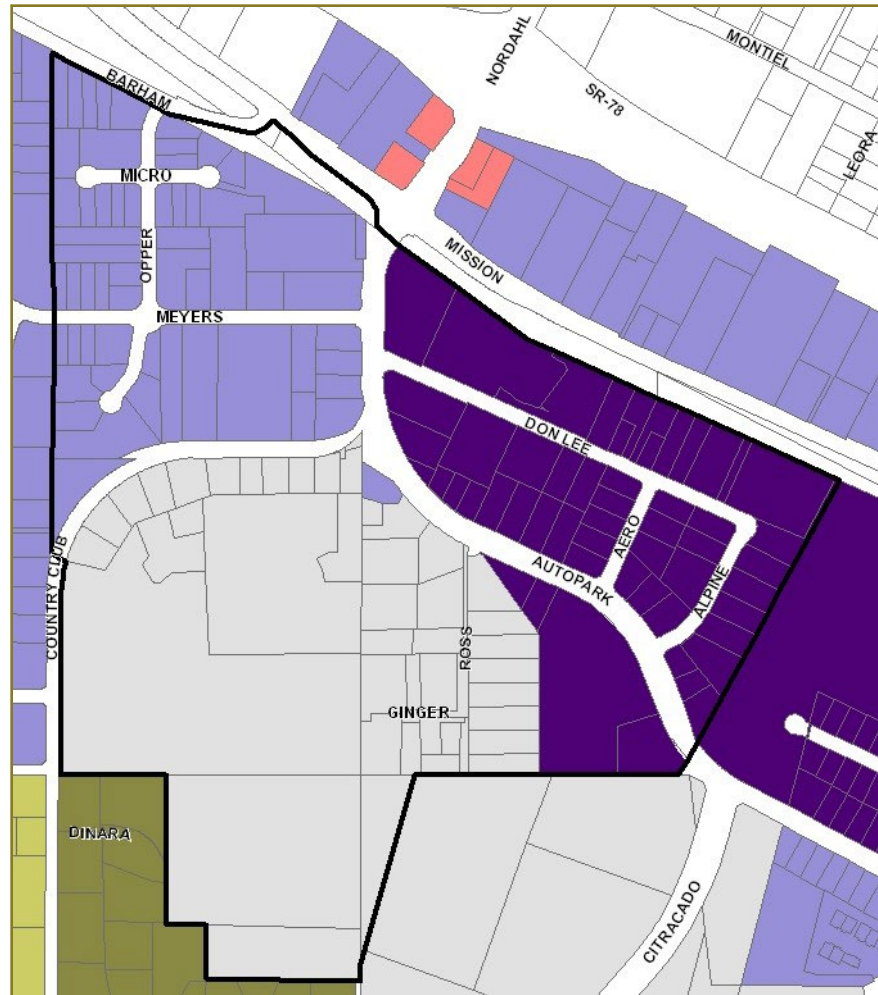


Figure II-30

### k. Nordahl Road Transit Station Target Area

**Location:** On the western side of the Planning Area along Auto Park Way south of Nordahl Road and Mission Avenue.

**Size:** Approximately 170 gross acres (Figure II-30).

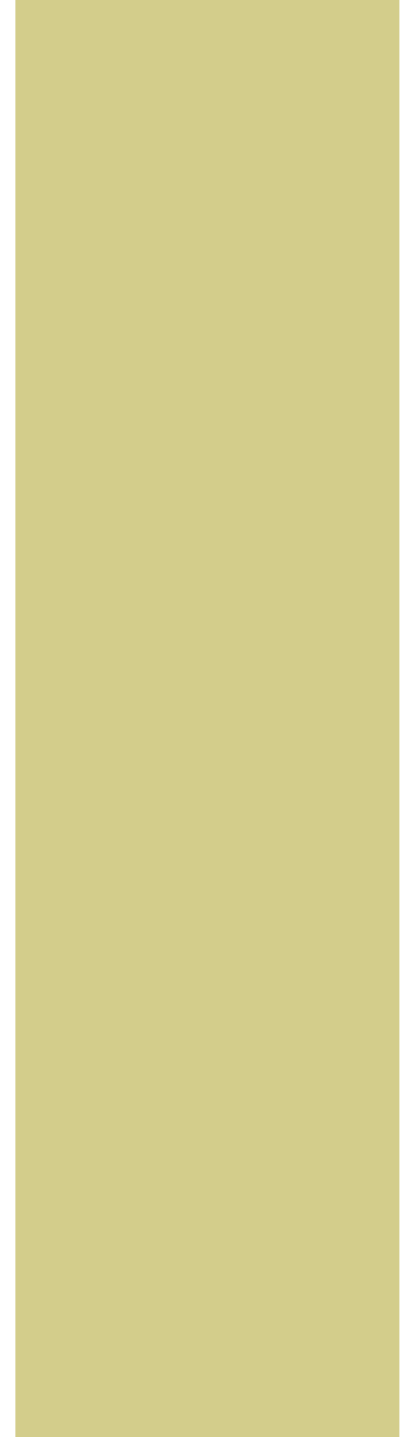
**General Plan Designations:** Specific Planning Area #8, Light Industrial, General Industrial

**Current Status:** The area is partially developed.

#### Target Area 11 Guiding Principles:

- 1) Promote opportunities and incentives that increase employment densities and attract businesses with salaries that raise the city's median income and improve the jobs/housing balance.
- 2) Establish an Area Plan that incorporates flexible land uses adjacent to the transit station, and along Auto Park Way, to include office, medical, convalescent, and support services. Similar provisions shall be included in the Specific Plan text associated with SPA #8.

- 3) Development shall include high quality, unified design elements that incorporates superior architecture and features such as building height, mass, colors, materials, signage, landscaping, lighting, parking and circulation.
- 4) Development adjacent to single-family zoning located to the southwest shall be of compatible height and scale with buffers included that enhance the transition of land uses.
- 5) Increased building heights and intensities are appropriate closer to the Nordahl Transit Station and along Auto Park Way that are distanced from lower density residential areas to ensure compatibility.
- 6) Opportunities for a passenger shuttle service between the Nordahl Transit Station and Palomar Hospital shall be encouraged.





*A residential development in northern Escondido that utilized clustering to preserve large open space buffers*

## **K. Special Application Measures**

The General Plan establishes the rationale, goals, objectives, and policies for future actions within the community. However, because areas of the community differ in characteristics such as topography, development potential, and intensity, special application measures provide a means to carry out certain objectives of the General Plan to benefit the community. These measures include: residential lot clustering, development agreements, annexations, and General Plan Amendments.

### **1. Residential Lot Clustering**

Residential Lot Clustering (clustering) is a useful development tool for protecting sensitive resources, avoiding hazardous areas, and/or preserving the natural appearance of hillsides. Clustering involves assessing the natural characteristics of a site and grouping the buildings or lots through an on-site transfer of density rather than distributing them evenly throughout the project as in a conventional subdivision. Not only do cluster developments help preserve open space, they also tend to minimize the visual impacts associated with development, reduce the cost of building and maintaining public roads, and decrease grading in environmentally sensitive areas.

The maximum development yield (that is, the number of dwelling units) that can be built as part of a clustered development project shall be derived by applying the maximum permissible density in each applicable residential land use category, subject to applicable slope density categories and adjusted for natural floodways as prescribed in the General Plan policies. The number of dwelling units actually permitted in a cluster development may be less following application of the policies that shall govern cluster development projects.

## 2. Development Agreements

California Planning law authorizes cities and developers to enter into a contract in which mutually benefitting concessions and assurances governing a property are negotiated and approved. For the developer, a development agreement grants vested rights for a period of time that guarantees a project's approval even if future changes to local planning or zoning laws might otherwise restrict or prohibit development of that project. In exchange, the city is assured certain public benefits by the developer that could include construction of improvements, public facilities and/or services, fees, or other commitments that the city ordinarily cannot require of the developer. Development agreements are individually approved by the City Council with terms unique to project and situation pertaining to the development.

## 3. Annexations

Approximately one-half of Escondido's Planning Area involves territory that is located outside the city's municipal boundaries and governed by San Diego County (Figure II-30). Transitioning these properties into the city requires annexation through the Local Agency Formation Commission (LAFCO) and property owner involvement. Annexation policies are intended to ensure that the city's boundary expansions occur in a manner that are consistent with the General Plan's vision and meet Escondido's long term goals.

## 4. General Plan Review and Amendment

The General Plan reflects a 20+ year time horizon to allow for the systematic implementation of desired land use patterns, mobility network, and facility installation. Periodic review of the General Plan is an important facet in its implementation to allow for adjustments in response to changing conditions, both internal and external, the availability of more recent planning data, and shifts in community values.

Changing conditions may result in General Plan Amendment requests which should be carefully considered. In conformance with Section 65358(b) of the State Government Code each mandatory element of the General Plan may be amended up to four times per year. Each amendment may include multiple changes to the General Plan. The General Plan policies regarding amendments are intended to ensure greater predictability for both the development community and the public and include local requirements requiring a public vote for certain types of land use amendments.

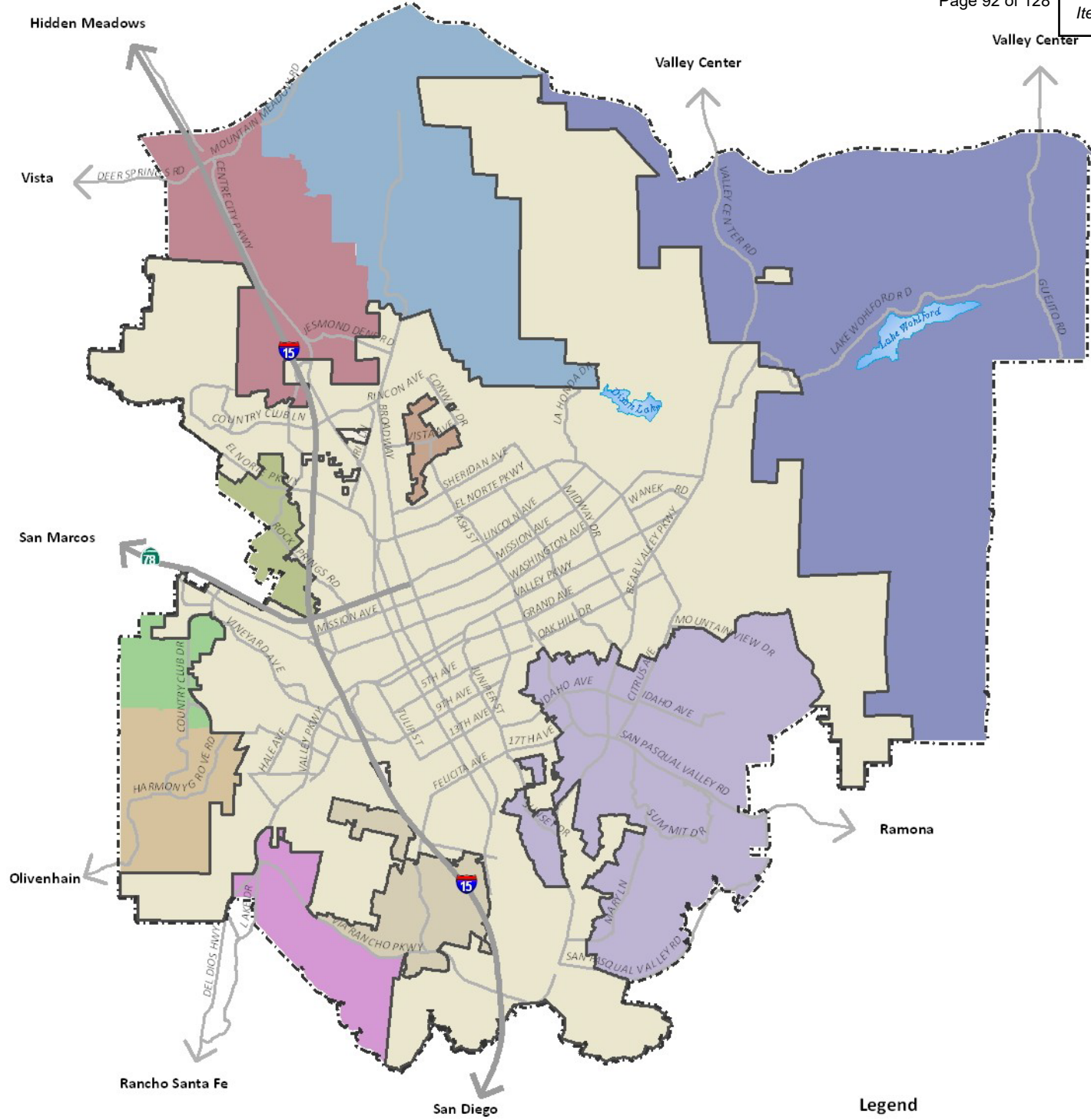


## L. Unincorporated Neighborhoods in the Planning Area

Surrounding Escondido's corporate boundaries are several unincorporated neighborhoods within the General Plan and Sphere of Influence (Figure II-31). It is anticipated that requests for annexing unincorporated properties in these areas will be considered during the planning horizon of the General Plan. Annexation involves an evaluation and determination of facilities and services that will be provided in the territory proposed for incorporation to the city, as well as financing mechanisms to fund the necessary facility infrastructure. The following information analyzes facilities and services as well as financing opportunities within unincorporated neighborhoods surrounding the city of Escondido.

*The unincorporated areas of Eden Valley and Harmony Grove have adopted a rural lifestyle with equestrian uses*





**Unincorporated Neighborhoods**

- |   |   |
|---|---|
|  Citrus Valley Neighborhood |  Lake Hodge Neighborhood     |
|  Eden Valley Neighborhood   |  Lake Wohlford Neighborhood  |
|  Felicity Park Neighborhood |  Lehner Valley Neighborhood  |
|  Harmony Grove Neighborhood |  North Broadway Neighborhood |
|  Jesmond Dene Neighborhood  |  Rock Springs Neighborhood   |

**Legend**

-  General Plan Boundary
-  City Limits
-  Highway
-  Street
-  Lakes

 0 0.5 1 Miles



**Escondido General Plan**

Unincorporated Neighborhoods  
 Figure II-31

Source: City of Escondido

## 1. Eden Valley and Harmony Grove Neighborhoods

**Location / General Description:** The Eden Valley and Harmony Grove neighborhoods are located in a rural valley along the western portion of Escondido, generally bounded by Hill Valley Road to the north, Escondido's General Plan boundary to the west, Escondido Creek Conservancy natural open space to the south, and Country Club Road, Kauana Loa Drive and portions of Harmony Grove Road to the east. The area generally north of Mount Whitney Road forms the boundary between the Eden Valley and Harmony Grove neighborhoods. The area includes single family residential on one-acre and larger lots, a concrete pipe manufacturing company, agricultural uses, a historic spiritualist retreat center, and vacant property.

The Harmony Grove neighborhood is included in the County's adopted Elfin Forest and Harmony Grove San Dieguito Community Plan; a policy document created to address the issues, characteristics and vision of the two communities. Future development within Harmony Grove includes a 468-acre Specific Plan approved by the County that will involve a mixed-use rural residential village consisting of commercial uses, a fire station, open space, equestrian facilities and up to 742 units.

**Approximate Acreage:** 1,000 acres

**Water Service:** Rincon Water District supplies potable water to these neighborhoods as part of its service area (refer to Infrastructure and Mobility Element, Figure III-12) The District receives imported water from Northern California and the Colorado River via the Metropolitan Water District of Southern California (MWD) and the San Diego County Water Authority (SDCWA).

**Wastewater Service:** There are no wastewater service providers in the Eden Valley and Harmony Grove neighborhoods. Properties are developed with private septic systems to individually treat wastewater generated on-site. The future Harmony Grove Village project will involve construction of an on-site package sewer treatment facility to serve the development.

**Drainage:** No storm drain system serves the Eden Valley and Harmony Grove neighborhoods. Drainage through the area naturally flows in a southerly direction through the Eden Valley neighborhood into the Harmony Grove neighborhood and drains into Escondido Creek, which flows west-ward to San Elijo Lagoon and the Pacific Ocean. The future Harmony Grove Village project will involve a master planned storm drain system to serve the development.

**Safety:** The San Diego County Sheriff's Department provides generalized patrol and investigative services in the unincorporated areas of Escondido's General Plan. The nearest stations are located in San Marcos and Vista. The California Highway Patrol has the primary jurisdiction for traffic services in unincorporated areas.

**Fire Protection:** The Eden Valley neighborhood is served by the San Marcos Fire Protection District, a community facilities district that serves the city of San Marcos and several other outlying unincorporated communities. The closest fire station is located on Woodland Parkway in San Marcos. Harmony Grove is served by the Elfin Forest /Harmony Grove Fire Department which maintains a fire station on Elfin Forest Road. Both fire protection agencies maintain mutual aid agreements with neighboring jurisdictions, including Escondido. Refer to the Community Protection Element, Figure VI-3 for service boundaries.

**Deficiency Improvement Financing Analysis:** Annexing properties in this area would result in a reorganization of agencies that provide facilities and services based on direction from the Local Agency Formation Commission and negotiations with responsible agencies. The annexation process includes an evaluation of facility, service and infrastructure deficiencies to determine the type and amount of improvements that may be required in order to annex to the city. Options for financing improvements that correct deficiencies include benefit assessment districts, Capital Improvement Programs, Community Facilities Districts and / or other payment mechanisms.

## 2. Felicita Park and Lake Hodges Neighborhoods

**Location / General Description:** The Felicita Park and Lake Hodges neighborhoods are located in the southern portion of Escondido, generally bounded by Interstate 15 and Centre City Parkway on the north and east, West Valley Parkway and Del Dios Highway on the west, and Lake Hodges on the south. The area generally north of Via Rancho Parkway forms the boundary between the Felicita Park and Lake Hodges neighborhoods. The area includes Felicita County Park, single family residential on one-half acre and larger lots, agricultural uses, and vacant property.

**Approximate Acreage:** 1,500 acres

**Water Service:** Two water agencies supply potable water to these neighborhoods. Portions of the Lake Hodges Neighborhood adjacent to Via Rancho Parkway are not within any water service boundary (refer to Infrastructure and Mobility Element, Figure III-12).



*View of Lake Hodges from  
Escondido looking south*

Rincon Water District provides water service to areas south of Via Rancho Parkway as well as in the immediate vicinity of Felicita County Park. The city of Escondido provides water service to areas adjacent to Interstate 15. Rincon Water District and Escondido receive imported water from Northern California and the Colorado River via the Metropolitan Water District of Southern California (MWD) and the San Diego County Water Authority (SDCWA). In addition, Escondido receives approximately 15% of its water from local sources.

**Wastewater Service:** There are no wastewater service providers in the Felicita Park and Lake Hodges neighborhoods. Properties are developed with private septic systems to individually treat wastewater generated on-site.

**Drainage:** No storm drain system serves the Felicita Park and Lake Hodges neighborhoods. Drainage through the area naturally flows in a southerly direction and drains into Lake Hodges, which flows into the San Dieguito River and the Pacific Ocean.

**Safety:** The San Diego County Sheriff's Department provides generalized patrol and investigative services in the unincorporated areas of Escondido's General Plan. The nearest stations are located in San Marcos and Vista. The California Highway Patrol has the primary jurisdiction for traffic services in unincorporated areas.

**Fire Protection:** The Felicita Park and Lake Hodges neighborhoods are within the Rincon Fire District, which is staffed by the city of Escondido Fire Department through a contractual arrangement. The closest fire station is located on Felicita Road in Escondido. The Escondido Fire Department maintains mutual aid agreements with neighboring jurisdictions. Refer to the Community Protection Element, Figure VI-3 for service boundaries.

**Deficiency Improvement Financing Analysis:** Annexing properties in this area would result in a reorganization of agencies that provide facilities and services based on direction from the Local Agency Formation Commission and negotiations with responsible agencies. The annexation process includes an evaluation of facility, service and infrastructure deficiencies to determine the type and amount of improvements that may be required in order to annex to the city. Options for financing improvements that correct deficiencies include benefit assessment districts, Capital Improvement Programs, Community Facilities Districts and / or other payment mechanisms.



### 3. Citrus Valley Neighborhood

**Location / General Description:** The Citrus Valley neighborhood is located in the southeastern portion of Escondido, generally bounded by Escondido's corporate boundaries on the north, east and west, and the city of San Diego's San Pasqual Valley on the south. The area includes single family residential on one-half acre and larger lots, agricultural uses, and vacant property.

**Approximate Acreage:** 3,000 acres

**Water Service:** Two water agencies supply potable water to this area. Portions of the Citrus Valley neighborhood adjacent to San Pasqual Valley Road are not within any water service boundary (refer to Infrastructure and Mobility Element, Figure III-12).

Rincon Water District provides water service to the southern portion of the neighborhood comprising approximately 15% of the territory. The city of Escondido provides water service to the remaining area. Rincon Water District and Escondido receive imported water from Northern California and the Colorado River via the Metropolitan Water District of Southern California (MWD) and the San Diego County Water Authority (SDCWA). In addition, Escondido receives approximately 15% of its water from local sources.

**Wastewater Service:** There are no wastewater service providers in the Citrus Valley neighborhood. Properties are developed with private septic systems to individually treat wastewater generated on-site.

**Drainage:** No storm drain system serves the Citrus Valley neighborhood. Drainage through the area naturally flows in a southerly direction and drains into Lake Hodges, which flows into the San Dieguito River and the Pacific Ocean.

**Safety:** The San Diego County Sheriff's Department provides generalized patrol and investigative services in the unincorporated areas of Escondido's General Plan. The nearest stations are located in San Marcos and Vista. The California Highway Patrol has the primary jurisdiction for traffic services in unincorporated areas.

**Fire Protection:** The Citrus Valley neighborhood is within the Rincon Fire District, which is staffed by the city of Escondido Fire Department through a contractual arrangement. The closest fire stations are located on Bear Valley Parkway and Midway Drive in Escondido. The Escondido Fire Department maintains mutual aid agreements with neighboring jurisdictions. Refer to the Community Protection Element, Figure VI-3 for service boundaries.



**Deficiency Improvement Financing Analysis:** Annexing properties in this area would result in a reorganization of agencies that provide facilities and services based on direction from the Local Agency Formation Commission and negotiations with responsible agencies. The annexation process includes an evaluation of facility, service and infrastructure deficiencies to determine the type and amount of improvements that may be required in order to annex to the city. Options for financing improvements that correct deficiencies include benefit assessment districts, Capital Improvement Programs, Community Facilities Districts and / or other payment mechanisms.

#### 4. Lake Wohlford Neighborhood

**Location / General Description:** The Lake Wohlford neighborhood is located in the eastern portion of Escondido, generally bounded by the city’s corporate boundaries on the west, the unincorporated community of Valley Center to the north, the city of San Diego’s San Pasqual Valley to the south, and unincorporated territory to the east. The area includes Lake Wohlford which serves as one of Escondido’s principal water storage facilities and recreational areas. Additional land uses include the San Pasqual Indian Reservation, a small private airstrip, rock quarry, a mobile home park, single family residential on one acre and larger lots, agricultural uses, and vacant property.

**Approximate Acreage:** 6,500 acres

**Water Service:** Three water agencies supply potable water to approximately 2,500 acres within the neighborhood. Approximately 4,000 acres of the neighborhood are outside the Metropolitan Water District boundaries and not within any water service boundary (refer to Infrastructure and Mobility Element, Figure III-12).

Valley Center Municipal Water District provides water service to the northern and eastern portion of the neighborhood comprising approximately 40% of the territory. The city of Escondido provides water service to less than 150 acres the neighborhood near Valley Center Road and Lake Wohlford Road. Valley Center Municipal Water District and Escondido receive imported water from Northern California and the Colorado River via the Metropolitan Water District of Southern California (MWD) and the San Diego County Water Authority (SDCWA). In addition, Escondido receives approximately 15% of its water from local sources.

**Wastewater Service:** There are no wastewater service providers in the Lake Wohlford neighborhood. Properties have private septic systems that individually treat wastewater generated on-site.



*View of Lake Wohlford  
looking east*

**Drainage:** No storm drain system serves the Lake Wohlford neighborhood. Drainage for the southern 40% of the neighborhood naturally flows in a southerly direction and drains into Lake Hodges, which flows into the San Dieguito River and the Pacific Ocean. The northern portion of the neighborhood drains into Escondido Creek, which flows westward to San Elijo Lagoon and the Pacific Ocean.

**Safety:** The San Diego County Sheriff's Department provides generalized patrol and investigative services in the unincorporated areas of Escondido's General Plan. The nearest stations are located in San Marcos and Vista. The California Highway Patrol has the primary jurisdiction for traffic services in unincorporated areas.

**Fire Protection:** The Lake Wohlford neighborhood is within the Valley Center Fire Protection District. The closest fire station is located on North Lake Wohlford Road. The Valley Center Fire Protection District maintains mutual aid agreements with neighboring jurisdictions. Refer to the Community Protection Element, Figure VI-3 for service boundaries.

**Deficiency Improvement Financing Analysis:** Annexing properties in this area would result in a reorganization of agencies that provide facilities and services based on direction from the Local Agency Formation Commission and negotiations with responsible agencies. The annexation process includes an evaluation of facility, service and infrastructure deficiencies to determine the type and amount of improvements that may be required in order to annex to the city. Options for financing improvements that correct deficiencies include benefit assessment districts, Capital Improvement Programs, Community Facilities Districts and / or other payment mechanisms.

## 5. North Broadway and Jesmond Dene Neighborhoods

**Location / General Description:** The North Broadway and Jesmond Dene neighborhoods are located in the northern portion of Escondido, generally bounded by Interstate 15 on the west, the unincorporated community of Hidden Meadows on the north, Daley Ranch on the east and the city's corporate boundaries on the south. The area includes single family residential on one-half acre and larger lots, agricultural uses, commercial nurseries, and vacant property.

**Approximate Acreage:** 4,500 acres

**Water Service:** Four water agencies supply potable water to these neighborhoods; Valley Center Municipal Water District, Rincon Water District, Vallecitos Water District, and the city of Escondido.

Valley Center Municipal Water District provides water service to the northern portion of the neighborhood comprising approximately 75% of the territory. Vallecitos Water District provides water service to the portion of the neighborhood along Interstate 15. Rincon Water District provides water service in the southwest portion of the neighborhood and the city of Escondido serves the extreme southeast portion of the neighborhood.

Both districts receive imported water from Northern California and the Colorado River via the Metropolitan Water District of Southern California (MWD) and the San Diego County Water Authority (SDCWA). In addition, Escondido receives approximately 15% of its water from local sources (refer to Infra-structure and Mobility Element, Figure III-12).

**Wastewater Service:** There are no wastewater service providers in the North Broadway and Jesmond Dene neighborhoods. Properties are developed with private septic systems to individually treat wastewater generated on-site.

**Drainage:** No storm drain system serves the North Broadway and Jesmond Dene neighborhoods. Drainage in the North Broadway area flows into Reidy Creek in a southerly direction that ultimately drains into Escondido Creek. Drainage in the Jesmond Dene neighborhood flows in a southerly direction that drains into Reidy Creek.

**Safety:** The San Diego County Sheriff's Department provides generalized patrol and investigative services in the unincorporated areas of Escondido's General Plan. The nearest stations are located in San Marcos and Vista. The California Highway Patrol has the primary jurisdiction for traffic services in unincorporated areas.

**Fire Protection:** The North Broadway and Jesmond Dene neighborhoods are within the Deer Springs, San Marcos, and Rincon Fire Protection Districts. The Deer Springs Fire Protection District serves approximately 90% of the neighborhoods and maintains a fire station on Deer Springs Road near the Interstate 15 interchange. The San Marcos Fire Department serves the southeastern portion and maintains fire stations in San Marcos.

The southeastern portion of the North Broadway neighborhood is served by the Rincon Fire Protection District, which is staffed by the city of Escondido Fire Department through a contractual arrangement. The closest fire station is located on Felicita Road in Escondido. All Fire Departments maintain mutual aid agreements with neighboring jurisdictions. Refer to the Community Protection Element, Figure VI-3 for service boundaries.





**Deficiency Improvement Financing Analysis:** Annexing properties in this area would result in a reorganization of agencies that provide facilities and services based on direction from the Local Agency Formation Commission and negotiations with responsible agencies. The annexation process includes an evaluation of facility, service and infrastructure deficiencies to determine the type and amount of improvements that may be required in order to annex to the city. Options for financing improvements that correct deficiencies include benefit assessment districts, Capital Improvement Programs, Community Facilities Districts and / or other payment mechanisms.

## 6. Rock Springs Road Neighborhood

**Location / General Description:** The Rock Springs Road neighborhood is located in the western portion of Escondido, generally bounded by Interstate 15 on the east, Montiel Road on the south, El Norte Parkway on the north, and the city of San Marcos on the west. The area includes single family residential on one-quarter acre and larger lots, agricultural uses, and vacant property.

**Approximate Acreage:** 300 acres

**Water Service:** Two water districts supply potable water to these neighborhoods; Vallecitos Water District and Vista Irrigation District. Vista Irrigation District provides water service to approximately one-half of the Rock Springs neighborhood. Vallecitos Water District provides water service to the remaining portion of the neighborhood (refer to Infrastructure and Mobility Element, Figure III-12).

Both districts receive imported water from Northern California and the Colorado River via the Metropolitan Water District of Southern California (MWD) and the San Diego County Water Authority (SDCWA). In addition, Vista Irrigation District receives between 30–80% of its water from local sources (refer to Infrastructure and Mobility Element, Figure III-12).

**Wastewater Service:** Vallecitos Water District provides wastewater treatment service to properties within its service area. Vista Irrigation District does not provide wastewater treatment services. Properties without wastewater service are developed with private septic systems to individually treat waste-water generated on-site.

**Drainage:** Developed properties in the Rock Springs Neighborhood are served by a combination of storm drains in suburban tracts and open culverts in more rural / underdeveloped areas.

Drainage in the Rock Springs neighborhood flows westward into San Marcos Creek that ultimately drains into Batiquitos Lagoon and the Pacific Ocean.

**Safety:** The San Diego County Sheriff's Department provides generalized patrol and investigative services in the unincorporated areas of Escondido's General Plan. The nearest stations are located in San Marcos and Vista. The California Highway Patrol has the primary jurisdiction for traffic services in unincorporated areas.

**Fire Protection:** The neighborhood is served by the San Marcos Fire Protection District, a community facilities district that serves the city of San Marcos and several other outlying unincorporated communities. The closest fire station is located on Woodland Parkway in San Marcos. The district maintains a mutual aid agreement with neighboring jurisdictions, including Escondido. Refer to the Community Protection Element, Figure VI-3 for service boundaries.

**Deficiency Improvement Financing Analysis:** Annexing properties in this area would result in a reorganization of agencies that provide facilities and services based on direction from the Local Agency Formation Commission and negotiations with responsible agencies. The annexation process includes an evaluation of facility, service and infrastructure deficiencies to determine the type and amount of improvements that may be required in order to annex to the city. Options for financing improvements that correct deficiencies include benefit assessment districts, Capital Improvement Programs, Community Facilities Districts and / or other payment mechanisms.

## 7. Lehner Valley County Island Neighborhood

**Location / General Description:** The Lehner Valley county island neighborhood are located in the northern portion of the city of Escondido, generally bounded by Broadway on the west, Rincon Avenue on the north, Sheridan Avenue on the south, and Conway Drive on the east. The area includes single family residential on one-half acre and larger lots, agricultural uses, and vacant property.

**Approximate Acreage:** 100 acres

**Water Service:** The area is served by the city of Escondido water system (refer to Infrastructure and Mobility Element, Figure III-12). Escondido receives imported water from Northern California and the Colorado River via the Metropolitan Water District of Southern California (MWD) and the San Diego County Water Authority (SDCWA). In addition, the city receives approximately 15% of its water from local sources.



**Wastewater Service:** There are no wastewater service providers in the Lehner Valley neighborhood. Properties are developed with private septic systems to individually treat wastewater generated on-site.

**Drainage:** No storm drain system serves Lehner Valley neighborhood. Drainage in the area flows into Reidy Creek in a westerly direction that ultimately drains into Escondido Creek.

**Safety:** The San Diego County Sheriff's Department provides generalized patrol and investigative services in the unincorporated areas of Escondido's General Plan. The nearest stations are located in San Marcos and Vista. The California Highway Patrol has the primary jurisdiction for traffic services in unincorporated areas.

**Fire Protection:** The Lehner Valley neighborhood is within the Rincon Fire District, which is staffed by the city of Escondido Fire Department through a contractual arrangement. The closest fire stations are located on Ash Street and Nutmeg Street in Escondido. The Escondido Fire Department maintains mutual aid agreements with neighboring jurisdictions. Refer to the Community Protection Element, Figure VI-3 for service boundaries.

**Deficiency Improvement Financing Analysis:** Annexing properties in this area would result in a reorganization of agencies that provide facilities and services based on direction from the Local Agency Formation Commission and negotiations with responsible agencies. The annexation process includes an evaluation of facility, service and infrastructure deficiencies to determine the type and amount of improvements that may be required in order to annex to the city. Options for financing improvements that correct deficiencies include benefit assessment districts, Capital Improvement Programs, Community Facilities Districts and / or other payment mechanisms.

## M. Land Use and Community Form Goals and Policies

A complete list of the General Plan Goals is located in the Vision and Purpose. Specific goals and policies related to land use and community form provided below are intended to guide development to meet present and future needs, achieve a vibrant community, and enhance the character of Escondido.

### 1. Community Character

**GOAL 1: A community composed of distinct residential neighborhoods, business districts, and employment centers, whose urban form reflects the natural environmental setting.**

#### Community Character Policy 1.1

New development should serve to reinforce the city's present development pattern of higher-intensity development within the downtown area and lower-intensity development in outlying areas. As a guide toward accomplishing this objective, new development projects shall be at an appropriate density or clustered intensity based upon their compatibility with the majority of the existing surrounding land uses. This policy shall limit density transfers from constrained portions of a property as defined in the land use and open space goals. **(Amendment to this policy will continue to require voter approval)**

#### Community Character Policy 1.2

The boundaries of the Land Use categories depicted on the General Plan are not precise. However, the categories are generally intended to avoid intensification of existing land use or zoning designations where land use compatibility and the objectives of the General Plan are at issue.

**(Amendment to this policy will continue to require voter approval)**

#### Community Character Policy 1.3

Focus development into areas where land use changes achieve the community's long term goals. Facilitate development that is consistent with the build out vision for each area through incentive programs and efficient administrative and discretionary approval processes for plot plans, Planned Developments, Area Plans, Specific Plans, and Zoning Overlays.



#### **Community Character Policy 1.4**

Consider the appropriateness of alternative methodologies to define project objectives, determine thresholds of significance, and assess the environmental impacts of projects that further Escondido's smart growth objectives for downtown infill, mixed-use, pedestrian-oriented, and transit-oriented development, consistent with the requirements of the California Environmental Quality Act (CEQA).

#### **Community Character Policy 1.5**

The city should maintain its single-family residential development pattern, except in locations such as the downtown, along major transportation corridors, and around commercial and public activity centers, where higher densities are more appropriate.

**(Amendment to this policy will continue to require voter approval)**

#### **Community Character Policy 1.6**

Residential Categories are established for purposes of providing the city with a range of building intensities to address various site constraints and opportunities. Proposed development shall not exceed the densities shown on the Land Use Plan and outlined in Figure II-6. **(Amendment to this policy will continue to require voter approval).**

#### **Community Character Policy 1.7**

Incorporate iconic signage, artwork, landscaping and/or architecture characterized as uniquely Escondido at gateway locations to define a sense of entry and strengthen community identity.

#### **Community Character Policy 1.8**

Require development projects to locate and design buildings, construct energy and water efficient infrastructure, reduce greenhouse gas emissions, enhance community livability and economic vitality, and implement other practices contributing to sustainable resources.

#### **Community Character Policy 1.9**

Promote development in downtown, at transit stations, and other key districts to accommodate a mix of land uses and configure uses to promote walkability, bicycling, and transit uses, reducing the need for the automobile.

#### **Community Character Policy 1.10**

Reduce light pollution and preserve views of the night sky through the design and siting of light fixtures to minimize light spill-over onto adjacent properties.

#### **Community Character Policy 1.11**

Encourage new development to minimize the creation of incompatible glare through development design features (e.g., minimizing use of certain types of exterior building materials).



*Iconic art sculptures, such as the "New Leaf" on Center City parkway at Felicita Avenue instill community character*

### **Community Character Policy 1.12**

No development shall be permitted on slopes greater than 35% or in natural 100-year floodways. If approved by the city and other appropriate local, state and federal agencies, an environmental channel may be considered within the floodway. Adequate landscaping, revegetation, flood control measures and usable open space beyond the embankments of the environmental channel shall be provided as determined by the city.

**(Amendment to this policy will continue to require voter approval)**

### **Community Character Policy 1.13**

Subject to city approval, parcels legally created prior to the adoption of this General Plan and wholly within constrained lands as defined in Community Character Policy 1.12 may be eligible for the development of a single dwelling unit, providing the property meets minimum lot size for the zoning and land use designations.

**(Amendment to this policy will continue to require voter approval)**

### **Community Character Policy 1.14**

Recognize Community Plans approved by the Board of Supervisors within Escondido's General Planning Area and coordinate land use and design guidelines to minimize impacts in areas where city/county lands transition. Collaborate with annexing property owners to retain desired components of their Community Plans by considering appropriate zoning overlay designations in the event of annexation.

### **Community Character Policy 1.15**

Notify and coordinate with surrounding property owners and resident groups when conducting land use studies affecting residents of unincorporated communities to include property owners, resident groups, homeowner's associations, and / or planning advisory groups that make their presence known to the city. Utilize neighborhood meetings to notify interested parties to gather information and solicit input for recommendation to various decision-makers.

### **Community Character Policy 1.16**

Support the formation of Homeowners' Associations to maintain private streets, common open space areas, and landscaping within and adjacent to such developments, and facilitate annexation into the city's Landscape Maintenance District (or an acceptable alternative) for maintenance of similar landscaping improvements where no Homeowners' Association is established.

## **2. Land Use Zoning**

**GOAL 2: Regulations that clearly and effectively implement land use development goals and objectives.**



**Land Use Zoning Policy 2.1**

Update and revise city ordinances to reflect the goals, objectives and policies in the adopted General Plan.

**Land Use Zoning Policy 2.2**

Apply zoning overlays to implement specific standards, regulations and guidelines that further advance General Plan policies and city programs for development within Land Use Area Plans and Specific Plans.

**Land Use Zoning Policy 2.3**

Establish new zoning categories in areas where the city’s existing zoning will not adequately implement the goals and objectives of the General Plan based on the designations identified in Figure II-32:

*Figure II-32*

General Plan Land Use	Zoning Category
Rural I, Rural II	Residential Agriculture (R-A) Planned Development (PD-R)
Estate I, Estate II	Residential Estate (R-E) Planned Development (PD-R)
Suburban, Urban I	Single-Family Residential (R-1) Mobilehome Residential (R-T) Planned Development (PD-R)
Urban II	Light Multiple Residential (R-2) Mobilehome Residential (R-T)
Urban III	Medium Multiple Residential (R-3)
Urban IV	High Multiple Residential (R-4)
Urban V	Very High Multiple Residential (R-5)
Office	Commercial Professional (C-P) Hospital Professional (H-P)
Planned Office	Planned Development Office (PD-O)
General Commercial	Commercial General (C-G)
Neighborhood Commercial	Commercial Neighborhood (C-N)
Planned Commercial	Planned Development (PD-C)
Light Industrial	Light Industrial (M-1) Industrial Park (I-P)
General Industrial	Light Industrial (M-1) General Industrial (M-2)
Industrial Office	Industrial Office (I-O) Light Industrial (M-1) General Industrial (M-2)
Open Space / Parks	Public (P)
Specific Planning Area	Specific Plan (SP)
Public Facility Overlay	Various
Mixed Use Overlay	Various
Tribal Land Overlay	Various

### Land Use Zoning Policy 2.4

Consider locational and operational characteristics of existing and proposed land uses, as well as the surrounding zoning patterns, when establishing zoning and overlay designations to ensure compatibility and appropriateness.

### Land Use Zoning Policy 2.5

Maintain clear and precise definitions of constrained lands and methodologies for calculating residential project densities and allowable density transfers to account for slopes, natural floodways, and environmentally sensitive areas (Figure II-33).

## 3. Residential Development

**GOAL 3: Neighborhoods that provide a variety of housing types, densities, and design, and a mix of uses and services that support resident needs.**

### Residential Development Policy 3.1

Residential Density is defined as the maximum number of dwelling units permitted per acre, including streets within the development, excluding all ultimate circulation element street rights-of-way, adjustments for floodways as defined by the Federal Emergency Management Agency (FEMA—see Flooding Map) or the City, slope categories, and other environmental factors as designated in each land use category and/or open space/ conservation element. Building intensity is based upon the number of dwellings per acre permissible in each category subject to constraints and opportunities provided by all General Plan policies. Limited nonresidential development, such as churches or schools, may occur in residential categories subject to state and local ordinances.

**(Amendment to this policy will continue to require voter approval)**

### Residential Development Policy 3.2

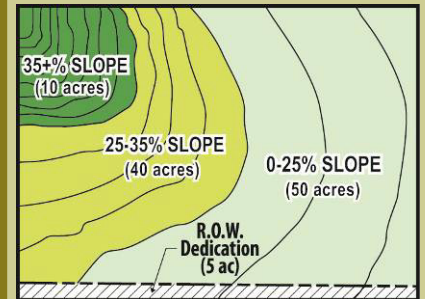
Permit limited non-residential development, such as churches or schools, on properties designated by residential use classifications subject to state and local ordinances.

### Residential Development Policy 3.3

The residential land use designation indicates **MAXIMUM** development yields. To meet General Plan Goals and Objectives, including, but not limited to, population goals and environmental considerations, the **ACTUAL** yield may be considerably less than maximum potentials. Population density can be determined by the San Diego Association of Governments (SANDAG) projection of an average number of residents per dwelling unit by the build-out target year of

*(Policy continued on next page)*

Figure II-33  
**RESIDENTIAL YIELD  
 EXAMPLE**



Suburban Land Use Designation  
 (105 acre site)  
 (Minimum Lot Size 10,000 SF)

	0-25% @ 3.3 du/ac. (50 ac) = 165 du
	25-35% @ 1.5 du/ac. (40 ac) = 60 du
	35%+ @ 1 du/20 ac. (10 ac) = 1 du
	Circulation Element (5 ac) = N/A Street Dedication
<hr/>	
Total Site Area 105 ac = 226 du	

Potential Yield = 226 du

Maximum Allowable Density:

$\frac{\text{Max. Permitted DU}}{\text{Area for Yield}}$	$\frac{226 \text{ du}}{100 \text{ ac}} = 2.26 \text{ du/ac}$
--	--

Notes:

- 1) Development shall be transferred off 35%+ slope (or sensitive habitat) areas.
- 2) Circulation Element Streets right-of-way dedication areas are not included in yield calculations.
- 3) Suburban Land Use Designation requires 10,000 SF minimum lot size unless clustered pursuant to General Plan Policies.



2035 and the maximum units per acre allowed by each land use designation. In lower density categories, the number of residents per unit will often exceed three due to relatively large structures. Conversely, in multi-family areas, smaller unit sizes will result in 1-2 persons per unit being commonplace. Further, population and building intensities are estimated in the General Plan Vision and Purpose. **(Amendment to this policy will continue to require voter approval)**

#### Residential Development Policy 3.4

Require that properties in Urban III, IV, and V residential designations be developed at a minimum 70% of their permitted densities in order to promote transit ridership and walking, support nearby commercial establishments and take advantage of infrastructure improvements sized to accommodate their intended intensities.

#### Residential Development Policy 3.5

Establish minimum single family lot sizes as prescribed in Figure II-6 unless the development is clustered in accordance with the cluster provisions.

#### Residential Development Policy 3.6

Limit the use of panhandle lots and unusual lot slopes in unconstrained areas and consider their use to preserve slopes, ridgelines, habitat areas, and other resources identified in the Resource Conservation Element.

#### Residential Development Policy 3.7

No permits shall be approved for the development of any lot which is not consistent with the density restrictions of the General Plan except for single-family lots which existed prior to the effective date of the General Plan. Such single-family lots shall comply with all other provisions of the General Plan, including applicable requirements of a Facilities Plan.

Exceptions from density requirements may also be permitted to allow the timely development of lots created by the recordation of a vesting tentative subdivision map subsequent to the effective date of the General Plan providing it conforms to applicable requirements of a Facilities Plan.

Nothing in this General Plan shall prohibit the continued use of legally established mobile home spaces and the possibility of ownership conversion at existing densities legally established under previous ordinances and statutes. Said mobile home spaces shall also be exempt from General Plan clustering provisions.

**(Amendment to this policy will continue to require voter approval)**



*Mobile home parks represent a sizable portion of Escondido General Plan land uses and policies permit ownership conversions at existing densities*

### Residential Development Policy 3.8

Land use designations and zoning classifications may accommodate maximum yields for one residential development proposal which may not be achievable due to conflict with the overall population objectives. In review of residential development proposals, population objectives may be considered to preserve the welfare of the community.

**(Amendment to this policy will continue to require voter approval)**

### Residential Development Policy 3.9

Promote new residential subdivisions, multi-family projects, and development in Mixed Use Overlay areas to incorporate smart growth principles such as:

- a) Walkways, shade trees, seating areas and other pedestrian activity, and enhance resident quality of life;
- b) Features that promote the use of alternative transportation options;
- c) Opportunities for residents to conduct routine errands close to their residence;
- d) Maximum connectivity with surrounding uses to become a part of the area rather than an isolated project;
- e) Architectural elements or themes from the surrounding neighborhood; and,
- f) Appropriate transitions between land use designations to minimize compatibility conflicts.

### Residential Development Policy 3.10

Encourage proportionate numbers of two-story dwelling units within single family detached subdivisions to promote variety and avoid monotonous streetscapes and visual impacts.

### Residential Development Policy 3.11

The maximum development yield for slopes over 35% is established only for the purpose of determining the potential for density transfer as permitted by the General Plan.

**(Amendment to this policy will continue to require voter approval)**

### Residential Development Policy 3.12

Where slope categories are indicated, the maximum development yield will be determined by the sum of acreages within each slope category.

**(Amendment to this policy will continue to require voter approval)**



### **Residential Development Policy 3.13**

The development potential on slopes greater than 35% or in natural floodways or in City-approved environmental channels may be transferred to other portions on the site at one dwelling unit per 20 acres in all residential land use categories.

**(Amendment to this policy will continue to require voter approval)**

## **4. Neighborhood Maintenance & Preservation**

**GOAL 4 Residential neighborhoods that are well-maintained and enduring, and continue to be great places to live for multiple generations.**

### **Neighborhood Maintenance & Preservation Policy 4.1**

Utilize code enforcement measures and incentive programs as necessary to promote property maintenance and prevent the deterioration of established housing stock.

### **Neighborhood Maintenance & Preservation Policy 4.2**

Residential neighborhoods shall be protected from the encroachment of incompatible activities or land uses such as heavy service commercial businesses which may have a negative impact on the residential living environment.

**(Amendment to this policy will continue to require voter approval)**

### **Neighborhood Maintenance & Preservation Policy 4.3**

Integrate pedestrian-friendly features, promote walkability, and work with residents to enhance existing neighborhood character and aesthetics.

### **Neighborhood Maintenance & Preservation Policy 4.4**

In the design of both Rural designations and of Estate I single-family residential development, consideration should be given to public improvement standards which allow for a more rural environment, such as flexibility in street rights of-way, increased setbacks and pedestrian circulation systems such as trails or paths, provided health and safety are not compromised.

**(Amendment to this policy will continue to require voter approval)**

### **Neighborhood Maintenance & Preservation Policy 4.5**

Mobile home parks should be given particular attention to ensure that building and safety regulations are continually met and that the mobile home parks are well maintained. Additionally, criteria will be developed to evaluate the conversion of mobile home parks to ownership or alternative uses.

**(Amendment to this policy will continue to require voter approval)**

### Neighborhood Maintenance & Preservation Policy 4.6

A Land Use Area Plan will be developed for the Old Escondido Neighborhood and other neighborhoods predominately characterized by older single-family residential housing stock. The area plans shall address the following objectives:

- a) Orientation towards pedestrian activities: The improvement of area streetscapes to provide, at a minimum, street lights and continuous sidewalks.
- b) Preservation of the single-family residential character: Introduction of zoning that discourages demolition of single-family dwellings that are subsequently replaced by high density multi-family units.
- c) Preservation of historic/cultural resources: Consideration of a conservation district that would provide guidelines for protecting the historical/ cultural resources in the area through design and development standards.
- d) Integration with Downtown Specific Plan and South Escondido Corridor other adjacent Area Plans: Development guidelines that require uses that will complement the two areas that border the neighborhood and provide a transition between the single-family residential core and commercial uses.
- e) Implementation measures such as overlay zones, design guidelines and incentive programs for rehabilitation and preservation.

**(Amendment to this policy will continue to require voter approval)**

## 5. Residential Clustering

**GOAL 5 Clustering of single family residential units to maintain site topography, protect natural resources, and avoid hazards.**

### Residential Clustering Policy 5.1

Minimum lot size standards for single-family cluster development shall be:

<i>Designation</i>	<i>Minimum Lot Size</i>
Rural I	2 acres
Rural II	1 acre
Estate I	20,000 square feet
Estate II	10,000 square feet
Suburban	7,920 square feet
Urban I	3,630 square feet

**(Amendment to this policy will continue to require voter approval)**



### **Residential Clustering Policy 5.2**

Clustering is not intended to maximize the density or yield, or to circumvent the existing zoning. It shall be utilized as a tool to preserve slopes, ridgelines and sensitive habitat or provide a community benefit.

**(Amendment to this policy will continue to require voter approval)**

### **Residential Clustering Policy 5.3**

Under the clustering provision, lot widths, building separations and setbacks, and unit bulk shall be consistent with community design and zoning policies.

**(Amendment to this policy will continue to require voter approval)**

### **Residential Clustering Policy 5.4**

When utilizing cluster provisions, a project shall not have an adverse visual impact on the surrounding areas by blocking scenic views, by resulting in a scale of development incompatible with the setting, by siting buildings that project above the ridgeline, or by extensive grading, cutting and filling, or by terracing that disrupts the natural shape and contour of the site.

**(Amendment to this policy will continue to require voter approval)**

### **Residential Clustering Policy 5.5**

Cluster developments shall not increase geotechnical and flooding hazards for adjoining properties.

**(Amendment to this policy will continue to require voter approval)**

### **Residential Clustering Policy 5.6**

Cluster projects shall avoid sensitive cultural and biological resources and density transfer from such sensitive areas shall be of limited yield to meet the above policies.

**(Amendment to this policy will continue to require voter approval)**

### **Residential Clustering Policy 5.7**

Lands devoted to permanent open space should not be developed with structural uses other than agricultural accessory buildings. Uses should be restricted to agriculture; historic, archaeological, or wildlife preserve; water storage or recharge area; leach field or spray disposal area; scenic areas; protection from hazardous area; or public outdoor recreation.

**(Amendment to this policy will continue to require voter approval)**

### **Residential Clustering Policy 5.8**

The provisions for clustering units shall be utilized only within Planned Development Zones or Specific Planning Areas.

**(Amendment to this policy will continue to require voter approval)**



*The Hidden Trails development clustered residential units on flatter portions of the site to preserve agricultural uses on hillside areas through the Specific Plan process*

### Residential Clustering Policy 5.9

In no event shall the reduction of lot sizes for clustered projects exceed the open space areas within the development.

**(Amendment to this policy will continue to require voter approval)**

### Residential Clustering Policy 5.10

When clustering, the portion of the site to be developed for residential purposes shall not significantly change the character of the surrounding area.

**(Amendment to this policy will continue to require voter approval).**

## 6. Planned Development

**GOAL 6: Large scale, multi-use projects that are designed to create distinct districts that complement the existing community and urban form.**

### Planned Development Policy 6.1

Planned Development Zoning shall be used to address unique characteristics of a development site and the surrounding land uses to better implement the goals and policies of the General Plan but not to attain maximum yield.

**(Amendment to this policy will continue to require voter approval)**

### Planned Development Policy 6.2

Planned Development zoning should be limited to projects of adequate size and unique physical characteristics to effectively implement the appropriate policies.

**(Amendment to this policy will continue to require voter approval)**

### Planned Development Policy 6.3

Development proposals involving Planned Developments shall address and/or include, if applicable:

- a) Visual impacts of the development from the Valley floor and from adjoining properties;
- b) Preservation of the natural setting by minimizing earth movement and removal of native vegetation and by using compatible building materials, textures and colors;
- c) Grading, erosion control and revegetation/ landscaping requirements;
- d) Preservation of the creeks and their adjoining vegetation in a natural state and the use of buffering techniques to control undesired access;

*(Policy continued on next page)*



- e) Implementation of appropriate management techniques in areas of rare and endangered plant and animal species;
- f) Adequate buffers and separations from adjacent properties;
- g) Superlative architectural design features of all structures;
- h) Adequate separation between structures and attention to the bulk and scale to avoid a monotonous streetscape; and
- i) Preservation / maintenance of common open space or community area.

The Planned Development zoning ordinance may require further detailed information to achieve General Plan goals and objectives. **(Amendment to this policy will continue to require voter approval)**

#### **Planned Development Policy 6.4**

Clustering residential units shall be permitted only in conjunction with a Planned Development or Specific Planning Areas (SPA) (see provisions for clustering).

**(Amendment to this policy will continue to require voter approval)**

## **7. Mixed Use Overlay Zones**

**GOAL 7: Districts containing a mix of uses enabling residents to live close to their jobs, shopping, entertainment, and recreation, reducing the need to use the automobile and promoting walking and healthy lifestyles.**

#### **Mixed Use Overlay Policy 7.1:**

Designate areas for the development of mixed-use projects in a pedestrian-friendly environment integrating housing with retail, office, and service uses (childcare, health, etc.) consistent with the General Plan's vision and long-term growth needs.

#### **Mixed Use Overlay Policy 7.2**

Establish guidelines and standards for mixed-use development through Area Plans that include but are not limited to; minimum density and intensity requirements; landscaping and open space, allowable uses; building heights; and any shared parking standards consistent with Figure II-6.

#### **Mixed Use Overlay Policy 7.3**

Focus the tallest buildings and developments with the highest intensities and densities in mixed use districts in the downtown and key urban activity centers that are well-served by transit, close to employment, services, utilities, and recreational facilities.



### Mixed Use Overlay Policy 7.4

Review proposed projects in mixed use overlay districts and encourage features that:

- a) Promote a wide range of housing opportunities;
- b) Facilitate the establishment of child care homes and centers;
- c) Create a walking environment to encourage pedestrian activity;
- d) Maximize alternative transportation modes;
- e) Provide opportunities for residents to conduct routine errands close to their residence;
- f) Integrate with surrounding uses to become a part of the neighborhood rather than an isolated project;
- g) Incorporate architectural elements or themes from the surrounding neighborhood;
- h) Provide appropriate transition between land use designations to minimize compatibility conflicts;
- i) Provide adequate infrastructure;
- j) Ensure quality architecture and landscaping, adequate off-street parking, on-site open space, and recreation areas;
- k) Integrate on-site or fund off-site development of neighborhood parks;



## 8. Commercial Land Uses

**GOAL 8: A diversity of economically prosperous and well-designed commercial districts providing a choice of uses for Escondido's residents and visitors.**

### Commercial Land Use Policy 8.1

Establish Neighborhood Commercial, General Commercial, and Planned Commercial land use designations as described in Figure II-6 to accommodate the various types of retail and service-related needs.

### Commercial Land Use Policy 8.2

Permit the development of a broad range of retail and service activities within the General Commercial land use designation as described in Figure II-6.

### Commercial Land Use Policy 8.3

Promote the development of a variety of commercial activities within self-contained, comprehensively planned commercial centers within the Planned Commercial land use designation as described in Figure II-6.

*'Via Roble' mixed use development on Escondido Boulevard incorporated a variety of residential dwellings including shopkeeper units, single family detached, and multi-family*



#### **Commercial Land Use Policy 8.4**

Permit the development of convenience-oriented commercial uses that provide retail goods and services to local residents, as permitted within the Neighborhood Commercial land use designation, in areas designated for residential uses without a public vote as described in Figure II-6.

#### **Commercial Land Use Policy 8.5**

Allow isolated commercial development within residential and industrial designations only when commercial uses are compatible with the Neighborhood Commercial designation and the uses are intended to primarily serve the immediate needs of the area.

#### **Commercial Land Use Policy 8.6**

Require that commercial buildings be located in planned, group concentrations rather than in a linear strips, except for designated corridors, and incorporate features that minimize impacts on adjacent sensitive uses associated with noise, property maintenance, product deliveries, trash service, and other potentially incompatible characteristics.

#### **Commercial Land Use Policy 8.7:**

Support efforts to strengthen and rehabilitate existing commercial areas east of the I-15 freeway.

#### **Commercial Land Use Policy 8.8:**

Generally encourage commercial development west of the I-15 freeway to uses that serve the immediate surrounding areas and regional high-volume centers requiring freeway access and visibility that are compatible with surrounding land uses.

#### **Commercial Land Use Policy 8.9**

Require, as necessary, new commercial development larger than five acres requiring entitlement approvals to submit a study of the existing and/or approved commercial development in the project vicinity, existing vacancy rates for similar commercial uses, market feasibility, and other information as deemed necessary by the city to identify adverse economic impacts contributing to blight.

#### **Commercial Land Use Policy 8.10**

Require that commercial development be located and designed to benefit from the access afforded by the circulation system without impairing its operation by:

- a) Requiring a traffic and circulation study for all commercial development over five acres or smaller centers, if necessary, as deemed by the City Engineer.

*(Policy continued on next page)*



*General Plan policies promote self-contained, comprehensively planned commercial centers*

- b) Prohibiting points of access if they are too close to intersections and will result in unacceptable congestion or in safety hazards as determined by city staff.
- c) Limiting the number of access points and curb cuts to maintain efficient traffic operations.

### **Commercial Land Use Policy 8.11**

Allow drive through facilities subject to the mitigation of identified air quality, traffic safety, and visual impacts based on appropriate studies submitted to the satisfaction of the city prior to approval.

## **9. Office Land Use**

**GOAL 9: A diversity of office uses enabling residents to live and work in Escondido and attain good wages.**

### **Office Land Use Policy 9.1**

Establish General Office, and Planned Office land use designations as described in Figure II-6 to accommodate the various types of office needs.

### **Office Land Use Policy 9.2**

Encourage the development of office buildings in planned, grouped concentrations, and incorporate features that minimize impacts on adjacent sensitive uses associated with noise, property maintenance, product deliveries, trash service and other potentially incompatible characteristics.

### **Office Land Use Policy 9.3**

Encourage the integration of service, financial, dining, and other support uses in office complexes to enable employees to remain on site and reduce automobile use.

### **Office Land Use Policy 9.4**

Locate and design office buildings to assure compatibility and transitions with adjoining neighborhoods, with the greatest building intensities and heights in the downtown, near transit, and mixed use districts.

### **Office Land Use Policy 9.5**

The General Office land use designation shall accommodate administrative and professional offices, business support services, financial, insurance, and real estate services, supportive commercial uses such as restaurants, as well as medical related offices, short-term convalescent and long-term care facilities, research labs, medical supply, and similar uses.





*General Plan policies promote self-contained, comprehensively planned office development with opportunities for support facilities such as fitness centers and restaurants*

### **Office Land Use Policy 9.6**

Accommodate large scale bio-technology, research and development, corporate office and related support office uses in a campus-like setting within the Planned Office land use designation. Allow limited support retail and service uses, such as restaurants, dry cleaners, gym/fitness centers, markets, and office services (e.g., printing / copying / shipping) as well as compatible public uses if integrated into larger facilities.

## **10. Industrial Land Use**

**GOAL10: A variety of industrial uses located and designed to assure compatibility with adjoining land uses offering diverse jobs for the community.**

### **Industrial Land Use Policy 10.1**

Establish Industrial Office, Light Industrial, and General Industrial land use designations as described in Figure II-6 to accommodate the need for the various types of industrial uses.

### **Industrial Land Use Policy 10.2**

Encourage the development of industrial buildings in planned, group concentrations and incorporate features that minimize impacts on adjacent sensitive uses associated with noise, property maintenance, product deliveries, trash service and other potentially incompatible issues.

### **Industrial Land Use Policy 10.3**

Require that projects located within the Industrial Office classification be designed to be aesthetically attractive and compatible with adjoining land uses addressing such elements as land use, building architecture, landscaping, screening of outside storage, and out-building uses. Scale the amount of required improvements to the size of the project for businesses expanding their operations.

### **Industrial Land Use Policy 10.4**

Encourage the development of "Safety Uses" (e.g. police station, fire department, city related uses etc.), support commercial, and industrial-related office uses (e.g. architects, data processing, engineering, contractor, government services, corporate headquarters) in the Industrial Office land use designation as an incentive to transition from M2 and M1 zones to the IO zone.

### **Industrial Land Use Policy 10.5**

Accommodate industries that generate moderate daytime and minimum nighttime noise levels, and require limited or no outside storage in Light Industrial designated properties.

### **Industrial Land Use Policy 10.6**

Require development on properties located in designated Light Industrial areas to incorporate stricter standards than comparable General Industrial designated sites for building architecture, landscaping, and screening of outside storage, property setbacks, and open land use.

### **Industrial Land Use Policy 10.7**

Correlate the scale and amount of required improvements with the size of the project for businesses expanding their operations.

### **Industrial Land Use Policy 10.8**

Maintain building intensity standards for Industrial designated properties as required by law.

### **Industrial Land Use Policy 10.9**

Allow more flexible requirements affecting building architecture, landscaping, screening of outside storage, or outbuilding use depending on location and visibility from off-site areas on properties designated General Industrial. Scale the amount of required improvements to the size of the project for businesses expanding their operations.

## **11. Specific Plan Area Land Use**

**GOAL 11: Large-scale, multi-use projects that create a sense of distinct identity, provide amenities, and are cohesively and comprehensively developed.**

### **Specific Planning Area Land Use Policy 11.1**

Establish the Specific Planning Area land use designation and require submittal of a Specific Plan application to manage the phased and cohesive development of large scale, multi-use projects (in compliance with California Government Code Sections 65450, et seq.) as described in Figure II-6.

### **Specific Planning Area Land Use Policy 11.2**

Allow additional areas to be designated as Specific Planning Areas as requested by landowners/property owners subject to criteria defining the type of project, the character of the intended development, proposed land uses and intensities, pertinent conditions or restrictions on development, appropriate application process, and demonstration of how the proposed Specific Planning Area furthers the goals and objectives of the General Plan more effectively than existing land use designation(s).



### Specific Planning Area Land Use Policy 11.3

Specific Plans shall not be utilized in a wide-spread manner to circumvent or modify the character or intent of ordinances, land use designations and/or city goals and objectives, but rather should be reserved for a limited number of proposals which, by nature, are ideally suited for the comprehensive planning efforts involved in the Specific Planning process.

**(Amendment to this policy will continue to require voter approval)**

### Specific Planning Area Land Use Policy 11.4

Specific Planning Areas (SPA's) shall be utilized to consider development proposals analyzing zoning regulations, development standards, land uses, densities, building intensities tailored to the need and unique characteristics of a particular area. Generally, SPAs should only be applied to larger areas and where community benefit can be demonstrated.

**(Amendment to this policy will continue to require voter approval)**

### Specific Planning Area Land Use Policy 11.5

Specific criteria to evaluate the suitability of a Specific Plan shall be established which shall include:

- a) The site should be of sufficiently large area to take advantage of density transfers where appropriate, thereby preserving significant open space areas within the Specific Plan area;
- b) The site should have unique physical characteristics, such as uneven terrain or hillside areas that, without a Specific Plan, might not be effectively protected and incorporated into the overall development plan;
- c) The site should be of sufficient area that lends itself to a comprehensive site design utilizing a combination of attractive landscaping and open space amenities left in their natural condition;
- d) The site should be of sufficient area and nature that lends itself to long-term development phasing (e.g., in excess of five years) which can effectively be monitored and controlled; and
- e) The site should require flexibility in planning to deal with compatibility with different surrounding land uses and extensive public improvement requirements.

**(Amendment to this policy will continue to require voter approval)**

### Specific Planning Area Land Use Policy 11.6

No Specific Plan shall be adopted by the City Council until the Council has reviewed the proposed Plan for compliance with the following requirements which are in addition to requirements imposed by State Government Code Sections 65450, et seq.:

*(Policy continued on next page)*

- a) Residential, industrial and commercial structures built within the Specific Plan area shall be constructed under rigorous quality control programs and safeguards (e.g., appropriate restrictive covenants running with the land);
- b) Appropriate protection against soil erosion, particularly where hillside development is involved, shall be assured;
- c) Assurance shall be provided that any hillside cutting will be minimized or appropriately landscaped so that visible scarring will be mitigated to the extent feasible;
- d) All open space areas shall be identified and appropriate measures providing for their preservation shall be included;
- e) Design criteria, development regulations and building standards shall be provided sufficient to ensure that residential, industrial and commercial structures are compatible with the surrounding environment;
- f) Adequate assurance shall be provided that the circulation and access needs of the project residents and the surrounding community are properly addressed;
- g) Appropriate arrangements to ensure that public facilities and services adequate to serve the project residents are available shall be described; and
- h) The Specific Plan demonstrates implementation of the goal and objectives of the General Plan and furthers the interests of the community.

**(Amendment to this policy will continue to require voter approval)**

#### **Specific Planning Area Land Use Policy 11.7**

Clustering residential units shall be permitted only in conjunction with a Planned Development or Specific Planning Area (SPA) (see provisions for clustering).

**(Amendment to this policy will continue to require voter approval)**

## **12. Open Space / Park Land Use**

**GOAL 12: Open space lands that provide an attractive environmental setting for Escondido and visual relief from development, protect the viability of natural resources and habitat, offer recreational opportunities for residents and visitors, and protect the public from the risks of natural hazards.**



### **Open Space Land Use Policy 12.1**

Establish the Open Space / Park land use designation to identify city and county properties reserved for active and passive parks, habitat preservation, and public safety purposes as described in Figure II-6.

### **Open Space Land Use Policy 12.2**

Require any proposed land use change in areas designated as Open Space to conform in type and intensity with the surrounding land uses.

### **Open Space Land Use Policy 12.3**

Encourage the preservation of lands within the Planning Area that are owned by other public agencies for use as undeveloped open space, recreational purposes or mitigation banking.

### **Open Space Land Use Policy 12.4**

Explore options to purchase lands used for recreation or open space purposes within the Planning Area that are owned by other public agencies and available for acquisition, as appropriate. Retain such property acquisitions in their current use for possible mitigation banking purposes, or to develop as additional recreational opportunities for Escondido residents.

## **13. Public Facility Overlay**

**GOAL 13: Adequate and accessible civic, utility, institutional, educational, cultural, and service uses supporting the needs of Escondido's residents and businesses.**

### **Public Facility Overlay Policy 13.1**

Establish the Public Facility overlays to accommodate "single use" municipal facilities and government operations such as libraries, community centers fire stations, municipal firing range, treatment facilities, public schools, etc. as described in Figure II-6.

### **Public Facility Overlay Policy 13.2**

Ensure that any proposed land use change in this category shall conform to the underlying land use designation with respect to type of activity and intensity of development.

### **Public Facility Overlay Policy 13.3**

Maintain a buffer zone around the Hale Avenue Resource Recovery Facility (HARRF) and restrict development in order to minimize public exposure to odors and public health risks. Limit the amount of new residential development within this zone and permit non-residential uses that would not adversely impact existing residences. Encourage development to incorporate site planning and architectural layout techniques that minimizes exposure to odors.

## 14. Tribal Area Land Use Policies

### GOAL 14: Recognition of the jurisdictional authority of local Native American Tribes.

#### Tribal Area Land Use Policy 14.1

Establish the Tribal Area land use designation as described in Figure II-6 for federally recognized reservations or Indian Villages and for which the city has no land use authority.

## 15. Development Agreement Policies

### GOAL 15: Shared public and private commitments for large scale, multi-year, and multi-use projects to assure conformance with community development objectives.

#### Development Agreement Policy 15.1

Encourage Development Agreements as a mechanism to secure community benefits from applicants that the city cannot require as part of a project's approval.

#### Development Agreement Policy 15.2

Approve a Development Agreement for increased residential density within Specific Planning Areas (SPA) #2 and #4 in excess of the basic entitlement, provided that community benefits exceed those normally required of comparable development projects. The yield/benefit determination shall be made by the City Council and shall not exceed the maximum stated in the SPA section.

#### Development Agreement Policy 15.3

Specify, if needed, the number of building permits to be allocated on a yearly basis and the correlation and timing for the provision of facilities and/or financing for on-site or off-site community benefits in all Development Agreements.

#### Development Agreement Policy 15.4

Regularly monitor Development Agreements to ensure compliance and to address community concerns and needs that may change over time.





## 16. Annexation

**GOAL 16: Annexation of properties for the provision of municipal services whose development shall complement and be compatible with adjoining areas without placing an undue financial burden on the city.**

### **Annexation Policy 16.1**

Allow property owners to annex to the city, and actively annex unincorporated lands owned by the city.

### **Annexation Policy 16.2**

Promote the annexation of unincorporated lands where it is determined in the city's interest to promote orderly development, implement goals and objectives, and /or to expedite facilities and services.

### **Annexation Policy 16.3**

Demonstrate that facilities, services, and infrastructure are adequate to serve proposed annexations in accordance with city standards, acknowledging Neighborhood Maintenance & Preservation Policy 4.4 allowing more flexible public improvement requirements in the Rural and Estate I single-family residential areas.

### **Annexation Policy 16.4**

Allow annexations if it can be demonstrated that appropriate improvements as determined by the city will be financed by the property owner(s), and that such expansion of the city will not have unacceptable adverse fiscal or environmental impacts to existing city services or residents. Exceptions to this policy may be considered subject to Policy 16.2.

### **Annexation Policy 16.5**

Provide services to unincorporated areas when there is a mutual agreement between the city and appropriate agencies, if any, provided the city is compensated for costs incurred.

### **Annexation Policy 16.6**

Maintain an annexation procedures manual outlining the steps and city policies regarding annexations that includes, but is not be limited to, applicant's responsibilities, requirements for environmental review, requirements for development plans, and fees for annexation.

### **Annexation Policy 16.7**

Update the Sphere of Influence as necessary concurrent with each five-year review of the General Plan.

### **Annexation Policy 16.8**

Expand the Sphere of Influence to be coterminous with the Planning Area boundary where such expansion is deemed appropriate by the City and the Local Agency Formation Commission.

## **17. General Plan Review and Amendments**

**GOAL 17: A dynamic General Plan that is responsive to community values, visions, needs, economic conditions, resource availability, and state and federal legislation.**

### **General Plan Review and Amendment Policy 17.1**

Track, monitor, and report the performance and the General Plan land use goals and policies and, where there are substantive deviations in development practice or anticipated impacts, assess their implications and appropriateness for Plan amendments.

### **General Plan Review and Amendment Policy 17.2**

Comprehensively review and update the General Plan, as appropriate at five year intervals.

### **General Plan Review and Amendment Policy 17.3**

Prior to any major extensions of services or utilities to accommodate changes in land use, significant growth inducing, and environmental implications including significant growth inducing impacts, shall be thoroughly reviewed based upon the Growth Management policies of this document and any necessary mitigation measures implemented. **(Amendment to this policy will continue to require voter approval)**

### **General Plan Review and Amendment Policy 17.4**

Require General Plan Amendments when proposals:

- a) Request the development of a site for a designation or density/intensity other than indicated on the Land Use Map or within the text of the General Plan;
- b) Do not meet or exceed adopted Quality of Life Standards;
- c) Request changes to, or not substantially consistent with, General Plan policies, goals or objectives; and,
- d) Are determined by the city to be inconsistent with policies contained in the General Plan text.



### **General Plan Review and Amendment Policy 17.5**

Substantiate the need for General Plan Amendments with written findings submitted by the applicant that considers the following criterion:

Identified physical, social, or city-wide economic factors or changes that have made the General Plan designation, policy statement goal, or intent in question inappropriate from the standpoint of the general public welfare.

Unless the applicant provides substantial documentation that the changes have occurred, the GPA request shall be denied.

### **General Plan Review and Amendment Policy 17.6**

Permitted land uses in the residential areas of the City shall be intensified only when the voters approve such changes. No General Plan Amendment or new Specific Planning Area shall be adopted which would:

- a) Increase the residential density permitted by law,
- b) Change, alter, or increase the General Plan Residential Land Use categories, or
- c) Change any residential to commercial or industrial designation on any property designated as: Rural, Estate, Suburban, Urban.

Unless and until such action is approved and adopted by the voters of the City at a special or general election, or approved first by the City Council and then adopted by the voters in such election.

**(Amendment to this policy will continue to require voter approval)**

### **General Plan Review and Amendment Policy 17.7**

Periodically review and update the city's Planning Area boundary to identify areas appropriate for amendment which shall be conducted through the General Plan Amendments process.

### **General Plan Review and Amendment Policy 17.8**

Require California Environmental Quality Act (CEQA) review for development that exceeds the 2035 forecasted General Plan development capacity as defined in Figure II-5.

## **18. Environmental Review**

**GOAL 18: Environmental quality regulations that mitigate for impacts associated with development to preserve and protect Escondido's unique environment.**

**Environmental Review Policy 18.1**

Maintain Environmental Quality Regulations in accordance with city, state, and federal requirements.

**Environmental Review Policy 18.2**

Require environmental review and mitigation of impacts, if necessary, consistent with city, state, and federal requirements for development projects the Planning Area.

**Environmental Review Policy 18.3**

Periodically review and update environmental thresholds and special sensitive areas as more specific and recent information becomes available.

**Environmental Review Policy 18.4**

Require all development to conform to the General Plan, Facilities Plans, Areas Plans, and Quality of Life Standards.







# East Valley Parkway Area Plan

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Cover Photo: "Shifting Threshold" © by Joan Irving, 2002

**As amended:**

Resolution 2005-79(R)..... Effective May 4, 2005  
Ordinance 2019-09.....Effective October 10, 2019  
Ordinance 2021-11.....Effective November 26, 2021  
**Ordinance 2024-105 ..... Effective, [DATE]**



## Changes to the East Valley Parkway Area Plan

On July 19, 2023, the Escondido City Council adopted the East Valley Specific Plan (EVSP), a plan which reevaluates and modifies the policies, allowable uses, and land use patterns within a segment of the East Valley Parkway Area Plan (EVPAP). In order to reflect these changes, the Escondido City Council adopted Ordinance No. 2024-105 on August 7, 2024, which adjusts the EVPAP's boundaries so that they do not conflict with the EVSP. The figures below provide a side-by-side comparison between the old EVPAP boundary and the new site limits. As depicted in the image below (right), parcels located generally east of Hickory Street, west of Harding Street, south of the Escondido Creek Channel (with exception of those surrounding the Ash and Washington intersection) and north of Grand Avenue, are now subject to regulations in the EVSP.

California Government Code Section 65450 grants specific plans like the EVSP authority to lead the “systemic implementation” of a City’s general plan. In the event there is any future or unresolved conflicts between EVPAP and EVSP, the EVSP shall prevail. For parcels that fall under the area now governed by the EVSP, readers need to reference the EVSP for applicable guidelines, allowable uses, and any additional information.

The EVSP can be found online at:

<https://escondido.gov/DocumentCenter/View/2283/East-Valley-Specific-Plan->



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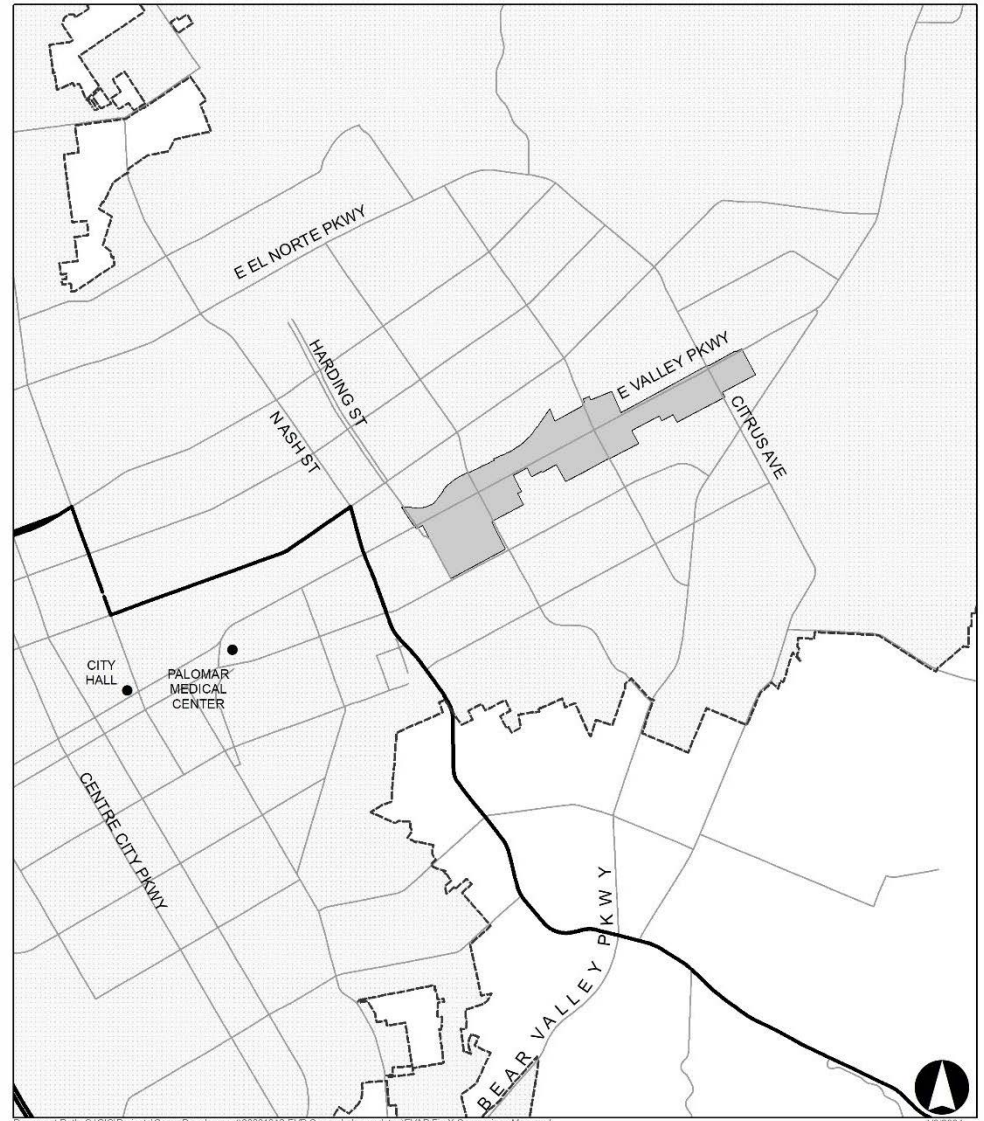
**East Valley Parkway Area Plan**

**Legend**

- Old East Valley Parkway Area Plan

**ESCONDIDO**  
LANDOWNERS

**Vicinity Map (Previous Boundary)**



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**East Valley Parkway Area Plan**

**Legend**

- Current East Valley Parkway Area Plan

**ESCONDIDO**  
LANDOWNERS

**Vicinity Map (Current Boundary)**

# East Valley Parkway Area Plan

## Table of Contents

<b>Section</b>	<b>Title</b>	<b>Page</b>
<b>Section 1</b>	<b>Introduction</b>	1
	1.1 Purpose	1
	1.2 Location	1
	1.3 History	4
	1.4 Plan Preparation Process	6
<b>Section 2</b>	<b>Relationship to General Plan and City Policies</b>	8
	2.1 General Plan Conformance	8
	2.2 Bicycle Facilities Master Plan	9
	2.3 Zoning	9
<b>Section 3</b>	<b>Area Plan Goals</b>	11
	3.1 Goals	11
<b>Section 4</b>	<b>Land Use</b>	12
	4.1 Objectives	12
	4.2 Existing Land Use	12
	4.3 Future Land Use Opportunities	14
	4.4 Land Use Policies	14
	4.5 Principal Land Uses	15
	4.6 Permitted Accessory Uses and Structures	23
	4.7 Prohibited Uses	24
	4.8 Parking	25
	4.9 Signs	26
	4.10 Review Process	27
<b>Section 5</b>	<b>Appearance</b>	28
	5.1 Objectives	28
	5.2 Property Maintenance and Enforcement	28
	5.3 Design Guidelines	29

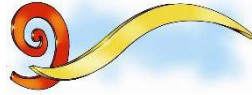
	5.4 Public Art	29
<b>Section 6</b>	<b>Circulation and Infrastructure</b>	31
	6.1 Objectives	31
	6.2 Existing Conditions	31
	6.3 Transit	34
	6.4 Bicycle and Pedestrian Paths	34
	6.5 Circulation Policies	34
	6.6 Directional Signs	35
	6.7 Other Infrastructure	35
<b>Section 7</b>	<b>Economic Development</b>	37
	7.1 Economic Development	37
	7.2 Marketing	37
<b>Section 8</b>	<b>Design Guidelines</b>	39
	8.1 Introduction and Purpose	39
	8.2 Overall Design Concept	39
	8.3 Architectural Design Guidelines	42
	8.4 Site Design Guidelines	43
	8.5 Building and Architectural Guidelines	49
	8.6 Landscape Guidelines	54
	8.7 Signage and Lighting Guidelines	56
	8.8 Residential and Mixed-Use Guidelines	56
<b>Section 9</b>	<b>Implementation</b>	58
	9.1 Implementation Mechanisms	58
<b>Figures</b>		<b>Follows Page</b>
	1. Vicinity Map	2
	2. General Plan	3
	3. Zoning	10
	4. Circulation Plan	32
	5. Design Concept	40
	6.A Mediterranean Design Concept	44
	6.B Mediterranean Design Concept	45
	6.C Conceptual Site Plan	46
	7.A Contemporary Style	47
	7.B Contemporary Style	48
	8. Conceptual Building Renovation	51

9. Building Renovation	52
10. Site Renovation	53

**Tables**

4.1 Permitted and Conditionally Permitted Principal Uses	17
4.2 Permitted Accessory Uses and Structures	23

## SECTION 1. INTRODUCTION

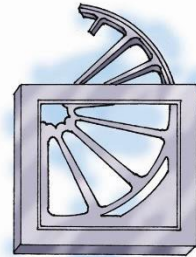


***Mission Statement:*** *The mission of the East Valley Parkway Area Plan is to develop and implement a comprehensive strategy for the revitalization of the physical character and economic health of East Valley Parkway businesses and community.*

### 1.1 Purpose

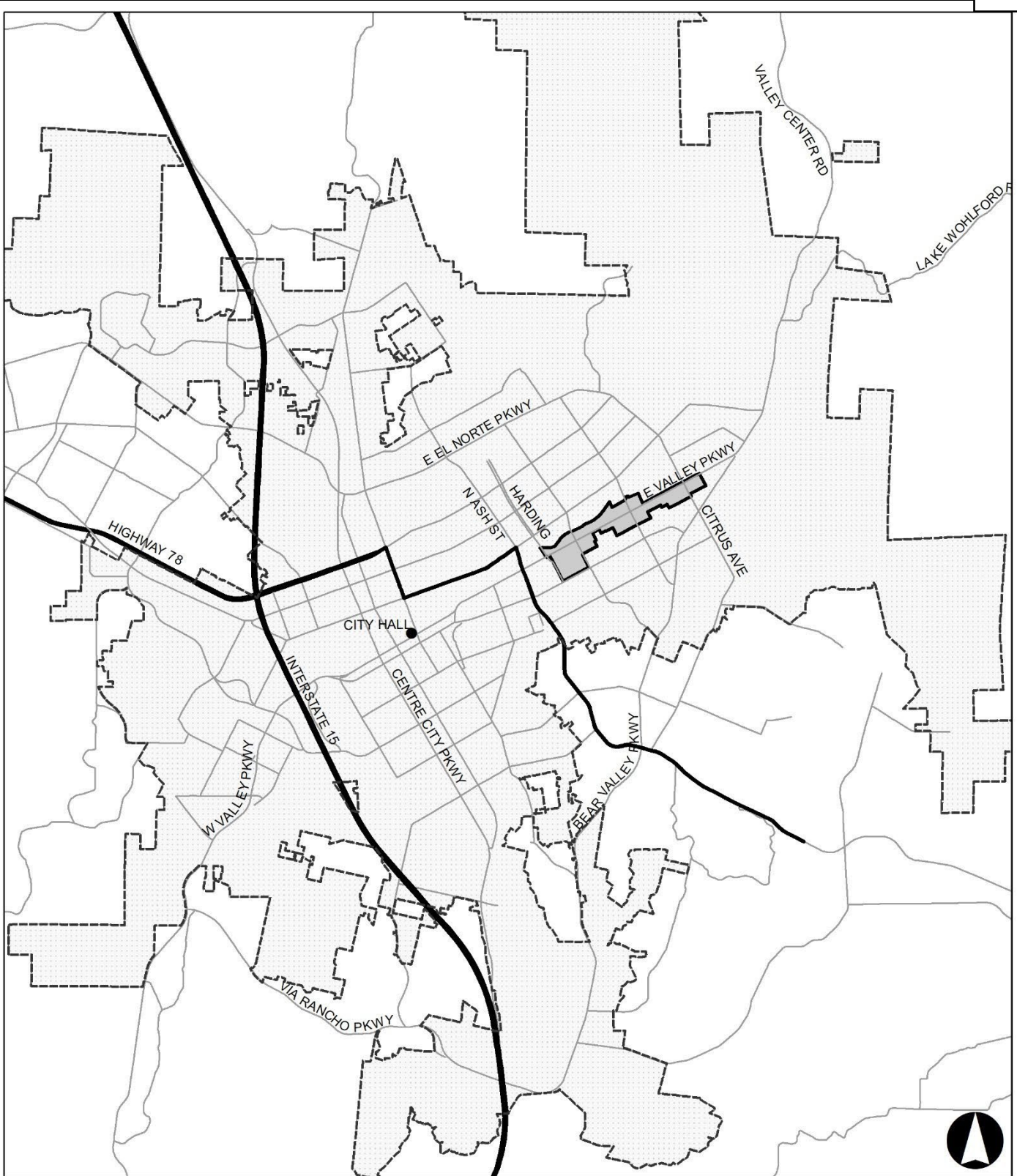
The purpose of the East Valley Parkway Area Plan is multifold:

- To address the Commercial Policy objectives identified in the City's General Plan including opportunities to attract office and professional uses, rehabilitate existing commercial centers, strengthen existing establishments through façade and streetscape improvements, and consolidate access point to improve traffic circulation
- To continue and strengthen the efforts for the renaissance of the area
- To develop strategies encouraging older developed properties to upgrade facades, parking areas and landscaping and to maintain properties in a well-kept manner according to current Municipal Code requirements
- To provide direction for the design of buildings, site planning, signs, and landscaping
- To provide a marketing tool for attracting targeted uses that contribute to economic development, and to encourage additional educational uses to build upon the existing education cluster
- To provide guidelines for residential uses as part of mixed-use development
- To develop strategies that encourage home ownership of residential units
- To identify priorities for infrastructure improvement



### 1.2. Location

East Valley Parkway is located in the central portion of the City of Escondido, immediately adjacent to and east of downtown (refer to Figure 1– Vicinity Map). The East Valley Parkway Area Plan boundary begins generally east of Harding Street and extends an approximate two-miles along East Valley Parkway to just east of Citrus Avenue (refer to Figure 2– General Plan). A portion of the area is bounded by the Escondido Creek flood control channel on the north and portions of Grand Avenue on the south.



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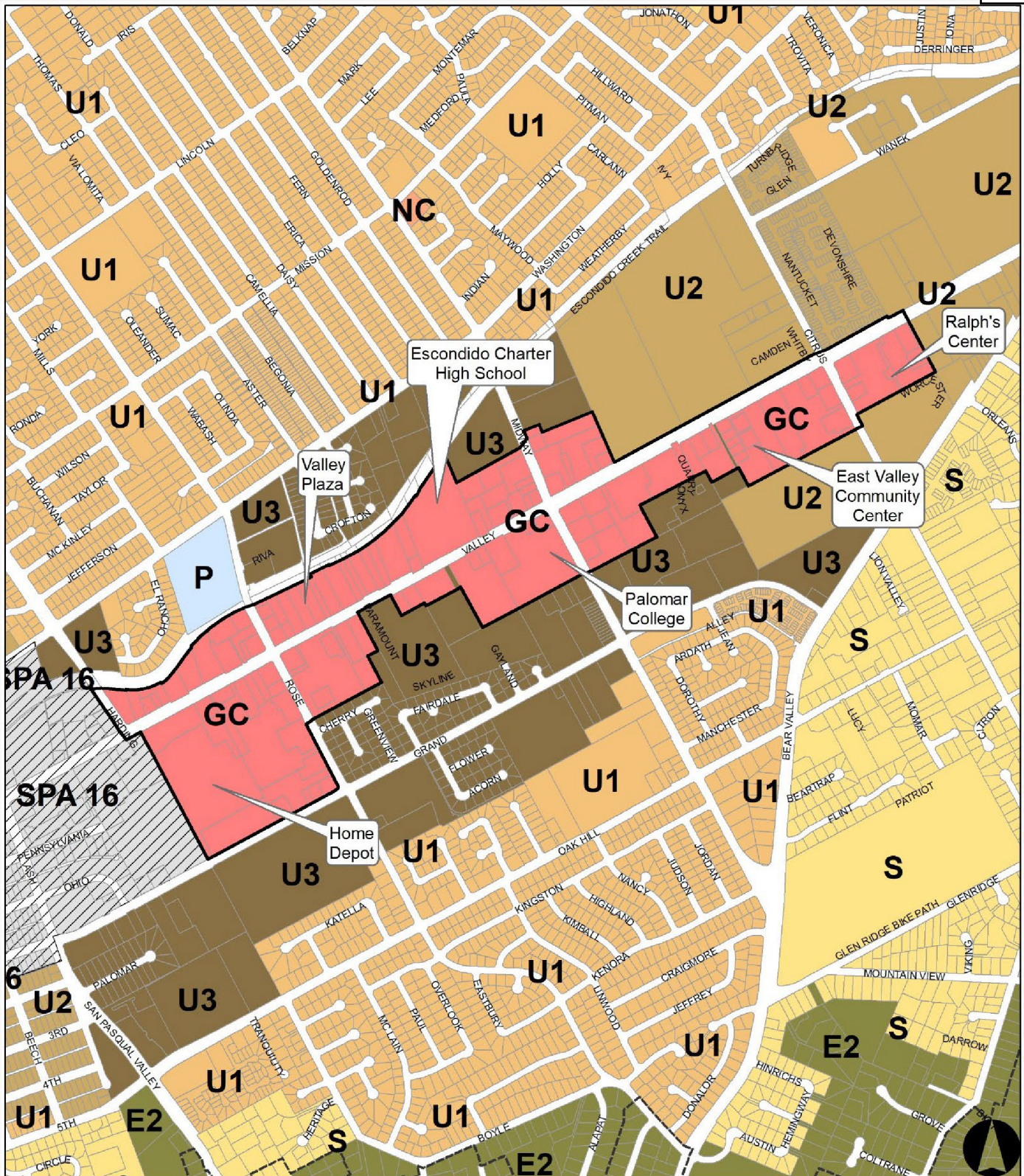
### Legend

-  City Limits
-  East Valley Parkway Area Plan

### East Valley Parkway Area Plan



### FIGURE 1: VICINITY MAP



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**Legend**

East Valley Parkway Area Plan Boundary	U1: Urban 1	NC: Neighborhood Comm
General Plan Mixed Use Overlay	U2: Urban 2	P: Park
E2: Estate 2	U3: Urban 3	SPA: Specific Plan
S: Suburban	GC: General Comm	

### East Valley Parkway Area Plan



## FIGURE 2: GENERAL PLAN





*Street trees frame distant mountain views along the scenic parkway*

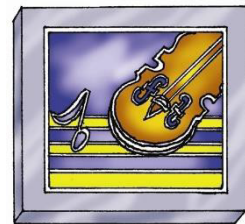
### 1.3 History

#### Brief Chronology of the Area:

The East Valley Parkway area thrived during its heyday during the 1960s as a major retail and entertainment district anchored by suburban shopping centers with ample parking. With the development of the North County Fair regional shopping center (renamed Westfield Shoppingtown North County and subsequently North County Mall) at the southern boundary of the City, the customer base along East Valley Parkway declined and older buildings experienced higher vacancy rates. The area has experienced a renaissance which began in the late 1990s, as evidenced by new anchor businesses, a consolidation of retail, adaptive reuse of marginal commercial uses, a growing educational cluster, and the phased undergrounding of utilities. In 2023, the City adopted the East Valley Specific Plan (EVSP) governing portions of the East Valley as a Area Plan's geographic area, thereby reducing the total area of the area plan.

#### Detailed History:

Incorporated in 1888, Escondido is one of the oldest cities in the County. Over time, land use within the East Valley area has transitioned from agricultural uses to an automobile-oriented commercial area bordered by residential uses. The original eastern city limits terminated at Ash Street. The eastern part of the valley was fast growing with ranches, orchards and other agricultural uses. This growth led to the need for a new, second elementary school to serve the east part of the City. Known as Oak Glen School, the school was constructed in 1892 in a grove of oaks at the east end of the valley. Destroyed by fire two years later, the school was rebuilt and renamed Orange Glen School, its current name. The unpaved road heading east from the downtown area past the school was known during the 1920s as “the road to Valley Center”.



City zoning districts dating back to the 1930s designate the properties between Hickory and Ash Streets as an agricultural district. Defining the western boundary of the study area was Palomar Medical Center, established in 1950 on the site of the former Escondido Hotel.

The eastern City boundary at Ash Street remained unchanged until 1959 when properties along East Valley Parkway annexed to the City. Some of the earliest development along the parkway consisted of mobile home parks, many of which still remain. As the City grew, commercial development followed the trend seen in other older cities



characterized by traditional downtown settings; neighborhood stores and shopping centers with ample on-site parking were developed to provide services outside the downtown shopping area. Zoning dating back to the 1960s designated the East Valley area, along with the downtown and South Escondido Boulevard areas, as general commercial districts. A significant event in the development of the East Valley area was the 1964 opening of the City's first large shopping center, known as Escondido Village. The fully-enclosed, air-conditioned shopping center was built on the site of a former dairy, on

the corner of East Valley Parkway at Ash Street. While considered "state of the art" at the time, the center was renovated in the early 1990s to provide an open-air mall and increase street visibility for merchants.

Historically, the Escondido valley area was subjected to a number of floods as Escondido Creek topped its banks, most significantly in 1916 and 1927. Construction of the Escondido Creek flood control channel, known as the Escondido Creek Watershed Project, began in 1965. The project was built in four phases, using a combination of federal and state funds and a bond measure financed by Escondido residents. This concrete-lined channel extends from approximately Lake Wohlford Road on the east to the Harmony Grove bridge on the west end, and abuts the rear of many properties north of East Valley Parkway. The channel maintenance road also functions as a bicycle path.

Subsequent commercial development has been automobile-oriented, characterized by big and mid-box retail, strip commercial and food service establishments with ample parking generally located along the street frontage. Additional shopping centers were constructed, anchored by major retail stores such as Fedco, theaters, and grocery stores. In addition, a number of public uses were established. The satellite campus of Palomar College was established in 1989. In the 1990s the City purchased a commercial center located between Midway Drive and Citrus Avenue, and converted the former grocery store building into the East Valley Community Center, containing a branch library and gymnasium. Adaptive reuse of a shopping center east of Valley Plaza and Rose Street has been completed with



the construction of a new charter high school campus which opened in Fall 2003.

*An underutilized commercial center was successfully renovated to the satellite campus of Palomar College, stimulating the establishment of other educational uses*

One of the main catalysts for the East Valley Parkway recent revitalization is the residential developments further east and north along East Valley Parkway, including Hidden Trails (East Grove – Specific Plan Area 12) and Eureka Ranch (Specific Plan Area #5). Another catalyst for redevelopment was demolition of the former Fedco and Vineyard Shopping Center, and replacement with the Albertsons and Home Depot centers. The installation of a series of public art pieces known as “Shifting Threshold” in 2001 and 2003, provides a colorful and festive depiction of the East Valley area as it transitions from its agricultural beginnings to its current status as an important commercial district. Additional infill development behind the Escondido Village Shopping Center is anticipated, which may result in the relocation of the Escondido School District administrative offices elsewhere within the district.



#### 1.4 Plan Preparation Process

The need for an area plan for the East Valley Parkway area was identified in the Commercial Policies of the 1990 General Plan. To implement the General Plan objectives, the East Valley Overlay Ordinance (Ordinance 91-51) was adopted in 1991 as an interim ordinance. The overlay ordinance was intended to guide development and land use decisions in a manner consistent with the General Plan, until such time as a final area plan was adopted. Since that time, area property and business owners have continued to work with the City to focus attention and resources on the commercial district by forming the East Valley Association (EVA), a non-profit organization.

In 1997, SANDAG funded an urban design study for the East Valley Parkway corridor aimed at developing design solutions that would enhance and revitalize the area. The design consultant (Estrada Land Planning) facilitated public workshops and recommended design solutions to address community concerns. The recommendations were included in the East Valley Parkway Corridor Urban Design Study Summary Report, dated August 1997. Many of the concepts



included in this study have been implemented as part of subsequent development proposals, and additional recommendations are incorporated into the area plan (Refer to Figure 5 – Overall Design Concept). Since the late 1990s a number of properties have undergone revitalization or replacement of existing business with new tenants. The EVA continues to work closely with representatives from numerous City departments to revitalize the physical character and economic growth of the area.

At the request of the EVA in 2002, the City Council directed staff to prepare a comprehensive area plan for the East Valley Parkway area that replaced the interim overlay ordinance. The City Council appointed a 13-member citizen's committee, consisting primarily of property and business owners and area residents, to work with staff in developing the plan. The citizens' committee focused their efforts on reviewing land use regulations, and developing design guidelines and property maintenance standards.



## SECTION 2. RELATIONSHIP TO THE GENERAL PLAN AND OTHER CITY POLICIES

### 2.1 General Plan Conformance

The City's General Plan provides a blueprint for growth and development within the City. It specifically identifies the East Valley area for special consideration. Properties within the East Valley Parkway Area Plan are designated General Commercial (GC) in the Land Use Element of the General Plan (refer to Figure 2 – General Plan). This designation is characterized by a broad range of retail and service activities, including personal and business retail sales and service, eating and drinking establishments, and offices. Automobile sales and service, while generally allowed in the general commercial area, are



subject to special zoning restrictions along East Valley Parkway. The anticipated building height is generally low-profile (one to three stories) although taller structures may be permitted where tourist-serving facilities or mixed-use projects are proposed.

*Commercial centers provide a broad mix of retail and service uses*

Development and implementation of the Area Plan shall be consistent with the General Plan, which includes a number of Commercial and Economic policies applicable to the East Valley commercial area, as described below:

- Economic Policy B3.3 encourages the continued revitalization of the East Valley Parkway commercial area by upgrading its appearance and achieving a coordinated land use pattern, including retail, offices, visitor-serving activities and residential development.
- Commercial Policy B4.2 establishes the need to develop and adopt programs and ordinances directed at strengthening and rehabilitating existing commercial centers.
- Commercial Policy B4.4 requires new commercial developments over five acres in size to submit a study of existing and approved commercial development in the vicinity, vacancy rates, and other information to evaluate potential blight in existing commercial areas.
- Commercial Policy B4.5 requires future commercial activities to be organized in planned, grouped concentrations rather than organization in a linear fashion.
- Commercial Policy B4.12 addresses the need to prepare a Land Use Area Plan for East Valley Parkway, and establishes the following objectives:
  - a. Analyze opportunities for attracting office and professional uses to the area;
  - b. Encourage the rehabilitation of existing commercial centers rather than expansion;

- c. Seek ways of strengthening the existing establishments through façade and streetscape improvements. Upgraded public and private landscaping and aesthetically-upgraded signage;
  - d. Consider multiple-family residential and office uses as a replacement for some existing commercial uses; and
  - e. Establish mechanisms to consolidate access points to commercial centers to improve traffic circulation.
- Circulation Policy D2.7 establishes guidelines limiting access to Major Roads, such as East Valley Parkway, through the use of medians and access controls to maintain street capacity.
  - Circulation Policy D2.7 establishes a policy of consolidating driveway access points along classified streets of Collector and above, to enhance and protect the capacity and safety of classified streets by reducing potential traffic conflicts. As a Major Road, East Valley Parkway is subject to this policy.



## 2.2 Bicycle Facilities Master Plan

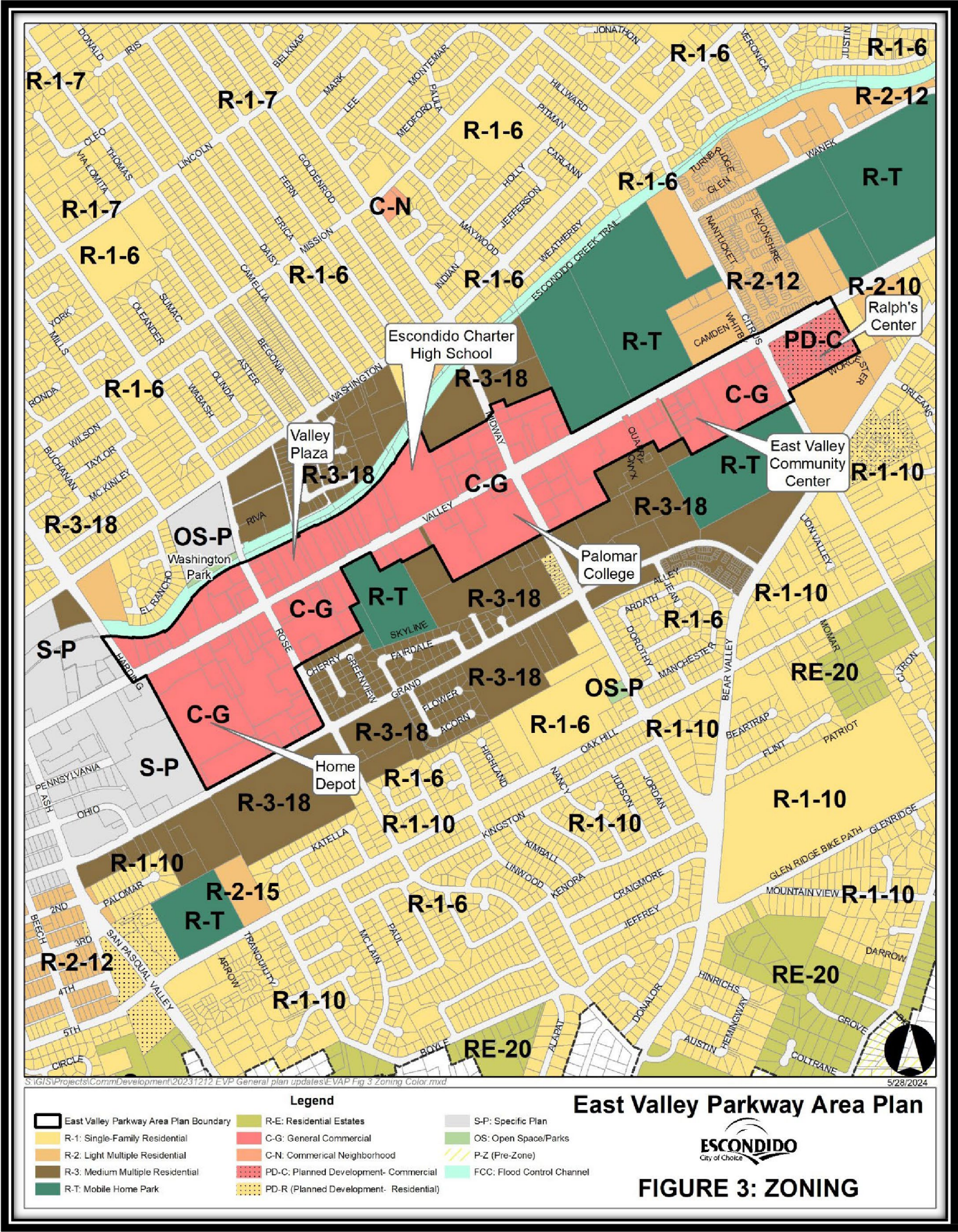
The Bicycle Facilities Master Plan, adopted in 1993, establishes a system of bicycle routes and support facilities intended to provide an alternate mode of transportation as well as a recreational opportunity. The master plan identifies a Class 1 grade-separated bikeway situated along the service road bordering the channelized portion of Escondido Creek from the western end of the City to Lake Wohlford Road. The City has completed construction of this bicycle path from North Broadway to East Washington Avenue. A segment of this pathway borders the south side of the creek channel adjacent to the commercial properties along East Valley Parkway. Future improvements are anticipated to provide a grade-separated bicycle crossing at Date and Ash Streets.

## 2.3 Zoning

### Zoning Districts

Properties within the area plan prior to the EVSP's adoption in 2023 included a mix of zoning districts with the CG (General Commercial) district encompassing the largest area, and including the CP (Professional Commercial), HP (Hospital Professional), PD-R (Planned Development – Residential) and PD-C (Planned Development – Commercial) districts. With the adoption of the EVSP, the only zoning district remaining in the area plan is the CG (General Commercial) district and CP (Professional Commercial). The intent of the Area Plan Overlay is to refine the list of land use and development standards of the underlying zone to conform with the General Plan policies and provide clear criteria for both new and existing development.

The standards of the underlying zoning and this area plan overlay shall be applied to development and use of property within the area plan boundaries as shown on Figure 2.



### Business Enhancement Zone (BEZ)

The East Valley Parkway Area is within the Escondido Business Enhancement Zone (BEZ). The intent of the BEZ is to induce and facilitate projects that provide significant public benefit and strengthen the image and appearance of the City. Projects within the BEZ are eligible for incentives pursuant to criteria adopted by the City Council. The potential incentives include financial assistance, relief from certain zoning requirements and expedited processing.

## **SECTION 3. AREA PLAN GOALS**

### **3.1 Goals**

The following goals were developed to provide direction for the future development and revitalization of the East Valley Parkway area, as envisioned by the General Plan:

1. Provide surrounding neighborhoods with a convenient and attractive commercial area for their shopping, dining, entertainment, education and employment needs by attracting a full range of quality uses to the area, including retail, high-paying office and professional uses, educational clusters and sit-down dining establishments
2. Encourage revitalization of existing commercial centers through implementation of façade and streetscape improvements incorporating quality design of all exterior building improvements, landscaping and exterior colors
3. Provide an opportunity for start-up businesses to become established and promote the transition of marginal retail to higher and better uses
4. Determine where and to what extent existing commercial centers should recycle to mixed-use incorporating multiple family residential components
5. Identify site criteria and establish enforceable development standards for mixed-use residential developments through the Planned Development process, emphasizing design elements and site amenities which typify and promote the home ownership market
6. Encourage the rehabilitation of existing uses by clarifying the approval processes to avoid excessive conditions that discourage rehabilitation
7. Develop comprehensive design guidelines to promote quality architectural design, reorientation of linear strip commercial with clustered site planning, and to unify the streetscape appearance as a landscaped parkway
8. Develop enforceable standards to insure properties are monitored and maintained at a high level of compliance with code requirements and conditions of approval.
9. Provide smooth traffic flow and improve accessibility to and through East Valley Parkway by developing a comprehensive directional sign program, and by consolidating access points onto East Valley Parkway





## SECTION 4. LAND USE

### 4.1 Objectives



The primary objective of the land use section is to identify a full range of desirable land uses that can achieve the area plan goals of stimulating the visual and economic revitalization and to provide surrounding neighborhoods with a convenient and attractive place for their shopping, dining, entertainment, education and employment needs. The land use objectives are intended to strengthen the area's economic base, increase property values and support surrounding areas.

### 4.2 Existing Land Use

#### Existing Conditions:

The East Valley Parkway area is an established commercial district developed with a broad spectrum of retail, service, educational and recreational uses. The area contains approximately 329 businesses that represent approximately 4% of the total number of businesses in Escondido. With the establishment of the interim overlay ordinance in 1991, the list of permitted and conditionally permitted uses as established by the underlying zoning districts was refined to reflect the General Plan policies to promote revitalization of the corridor. Towards this end, a variety of automotive-related uses were specifically prohibited, including the sale or rental of motor vehicles, equipment and boats, and a higher level of review through the conditional use permit process was established for service stations and automobile sales and services. Any such existing uses are considered non-conforming and are limited in their ability to expand or extend the life of the use, pursuant to Zoning Code Section 33-1240 et seq.



*Former Palomar Hospital anchored the west end of the parkway adjacent to downtown Escondido*

Existing land use is characterized by the following conditions:

- A high number of small to mid-size retail establishments, transitional uses, social services and food establishments, and minimal office development. Food

establishments cater primarily to the fast-food market, while sit-down, family style restaurants are few in number.

- Existing buildings are low-scale, primarily single story. Older centers are characterized by traditional shopping center design with retail stores developed in a linear strip with shared parking located in front of the buildings and having little or no landscaping. Recently reconstructed centers include clustered developments with outpad buildings, site plans with improved street visibility and well-distributed parking.
- A cluster of educational uses, including Palomar College, Escondido Charter High School and the Escondido Union School District administrative offices are centrally located along or adjacent to the parkway.



*Escondido Charter High School opened in Fall 2003*

- Mixed-use developments containing a combination of retail and office uses are limited. No mixed-use residential projects have been developed since the Interim Overlay Ordinance was established in 1991.
- Recreational uses include the bicycle path along the Escondido Creek flood control channel and the East Valley Community Center. While located north of the flood control channel at Rose Street outside of the Area Plan boundaries, Washington Park also serves the recreational needs of the area.

#### Ownership Patterns and Lot Configurations:

Individual ownership patterns and unusual lot configurations can create obstacles to efficient and attractive land use and site planning. An example of fragmented ownership is the area between Harding Street and N. Midway Drive north of E. Valley Parkway, which consist of irregular lot sizes and configurations including lots with pan handles and shared access across several separately owned properties and developments. Properties east of Harding Street are deeper, allowing larger setbacks for parkway landscaping, parking lot screening and consolidated signage. Many established uses operate under long-term lease agreements which provide stability to the tenant but may be a deterrent to potential new property owners. For example, the Valley Plaza shopping center includes a number of long, narrow lots that are individually owned, contain multiple driveways and minimal parking lot landscaping. Efforts to revitalize the center in a comprehensive manner have been challenging due to the need to coordinate with multiple owners and tenants.



*Individual ownership of some older commercial properties makes revitalization efforts difficult to coordinate between multiple owners*

### 4.3 Future Land Use Opportunities

#### Mixed-Use:

Since 1990 the General Plan Land Use Element has promoted the establishment of opportunities for mixed-use residential and office development along East Valley Parkway. However, no new mixed-use developments have been established. The intent of the General Plan policy is to increase the residential population in close proximity to commercial uses and to provide a range of viable land uses to replace or enhance underutilized commercial centers. Conversion of commercial sites to residential-only uses is not anticipated or promoted, since such redevelopment would reduce the inventory of employment and revenue-generating commercial lands. However, establishment of mixed-use projects that include a residential component can enhance the vitality and stability of the area. Mixed-use projects, including a combination of retail/office and retail/residential units with high quality design and amenities targeting the home-ownership market, are encouraged. The planned development process will be required for mixed-use residential projects.



#### Other Targeted Land Uses:

East Escondido has experienced significant residential growth, with the development of the Hidden Trails development and other approved subdivisions in the East Valley Parkway and East Washington areas and in Valley Center. Development of gaming casinos on tribal lands to the north has also contributed to an increased number of motorists along the parkway. To service this growth and take advantage of the increased exposure to motorists, an opportunity exists for infill development to attract new, higher quality commercial and office uses and spur revitalization of underutilized parcels.

### 4.4 Land Use Policies

The following policies are intended to guide land use patterns and distribution:

1. Encourage consolidation of ownership to facilitate revitalization and significant aesthetic improvement through comprehensive site planning and design and property maintenance coordination.

2. Provide incentives for the consolidation of properties within the Valley Plaza Shopping Center to encourage redevelopment in a comprehensive design.
3. Consider opportunities for shared parking and access arrangements where lot consolidation is infeasible.
4. Encourage the establishment of desirable land uses to serve the increasing residential base and to capture visitor traffic in east Escondido, including the following:
  - Home improvement and home furnishing stores
  - Educational institutions and support facilities
  - Medical and hospital support uses
  - Concentration of Class A office space for large employers, flagship / headquarters buildings, and mixed-use office developments
  - Office buildings for small independent and incubator businesses and professional services, serving the employment needs of the new residents in the east valley area
  - Sit-down and family-style restaurants
  - Entertainment uses, including movie theaters
  - Commercial types of recreational uses, such as athletic clubs



*Recent construction of a second large home improvement center boosts sales tax revenue and provides convenient retail trade to meet demand created by significant new residential construction in the east portion of Escondido*

#### **4.5 Principal Land Uses**

The following Table 4.1 lists those uses in the underlying commercial zone that are permitted (P) subject to business license or plot plan review, or subject to conditional use permit (C) pursuant to Zoning Code Article 61, Division 1. An asterisk (\*) indicates uses subject to special regulations of the Zoning Code article shown in parentheses. The review process is described in Section 4.10.



*Scenic hillsides provide an attractive backdrop to this shopping center*

Table 4.1

## PERMITTED AND CONDITIONALLY PERMITTED PRINCIPAL USES

USE TITLE	CG	CP
<b>RESIDENTIAL AND LODGING:</b>		
• Bed and Breakfast (Article 32*)	C*	---
• Hotels and Motels (Article 63*)	C*	---
• Lodging for organization members only	C	---
• Mobile home or travel trailer parks (Articles 45 & 46*)	C*	---
• Multi-family residential as part of a mixed-use project	PD	---
<b>MANUFACTURING, WHOLESALE TRADE, AND STORAGE:</b>		
• Any use or structure permitted or conditionally permitted in a zone and involving hazardous materials (Section 33-666*)	C*	C*
• Mini-warehouse storage facilities (Article 57*)	C*	---
• Newspaper printing and publishing	P	---
<b>RETAIL TRADE:</b>		
<b>Automotive and marine craft</b>		
• Automotive parts and accessories sales with no repair or installation	P	---
• Gasoline service stations including concurrent sale of alcoholic beverages and motor vehicle fuel (Article 57* and Council Resolution #5002*)	C*	---
<b>Food and Drink Sales</b>		
• Food stores (grocery, produce, candy, baked goods, meat, delicatessen, etc.), excluding sale of liquor, tobacco and smoking-related products as primary use	P	---
• With facilities to dispense gasoline (Article 57*)	C*	---
• Liquor stores, packaged (off-sale)	---	---
<b>General Retail</b>		
• Antique and Consignment stores	P	---
• Bargain basement stores	---	---
• Building materials and supplies including lumber, heating, plumbing, and electrical equipment, etc. (Outdoor storage or sale subject to CUP)	P	---
• Consignment shop (Section 33-1127 of the Zoning Code*)	P	---
• Drugstores	P	P

USE TITLE	CG	CP
<ul style="list-style-type: none"> <li>• Drug stores with drive-through (Section 33-341 of the Zoning Code*)</li> </ul>	C	C
<ul style="list-style-type: none"> <li>• Florists, gifts, cards, newspapers and magazines</li> </ul>	P	P
<ul style="list-style-type: none"> <li>• Florists, gift, cards, newspapers and magazines with drive-through (Section 33-1127 of the Zoning Code*)</li> </ul>	C	C
<ul style="list-style-type: none"> <li>• Furniture, home and office furnishing and equipment, electrical appliances, and office machines and supplies</li> </ul>	P	---
<ul style="list-style-type: none"> <li>• General retail of new merchandise, NEC (as determined by the Director of Development Services, based on conformance with the purpose of the specific zone, interaction with customers, the appearance of the building, the general operating characteristics, the type of vehicles and equipment associated with the use, and including incidental assembling of customized items);</li> </ul>	P	---
<ul style="list-style-type: none"> <li>• General retail of new merchandise, NEC with drive-through (Section 33-1127 of the Zoning Code*)</li> </ul>	C	---
<ul style="list-style-type: none"> <li>• Hospital/medical equipment sales</li> </ul>	P	---
<ul style="list-style-type: none"> <li>• Nurseries and garden supply stores</li> </ul>	P	---
<ul style="list-style-type: none"> <li>• Outdoor retail, NEC (as a principal use)</li> </ul>	C	---
<ul style="list-style-type: none"> <li>• Pharmacies</li> </ul>	P	P
<ul style="list-style-type: none"> <li>• Sporting goods (includes ammunition and firearms, fishing, hunting, golf, playground equipment, etc.)</li> </ul>	P	---
<ul style="list-style-type: none"> <li>• Temporary seasonal sales such as Christmas tree and wreath sales, pumpkin sales, etc., on vacant lots subject to site plan approval</li> </ul>	P	---
<b>EATING AND DRINKING ESTABLISHMENTS:</b>		
<b>Cabarets and nightclubs</b> (with or without alcoholic beverages, including comedy clubs, magic clubs, etc.)	C	---
<b>Drinking places-alcoholic beverages</b> (on-sale beer and wine and on-sale general licenses and public premises) includes bars and taverns, does not include restaurants serving alcoholic beverages.	C	---
<b>Restaurants, cafes, delicatessens, and sandwich shops, without alcoholic beverages</b>	P	P
<ul style="list-style-type: none"> <li>• With on-sale beer and wine and on-sale general licenses</li> </ul>	P	---
<ul style="list-style-type: none"> <li>• Auto oriented drive-in, drive-through (Section 33-341*)</li> </ul>	C	---
<ul style="list-style-type: none"> <li>• Specialized food sales from pushcart facilities (Section 33-342*)</li> </ul>	P*	P*

USE TITLE	CG	CP
<b>SERVICES:</b>		
<b>Animal Care</b> (excluding kennels)	P	---
<b>Automotive services</b> (including motorcycles, motorized vehicles, marine craft and recreational vehicles)		
• Automobile supply stores with incidental installation	P	---
• Boutique car sales or car dealership	---	---
• Car-wash, polishing, vacuuming, detailing as a primary or accessory use	C*	---
• Commercial vehicle repair	---	---
• General vehicle repair	C	---
• Junyard and wrecking yard	---	---
• Limited vehicle repair and service in freestanding or single tenant building	C	---
• Limited vehicle repair and service in multi-tenant centers which were comprehensively designed and approved for automotive repair prior to Area Plan	P	---
• Tow yard storage	---	---
• Tractor or heavy truck sales, storage, or rental	C	---
<b>Educational services</b>		
• Day nurseries, child care centers (Article 57*)	C*	C*
• Schools, including kindergarten, elementary, junior, and senior high schools (Article 57*)	P*	---
• Special needs education	P	P
• University, college, junior college, and professional schools	P	P
• Vocational and trade schools	P	P
• Other special training (including art, music, drama, dance, language, etc.)	P	---
<b>Government services</b>		
• Administrative centers and courts	P	P
• Employment and training services	P	P
• Operation Centers	C	C
• Police and fire stations	C	C
• Postal services	P	P
<b>Financial services and institutions</b>		
• Banks, securities brokers, credit offices (excluding check cashing as a primary use)	P	P
• Check-cash / pay day	---	---



USE TITLE	CG	CP
<ul style="list-style-type: none"> <li>• Insurance</li> </ul>	P	P
<b>Medical, dental and related health services</b>		
<ul style="list-style-type: none"> <li>• Counseling services</li> </ul>	C	C
<ul style="list-style-type: none"> <li>• Hospitals, excluding small medical clinics</li> </ul>	C	C
<ul style="list-style-type: none"> <li>• Medical clinics and blood banks</li> </ul>	P	---
<ul style="list-style-type: none"> <li>• Medical, dental, optical, and other health care offices and laboratories</li> </ul>	P	P
<ul style="list-style-type: none"> <li>• Sanitariums, convalescent and residential care facilities</li> </ul>	C	---
<ul style="list-style-type: none"> <li>• Other medical and health services NEC</li> </ul>	C	C
<b>Offices and business services, except medical</b>		
<ul style="list-style-type: none"> <li>• Call centers and telemarketing services</li> </ul>	C	C
<ul style="list-style-type: none"> <li>• General business services (including advertising, building services, credit reporting, detective/protective services, drafting, employment services, news syndicate, computer services, etc.)</li> </ul>	P	P
<ul style="list-style-type: none"> <li>• General office use (includes professional offices, legal services)</li> </ul>	P	P
<ul style="list-style-type: none"> <li>• Mailing, stenographic, accounting and office services</li> </ul>	P	P
<ul style="list-style-type: none"> <li>• Messenger services</li> </ul>	P	P
<ul style="list-style-type: none"> <li>• Real estate services</li> </ul>	P	P
<ul style="list-style-type: none"> <li>• Travel agencies and services</li> </ul>	P	P
<b>Repair services, except automotive</b>		
<ul style="list-style-type: none"> <li>• Apparel and shoe repair and alteration</li> </ul>	P	---
<ul style="list-style-type: none"> <li>• Bicycle repair</li> </ul>	P	---
<ul style="list-style-type: none"> <li>• Locksmiths and key shops</li> </ul>	P	P
<ul style="list-style-type: none"> <li>• Miscellaneous repair services (excluding machine shops and welding services)</li> </ul>	P	---
<ul style="list-style-type: none"> <li>• Small appliance repair and services (including TV, radio, VCR, computers, household appliances, etc.)</li> </ul>	P	---
<ul style="list-style-type: none"> <li>• Watch, clock, and jewelry repair</li> </ul>	P	P
<b>Social, professional, and religious organizations and services</b>		
<ul style="list-style-type: none"> <li>• Churches, synagogues, temples, missions, religious reading rooms, and other religious activities including columbaria and mausoleums as an incidental use (Article 57*)</li> </ul>	C*	C*
<ul style="list-style-type: none"> <li>• Professional organizations (political membership, veterans, civic, labor, and similar organizations, etc.)</li> </ul>	P	P

USE TITLE	CG	CP
<ul style="list-style-type: none"> <li>• Social services and charitable organizations including only office and administrative activities, and excluding direct distribution of goods or services to the ultimate client at this location</li> </ul>	P	P
<ul style="list-style-type: none"> <li>• Youth Organizations (Article 57*)</li> </ul>	C*	---
<b>Other services</b>		
<ul style="list-style-type: none"> <li>• Assembly halls, fraternities, sororities, lodges, etc.</li> </ul>	C	---
<ul style="list-style-type: none"> <li>• Barber, beauty, nail, and tanning services, excluding tattoo parlors</li> </ul>	P	P
<ul style="list-style-type: none"> <li>• Hospital/medical equipment rental and leasing</li> </ul>	P	---
<ul style="list-style-type: none"> <li>• Laundry and dry cleaning services (Section 33-343 of the Zoning Code*)</li> </ul>		
<ul style="list-style-type: none"> <li>• Commercial laundry</li> </ul>	---	---
<ul style="list-style-type: none"> <li>• Dry cleaning, laundering, pressing and dying for on-site retail customers only</li> </ul>	P	---
<ul style="list-style-type: none"> <li>• Pick-up service only</li> </ul>	P	P
<ul style="list-style-type: none"> <li>• Self-service, coin-operated</li> </ul>	P	---
<ul style="list-style-type: none"> <li>• Mortuary (excluding crematories and mausoleums)</li> </ul>	P	---
<ul style="list-style-type: none"> <li>• Personal services, NEC (including clothing and costume rental, marriage bureaus, baby-sitting services, etc.)</li> </ul>	P	---
<ul style="list-style-type: none"> <li>• Photographic and duplicating services:</li> </ul>		
<ul style="list-style-type: none"> <li>• Blueprinting and photocopying</li> </ul>	P	P
<ul style="list-style-type: none"> <li>• Studios, developing, printing, and similar services, except commercial photography</li> </ul>	P	P
<ul style="list-style-type: none"> <li>• Commercial photography, including aerial photographs and mapping services</li> </ul>	P	---
<ul style="list-style-type: none"> <li>• Picture framing, assembly only</li> </ul>	P	---
<ul style="list-style-type: none"> <li>• Recycling Services</li> </ul>		
<ul style="list-style-type: none"> <li>• Reverse vending machines occupying a total of fifty (50) square feet or less (Article 33*):</li> </ul>	P*	P*
<ul style="list-style-type: none"> <li>• Small collection facilities occupying a total of five hundred (500) square feet or less (Article 33*):</li> </ul>	P*	P*
<ul style="list-style-type: none"> <li>• Aluminum can and newspaper redemption center without can crushing facilities (Article 33*):</li> </ul>	C*	---
<b>CULTURAL ENTERTAINMENT AND RECREATION:</b>		
<ul style="list-style-type: none"> <li>• Adult entertainment establishments (Article 42*)</li> </ul>	P*	---
<ul style="list-style-type: none"> <li>• Amusement assembly, including amusement parks, arcades, dance halls, drive-in movie theaters, miniature golf, go-carts, electronic game centers, etc.</li> </ul>	C	---
<ul style="list-style-type: none"> <li>• Cultural, including museums, art galleries, etc.</li> </ul>	P	P

USE TITLE	CG	CP
<ul style="list-style-type: none"> <li>Entertainment assembly, including gymnasiums, athletic clubs, body building studios, dance studios, martial arts schools, etc.</li> </ul>	C	---
<ul style="list-style-type: none"> <li>Health and fitness facilities, including gymnasiums, athletic clubs, body building studios, dance studios, martial arts schools, etc.</li> </ul>	P	C
<ul style="list-style-type: none"> <li>Libraries</li> </ul>	P	P
<ul style="list-style-type: none"> <li>Parks</li> </ul>	P	P
<ul style="list-style-type: none"> <li>Sports and recreation facilities, including bowling alleys, billiards, indoor and outdoor skating facilities, batting cages, riding schools and stables, etc.</li> </ul>	C	---
<ul style="list-style-type: none"> <li>Swimming schools and pools</li> </ul>	C	---
<ul style="list-style-type: none"> <li>Theaters, indoor motion picture and legitimate</li> </ul>	P	---
<b>TRANSPORTATION, COMMUNICATIONS AND UTILITIES:</b>		
<b>Transportation</b>		
<ul style="list-style-type: none"> <li>Ambulance and paramedic</li> </ul>	C	---
<ul style="list-style-type: none"> <li>Bus and train depots</li> </ul>	P	
<ul style="list-style-type: none"> <li>Park-and-ride facilities</li> </ul>	P	P
<ul style="list-style-type: none"> <li>Parking lots and parking structures (short term)</li> </ul>	P	P
<ul style="list-style-type: none"> <li>Taxicab stand</li> </ul>	P	---
<b>Communications</b> (telephone, telegraph, radio, TV, etc.)		
<ul style="list-style-type: none"> <li>Broadcasting (radio and/or television), recording, and/or sound studios</li> </ul>	P	P
<ul style="list-style-type: none"> <li>Personal wireless service facilities</li> </ul>		
<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>roof-mounted or building-mounted facilities incorporating stealthy designs and/or screened from public ways or significant views (Article 34*)</li> </ul> </li> </ul>	P*	P*
<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>pole-mounted or ground-mounted facilities that incorporate stealthy designs and do not exceed 35' in height (Article 34*)</li> </ul> </li> </ul>	P*	P*
<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>pole-mounted or ground-mounted facilities that exceed 35' in height or roof-mounted or building-mounted designs which project above the roofline and are not completely screened or considered stealthy (Article 34*)</li> </ul> </li> </ul>	C*	C*
<ul style="list-style-type: none"> <li>Other communications, NEC</li> </ul>	C	C
<ul style="list-style-type: none"> <li>Radio and television transmitting towers</li> </ul>	C	C
<ul style="list-style-type: none"> <li>Telephone exchange stations and telegraph message centers</li> </ul>	P	P

USE TITLE	CG	CP
<b>Utilities</b> (electric, gas, water, sewage, etc.)		
<ul style="list-style-type: none"> <li>Central processing, regulating, generating, control, collection, storage facilities and substations</li> <li>Distribution facilities</li> </ul>	C P	C P

\* = Subject to special regulations –see Zoning Code Article in parentheses

NEC = Not Elsewhere Categorized

#### 4.6 Permitted Accessory Uses and Structures

Accessory uses and structures are permitted in commercial zones, provided they are incidental to, and do not substantially alter the operating character of the permitted principal use or structure as determined by the Director of Development Services. Such permitted accessory uses and structures include, but are not limited to, the following:

**Table 4.2**  
**PERMITTED ACCESSORY USES AND STRUCTURES**

USE TITLE	CG	CP
<ul style="list-style-type: none"> <li>Accessory buildings such as garages, carports and storage buildings clearly incidental to permitted use</li> <li>ATM kiosk</li> <li>ATM kiosk with drive-through (Section 33-341 of the Zoning Code*)</li> <li>Bus stop shelters (Article 57* and Article 9*, Chapter 23 EMC*)</li> <li>Caretaker's or resident manager's quarters (for lodgings, motels, hotels, and mortuaries)</li> <li>Check cashing</li> <li>Drive-through (Section 33-341 of the Zoning Code*)</li> <li>Employee recreational facilities</li> <li>Fleet Storage (as an accessory use)</li> <li>Helipad, as incidental use only (Article 57*)</li> <li>Live entertainment</li> <li>Liquor sales, packaged off-sale</li> <li>Outdoor dining in conjunction with an approved eating place (Article 57*)</li> <li>Outdoor display of merchandise (Article 73*)</li> <li>Satellite dish antennas (Article 34*, CUP required for some sizes and heights)</li> </ul>	P P C P* P P C P P C* P P P* P* P*/C*	P P --- P* --- P C P P C* P --- P* P* P*/C*

<ul style="list-style-type: none"> <li>• Storage of materials used for the construction of a building, including the contractor’s temporary office, provided that such use is on the building site or immediately adjacent thereto and provided further, that such use shall be permitted only during the construction period and the thirty (30) days thereafter</li> </ul>	P	P
<ul style="list-style-type: none"> <li>• Temporary outdoor sales (Article 73*) and special events subject to the issuance of a temporary use permit</li> </ul>	P*	P*
<ul style="list-style-type: none"> <li>• Tobacco products</li> </ul>	P	P
<ul style="list-style-type: none"> <li>• Tow truck operation incidental to repair</li> </ul>	P/C	---
<ul style="list-style-type: none"> <li>• Vending machines (Article 33*)</li> </ul>	P*	P*

\* = Subject to special regulations – see Zoning Code Article in parentheses.

#### 4.7 Prohibited Uses

All uses not listed as permitted primary or accessory uses, or conditionally permitted uses shall be prohibited. Such prohibited uses include but are not limited to those which for a special emphasis are listed below:

- (a) Automobile, motorcycle, truck and trailer rentals
- (b) Boat sales and rentals
- (c) Check cashing as a primary use
- (d) Commercial vehicle repair
- (e) Equipment rental and leasing services
- (f) Motor vehicle sales and car dealerships (new or used), including boutique car sales, recreational vehicles, motorcycles and other motorized vehicles
- (g) Pawn shops
- (h) Retail uses with across the board maximum pricing or “everything under” pricing
- (i) Social services and charitable organizations involving the direct distribution of goods or services to the ultimate client at this location
- (j) Swap meets (interior or exterior), involving the rental or leasing of numerous small, delineated spaces to separate, unrelated proprietors which collectively sell a wide variety of goods and services, within a building, location or business, as a single entity
- (k) Tattoo parlors
- (l) Thrift stores
- (m) Tobacco store and private smoker’s lounge
- (n) Tow yard storage, junkyards, and fleet storage as a primary use
- (o) Used or secondhand merchandise, excluding consignment sales
- (p) All uses and structures not listed as permitted primary or accessory uses, or conditionally permitted uses shall be prohibited. However, the Director of Development Services may approve a use, after study and deliberation, which is found to be consistent with the purposes of this article, similar to the uses listed as permitted uses, and not more detrimental to the zone than those uses listed as permitted uses

Any existing residential structure shall not be used for both residential and commercial purposes at the same time.

## 4.8 Parking

### Existing conditions:

Properties within the area plan contain limited to no on-site parking, and on-street parking along East Valley Parkway is prohibited. Lack of available parking limits redevelopment opportunities for these properties. Larger properties further east generally contain ample on-site parking, with shared access and parking arrangements. Available parking tends to be located along the street frontage, resulting in large setbacks for retail uses. Distribution of some required parking in older commercial centers is inconveniently located behind commercial buildings. As redevelopment of shopping centers occurs, the clustering of buildings and redistributing of parking to improve accessibility for customers, employees and delivery vehicles will be encouraged.



*Consolidated driveways and attractive landscaping soften the view of large parking lots*

### Parking Standards:

1. The parking ratios and design of the parking lots shall be consistent with Zoning Code Section 33-760. Reconfiguration of parking lots shall require plot plan review (per Section 33-340) by the Design Review Board.
2. Required parking for shopping centers (as defined by Zoning Code Section 33-765) may be reduced through the planned development or other legislative action and environmental review process, subject to all of the following criteria:
  - A parking demand study is prepared demonstrating that the parking reduction will not result in overflow parking on public streets or residential neighborhoods.
  - The site design for the shopping center provides internal vehicular circulation and convenient pedestrian connections between store entries.
3. Reductions in the number of required parking spaces (up to 25%) may be approved through the BEZ process (Article 69) through an Administrative Adjustment.
4. Landscaping shall comply with City Landscape Standards of the CG Zone at a minimum. Additional landscaping may be required at the discretion of the Design Review Board and Director of Development Services.
5. For new development, joint-use parking and access agreements with adjacent properties may be required where feasible to provide an opportunity to eliminate

unnecessary curb cuts, utilize existing parking, facilitate pedestrian circulation and eliminate unnecessary parking facilities.

6. Parking lot design shall conform to the Design Guidelines in Section 8 to the extent feasible.

#### 4.9 Signs

Since the East Valley Parkway commercial area is not located along a major freeway, the success of the businesses is largely dependent upon directional signs to guide customers to the district, particularly from Interstate 15 through the Downtown area. A comprehensive Citywide directional sign program will be developed. The program will include signage to direct people to established business districts like East Valley Parkway.

Business signage is intended to identify a center or building and to attract potential customers. Given the function of East Valley Parkway as a Major Road handling a high volume of traffic, business signage is oriented towards motorists rather than pedestrians. While shopping centers under common ownership or management have developed comprehensive sign programs, the narrow parcel configurations under separate ownership lack sign coordination. Consequently, existing signs often compete with each other to attract attention through overly bright colors and excessively large lettering and graphics, resulting in an often cluttered and eclectic appearance. Large exterior windows are often used as canvasses for temporary painted signs and posters, adding to the visual clutter. The sign ordinance will be enforced to reduce the clutter of illegal signs and make legal signs more effective. New signs shall be consistent with the Citywide Sign Ordinance (Article 66 of the Zoning Code). Due to the lack of direct street frontage and visibility of the Major retailer parcel within the Escondido Village Shopping Center Subarea, one additional freestanding sign not to exceed 150 SF of display area shall be allowed on East Valley Parkway. Additional sign guidelines are contained in Section 8 Design Guidelines.



*Consolidating shopping center signage on entry monuments reduces visual clutter and confusion for the motorist*

## Section 4.11 Review Process

1. Business licenses: The Director of Development Services (Director) or his designee shall review all business license requests within the area plan to determine if the proposed land use and required parking are consistent with the provisions of the Area Plan Tables 4.1 and 4.2, and Zoning Code Section 33-765. The Director may refer business licenses to the Fire and Building Departments to determine compliance with other applicable codes.
2. Exterior modifications:
  - a. The Design Review Board (DRB) shall review all proposed exterior improvements as defined by the Zoning Code Section 33-1354, to determine conformance with Section 8 - Design Guidelines. The DRB may recommend to the Director the conditions to be applied to the project. All such conditions are subject to appeal to the Planning Commission.
  - b. All other exterior modifications to structures or sites not otherwise subject to DRB review, including changes in exterior colors or materials, shall comply with Section 8 – Design Guidelines, as determined by the Director or his designee. The Director may request submittal of information needed to determine conformance with requirements and may refer requests to the DRB prior to approval.
3. Permits: The Director or his designee shall review all requests for building permits, plot plans and discretionary permits within the area plan to determine if the proposed use and development are consistent with the provisions of the Area Plan and design guidelines.
4. Property Compliance Evaluation: Prior to approval of any plot plan or discretionary permit, the Director shall prepare a property compliance evaluation to ensure that the property conforms to the Property Maintenance Ordinance (Article 20 of the Municipal Code), the Sign Ordinance (Article 66 of the Zoning Code) and any prior approvals. No approvals shall be granted until compliance issues are resolved or conditioned to the Director's satisfaction. The Director may solicit input from the East Valley Association and other interested organizations as deemed necessary or appropriate.



## SECTION 5: APPEARANCE

### 5.1 Objectives

An important objective of the area plan is to provide an attractive appearance along the parkway through the application of design guidelines for streetscape and façade improvements, by oversight of exterior building and property modifications through a review process, and by enforcement of property maintenance requirements. The intent is to create a landscaped parkway that complements rather than competes with the natural setting of the valley floor and frames the backdrop of the mountains to the east, while still facilitating the visibility of commercial uses to motorists. Implementation measures to improve the visual appearance focus on code enforcement, property maintenance review, design guidelines and public art, as described below.



*Well-maintained buildings and landscaping shows respect for the customer by making them feel welcome, comfortable and safe*

### 5.2 Property Maintenance and Enforcement

As an established commercial district that does not have the advantage of a common ownership or management entity, the parkway has developed incrementally. Many established uses are tenants rather than owners, and therefore have limited resources or authority to upgrade or maintain the property. Multiple ownerships, within a block, often contribute towards varying approaches in property maintenance. City standards regarding landscaping requirements, sign allowances and architectural design review have evolved over many years. The result is an inconsistent and uncoordinated visual appearance as properties have developed under the standards in effect at the time.

Property maintenance contributes significantly to the visual appearance of the area. While the amount of on-site landscaping may vary, proper maintenance of landscaped areas contributes making the area appear to be thriving and attractive. Proper watering, weeding,

pruning, trash removal and fence repair are necessary maintenance practices for all property owners and tenants. General building maintenance, such as painting, graffiti removal and adequate night lighting is also important. Self policing of business signage to ensure only legal signs exist, benefits the business itself and the surrounding businesses.

The following policies are intended to guide property maintenance and enforcement:

1. Require commercial properties to be well-maintained, free from litter, well lit for security, free of illegal signs, and in good repair. Particular attention shall be paid to the portions of the property visible from public streets and the Escondido Creek channel bicycle path, to maintain an attractive appearance.
2. Establish a property maintenance review process as part of the East Valley Parkway Overlay Zone to further insure that a property conforms to all applicable landscape, sign and development standards, as previously described in Section 4.10.

### 5.3 Design Guidelines

To provide a visually attractive streetscape, a comprehensive set of design guidelines has been prepared (refer to Section 8). Given the length of the commercial district, variety of architectural styles, exterior materials, site layouts, and landscape elements, a single unified thematic design is infeasible and may discourage creative design solutions. Therefore the design guidelines are intended to encourage quality design through consideration of the natural elements, the context of the project, the needs of the owner and users, and the aesthetic and functional enjoyment of the final solution. The guidelines establish an expectation of quality design, creativity and incorporation of unifying elements as the basis for review by the Design Review Board, to be implemented in proportion to the nature of the proposed improvements. For example, since redeveloped sites have greater flexibility regarding the inclusion of new design elements compared to minor changes such as business licenses changes and repainting of buildings, the Design Review Board is granted some degree of flexibility and discretion to determine thresholds for compliance. The complete Design Guidelines are contained in Section 8.



### 5.4 Public Art

The City collects a Public Art fee at the time of building permit issuance for new development. The East Valley area has benefited significantly from the public art program with the installation of several public art pieces along the parkway. The artwork known as “Shifting Threshold” by Joan Irving, includes the installation of a series of interrelated glass and metal pieces constructed at several key locations within the median and public parkway. The art pieces provide colorful graphic depictions representative of the City’s rich agricultural, cultural and industrial history, and provide a thematic identity to the area. Completed in 2001 and 2003, the art pieces define the east and west entries to the parkway at N. Hickory Street and Citrus Avenue, as well as at key nodes located near Harding and Rose Streets and Midway Drive. Additional opportunities for public art projects using

private donations are anticipated; the most recent installation is the grouping of sculptures around the flagpole at the new charter high school.



*"Shifting Threshold", a public art project by local artist Joan Irving includes a series of sculptures along East Valley Parkway emphasizing the rich heritage of the City of Escondido*

## SECTION 6: CIRCULATION AND INFRASTRUCTURE

### 6.1 Objective

The area plan is intended to identify and accommodate circulation and infrastructure needs pursuant to Circulation Element standards for level of service and median and parkway landscaping, while facilitating access to commercial properties, in an effort to improve the appearance and safety for pedestrian and vehicular traffic.

### 6.2 Existing Conditions

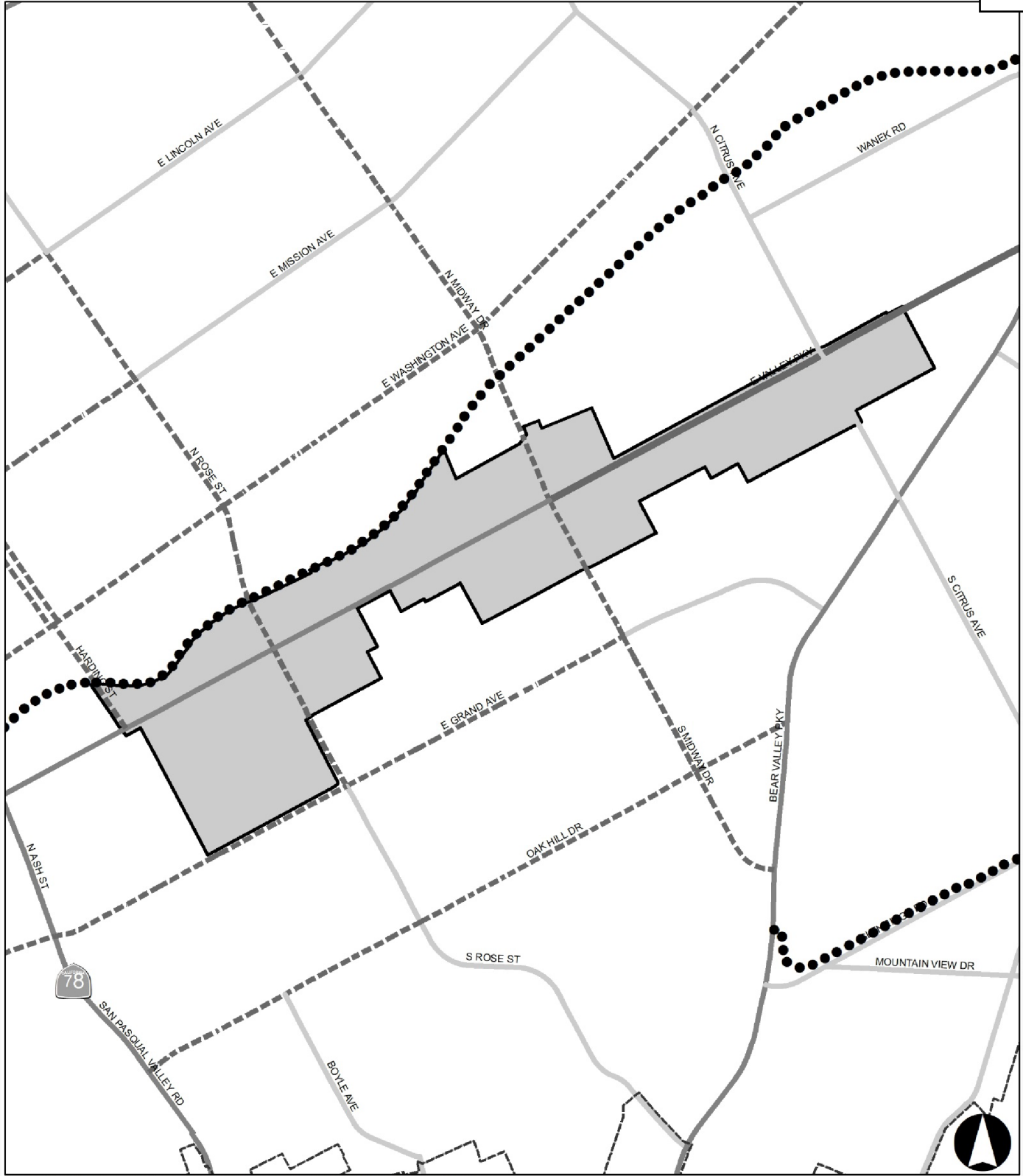
#### Regional Context

The East Valley Parkway area lacks direct freeway access. The district begins approximately 1.5 miles east of Interstate 15, beyond downtown Escondido. Highway 78 as an elevated freeway terminates at the North Broadway exit, and continues east and south as an at-grade highway along Lincoln Parkway to Ash Street where it crosses East Valley Parkway and ultimately transitions to San Pasqual Valley Road. The primary travel routes to the parkway are from I15 through downtown and from Highway 78 south to Ash Street. Additional visitors arrive from the northeast via Valley Center Road and from the southeast via Bear Valley Parkway and Citrus Avenue. Merchants and property owners have consistently indicated that their customers have difficulty finding their businesses, due to the lack of immediate freeway access, the need for I15 motorist to travel through the downtown area, the street name and directional changes along the way, and the lack of adequate directional signage.

#### General Plan

The Circulation Element of the General Plan designates East Valley Parkway as a Major Road from Hickory Street to Midway Drive, with an anticipated paved width of 82 feet (four travel lanes and a center median or turn lane) within a 102-foot right-of-way. East of Midway Drive, the road transitions to a Prime Arterial consisting of a 106 foot paved width (six travel lanes and a center median or turn pocket) within a 126-foot right of way. To accommodate the maximum number of travel lanes, street parking is prohibited in most areas. The Circulation Element also designates Grand Avenue as a Collector Road, with a paved width of 64 feet with an 84-foot right-of-way. Grand Avenue is fully improved within the district.

Portions of the East Valley Parkway district are not fully improved to General Plan standards. The eastern segment of the parkway (east of Midway) is improved to the ultimate width, with a paved center turn lane. The central and western segments are constructed to four travel lanes with a center turn pocket. To accommodate projected traffic along East Valley Parkway at acceptable levels of service, the Circulation Element anticipates that additional widening is needed, driveways will be consolidated where possible and a raised center median will ultimately prohibit mid-block left turns. A number of Circulation Element streets intersect East Valley Parkway, as shown on the attached Circulation Plan (Figure 4).



S:\GIS\Projects\CommDevelopment\2023\12\12 EVP General plan updates\EVAP Fig 4 Circulation Plan.mxd

1/8/2024

**Legend**

- Bike Path
- Prime Arterial
- Major Road
- Collector
- Local Collector
- Highway 78

**East Valley Parkway Area Plan**



**FIGURE 4: CIRCULATION PLAN**



*Westbound motorists approach the Ash Street intersection (Highway 78)*

### Site Access and Parking

Many properties utilize individual curb cuts along East Valley Parkway for driveway access. Individual properties lacking frontage along a side street, alley, or via a shared access agreement rely on these curb cuts for access. A center turn lane is provided along much of the parkway to allow mid-block left turn movements. However along other segments (such as the approach to the Rose St Street intersection from the West on East Valley Parkway), a raised center median prohibits mid-block left-turn movements, forcing motorists to make U-turns at the next intersection. Separate curb cuts facilitate access to individual properties, but impede overall circulation flow. Additionally, multiple driveways create the need for competing signage.

Due to the nature of existing land uses along the parkway, large truck rigs often park on the street. To ensure compatibility with established residential uses, parking of “big rigs” is prohibited in front of the residential property on the north side.



*Mid-block left turn lanes, which facilitate access to individual businesses, may impede traffic flow*

### 6.3 Transit

The North County Transit District (NCTD) operates the public transit system in Escondido. Current bus ridership along East Valley Parkway is low; additional bus routes are provided along Grand Avenue, Washington Avenue and Mission Avenue. A Park and Ride facility



is available along Grand Avenue west of Rose Street. NCTD coordinates with the City regarding bus routes and bus stop locations. Due to the constrained right-of-way, bus turnouts are currently unavailable; new developments may be required to provide bus turnouts, ADA accessible pads and benches where feasible. Bus shelters and shade structures, while desirable, are generally not required due to low ridership levels and maintenance concerns.

### 6.4 Bicycle and Pedestrian Paths

As discussed in Section 2.2, the Bicycle Facilities Master Plan identifies a network of bicycle paths traversing East Valley Parkway. Phased implementation of the bicycle path system has been funded primarily through SANDAG. Completion of the Escondido Creek bicycle path continues to be a top priority as a way to provide an alternative and convenient mode of transportation and enjoyable recreational opportunity. The City will continue to pursue funding for grade-separated crossings (bridges or underpasses) at key locations.



Pedestrian circulation is provided along improved sidewalks through most of the district. The long “super blocks” between Harding Street and Citrus Avenue and the lack of mid-block crossings discourage pedestrians who are inconvenienced by the long distances between controlled intersections. Pedestrians wishing to cross to the other



**side** to access a bus stop or commercial center must travel long distances and double-back. This configuration is particularly difficult for the large number of senior citizens live in the apartment buildings and mobile home parks along the parkway. Opportunities to improve pedestrian circulation across East Valley Parkway will be explored as part of future capital improvement projects.

### 6.5 Circulation Policies

New developments shall be subject to the following policies in order to balance the need for smooth traffic flow with convenient customer access:

1. Evaluate opportunities to improve circulation across East Valley Parkway and to provide through-block connections to Grand Avenue as part of major development projects within the “super block” area between Harding and Rose Streets.

2. Prohibit installation of new or additional curb cuts on East Valley Parkway except as a replacement for closing another curb cut elsewhere on the frontage, to the satisfaction of the public works director and Caltrans.
3. Construct public improvements commensurate with the proposed development, including but not limited to, enhanced or replaced sidewalks, street parkway landscaping, curb ramps, closures of curb cuts, lighting, benches and drainage improvements.
4. Promote internal vehicular and pedestrian connections between properties and encourage shared access and parking to discourage unnecessary turning movements on East Valley Parkway.
5. Encourage consolidation of driveways by providing incentives for lot consolidation.
6. Install raised landscaped medians between intersections as part of any Capital Improvement Program project involving street widening where adequate right-of-way is available.

## **6.6 Directional Signs**

Since the parkway lacks direct freeway access, a system of directional signs is needed to identify the East Valley commercial district and to assist customers in locating specific businesses and uses. A comprehensive Citywide directional sign program will be developed and is anticipated to include the following components:

1. Primary directional signs to direct people to established business districts including the East Valley Parkway area; and
2. Wayfinding signs to assist visitors in finding a specific use.

## **6.7 Other Infrastructure**

### Utilities

The City is working in coordination with San Diego Gas and Electric Company (SDG&E) to underground utilities along the parkway. Typically, utility undergrounding is incorporated into any street widening project, such as the anticipated widening of East Valley and Bear Valley Parkways from Citrus Avenue to Valley Center Road. SDG&E will construct the utility undergrounding on portions of East Valley Parkway that are not associated with a widening project. When completed, the removal of overhead utility lines will greatly enhance the visual appearance of the parkway. Other anticipated underground improvements include installation of fiber optic conduit.





*Utility undergrounding is accomplished incrementally as part of street improvement projects*

### Drainage

The commercial district is within the Escondido Creek drainage basin. The concrete-lined Escondido Creek channel borders the district on the north. Drainage improvements are constructed as part of the capital improvement program or concurrent with new development. Currently a drainage problem exists at the East Valley Parkway intersection with Ash Street (Highway 78). Correcting this deficiency is the responsibility of Caltrans.

## SECTION 7. ECONOMIC DEVELOPMENT

### 7.1 Economic Development

The long-term economic viability of East Valley Parkway is dependent on a number of actions including:

- Having a vision for the area on which consensus is reached
- Having an economic strategy with goals that support the vision
- Having active interest and participation by area residents, property owners and business owners who are willing to invest and work towards the vision.

A diverse business base, an attractive business environment, well maintained properties and pride of ownership are critical to achieving the Vision set forth in the East Valley Parkway Area Plan.

The following goals support the Vision for the East Valley Parkway (EVP) area:

- a. Strengthen the economic viability of the business area by ensuring a diverse business base
- b. Improve and enhance the image and appearance of EVP to attract business and customers
- c. Make property maintenance an expectation and a priority for property owners and tenants
- d. Increase home ownership on East Valley Parkway and in the immediate area



Ongoing and changing activities will be required to achieve these goals and ultimately the Vision for the area. The City of Escondido will continue to provide sound infrastructure and public services to the area, however the owners and inhabitants, both business and residential, must make a commitment to the vision, make investments in the area's properties and structures, and be willing to work toward the goals and the Vision.

### 7.2 Marketing

The East Valley Parkway Area Plan is an effective marketing tool for business and investment attraction. The Plan clearly demonstrates the vision and standards that the community, property and business owners have for the area. An aesthetically pleasing appearance for the area is a key component for business and investment attraction, to increase property values and to attract customers to East Valley Parkway.

The parkway is anchored by successful major retailers such as Home Depot, Palomar College, and by a nine-acre campus of Escondido Charter High School. Consolidation of retail to a core area located between the former Palomar Medical Center and Midway Drive has been occurring since 1998. Marginal retail properties are being

adaptively reused for non-retail uses, such as the former Edwards Theater site becoming the Charter High School campus. The Parkway is in a period of renaissance that can be maximized by following standards and guidelines set forth in the Area Plan.



*While considered “State of the art” at the time of its original construction, the Escondido Village Mall was converted from a struggling indoor mall into a successful open-air retail center*

Marketing collateral, an interesting and well-maintained website, and positive messages conveyed to the media, are relatively inexpensive and important in marketing the Parkway and its viability. Businesses should also participate in cooperative advertising, which reduces individual advertising costs and has more visual impact.

Marketing efforts should also include the Brand Attributes, as appropriate, that are part of the City’s Marketing Plan. They include:

- Escondido as the heart of San Diego North
- Escondido’s strategic location for living, working and visiting
- Escondido as the cultural center of San Diego North
- Escondido’s history, heritage and hometown appeal
- Escondido’s abundance of natural beauty, vineyards, agriculture and supporting businesses
- Escondido’s progressive future rooted in an authentic past



## SECTION 8. DESIGN GUIDELINES

### 8.1 Introduction and Purpose

The Area Plan Design Guidelines are intended to inform and guide property development and renovation along East Valley Parkway. The guidelines are not regulatory and represent concepts the Director of Development Services and the Design Review Board (DRB) will apply in evaluating a project. The intent of the guidelines is to:

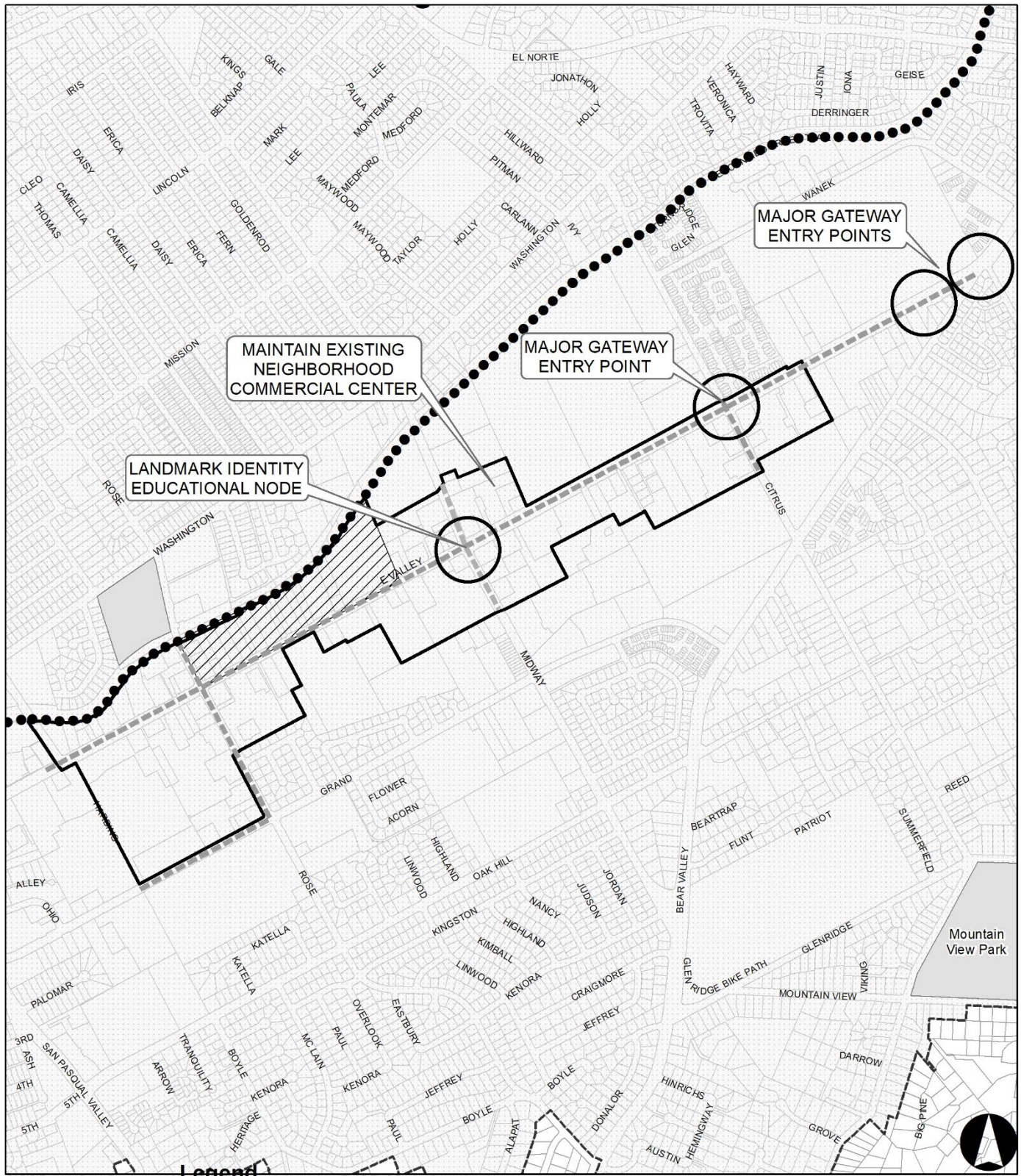
- Encourage quality, attractive and creative design that is compatible with other well-designed buildings, while respecting the property owner's objectives and economic implications regarding building materials and style
- Derive good site and building design from consideration of light and shadow, massing, human scale, texture, barriers, accessibility for the users, natural air flow, solar orientation, and view opportunities.
- Provide a design framework for property owners and their design teams to define the City's expectations and expedite the review process by reducing the need for redesign. However, in order to encourage the creative use of innovative and individual design expressions, some flexibility in the application of the guidelines may be allowed if the level of project quality is elevated



- Create an aesthetically pleasing environment
- Provide direction to property owners regarding aesthetic upgrades that can be achieved on smaller properties where major renovation is not economically feasible
- Serve as a catalyst to initiate future improvements to the area and establish a healthy climate for revitalization by providing a consistent vision and adherence to design principles. As new development and rehabilitation of existing properties occur pursuant to these guidelines, other property owners should be motivated to invest in improvements to enhance the shopping experience along East Valley Parkway.

### 8.2 Overall Design Concept

The East Valley Parkway district is characterized by a mix of architectural styles and sparse landscaping that generally reflect the trends and economic conditions at the time of site development. By identifying design concepts for new development and renovation projects based on the physical, historical and cultural context of the area, the Area Plan anticipates that design elements can be used to unify the parkway, provide visual interest and establish an identity.



S:\GIS\Projects\CommDevelopment\2024\2024-2027 General plan updates\EVAP Fig 5 Design Concept.mxd

5/28/2024

- East Valley Parkway Area Plan Boundary
- Encourage Lot Consolidation
- Enhance Bicycle Path
- Enhance Street Tree Planting

# East Valley Parkway Area Plan



## FIGURE 5: DESIGN CONCEPT

The context of proposed development projects will encourage and/or restrain the design through an understanding of a number of factors:

1. Relationship of the site to surrounding uses – Due to the length of the parkway, the range of neighboring uses varies from small scale residential, strip commercial, big-box retail, high-rise medical, educational uses, and other uses which should be considered in terms of compatibility
2. Environmental context – Climate is an important factor. Outdoor gathering places can take advantage of pleasant temperatures, while features such as landscaping, shade structures and fountains can create shade and provide a cooling factor.
3. Historical context – Development and land use patterns reflect the district’s rich agricultural heritage, proximity to the former Palomar Hospital and to a historical residential neighborhood to the north, and growing educational cluster
4. Cultural and social context – Design should consider who uses the project as well as neighboring uses to determine compatibility and functionality or usefulness
5. Transportation – Design should balance the need for neighboring residents and visitors to access the businesses while facilitating movement along the parkway. Particular attention is needed to accommodate safe pedestrian access from residential areas to the commercial businesses, recreational uses and transit stops.

Using these contextual principals, the overall urban design concept for the parkway is shown on Figure 5 – Design Concept and summarized below:

- Encourage lot consolidation of key properties to improve circulation
- Upgrade aesthetic value by incorporating quality design elements  
Create a landmark identity or focal point in the vicinity of the Midway intersections, which may be accomplished through a combination of elements such as building height and massing, signature architectural design and lush corner landscaping
- Install street trees along parkway frontages, medians and key intersecting streets to frame the view along the parkway
- Provide enhanced landscaped treatment at major nodes, including the intersections at Citrus Avenue and the realigned intersection of Bear Valley Parkway.
- Improve and enhance the appearance as viewed from the Escondido Creek bicycle path

### 8.3 Architectural Design Guidelines

The basic concept of these design guidelines is to provide a context for evaluation, and to encourage compatibility and creativity. Buildings that incorporate unique designs, striking colors or other dramatic elements are often considered “landmark” or “signature” buildings. The unique appearance of such buildings often becomes the anchoring theme of a developing area, such as occurred with the construction of the City Hall complex downtown. Landmark structures are also useful to define a space or provide directional guides.



*Covered arcades, heavy columns, stucco walls, tile roofs and rafter tails characterize the Mission style, commonly found along the parkway*

A variety of architectural styles are found along the parkway, including Mission or Mediterranean style, Western, and Contemporary. While no single theme predominates, some common architectural elements occur over and over. These recurring architectural elements help define a context for new development and renovation projects.

One list of elements may include the following:

- Arches, such as arched windows and doorways, arched rooflines and arched columns
- Tile and heavy-textured roof materials
- Towers taller focal points to define building entries
- Variations in building mass and scale through changes in building height, pop-outs, recesses and roof overhangs to create shadow lines
- Rafter tails and brackets
- Cornices and decorative parapets
- Stucco walls
- Covered arcades
- Trellises and arbors
- Heavy wood trim for doors and windows
- Multi-paned windows and doors
- Balconies
- Heavy decorative columns



- Decorative elements, including iron grillwork, tile details, shutters, awnings, and window and door trim
- Outdoor gathering space such as plazas, fountains and courtyards with seating, intended to create a restful atmosphere for visitors, inspiring customers to extend their shopping visit.
- Lush landscaping with color spots, shade plants and potted plants

Continued application and creative variations in the use of these elements can result in an attractive appearance without dating a building as reflective of a particular era or trend. For example, the construction of City Hall and the visual and performing arts center in the late 1980's triggered new and creative variations incorporating some of these design elements in new downtown development. Sample building elevations and site plans which successfully incorporate these design elements are illustrated in Figures 6-7.



*This comprehensively designed center incorporates large cornices, arched rooflines, covered arcades and simple building lines*

## 8.4 Site Design Guidelines

### A. Orientation / Setbacks / Buffers

1. Provide a minimum five-foot-wide landscaped setback along all street frontages, with pedestrian connections to the public sidewalk where appropriate. In most instances, the landscaping can be accommodated within the public right-of-way; however larger landscaped setbacks are encouraged.
2. Orient the building plane parallel to the East Valley Parkway to provide visibility to motorists in both directions.
3. Avoid long, strip commercial building design. On large parcels, cluster buildings and provide logical pedestrian connections.







East Valley Parkway Area Plan



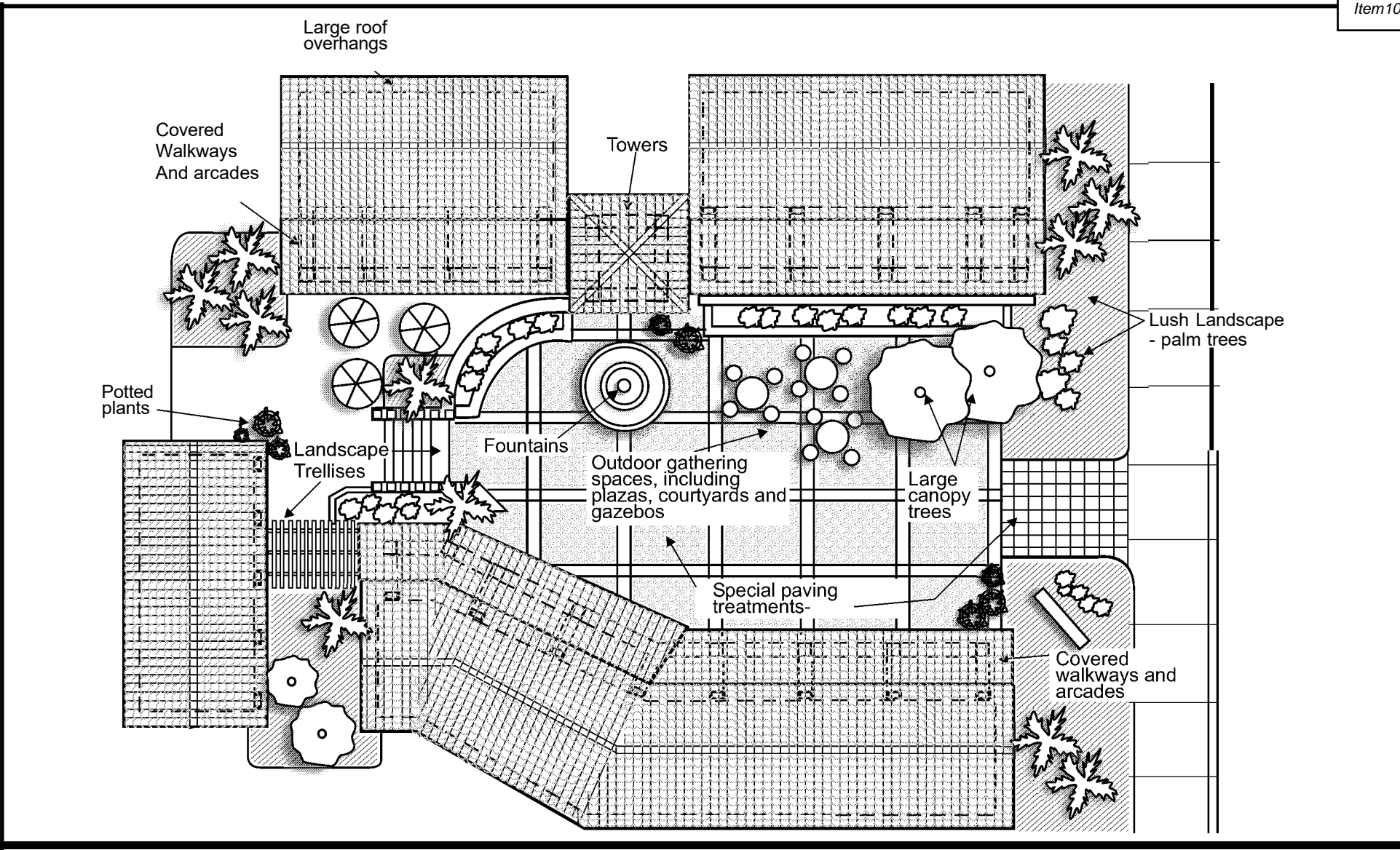
FIGURE 6A: MEDITERRANEAN DESIGN CONCEPT



East Valley Parkway Area Plan



FIGURE 6B: MEDITERRANEAN DESIGN CONCEPT



East Valley Parkway Area Plan



FIGURE 6C: CONCEPTUAL SITE PLAN



East Valley Parkway Area Plan



FIGURE 7A: CONTEMPORARY STYLE



East Valley Parkway Area Plan



FIGURE 7B: CONTEMPORARY STYLE

4. Locate buildings towards the East Valley Parkway frontage to avoid large expanses of parking separating the businesses from the street, provide motorists with good visibility to businesses and provide attractive streetscape appearance.



5. Site the building setback from East Valley Parkway and driveway locations in context with adjacent structures to ensure visibility so motorists have adequate time to identify businesses and turn safely into driveways.
  6. Incorporate architectural features at all ground floor elevations that emphasize pedestrian movement, provide adequate sight visibility and focus visual interest at the corners of buildings located at an intersection corner.
  7. Provide adequate visual and noise buffers between commercial uses and adjacent residential uses. Avoid the use of loading areas adjacent to residential uses.
8. Provide outdoor gathering spaces including landscaped courtyards, seating, shade trees, fountains and other restful elements in large commercial centers.

## **B. Vehicular and Pedestrian Circulation**

1. Consolidate driveways to the extent feasible. New curb cuts should only replace another curb cut in an effort to improve access and traffic circulation.
2. Provide through lot connections between East Valley Parkway and Grand Avenue in the “super block” areas between Harding and Rose Streets.
3. Provide internal connections between parking lots and support reciprocal access and parking agreements to avoid the need to use East Valley Parkway for circulation between adjacent developments.
4. Divide large open parking lots into smaller, less imposing lots. Distribute parking evenly throughout the site to provide convenient parking for all businesses within a center.
5. Provide convenient and safe pedestrian circulation with direct links to the building entries and street sidewalk system, and in close proximity to required parking.
6. Enhance parking lot entries with special paving treatments and landscaping.
7. Screen loading areas from public view and provide separation from customer access points.

## **8.5 Building and Architectural Guidelines**

### **A. Style / Theme / Articulation**

1. Incorporate unifying elements common to the East Valley Parkway area in a comprehensively design center, as described in Section 8.3 above.



2. Avoid large blank walls and harsh or dramatic contrasts in form and scale.
3. Provide equal treatment of all elevations, particularly where visible from a public right-of-way, the Escondido Creek channel bicycle path and adjacent residential uses.



4. Provide significant wall articulation and shadow lines, particularly at the pedestrian or first floor level. These features may be created by insets, pop-outs, columns, arches, arcades and covered walkways, large roof overhangs, inset windows and doorways, canopies and trellises.

5. Utilize multi-planed roofs, including tower elements to add interest and define building entries. Vary the roof height of the building so that it appears to be divided into distinct elements. Incorporate pitched roofs and full roof treatments on stand-alone buildings and where visible from a public right-of-way.
6. Include decorative parapets, cornices or detailed articulation at the roofline for flat roofed structures.
7. Avoid use of Mansard and A-frame roofs on single-story structures.
8. Provide exterior stairways and walkways to allow access to second floor areas.



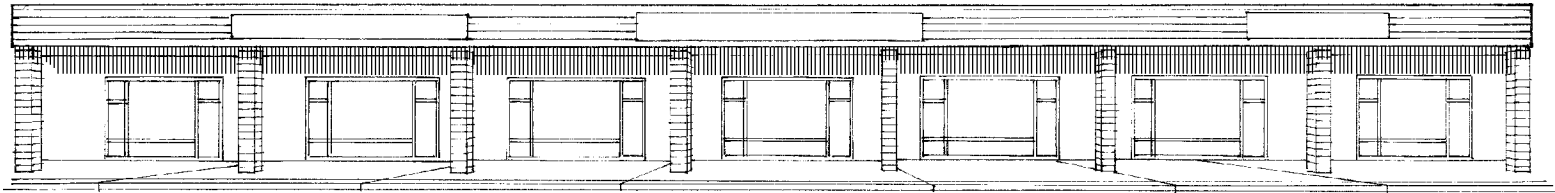
#### **B. Exterior Building and Roof Materials**

1. Use natural and traditional exterior materials.
2. Avoid use of heavy-textured stucco and surfaces that cause excessive reflection of light, heat or glare.
3. Incorporate roof materials that provide texture or visual interest.
4. Screen rooftop equipment from public view.
5. Avoid use of awnings that are out of scale with other building elements.

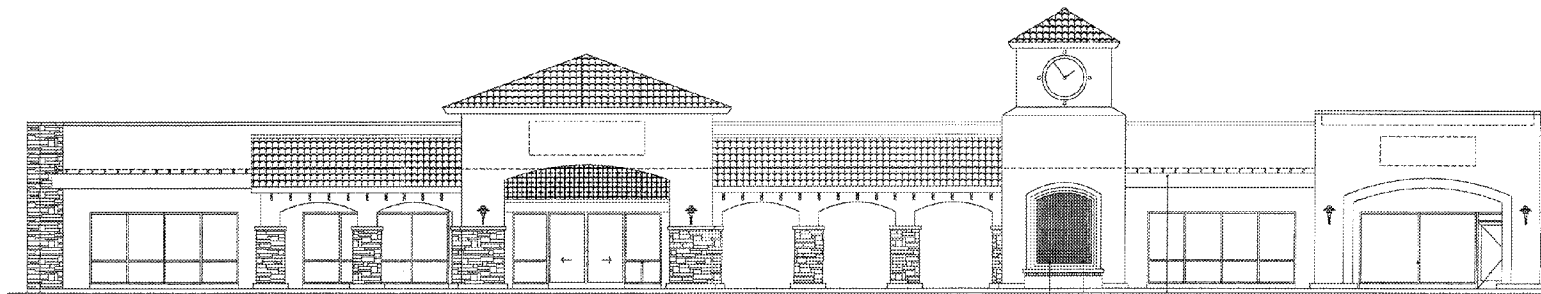


#### **C. Color Palette**


1. In general, avoid fluorescent and excessively bright colors and highly reflective surfaces as the primary building color or materials. Bright trim colors may be approved by the DRB where it can be shown to enhance the general appearance of the building.
2. Avoid primary colors (red, blue, yellow) and other strong contrasting or excessively bright colors on roofs.



FACADE PRIOR TO RENOVATION



FACADE AFTER RENOVATION

 **East Valley Parkway Area Plan**

**FIGURE 8: CONCEPTUAL BUILDING RENOVATION**



Too many colors on fascia - functions as a sign

Dangling lights

### Existing Conditions

Bulletin board looks junky

Temporary Window signs block visibility



Cardboard Boxes

Storage of excessive merchandise stacked against windows

Shopping carts, trash can, and vending machines block entrance

Address more visible

### Recommended improvements

Paint fascia onecolor

Relocate bulletin board

Relocate shopping carts to inside or provide screening ---

Open up window display area



Remove window Signs

Keep entrances clear of obstructions



## East Valley Parkway Area Plan

### FIGURE 9: BUILDING RENOVATION

### Existing Conditions



Oversized pole sign

Too many exterior vending machines

No parking lot screening

Minimal landscaping

Palm trees which look like telephone poles

### Recommended Improvements



New street trees help unify appearance

Relocate vending machines to inside or away from entry

Hedge screens parking areas

Replace pole sign with monument sign



## D. Renovation of Existing Buildings

1. Include vertical elements and exterior treatments such as trellises and decorative structures to de-emphasize the linear appearance when constructing façade improvements on existing buildings, to the degree feasible and compatible with the mass and structural integrity of the existing building. (see Figure 9 – Conceptual Building Renovation).
2. Remove inappropriate materials and elements that may have been constructed in previous remodeling. Examples include aluminum siding, plywood false fronts, artificial stone, unauthorized signs or natural wood siding.
3. Repair or replace deteriorated architectural features. Remove hardware that detracts from the building’s appearance, such as old sign supports, conduit, wires and brackets.
4. Relocate vending machines and bulletin boards inside the building.



## 8.6 Landscaping Guidelines

### A. Overall Concept

1. Provide for a unified streetscape design to establish the feel of a landscaped parkway that emphasizes the scenic vista of the surrounding mountains and valley floor (refer to Figure 5 – Overall Design Concept).
2. Create a sense of identity by incorporating a planting palette, street trees and landscape elements that complement and accentuate the overall Mediterranean design concepts and architectural elements.
3. Create a restful environment for visitors by creating a cooling effect through the use of shaded areas, lush landscaping, comfortable outdoor seating, tables with umbrellas and water features.
4. Enhance the appearance and perception of safety along the Escondido Creek channel and bicycle path through the introduction of landscaping and attention to property maintenance along the property boundary abutting the creek.

### B. Streetscape

1. Select street tree species to frame the views of the mountains to the east and the entry to downtown to the west. Queen palms (*Arecastrum romanzoffianum*) shall be incorporated as the predominant street tree along the corridor to provide a unifying element.
2. Cluster street trees, particularly palm trees, when possible to avoid the “telephone pole” appearance of the trunks as viewed from the street level and to provide view corridors into commercial properties.
3. Provide potted plants and window boxes to create visual interest and to soften the hardscape appearance within existing developments lacking sufficient space for parkway landscaping.



4. Provide colorful theme planting at major entries and nodes,
5. Provide parkway and median landscaping that does not compete with the visibility of the public art pieces.
6. Provide street furniture such as shade structures, bus shelters and decorative trash receptacles at bus stops.

### C. **Parking Lots**

1. Soften the visibility of parking lots seen from the public right-of way through the use of landscaping, low walls and berms.
2. Include shrubs within planters and parkways that are capable of achieving sufficient height and density to soften the view of vehicles. Avoid the use of dwarf shrubs except as foreground and accent planting.
3. Select plant materials that can be maintained to provide visibility for security patrols in secluded areas, including trees capable of maintaining a canopy above seven feet and shrubs with a growth pattern that exposes the base of the shrub.
4. Include shade trees within parking lots to reduce glare, break up the expanse of large parking lots, and provide a cooling effect for pedestrians and parked vehicles.
5. Use landscaping features to define pedestrian paths. Install arbors, trellises and/or shade trees along pedestrian paths to provide a minimum 50% shade during summer season.
6. Reduce the use of lawn area and provide screening vegetation, thematic planting and color spots where feasible when replacing landscaping.
7. Provide a commensurate improvement in parking lot landscaping for projects that result in increased floor area or additional required parking. This will bring the site into greater conformance with the landscape requirements of the Zoning Code Article 62, as determined by Plot Plan review.
8. Screen trash and storage areas from public rights-of-way and adjacent residential uses.



### D. **Hardscape / Decorative Elements**

1. Provide special paving treatments to identify circulation areas such as driveways, crosswalks, sidewalks, pedestrian paths, and courtyards.
2. Provide site furniture such as shade structures, seating areas, trash receptacles, kiosks, fencing, and fountains that is decorative as well as functional, and designed to complement surrounding buildings.



## 8.7 Signage and Lighting Guidelines

### A. Entry and Directional Signs

1. Replace existing pole signs with monument signs whenever feasible to provide sign visibility at the street level while not competing with street tree plantings.
2. Integrate signage into the landscape concept to provide identity and establish a sense of entry. Signage shall incorporate design elements that are consistent with the design theme of the building or center.
3. Provide the site address on entry monuments to be clearly visible to motorists.
4. Provide information on directional signs in a symbolic format.
5. Prohibit sidewalk sandwich-style (A-frame) signs.
6. Avoid banners and wind-activated signs other than flags on poles.

### B. Building Signs

1. Design new signs to be compatible with all other approved signs on a building or within the same center.
2. Design signs to complement and be subordinate to the building they identify.
3. Encourage use of graphic icons in lieu of text.
4. Avoid painted wall signs (other than murals), painted window signs and signs on awnings.
5. Avoid cluttering windows with temporary signs (such as paper and painted signs). This allows visibility of merchandise within buildings and provides a sense of safety for customers and clients.
6. Prohibit roof signs.
7. Display the address number for each business tenant in a prominent location.

### C. Lighting Concepts

1. Provide exterior lighting to enhance the safety and security of motorists and pedestrians, while shielding glare and overflow onto neighboring properties.
2. Install decorative lighting fixtures that complement the building design features. Avoid use of neon lights to illuminate buildings unless approved by the DRB.
3. Avoid focused illumination (lit from within or on the exterior) of awnings and roofing.



## 8.8 Residential and Mixed-Use Guidelines

### A. Overall Concept

1. Provide floor area designated solely for residential use in an amount that does not exceed 50% of the gross building floor area for residential mixed-use buildings or sites.
2. Locate residential units above the ground floor or behind the primary commercial use within mixed-use buildings. When residential and commercial uses are provided on the same site or in the same structure, provide separate entrances.



3. Incorporate appropriate recreational and / or open space amenities into the development to serve the residents. Allow use of rooftop and balcony areas for recreation. Design recreation and open space intended for resident use to be inaccessible from commercial areas.

4. Provide amenities for residential units comparable to amenities typically found in ownership units, including washer/dryer capacity, enclosed parking, quality materials and finishes, storage areas, common exercise and recreational facilities, and wiring for computer and electronic applications.

5. Screen service areas for commercial uses from residential areas. Locate service areas far enough away to minimize potential noise, glare and odors.

## SECTION 9. IMPLEMENTATION

### 9.1 Implementation Mechanisms

Implementation of the Area Plan will be accomplished through the following mechanisms:

1. Adopting the East Valley Parkway Overlay Zone to establish the boundaries of the area plan
2. Establishing a property compliance review process to identify property maintenance issues and corrective measures, prior to or concurrent with the review of new development proposals
3. Reviewing ministerial and discretionary actions for conformance with the Area Plan Land Use Policies, Development Standards and Design Guidelines
4. Constructing public improvements concurrent with development applications or as part of the City's Capital Improvement Program (CIP)
5. Promoting community organization to facilitate communication, promote public awareness and participation, and encourage voluntary conformance to City standards
6. Providing code enforcement action when necessary, initiated on a complaint basis
7. Promoting economic development through the use of Business Enhancement Zone incentives, existing business recruitment and retention programs, façade improvement programs, and effective marketing efforts.





# STAFF REPORT

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August 28, 2024  
File Number 0137-10

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## SUBJECT

**UPDATE CONCERNING THE REQUEST FOR PROPOSALS FOR MANAGEMENT OF THE CALIFORNIA CENTER FOR THE ARTS, ESCONDIDO; CORRECTIONS OF PREVIOUSLY REPORTED 5-YEAR EXPENSES DATA; AND APPOINTMENT OF A CITY COUNCIL AD HOC SUBCOMMITTEE TO REVIEW ALL PROPOSALS RECEIVED**

## DEPARTMENT

City Manager

## RECOMMENDATION

Request the City Council receive and file the report from staff, including the corrected 5-year average expenses. The Mayor may, at his discretion, nominate two members of the City Council to serve on an ad hoc Subcommittee to review the responses received to the Request for Proposals (“RFP”). The RFP was issued on June 24, 2024. Proposals must be submitted by interested parties by January 15, 2025.

Staff Recommendation: Receive and File (City Manager: Christopher McKinney, Deputy City Manager) the report; Approve Mayoral nominations of two City Council members to serve on an Ad Hoc Subcommittee to review all submitted proposals

Presenter: Christopher McKinney, Deputy City Manager

**ESSENTIAL SERVICE** – Yes, Maintenance of Facilities

**COUNCIL PRIORITY** – Eliminate Structural Deficit

## FISCAL ANALYSIS

On May 8, 2024, the City Council received a staff report outlining the process for submitting proposals for the California Center for the Arts, Escondido (“CCA”) facility. The staff report for the RFP process contained five year estimated City expenses to operate and maintain the CCA facility. The included expenses were direct costs paid by the City from the General Fund, including monies received from San Diego Gas and Electric (“SDG&E”) via the terms of a development agreement for the Palomar Energy Facility. The expenses had been incurred in the past through payments directly to the California Center for the Arts, Escondido, Foundation, a California nonprofit public benefit corporation (“Foundation”), under the terms of the Management Agreement between the Foundation and the City; payments for utility charges to SDG&E; purchase of special liability insurance; and direct staff and materials cost for maintenance. The report on expenses also included some costs paid directly by the Foundation, including a contribution to special liability insurance and facility security, but the report did not include any other





# CITY of ESCONDIDO

## STAFF REPORT

costs incurred or revenues earned directly by the Foundation. At that time, the City Council affirmed its direction – originally given on September 27, 2023 – to issue a Request for Proposals (“RFP”) for the operation of the CCAE. The RFP was subsequently issued on June 24, 2024.

The City Council’s California Center for the Arts Escondido Subcommittee (“Subcommittee”) met most recently on July 29, 2024. At that meeting, representatives of the Foundation presented to the Subcommittee several errors in the 5-year cost data presented on May 8, 2024. This erroneous data was included with the RFP. Staff confirmed these errors and discovered others. This report is meant to identify and correct these errors for the City Council and the public, and to clarify some points that may cause confusion if not given proper context. The “Background” section of this report provides more textual information and the attached tables provide numerical detail, explanation, and backup to further explain the corrected expense information. The corrections will also be shared through the RFP process with all potential respondents.

### PREVIOUS ACTION

On September 27, 2023, the City Council directed staff to prepare and issue an RFP for the CCAE facility.

On May 8, 2024, the City Council received the report described in the “Fiscal Analysis” section of this Staff Report and reaffirmed the direction to issue an RFP for operation and management of the CCAE.

On May 22, 2024, the City Council adopted Resolution No. 2024-58 authorizing the Mayor to execute an Operations and Management Agreement (“Agreement”) between the City and the Foundation. This Agreement will expire on June 30, 2025 and has a mutual option for extension for an additional year. The Staff Report for this past action includes information regarding prior actions authorizing previous management agreements.

### BACKGROUND

At the City Council’s Visioning and Structural Deficit Strategy Workshop on September 27, 2023, the City Council identified the Essential Services and Council Priorities that now guide staff. The City Council directed staff to solicit proposals from potential operators of the CCAE – including the Foundation – that would reduce or eliminate the financial cost of the CCAE to the City. Additionally, the City Council adopted a plan outlined at its meeting on January 31, 2024 related to Fiscal Sustainability, Capital Projects, and American Rescue Plan Act (“ARPA”). This plan aims to accomplish priorities of the Visioning Workshop by reducing future obligations to the General Fund and removing non-essential services in an effort to achieve financial sustainability.

The RFP issued on June 24, 2024 aims to further three goals: (1) Solicit general proposals for use and operation of the facility; (2) Demonstrate the City’s current costs to operate the CCAE facility, including



# CITY of ESCONDIDO

## STAFF REPORT

costs incurred directly by the City and money paid to the Foundation; and (3) Understand which, if any private or nonprofit entities are interested in submitting a proposal.

After errors were reported in the expense information provided to the City Council in May and included in the RFP, staff worked to correct those figures. The attached tables show the originally reported figures, the updated and corrected information, and an explanation of the difference (i.e., the errors).

The updated information on **Table 1** (Attachment “1”), titled “California Center for the Arts, Escondido Request for Proposals – Summary of Update Expense Information” contains five columns of expense data: (1) Data reported in May which contains the errors outlined in the staff report (*blue*); (2) Difference between the erroneous data in Column 1 and the corrected data (*pink*); (3) Updated information for expenses paid directly by the City (*green*); (4) Updated information for expenses paid by the Foundation for insurance and security (*yellow*); and (5) SDG&E money paid to the City for operation of the CCAE under the terms of the Palomar Energy Facility Development Agreement (*purple*).

The following summarizes this data and the necessary corrections.

The cost data is divided into several cost categories: San Diego Gas and Electric (**Table A**); Water and Wastewater (**Table B**); Information Technology and Systems (**Table C**); Special Liability Insurance (**Table D**); Public Works (“PW”) Maintenance Staff, Repairs, and Facility Contracts (**Table E**); Facility Contracts details (**Table F**); Management Fee paid to the Foundation (**Table G**); and, SDG&E Community Benefit payment (**Table H**).

The report of May 8, 2024, included a total of approximately \$4.5 million of 5-year average annual costs incurred by the City. Subsequent review to identify the errors shows that the majority of the errors can be attributed to a “double counting” of costs, i.e. the same costs being included in multiple categories. The correct 5-year total annual cost to the City is approximately \$2.6 million, a reduction from the originally reported amount of about \$1.9 million annually.

### SDG&E (Attachment “2” **Table A**)

SDG&E costs were reduced from \$898,000 to \$836,000. This amount had been erroneously included in “PW Maintenance and Staff Repairs” and has been removed from that category. The Finance Department was also unable to reconcile actual expenses to the General Ledger (“GL”) with the original source information provided by the Departments. The corrected figures are the recalculated 5-year average based on actual SDG&E utility costs reported in the GL. It is notable that the 5-year average utility cost is significantly lower than the cost incurred over the last two years. The 5-year average included Fiscal Year (“FY”) 2021, which was heavily impacted by the COVID-19 pandemic. In that year, the annual cost of SDG&E utilities was approximately \$600,000, while over the last two fiscal years (FY 2023 and FY 2024) the average has been approximately \$1.2 million.



# CITY of ESCONDIDO

## STAFF REPORT

### Water and Wastewater (Attachment "3" Table B)

Water and Wastewater costs were unchanged by the recent analysis and remain \$91,000. In the report given in May, however, these figures were based on a six-year average of costs. The updated data averaged these costs over the last five years rather than six years, which is consistent with the time period considered for other cost categories.

### Information Technology and Systems (Attachment "4" Table C)

Information Technology and System costs were unchanged by the recent analysis and remain \$33,000. These costs include \$18,000 for phone service, although future phone costs are anticipated to be reduced to \$12,000 annually.

### Special Liability Insurance (Attachment "5" Table D)

Special Liability Insurance was split into two rows on the summary table, D1 and D2. It was originally reported as \$154,000, but this did not reflect the historic split between the Foundation (~25%) and the City (~75%). The corrected figure of \$115,000 reflects the City's historic share of this cost, while the remaining \$38,000 is a new line that reflect the Foundation's historic cost. Any potential future manager and operator of the CCAE should anticipate paying the entire costs for liability insurance.

The most recent Management Agreement, covering FY2025, places the full cost of insurance on the CCAE Foundation. The Foundation has the option to use a portion of the Management Fee for this purpose but the City now makes no direct payments to the CCAE Foundation specifically for insurance.

### Public Works (PW) Maintenance Staff, Repairs, and Facility Contracts (Attachment "6" Table E)

The Public Works ("PW") Maintenance Staff, Repairs, and Facility Contracts account for the majority of the errors in the previously reported cost information. The amount reported in May included the Management Fee (\$660,000), SDG&E utility expenses (\$836,000), Water and Wastewater (\$91,000), and Insurance (\$115,000). These costs were removed from this amount and reported separately, reducing the cost of this category by \$1.7 million from \$2.6 million to \$0.9 million.

### Facility Contracts (Attachment "7" Table F)

Facility Contracts have been removed as a cost category on **Table 1** because they were already included under PW Maintenance Staff, Repairs, and Facility Contracts. Although these expenses are included in **Table E**, they are additionally listed in **Table F** for clarity.



# CITY of ESCONDIDO

## STAFF REPORT

### Management Fee Paid to the CCAE Foundation (Attachment "8" Table G)

The Management Fee paid to the Foundation for operation of the facility was correctly reported in the previous staff report in May, but this amount was incorrectly also included in PW Maintenance Staff, Repairs, and Facility Contracts. It has been removed from that category and is now included only in this line.

### SDG&E Community Benefit Payments (Attachment "9" Table H)

The City has received an annual payment from SDG&E of \$200,000 as part of a development agreement concerning their Palomar Energy Facility in the Escondido Research and Technology Center ("ERTC"). These payments commenced in 2006 and the last payment is scheduled for April 2025. These funds are to be specifically used by the City to fund operations and maintenance of the CCAE. The City has allotted this money to the CCAE Foundation every year that it has been received. This funding was not included in the May staff report. It is included here but will not be available to any future CCAE operator after FY2025.

### Security (Attachment "1" line 1 of Table 1)

Beginning in FY2021 the City provided additional Security services at the facility via Temporary, Part-Time Park Rangers. The Foundation agreed to fully reimburse the costs incurred by the City at a rate of \$6,849.99 per month or \$82,200 annually. Effective May 2024, all facility security is provided solely via private contract by the CCAE Foundation.

### Cost of Other City Staff Time

It is difficult to comprehensively capture the actual costs of City general fund monies and human resource assistance provided to sustaining the operation of the Center. There are other unquantified and unknown staff costs of senior leadership, Human Resources, City Attorney's Office, Community Services, and other department staff time organizing contracts.

### **AD HOC SUBCOMMITTEE**

Staff recommend that, in addition to the City Council receiving and filing this report, the Mayor nominate - for full City Council approval - two members of the City Council to serve on an Ad Hoc Subcommittee to meeting after proposals are received in January 2025. This Ad Hoc Subcommittee would review all proposals, along with staff, report to the full City Council in public session, and potentially recommend a selection for CCAE operator from among the proposals submitted.



# CITY of ESCONDIDO

## STAFF REPORT

### ATTACHMENTS

- a. Attachment "1" – **Table 1** – California Center for the Arts, Escondido Request for Proposals- Summary of Updated Expense Information
- b. Attachment "2" – **Table A** – San Diego Gas and Electric Expenses - CCAE
- c. Attachment "3" – **Table B** – Water and Wastewater Costs - CCAE
- d. Attachment "4" – **Table C** – Information Systems and Technology Expense - CCAE
- e. Attachment "5" – **Table D** – Special Liability Insurance- CCAE
- f. Attachment "6" – **Table E** – Public Works Staff and Facility Contract Expense- CCAE
- g. Attachment "7" – **Table F** – Facility Contract Expense- CCAE (included in information on **Table E**)
- h. Attachment "8" – **Table G** – Management Fee Expense- CCAE
- i. Attachment "9" – **Table H** – SDG&E Public Benefit Payments (ending in 2025)- CCAE

TABLE 1 - CALIFORNIA CENTER FOR THE ARTS, ESCONDIDO REQUEST FOR PROPOSALS - SUMMARY OF UPDATED EXPENSE INFORMATION

Summary - Comparison of May Report to Finance Records							
Reference Table		Reported in May	Difference	Confirmed by Finance			Notes
				Paid by the City	Paid by the CCAE	Other Allocations	
A	SDG&E	\$ 897,499.48	\$ (62,024.85)	\$ 835,474.63	\$ -	\$ -	This amount was erroneously included in (E) "Maintenance Staff & Repairs" in the May Report. Finance was unable to reconcile the May information with actual expenses in the General Ledger ("GL"). Finance recalculated the 5-year average based on actual SDG&E utility costs reported in the GL
B	Water and Wastewater	91,135.06	(1,471.41)	89,663.64	-	-	The calculation of information presented in May was based on a 6-Year Average, FY2018-FY2023. The updated figures, confirmed by Finance, are a 5-year average to be consistent with other line-items.
C	Information Technology and Systems	33,440.00	-	33,440.00	-	-	See Table C of the Staff Report for additional information on these costs
D1	Special Liability Insurance - City	153,725.52	(38,431.38)	115,294.14	-	-	Historically the City has split this cost with the CCAE, with the City paying for ~75% and the CCAE paying for ~25%. This amount was updated to reflect the City's direct expense in FY2024. The amount paid by the CCAE is reflected below (Row D2)
D2	Special Liability Insurance - CCAE Foundation	-	38,431.38	-	38,431.38	-	Historically the City has agreed to split this cost with the CCAE, the City paid for ~75% and the CCAE paid for ~25%. This amount reflects the 25% paid by the CCAE Foundation in FY2024
E	Public Works Maintenance Staff, Repairs, and Facility Contracts	2,539,868.47	(1,714,294.65)	825,573.82	-	-	The expense information reported in May for Maintenance and Staff Repairs erroneously included the Management Fee (Row G), Utilities (Row B), Insurance Costs (Rows D1 and D2), Facility Contracts (Row F) and SDG&E Community Benefit Payment (Row H). These items were removed from this amount and reported separately. The May calculation included expenses through January 2024 in the 5-year average, so the numbers were updated to reflect expenses for the full fiscal year 2024
F	Facility Contracts	112,054.00	(112,054.00)	-	-	-	This amount was included in Maintenance Staff & Repairs in May and is accounted for in Public Works Maintenance Staff & Repairs. The tab provides additional information on the Facility Contracts the City is funding for the facility
G	Management Fee to Operator	660,000.00	-	660,000.00	-	-	This amount was included in Maintenance Staff & Repairs. The tab provides the Management Fee for the previous 5 fiscal years. The amount of \$660,000 included in this calculation reflects the subsidy under the current Management Agreement with the Foundation
H	SDG&E Community Benefit Payment	-	200,000.00	-	-	200,000.00	This amount was included in Maintenance Staff & Repairs. SDG&E pays \$200,000 annually to the City through 2025 under the terms of the Palomar Energy Facility Development Agreement. Although this is not a cost to the City, it is money that has supported operations and maintenance at the CCAE, so any future operator should be aware that this source of funding will no longer be available after 2025.
I	Security staff time included in Maintenance Staff and Repairs	-	82,200.00	-	82,200.00	-	Beginning in FY2020-21 the City provided Security services at the facility using Temporary Part-Time Park Rangers. The CCAE agreed to fully reimburse the costs incurred by the City at \$6,849.99 per month or \$82,200 annually. Effective May 2024, security costs are paid by the CCAE Foundation.
		<b>\$ 4,487,722.53</b>	<b>\$ (1,607,644.92)</b>	<b>\$ 2,559,446.23</b>	<b>\$ 120,631.38</b>	<b>\$ 200,000.00</b>	

\*please note this workbook is for illustrative purposes for potential proposals to operate the CCAE facility; proposals should take into account operator's business model preferences

**TABLE A - SAN DIEGO GAS AND ELECTRIC EXPENSES - CCAE**

<i>Updated Information - Reported in City's Financial Ledger</i>						
	2018-19	2019-20	2020-21 (COVID year)	2021-22	2022-23	2023-24
<i>CCAЕ Expenses in Dept Expenditure Reports</i>	\$ 734,189.17	\$ 810,366.95	\$ 502,814.97	\$ 964,997.16	\$ 1,165,004.90	\$ 1,205,203.56
					\$ 835,474.63	
					5-Year Average	
					FY2019-FY2023	

<i>SDG&amp;E ACCOUNTS - INFORMATION ORIGINALLY PRESENTED IN MAY</i>										
	Account Number	Split with City	2018-19	2019-20	2020-21 (COVID year)	2021-22	2022-23	2023-24 (as of Jan 2024)	Totals (Actual)	
SDG&E	Conference Center (E1) Acct No. 1090235958	-	\$ 124,659.35	\$ 112,997.11	\$ 89,496.34	\$ 157,108.03	\$ 170,670.14	\$ 72,300.91	\$ 602,572.53	
	Conference Center (E2) Acct No. 8965228968	-	\$ 6,975.30	\$ 6,397.62	\$ 6,685.58	\$ 6,356.49	\$ 5,405.30	\$ 2,960.51	\$ 27,805.50	
	Conference Center (G1) Acct No. 1090235958	-	\$ 2,058.39	\$ 2,619.62	\$ 1,466.48	\$ 3,041.11	\$ 3,844.33	\$ 1,833.32	\$ 12,804.86	
	Community Theatre Acct No. 2215235959	-	\$ 126,233.48	\$ 112,390.92	\$ 66,624.94	\$ 127,280.50	\$ 142,588.91	\$ 63,188.80	\$ 512,074.07	
	Concert Hall (E.) Acct No. 3340235951	-	\$ 255,477.32	\$ 243,254.26	\$ 142,828.07	\$ 270,807.63	\$ 284,308.64	\$ 128,090.85	\$ 1,069,289.45	
	Concert Hall (G) Acct No. 3340235951	-	\$ 290.81	\$ 783.41	\$ 740.26	\$ 209.81	\$ 129.48	\$ 72.82	\$ 1,935.78	
	Museum Acct No. 5590235952	-	\$ 66,989.46	\$ 70,931.08	\$ 63,197.51	\$ 86,173.04	\$ 90,033.43	\$ 41,556.58	\$ 351,891.64	
	Central Plant (E1) Acct No. 7840235955	<b>80 CCAE /20 Build Maint</b>	\$ 106,828.23	\$ 97,878.90	\$ 94,944.37	\$ 116,292.40	\$ 124,080.22	\$ 42,256.00	\$ 475,451.89	
	Central Plant (E2) Acct No. 8965235954	<b>80 CCAE /20 Build Maint</b>	\$ 30,729.12	\$ 36,595.98	\$ 29,090.92	\$ 36,409.54	\$ 38,273.39	\$ 141,241.63	\$ 281,611.46	
	Central Plant (G) Acct No. 6715235953	<b>80 CCAE /20 Build Maint</b>	\$ 137,139.49	\$ 140,975.02	\$ 112,220.10	\$ 231,562.41	\$ 303,423.16	\$ 69,358.41	\$ 857,539.10	
		<b>TOTALS</b>		\$ 857,380.95	\$ 824,823.92	\$ 607,294.57	\$ 1,035,240.96	\$ 1,162,757.00	\$ 562,859.83	\$ 4,192,976.28
								<b>5-Year Average \$</b>	<b>897,499.48</b>	

**TABLE B - WATER AND WASTEWATER COSTS - CCAE**

<i>Water and Wastewater Costs for CCAE Facility (Program 50027)</i>		
<b>Year</b>	<b>Amount</b>	<b>Notes</b>
2018	\$ 100,635.15	
2019	\$ 100,070.35	
2020	\$ 84,997.55	
2021	\$ 70,370.47	
2022	\$ 95,117.58	
2023	\$ 95,619.23	
2024	\$ 102,213.38	Updated for full FY2024
<b>2019-2024 Average</b>	<b>\$ 89,663.64</b>	

*FY2019-2023* \$ 89,235.04

*FY2018-2023* \$ 91,135.06



**TABLE C - INFORMATION SYSTEMS AND TECHNOLOGY EXPENSE - CCAE**

<i>Information and Technology Expenses</i>		
<b>Year</b>	<b>Amount</b>	<b>Notes</b>
2023	\$ 33,440.00	Phone servers, internet access and employee costs

**Phones \$17,870**

CCAЕ has 49 phones, 1 menu, 6 ring groups, and they share the phone systems and services costs. In 2023/24 budget the allocated costs were 17,870 and in 2024/25 the budgeted allocation costs dropped to 11,660 due to overall changes in technology that lowered operating expenses.

**Infrastructure \$15,570**

This cost is for the infrastructure (firewall, switches, etc.) and services that include ISP, licenses, support, cyber security, auditing and other related costs. This also includes a portion of staffing costs to provide and ensure these services are 24/7/365. These are shared costs based on the number of devices (58 in 23/24 budget and 44 in 24/25 budget) on the network. Day to day tech support is handled by CCAE staff and not part of this calculation.

**TABLE D - SPECIAL LIABILITY INSURANCE - CCAE**

<i>Special Liability Insurance</i>			
<b>Entity</b>	<b>Year</b>	<b>Amount</b>	<b>Notes</b>
City Contribution	FY2024	\$ 115,294.14	City pays 75% of this amount, the current operator pays 25%
Operator Contribution	FY2024	\$ 38,431.38	City pays 75% of this amount, the current operator pays 25%
<b>Total</b>		<b>\$ 153,725.52</b>	

**TABLE E - PUBLIC WORKS STAFF AND FACILITY CONTRACT EXPENSE - CCAE**

<b>5 YEAR PUBLIC WORKS STAFF EXPENSES - CCAE</b>							
FUND	ACCT CODES		2019-20	2020-21	2021-22	2022-23	2023-24
			Actual	Actual	Actual	Actual	Actual
001	DEPT 140	5125 - BLDG MAINT INT SVCS	\$ 654,024.96	\$ 750,780.00	\$ 682,860.12	\$ 713,270.28	\$ 1,008,960.00
		5525 - LOAN PRIN PAY	\$ 4,224.72	\$ 2,111.52	\$ -	\$ -	\$ -
	PRGM 10049 Center for the Arts	5001 - REG FULL TIME	\$ -	\$ 78.53	\$ 1,958.21	\$ 47.46	\$ 95.49
		5025 - OTHER EMPL OVHD	\$ -	\$ 3.44	\$ 59.29	\$ 2.26	\$ 2.44
		5026 - PERS	\$ -	\$ 8.82	\$ 216.34	\$ 4.91	\$ 21.54
		5027 - MEDICAL	\$ -	\$ 2.42	\$ 91.70	\$ -	\$ 6.51
		5028 - WORK COMP	\$ -	\$ 7.94	\$ 48.70	\$ 3.93	\$ 5.66
		5030 - FLEX BEN	\$ -	\$ 2.13	\$ 85.62	\$ 2.58	\$ -
	PRGMS 50033 CFA Central Plant	5001 - REG FULL TIME	\$ 79.81	\$ -	\$ -	\$ -	\$ -
		5025 - OTHER EMPL OVHD	\$ 2.83	\$ -	\$ -	\$ -	\$ -
		5026 - PERS	\$ 9.01	\$ -	\$ -	\$ -	\$ -
		5027 - MEDICAL	\$ 19.63	\$ -	\$ -	\$ -	\$ -
		5028 - WORKERS COMP	\$ 7.31	\$ -	\$ -	\$ -	\$ -
	PRGMS 50028 Meeting Center	5001 - REG FULL TIME	\$ -	\$ -	\$ -	\$ -	\$ -
		5004 - TEMP PT	\$ -	\$ -	\$ -	\$ -	\$ -
		5020 - OT	\$ -	\$ -	\$ -	\$ -	\$ 1,933.93
		5025 - OTHER EMPL OVHD	\$ -	\$ -	\$ -	\$ -	\$ 30.16
		5026 - PERS	\$ -	\$ -	\$ -	\$ -	\$ 131.09
	PRGMS 50061 CCA Complex	5028 - WORKERS COMP	\$ -	\$ -	\$ -	\$ -	\$ 142.69
		5001 - REG FULL TIME	\$ 27,430.02	\$ 34,992.11	\$ 15,787.18	\$ 5,196.14	\$ 2,751.43
		5004 - TEMP PT	\$ 204.70	\$ -	\$ -	\$ -	\$ -
		5020 - OT	\$ 13,259.83	\$ 544.44	\$ -	\$ 601.29	\$ 761.92
		5025 - OTHER EMPL OVHD	\$ 1,433.02	\$ 1,319.55	\$ 493.28	\$ 150.62	\$ 102.02
		5026 - PERS	\$ 3,079.22	\$ 3,035.01	\$ 1,153.66	\$ 303.17	\$ 290.56
		5027 - MEDICAL	\$ 6,566.38	\$ 6,498.31	\$ 2,062.14	\$ 817.39	\$ 269.00
		5028 - WORKERS COMP	\$ 2,482.63	\$ 2,014.85	\$ 1,030.43	\$ 398.28	\$ 262.07
5030 - FLEX BEN		\$ 6.39	\$ 13.09	\$ -	\$ 1.65	\$ 7.66	
SUBTOTAL 001		\$ 751,695.76	\$ 807,545.62	\$ 709,565.10	\$ 721,759.79	\$ 1,016,652.83	
	229 DEPT 140	5209 - OTHER CAP OUTLAY	\$ -	\$ -	\$ -	\$ -	\$ 120,650.00
SUBTOTAL 229		\$ -	\$ -	\$ -	\$ -	\$ 120,650.00	
<b>TOTAL</b>			<b>\$ 751,695.76</b>	<b>\$ 807,545.62</b>	<b>\$ 709,565.10</b>	<b>\$ 721,759.79</b>	<b>\$ 1,137,302.83</b>

5-Year Average	\$ 825,573.82
The expenses reflect Public Works staff time and facility contracts listed on Tab F	

**TABLE F - FACILITY CONTRACT EXPENSE - CCAE (included in information on Table E)**

<b>CCAЕ ANNUAL FACILITY CONTRACTS</b>		
<b>Service</b>	<b>Est Cost</b>	<b>Notes</b>
Elevator Permits (Wondoor)	\$ 2,154.00	Inspection And Testing The Operation Of The Automatic Closing Fireguard Doors
Amtech	\$ 20,600.00	Elevator Repair Services
Rigging Inspection	\$ 3,500.00	Examine And Certify Fall Security Apparatus
Cci	\$ 7,200.00	Water Treatment Services For Cooling Towers, Chillers, Hot Water Systems
Ao Reed Vfd Inspections	\$ 11,556.00	Monthly Variable Frequency Drives (Vfd) Services For Boilers, Chillers, Air Handlers
Gala Systems	\$ 5,000.00	Maintenance And Inspection Of Orchestra Lifts
Omni Concepts	\$ 5,000.00	Annual Inspection Services Of Partition Walls
Safeguard Exhaust Cleaners	\$ 3,000.00	Exhaust System Cleaning (Kitchen Hoods, Ductwork, And Exhaust Fans)
Culligan	\$ 3,600.00	Maintenance Of Three Portable Exchange Soft Water Tanks
Progressive Technology	\$ 21,144.00	Security/Fire Alarm Services
Generators Global Power	\$ 3,500.00	Preventative Generator Maintenance
Generator Permits	\$ 20,000.00	Preventative Generator Maintenance For Permitting
Firehawk Fire Ext. Inspection	\$ 5,800.00	Hand Held Portable Fire Extinguisher Inspections, Testing, And Recharge
	<b>\$ 112,054.00</b>	

*This amount is included in Public Works Maintenance Staff & Repairs. The tab provides additional information on the Facility Contracts the City is funding for the facility*

**TABLE G - MANAGEMENT FEE EXPENSE - CCAE**

<i>CCAЕ Management Fee by Fiscal Year</i>							
FUND	ACCT CODES	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
		Actual	Actual	Actual	Actual	Actual	Actual
001-140	5131 - PROF SVCS	\$ 762,440.00	\$ 788,365.00	\$ 788,370.00	\$ 800,200.00	\$ 656,527.50	\$ 660,000.00
<b>TOTAL</b>		<b>\$ 762,440.00</b>	<b>\$ 788,365.00</b>	<b>\$ 788,370.00</b>	<b>\$ 800,200.00</b>	<b>\$ 656,527.50</b>	<b>\$ 660,000.00</b>

**TABLE H - SDG&E PUBLIC BENEFIT PAYMENTS (ending in 2025) - CCAE**

As part of the Palomar Energy Plant Development Agreement between the City and SDG&E, to provide an additional Community Benefit SDG&E agreed to support funding for the California Center for the Arts in the amount of \$200,000 until an aggregate total of \$4,000,000. The final payment under the current agreement will be made in January 2025

<u>Date</u>	<u>Amount</u>
4/27/2006	200,000.00
2/12/2007	200,000.00
1/23/2008	200,000.00
2/5/2009	200,000.00
1/28/2010	200,000.00
1/25/2011	200,000.00
2/13/2012	200,000.00
2/4/2013	200,000.00
1/28/2014	200,000.00
1/30/2015	200,000.00
2/4/2016	200,000.00
3/1/2017	200,000.00
2/5/2018	200,000.00
2/27/2019	200,000.00
2/25/2020	200,000.00
3/3/2021	200,000.00
3/28/2022	200,000.00
3/8/2023	200,000.00
1/29/2024	200,000.00
	<hr/>
	<b>3,800,000.00</b>
To be Distributed	
January 2025	200,000.00
	<hr/>
	<b>4,000,000.00</b>

5.7.2 Additional Community Benefit. Beginning in the calendar year during which the Power Project begins commercial operation, Palomar Energy shall make an annual payment to the City of Escondido which shall be used exclusively for the purpose of funding the California Center for the Arts Escondido. For the calendar year in which such commercial operation occurs, the payment shall be \$200,000 multiplied by the fraction of the calendar year remaining between the date of commercial operation and the end of such calendar year. For each calendar year thereafter, the contribution shall be \$200,000 per year payable on or before January 31st, and such payments shall continue until Palomar Energy has paid an aggregate total of \$4,000,000 equaling the undiscounted sum of all annual payments. Nothing in this section shall prevent Palomar from paying all or any portion of this benefit in advance. Prior to commercial operation, Palomar shall cooperate with the City in preparing any necessary agreements to arrange for and implement payment of this additional community benefit, including such agreements as are necessary to assure that the benefit is payable by any successors and assigns of Palomar.



# STAFF REPORT

August 28, 2024

File Number 0600-10; A-3527(A); A-3527(B)

## SUBJECT

**ESCONDIDO CREEK TRAIL MULTI-USE PATH PROJECT: AWARD OF CONSTRUCTION CONTRACT IN THE AMOUNT OF \$11,781,411.50 TO TRI-GROUP CONSTRUCTION AND AWARD CONSTRUCTION MANAGEMENT CONSULTING AGREEMENT IN THE AMOUNT OF \$1,074,473 TO T.Y. LIN INTERNATIONAL**

## DEPARTMENT

Development Services Department, Engineering Division

## STAFF RECOMMENDATION

Request the City Council adopt Resolution No. 2024-107 authorizing the Mayor to execute a Public Improvement Agreement for the Escondido Creek Trail Multi-Use Path Project (“Project”) the Tri-Group Construction and Development, Inc., determined to be the lowest responsible and responsive bidder, in the amount of \$11,781,411.50.

Further, it is requested that the City Council adopt Resolution No. 2024-108 authorizing the Mayor execute a consulting agreement with T.Y. Lin International in the amount of \$1,074,473 to provide construction management, inspection, and environmental services for the Project.

Staff Recommendation - Approval (Chris McKinney, Deputy City Manager, and Jonathan Schauble, City Engineer)

Presenters: Joanna Axelrod, Deputy City Manager, and Jonathan Schauble, City Engineer

**ESSENTIAL SERVICE** – Yes, Infrastructure/Parks Facilities

**COUNCIL PRIORITY** – Improve Public Safety/Increase Attraction of People/Encourage Housing Development

## FISCAL ANALYSIS

The Project is included in the adopted Capital Improvement Program and is funded by a \$8.5 million Proposition 68 Statewide Park Development and Community Revitalization Program grant, a \$3.5 million Clean California Local Grant Program Cycle 2 grant, \$2.2 million in American Rescue Plan funds, and \$3.6 million in TransNet funds.



# CITY of ESCONDIDO

## STAFF REPORT

### PREVIOUS ACTION

On January 25, 2012, the City Council adopted Resolution No. 2012-11 accepting the final Escondido Creek Trail Master Plan. The Trail Master Plan provided a guide for the future development of the Creek Trail based on the community feedback collected through a series of community meetings and online surveys.

On June 5, 2019, the City Council adopted Resolution No. 2019-87, authorizing the submittal for a California Department of Parks and Recreation Proposition 68 Statewide Park Development and Community Revitalization Program grant in the amount of \$8.5 million to renovate and expand the Escondido Creek Trail. City Council also authorized a \$40,000 budget adjustment for Park Development Fees to fund community outreach to facilitate the scope and design of the project for the purposes of the grant application.

On May 20, 2020, the City Council adopted Resolution No. 2020-60 authorizing a Consulting Agreement with RRM Design Group for the Escondido Creek Trail Expansion and Renovation Design Project.

On September 29, 2021, the City Council adopted Resolution No. 2021-146 and approved a budget adjustment allocating \$22,808,509 based on the initial guidelines established by the Treasury Department including \$1,000,000 in funding for the Escondido Creek Trail Expansion and Renovation Project.

On December 13, 2023, the City Council adopted Resolution No. 2023-162 accepting a \$3,503,000 Clean California Local Grant Program award for the Escondido Creek Trail Project.

On January 31, 2024, the City Council approved the recommended approach for expending American Rescue Plan Act funds including an allocation of \$1,200,000 for Construction Management of the Escondido Creek Trail Expansion and Renovation Project.

### BACKGROUND

The Project will improve approximately 4.5 miles of the existing Escondido Creek Trail (between Harmony Grove Road and Midway Drive) through the construction of multiple trail amenities to transform the Class I bicycle lane into a linear park. The Project will also add approximately 0.4 miles of new bicycle lanes to extend the Creek Trail from Harmony Grove Road to the Citracado Parkway extension. The project will open the closed side of the Creek Trail and construct more than 1.5 miles of new decomposed granite walking trails to provide a separate path for pedestrians and joggers. Key elements of the Project will include the installation of shade structures, bench seating, trash receptacles and bottle filling stations, fitness equipment, trail lighting, natural play equipment, decorative fencing and artistic features, landscape and irrigation, and wayfinding and educational signage.

On June 13, 2024, two sealed bids were received in response to the advertised request for bids for the Project. The confirmed totals for the total base and additive alternate bid items are listed below:





# CITY of ESCONDIDO

## STAFF REPORT

Granite Construction Company	\$16,084,772.00
Tri-Group Construction and Development, Inc.	\$11,781,411.50

Staff has evaluated the bids and determined that the bid submitted by Tri-Group Construction and Development, Inc. is the lowest responsive and responsible bid. The lowest bid was within 8 percent of the Engineer's Estimate. Staff recommends awarding the construction contract to Tri-Group Construction and Development, Inc. for the base and additive alternate bid scope of work in the amount of \$11,781,411.50.

Staff further recommends authorizing the execution of a consulting agreement with T.Y. Lin International to provide construction management, inspection, and environmental services for the Project. T.Y. Lin offers an experienced Resident Engineer who previously worked with the City as part of the construction management team for the Citracado Parkway Improvement Project. If approved, T.Y. Lin will manage all aspects of construction, including prioritizing public safety, coordination of inspection and testing of public improvements, coordination of new electrical points of service with SDG&E, environmental monitoring, responding to requests for information, review of submittals, and contractor progress payments. Construction management, inspection and environmental services generally cost 10-15 percent of the estimated construction cost. The proposed contract amount of \$1,074,473 is 9.1 percent of the construction cost.

### RESOLUTIONS

- a. Resolution No. 2024-107
- b. Resolution No. 2024-107 – Exhibit "A" – Public Improvement Agreement
- c. Resolution No. 2024-108
- d. Resolution No. 2024-108 – Exhibit "A" – Consulting Services Agreement

## RESOLUTION NO. 2024-107

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, A PUBLIC IMPROVEMENT AGREEMENT FOR THE ESCONDIDO CREEK TRAIL MULTI-USE PATH PROJECT

WHEREAS, the City Council has allocated funding in the adopted Capital Improvement Program budget for the Escondido Creek Trail Multi-Use Path Project ("Project"); and

WHEREAS, a Notice Inviting Bids for the Project was duly published on May 9, 2024 ("Notice"); and

WHEREAS, in response to the Notice, the City received two sealed bids for the Project, which were opened and evaluated on June 6, 2024; and

WHEREAS, Tri-Group Construction and Development, Inc. was determined to be the lowest responsive and responsible bidder; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to authorize a Public Improvement Agreement with Tri-Group Construction and Development, Inc. in the amount of \$11,781,411.50 for the Project.

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

1. That the above recitations are true.
2. That the City Council authorizes the Mayor to execute, on behalf of the City, a Public Improvement Agreement with Tri-Group Construction and Development, Inc., in a substantially similar

form to that which is attached and incorporated to this Resolution as Exhibit "A", and subject to final approval as to form by the City Attorney.

3. The City Engineer shall have the authority to execute change orders to the Public Improvement Agreement in an amount equal to 10 percent of the original contract price.



CITY OF ESCONDIDO  
PUBLIC IMPROVEMENT AGREEMENT

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

Between: CITY OF ESCONDIDO  
a California municipal corporation  
201 N. Broadway  
Escondido, CA 92025  
Attn: Jonathan Schauble  
760-839-4072  
("CITY")

And: Tri-Group Construction and Development, Inc.  
a California corporation  
9580 Black Mountain Road, Suite L  
San Diego, CA 82126  
Attn: Ghasson Assi  
858-689-0058  
("CONTRACTOR").

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

WHEREAS, the Parties desire to enter into this Agreement for the performance of work relating to the Escondido Creek Trail Multi-Use Path Project (“Project”), occurring on property located at various locations along the Escondido Creek Trail (“Property”), as further described in the Project documents.

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

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

2. Description and Performance of Work. CONTRACTOR shall furnish all work described in the Project Documents ("Work"). All Work to be performed and materials to be furnished shall be completed in a good workmanlike manner, free from defects, in strict accordance with the plans, drawings, specifications, and requirements set forth in the Project Documents and all provisions of this Agreement.
3. Compensation. In exchange for CONTRACTOR's completion of the Work, the CITY shall pay, and CONTRACTOR shall accept in full, an amount not to exceed the sum of **\$11,781,411.50** ("Contract Price"). CONTRACTOR shall be compensated only for performance of the Work described in this Agreement. No compensation shall be provided for any other work or services without the CITY's prior written consent.
4. Term and Time of Performance. CONTRACTOR shall commence work within one week from the CITY's notice to proceed. CONTRACTOR shall diligently perform and complete the Base Bid Schedule A, Additive Alternate Bid Schedule B, and Additive Alternate Bid Schedule C work with professional quality and technical accuracy within **223 working days** from the date specified in the notice to proceed ("Completion Date"). Extension of terms or time of performance shall be subject to the CITY's sole discretion.
5. Time Is of the Essence. If the Work is not completed by the Completion Date, it is understood that the CITY will suffer damage. It being impractical and infeasible to determine the amount of actual damage, in accordance with Government Code section 53069.85, the Parties agree that CONTRACTOR shall pay to the CITY as fixed and liquidated damages, and not as a penalty, the sum of **\$1,000 per day** for each calendar day of delay until the Work is completed and accepted ("Liquidated Damages Amount"). The Liquidated Damages Amount shall be deducted from any payments due to, or that become due to, CONTRACTOR. CONTRACTOR and CONTRACTOR'S surety shall be liable for the Liquidated Damages Amount.
6. Insurance Requirements.
  - a. CONTRACTOR shall procure and maintain, at its own cost, during the entire term of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Work, and the results of such Work, by CONTRACTOR, its agents, representatives, employees, or subcontractors. Insurance coverage shall be at least as broad as the following:
    - (1) *Commercial General Liability.* Insurance Services Office ("ISO") Form CG 0001 11188 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury (including emotional distress), sickness, disease, or death of any person other than the CONTRACTOR's employees, and personal and advertising injury, and damages because of injury or destruction of tangible property, including loss of use resulting there from, with limits no less than \$3,000,000 combined single limit coverage per occurrence for bodily injury and property damage; or, if a general aggregate limit is applicable, either: (i) the general aggregate limit shall specifically apply to the project identified in the bid specifications or to the location of such project which is the subject of these bid specifications with coverage to be no less than \$3,000,000, or (ii) the general aggregate shall be at least \$3,000,000 combined single limit coverage per occurrence for bodily injury and property damage.
    - (2) *Automobile Liability.* ISO Form CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired (Code 8) and non-owned autos (Code 9), including damages because of bodily injury, death of a person, or property damage

arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under CONTRACTOR's control and engaged in the Work, with limits no less than \$3,000,000 combined single limit per accident for bodily injury and property damage.

- (3) *Workers' Compensation.* Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
  - (4) If CONTRACTOR maintains broader coverage and/or higher limits than the minimums otherwise required by this Agreement, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by CONTRACTOR.
- b. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:
- (1) *Compliance with General Condition Requirements.* Insurance coverage shall comply with and meet all requirements set forth in Article 5.2 of General Conditions
  - (2) *Acceptability of Insurers.* Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A-:VII, or as approved by the CITY.
  - (3) *Additional Insured Status.* Both the Commercial General Liability and the Automobile Liability policies must name the CITY (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of *both* CG 20 10, CG 20 26, CG 20 33, or CG 20 38, *and* CG 20 37 if a later edition is used. The Automobile Liability additional insured endorsement shall be at least as broad as ISO Form CA 20 01.
  - (4) *Primary Coverage.* CONTRACTOR's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the CITY, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, officers, agents, employees, or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
  - (5) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.
  - (6) *Subcontractors.* If applicable, CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated within this Agreement, and CONTRACTOR shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.
  - (7) *Waiver of Subrogation.* CONTRACTOR hereby grants to the CITY a waiver of any right to subrogation that any insurer of CONTRACTOR may acquire against the CITY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this subsection shall apply regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy

required by this Agreement shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONTRACTOR, its agents, representatives, employees and subcontractors.

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

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

- a. CONTRACTOR (including CONTRACTOR's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind),

suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "Claims"), of every nature caused by, arising out of, or in connection with CONTRACTOR's (including CONTRACTOR's agents, employees, and subcontractors, if any) Work pursuant to this Agreement or its failure to comply with any of its obligations contained herein, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY.

- b. CONTRACTOR (including CONTRACTOR's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all Claims caused by, arising under, or resulting from any violation, or claim of violation, of the San Diego Municipal Storm Water Permit (Order No. R9-2013-0001, as amended) of the California Regional Water Quality Control Board, Region 9, San Diego, that the CITY might suffer, incur, or become subject to by reason of, or occurring as a result of, or allegedly caused by, any Work performed pursuant to this Agreement.
- c. All terms and provisions within this Section 7 shall survive the termination of this Agreement.

8. Bonds.

- a. CONTRACTOR shall furnish and deliver to the CITY, simultaneously with the execution of this Agreement, the following surety bonds:
  - (1) *Faithful Performance Bond.* CONTRACTOR shall furnish to the CITY a surety bond in an amount equal to the Contract Price as security for faithful performance of this Agreement.
  - (2) *Labor and Materials Bond.* CONTRACTOR shall furnish to the CITY a surety bond in an amount equal to the Contract Price as security for payment to persons performing labor and furnishing materials in connection with the Project.
- b. All bonds furnished to the CITY pursuant to this Agreement shall be in the form set forth herein and approved by the City Attorney.
- c. All bonds shall be executed by sureties that are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- d. If the surety on any bond furnished by the CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Work is located, the CONTRACTOR shall, within seven days thereafter, substitute another bond and surety, which must be acceptable to the CITY. No portion of the Work shall be performed without bonds, in a form and issued by a surety acceptable to the City. If one or more of such bonds shall, at any time, not be in full force and effect, CONTRACTOR shall immediately cease performance of the Work until CONTRACTOR is in full compliance with the bonding requirements of this Agreement and California law. All delays and costs incurred or resulting from such occurrence shall be to the exclusive account of CONTRACTOR. Failure of the CONTRACTOR to promptly cure any failure to have the necessary bonds in full force and effect shall be grounds for immediate termination of this Agreement.



- e. All bonds shall be obtained from surety companies that are duly licensed or authorized in the State of California. Such surety companies shall also meet any additional requirements and qualifications as may be provided in the Supplementary General Conditions.
9. Substitution of Securities. This Agreement is subject to California Public Contract Code section 22300, which permits the substitution of securities for any monies withheld by the CITY to ensure performance of this Agreement. At the request and expense of the CONTRACTOR, securities equivalent to the amount withheld shall be deposited with the CITY, or with a state- or federally-chartered bank in this state as the escrow agent, who shall then pay those moneys to CONTRACTOR. Upon satisfactory completion and acceptance of the Work, such securities shall be returned to the CONTRACTOR.
10. Contractor Default. In the event CONTRACTOR, for a period of 10 calendar days after receipt of written demand from the CITY to do so ("Cure Period"), fails to furnish tools, equipment, or labor in the necessary quantity or quality required by this Agreement, or fails to prosecute the Work and all parts thereof in a diligent and workmanlike manner, or after commencing to do so within the Cure Period, fails to continue to do so, then the CITY in its sole discretion may exclude the CONTRACTOR from the Property, or any portion thereof, and take exclusive possession of the Property or any portion thereof, together with all material and equipment thereon, and may complete the Work or any portion of the Work, either by (i) furnishing the necessary tools, equipment, labor, or materials; or (ii) letting the unfinished portion of the work, or any portion thereof, to another contractor; or (iii) demanding the surety hire another contractor; or (iv) any combination of such methods. The CITY's procuring of the completion of the Work, or the portion of the Work taken over by the CITY, shall be a charge against the CONTRACTOR and may be deducted from any money due or to become due to CONTRACTOR from the CITY, or the CONTRACTOR shall pay the CITY the amount of such charge, or the portion thereof unsatisfied. The sureties provided for under this Agreement shall become liable for payment if CONTRACTOR fails to pay in full any such cost incurred by the CITY. The permissible charges for any such procurement of the completion of the Work include actual costs and fees incurred to third party individuals and entities (including but not limited to consultants, attorneys, inspectors, and designers) and actual costs incurred by the CITY for the increased dedication of time of the CITY's employees to the Project.
11. Other Legal Requirements Incorporated. Each and every provision of law and clause required by law to be inserted in this Agreement or its attachments shall be deemed to be inserted herein, and this Agreement shall be read and enforced as though such law or clause were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either Party, the Agreement shall forthwith be physically amended to make such insertion or correction, without further changes to the remainder of the Agreement.
12. Merger Clause. This Agreement, together with its attachments or other documents described or incorporated herein, if any, constitutes the entire agreement and understanding of the CITY and CONTRACTOR concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. In the event of any conflict between the provisions of this Agreement and any of its attachments or related documents, if any, the provisions of this Agreement shall prevail.
13. Attorney's Fees and Costs. In any action to enforce the terms and conditions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs.
14. Independent Contractor. CONTRACTOR is an independent contractor, and no agency or employment relationship is created by the execution of this Agreement.

15. Amendment. This Agreement shall not be amended except in a writing signed by the CITY and CONTRACTOR, and pursuant to action of the Escondido City Council.
16. Anti-Waiver Clause. None of the provisions of this Agreement shall be waived by the CITY because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived by the CITY, in whole or in part.
17. Severability. This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.
18. Governing Law. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Venue for any action arising from this Agreement shall be conducted only in the state or federal courts of San Diego County, California.
19. Counterparts. This Agreement may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement by electronic means, including an attachment to an email, shall be effective as delivery of an executed original. The Agreement on file with the City is the copy of the Agreement that shall take precedence if any differences exist between or among copies or counterparts of the Agreement.
20. Provisions Cumulative. The foregoing provisions are cumulative to, in addition to, and not in limitation of any other rights or remedies available to the CITY.
21. Business License. CONTRACTOR shall obtain a City of Escondido Business License prior to execution of this Agreement and shall maintain such Business License throughout the term of this Agreement.
22. Compliance with Laws, Permits, and Licenses. CONTRACTOR shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements in effect during the term of this Agreement. This shall include, but shall not be limited to, all California Labor Code laws regarding payment of prevailing wages and all OSHA regulations. CONTRACTOR shall obtain any and all permits, licenses, and other authorizations necessary to perform the work under this Agreement. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.
23. Prevailing Wages and Department of Industrial Relations Compliance. Pursuant to California Labor Code section 1770 et seq., CONTRACTOR agrees that a prevailing rate and scale of wages, in accordance with applicable laws, shall be paid in performing this Agreement. CONTRACTOR shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements pertaining to the payment of prevailing wages, including but not limited to the keeping of certified payroll records, overtime pay, employment of apprentices, and workers' compensation coverage, as further set forth in the General Conditions. CONTRACTOR shall file the required workers' compensation certificate before commencing work under this Agreement. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. CONTRACTOR shall post all job site notices required by regulation. CONTRACTOR, as well as any subcontractors, shall be registered pursuant to California Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal (subject to the requirements of Public Contract Code section 4104), or engage in the performance of any public works contract subject to the

requirements of Division 2, Part 7, Chapter 1 of the California Labor Code. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.

24. Immigration Reform and Control Act of 1986. CONTRACTOR shall keep itself informed of and shall comply with the Immigration Reform and Control Act of 1986 ("IRCA"). CONTRACTOR represents and warrants that all of its employees and the employees of any subcontractor retained by CONTRACTOR who perform any portion of the Work under this Agreement are and will be authorized to perform the Work in full compliance with the IRCA. CONTRACTOR affirms that as a licensed contractor and employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will perform the Work. CONTRACTOR agrees to comply with the IRCA before commencing any portion of the Work, and continuously throughout the performance of the Work and the term of this Agreement.
25. Effective Date. Unless a different date is provided in this Agreement, the effective date of this Agreement shall be the latest date of execution set forth by the names of the signatories below.
26. Federal Contract Provisions. CONTRACTOR shall comply with the Federal Contract Provisions which are attached to this Agreement as Exhibit 1 and incorporated herein by this reference. CONTRACTOR understands and acknowledges that, at the time it executes this Agreement, CONTRACTOR shall also execute and return to the CITY the Certification Regarding Lobbying which is included in Exhibit 1 as Attachment A.

(SIGNATURE PAGE FOLLOWS)

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

CITY OF ESCONDIDO

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

\_\_\_\_\_  
Dane White, Mayor

Tri-Group Construction and Development, Inc.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name & Title (please print)

\_\_\_\_\_  
Contractor's License No.

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

APPROVED AS TO FORM:

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

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

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

## EXHIBIT 1

### 2 C.F.R Part 200 Appendix II Federal Contract Provisions

The Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") administrated by the U.S Department of Treasury ("Federal Awarding Agency") under the American Rescue Plan Act of 2021 ("ARPA") will be used to fund all or a portion of this Agreement, and as such CONTRACTOR shall also comply with any applicable sections of 2 CFR Appendix II Part 200 relating to required contract provisions for federal awards, any applicable sections will be incorporated by reference into the resulting agreement including without limitations, the following:

#### 1. DEBARMENT AND SUSPENSION

- a. This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, CONTRACTOR is required to verify that none of CONTRACTOR's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. The CONTRACTOR shall comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction CONTRACTOR enters into.
- c. This certification is a material representation of fact relied upon by the CITY. If it is later determined that CONTRACTOR did not comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, in addition to remedies available to the CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- d. The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C throughout the term of this Agreement. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### 2. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

The CONTRACTOR acknowledges that Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") established by the American Rescue Plan Act of 2021 will be used to fund all or a portion of this Agreement. The CONTRACTOR shall comply with all applicable federal law, regulations, executive orders, SLFRF policies, procedures, and directives.

#### 3. NO OBLIGATION BY FEDERAL GOVERNMENT

The United States Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the CITY, CONTRACTOR, or any other party pertaining to any matter resulting from this Agreement.

#### 4. PROGRAM FRAUD AND FALSE OR FRADULENT STATEMENT OR RELATED ACTS

CONTRACTOR acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to CONTRACTOR's actions pertaining to this Agreement

## EXHIBIT 1

### 2 C.F.R Part 200 Appendix II Federal Contract Provisions

#### 5. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

##### Clean Air Act

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

##### Federal Water Pollution Control Act

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

#### 6. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

- a. Prior to entering into this Agreement, CONTRACTOR shall file the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended)). Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.
- b. Required Certification. At the time CONTRACTOR executes this Agreement, CONTRACTOR shall provide the CITY with a completed Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying. A blank Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying is attached to this Exhibit 1 as **Attachment A** and incorporated herein by this reference.

## EXHIBIT 1

### 2 C.F.R Part 200 Appendix II Federal Contract Provisions

#### 7. PROCUREMENT OF RECOVERED MATERIALS

In the performance of this Agreement, CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (1) competitively within a timeframe providing for compliance with the Agreement's performance schedule, (2) meeting Agreement performance requirements, or (3) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines website, located at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

CONTRACTOR shall also comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

#### 8. ACCESS TO RECORDS

(1) The CONTRACTOR agrees to provide the CITY, the Federal Awarding Agency Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of CONTRACTOR that are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The CONTRACTOR agrees to provide the Federal Awarding Agency Administrator or their authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.

(4) In compliance with the Disaster Recovery Act of 2018, the CITY and CONTRACTOR acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the Federal Awarding Agency Administrator or the Comptroller General of the United States.

#### 9. FEDERAL AWARDING AGENCY SEALS, LOGO, AND FLAGS

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

#### 10. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

## EXHIBIT 1

### 2 C.F.R Part 200 Appendix II Federal Contract Provisions

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- (4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:



## EXHIBIT 1

### 2 C.F.R Part 200 Appendix II Federal Contract Provisions

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

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

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

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

#### 11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- A. Overtime requirements. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in this section.

## EXHIBIT 1

### 2 C.F.R Part 200 Appendix II Federal Contract Provisions

- C. *Withholding for unpaid wages and liquidated damages.* The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in this section.
- D. *Subcontracts.* The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in this section.
- E. *Further Compliance with the Contract Work Hours and Safety Standards Act.*
- a. The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserved them for a period of three years from the completion of the contract all labors and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
  - b. Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Federal Awarding Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## 12. AFFIRMATIVE SOCIOECONOMIC STEPS

If subcontracts are to be let, the prime Consultant is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

## ATTACHMENT A

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

#### Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

The CONTRACTOR, Tri-Group Construction and Development, Inc., a California Corporation, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date



Bond No.: \_\_\_\_\_  
Premium: \_\_\_\_\_

**LABOR AND MATERIALS BOND**

KNOW ALL BY THESE PRESENTS,

WHEREAS, The City Council of the City of Escondido, State of California, and Tri-Group Construction and Development, Inc., a California corporation ("Principal"), have entered into a certain Public Improvement Agreement dated \_\_\_\_\_ ("Agreement") hereby referred to and made a part hereof), whereby Principal has agreed to install and complete certain designated public improvements associated with the Escondido Creek Trail Multi-Use Path Project.

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

NOW, THEREFORE, the Principal and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of California and authorized to act as a surety in the State of California ("Surety"), are held firmly bound unto the City and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the Agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of eleven million, seven hundred and eighty-one thousand, four hundred and eleven dollars and fifty cents (\$11,781,411.50), lawful money of the United States of America, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

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

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

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or to the work to be performed thereunder or the

specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

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

\_\_\_\_\_  
Name of Principal

By: \_\_\_\_\_  
Signature of Person Signing on Behalf of Principal

\_\_\_\_\_  
Address of Principal

\_\_\_\_\_  
Name of Person Signing on Behalf of Principal

\_\_\_\_\_  
Title of Person Signing on Behalf of Principal

\_\_\_\_\_  
Name of Surety

By: \_\_\_\_\_  
Signature of Person Signing on Behalf of Surety

\_\_\_\_\_  
Address of Surety

\_\_\_\_\_  
Name of Person Signing on Behalf of Surety

\_\_\_\_\_  
Title of Person Signing on Behalf of Surety

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

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

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



Bond No.: \_\_\_\_\_  
Premium: \_\_\_\_\_

**FAITHFUL PERFORMANCE BOND**

KNOW ALL BY THESE PRESENTS,

WHEREAS, The City Council of the City of Escondido, State of California, and Tri-Group Construction and Development, Inc., a California corporation ("Principal"), have entered into a certain Public Improvement Agreement dated \_\_\_\_\_ ("Agreement") hereby referred to and made a part hereof), whereby Principal has agreed to install and complete certain designated public improvements associated with the Escondido Creek Trail Multi-Use Path Project.

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

NOW, THEREFORE, we, the Principal and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of California and authorized to act as a surety in the State of California ("Surety"), are held and firmly bound unto the City of Escondido, a California municipal corporation ("City") in the penal sum of eleven million, seven hundred and eighty-one thousand, four hundred and eleven dollars and fifty cents (\$11,781,411.50), lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

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

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

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

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

\_\_\_\_\_  
Name of Principal

By: \_\_\_\_\_  
Signature of Person Signing on Behalf of Principal

\_\_\_\_\_  
Address of Principal

\_\_\_\_\_  
Name of Person Signing on Behalf of Principal

\_\_\_\_\_  
Title of Person Signing on Behalf of Principal

\_\_\_\_\_  
Name of Surety

By: \_\_\_\_\_  
Signature of Person Signing on Behalf of Surety

\_\_\_\_\_  
Address of Surety

\_\_\_\_\_  
Name of Person Signing on Behalf of Surety

\_\_\_\_\_  
Title of Person Signing on Behalf of Surety

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

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

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

## RESOLUTION NO. 2024-108

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, A CONSULTING AGREEMENT WITH T.Y. LIN INTERNATIONAL GROUP, LTD FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE ESCONDIDO CREEK TRAIL MULTI-USE PATH PROJECT

WHEREAS, the City Council has allocated funding in the adopted Capital Improvement Program budget for the Escondido Creek Trail Multi-Use Path Project (“Project”); and

WHEREAS, a Notice of Request for Proposals dated April 4, 2024 was issued for Construction Management Services to verify compliance with Project plans, specifications, and permitting requirements; and

WHEREAS, T.Y. Lin International Group, LTD (“T.Y. Lin”) was determined to be qualified to provide these services; and

WHEREAS, the City Council desires at this time and deems it to be in the best public interest to authorize the Mayor to execute a consulting agreement with T.Y. Lin in the amount of \$1,074,473.

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

1. That the above recitations are true.
2. That Mayor is authorized to execute, on behalf of the City, a consulting agreement with TY Lin, which is attached and incorporated to this Resolution as Exhibit “A”, and subject to final approval as to form by the City Attorney.





CITY OF ESCONDIDO  
CONSULTING AGREEMENT

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

Between: CITY OF ESCONDIDO  
a California municipal corporation  
201 N. Broadway  
Escondido, CA 92025  
Attn: Jonathan Schauble  
760-839-4072  
("CITY")

And: T.Y. Lin International Group, Ltd.  
a Delaware corporation  
404 Camino del Rio South Suite 700  
San Diego, CA 92108  
Attn: Wade Durant  
619-279-3489  
wade.durant@tylin.com  
("CONSULTANT").

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

WHEREAS, the CITY has determined that it is in the CITY's best interest to retain the professional services of a consultant to provide environmental services in adherence to the Mitigated Negative Declaration (MND) and Mitigation Monitoring & Reporting Program (MMRP), construction management, and inspection services for the Escondido Creek Trail Multi-Use Path Project;

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

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

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

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

2. Compensation. In exchange for CONSULTANT's completion of the Services, the CITY shall pay, and CONSULTANT shall accept in full, an amount not to exceed the sum of **\$1,074,473**. CONSULTANT shall be compensated only for performance of the Services described in this Agreement. CONSULTANT shall submit its standard monthly invoice describing the Services performed and expenses incurred during the preceding month. The CITY shall make payment of all undisputed portions of such invoice and provide written justification for the withholding of any disputed portions to CONSULTANT within 30 calendar days after receipt of CONSULTANT 's monthly invoice. If any undisputed payment is more than thirty (30) days late, CONSULTANT shall (i) provide notice of late payment to CITY, and (ii) if the relevant payment is not made within thirty (30) days of receipt of such late notice, CONSULTANT shall have the option to suspend its provision of Services. No compensation shall be provided for any other work or services without the CITY's prior written consent. If this Agreement is amended at any time, additional compensation of CONSULTANT contained in any subsequent amendments shall not exceed a cumulative total of 25% of the maximum payment provided for in this Section 2, unless approved by resolution of the City Council.
3. Performance. CONSULTANT shall perform its obligations and Services in a manner consistent with the standard of care and skill ordinarily exercised by members of the profession practicing under similar conditions in the geographic vicinity and at the time the Services are performed (the "Standard of Care") and in accordance with the terms of this Agreement. CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other information furnished by CONSULTANT pursuant to this Agreement, except that CONSULTANT shall not be responsible for the accuracy of information supplied by the CITY.
4. Personnel. The performance of the Services by certain professionals is significant to the CITY. As such, CONSULTANT shall only assign the persons listed on **Attachment "B"**, attached to this Agreement and incorporated herein by this reference ("Personnel List"), to perform the Services. CONSULTANT shall not add or remove persons from the Personnel List without the City's prior written consent. If CONSULTANT has not designated a person to perform a component of the Services, CONSULTANT shall not assign such component of the Services to a person without obtaining the City's prior written consent. CONSULTANT shall not subcontract any component of the Services without obtaining the City's prior written consent.
5. Termination. The Parties may mutually terminate this Agreement through a writing signed by both Parties. The CITY may terminate this Agreement for any reason upon providing CONSULTANT with 10 days' advance written notice. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of any notice of termination. If the CITY terminates this Agreement due to no fault or failure of performance by CONSULTANT, then CONSULTANT shall be compensated based on the work satisfactorily performed at the time of such termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the Services.
6. City Property. All original documents, drawings, electronic media, and other materials prepared by CONSULTANT pursuant to this Agreement immediately become the exclusive property of the CITY, and shall not be used by CONSULTANT for any other purpose without the CITY's prior written consent. The CITY shall not, without CONSULTANT's express written consent, use the CONSULTANT Work for any purpose other than the Project, or modify the CONSULTANT work in any material respect, or transfer to a third party any rights in the CONSULTANT work. Any unauthorized use, modification, or transfer of the CONSULTANT Work will be at the CITY's sole risk. CONSULTANT shall have the right to retain copies of all Work, re-use the methodologies, techniques and know how utilized hereunder to perform services for other parties.
7. Insurance Requirements.
  - a. CONSULTANT shall procure and maintain, at its own cost, during the entire term of this

Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services, and the results of such work, by CONSULTANT, its agents, representatives, employees, or subcontractors. Insurance coverage shall be at least as broad as the following:

- (1) *Commercial General Liability*. Insurance Services Office ("ISO") Form CG 00 01 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 general aggregate.
  - (2) *Automobile Liability*. ISO Form CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage, unless waived by the CITY and approved in writing by the CITY's Risk and Safety Division.
  - (3) *Workers' Compensation*. Worker's Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
  - (4) *Professional Liability (Errors and Omissions)*. Professional Liability (Errors and Omissions) appropriate to CONSULTANT's profession, with limits no less than \$2,000,000 per occurrence or claim and \$2,000,000 aggregate.
  - (5) If CONSULTANT maintains broader coverage and/or higher limits than the minimums otherwise required by this Agreement, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by CONSULTANT.
- b. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:
- (1) *Acceptability of Insurers*. Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A-: FSC VII, or as approved by the CITY.
  - (2) *Additional Insured Status*. Both the Commercial General Liability and the Automobile Liability policies must name the CITY (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of *both* CG 20 10, CG 20 26, CG 20 33, or CG 20 38, *and* CG 20 37 if a later edition is used. The Automobile Liability endorsement shall be at least as broad as ISO Form CA 20 01.
  - (3) *Primary Coverage*. CONSULTANT's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the CITY, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, officers, agents, employees, or volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.
  - (4) *Notice of Cancellation*. Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.
  - (5) *Subcontractors*. If applicable, CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated within this Agreement, and CONSULTANT shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.
  - (6) *Waiver of Subrogation*. CONSULTANT hereby grants to the CITY a waiver of any right to subrogation (excepting Professional Liability Insurance) that any insurer of CONSULTANT may acquire against the CITY by virtue of the payment of any loss under such insurance.

CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this subsection shall apply regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Agreement shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONSULTANT, employees, and subcontractors.

(7) *Self-Insurance.* CONSULTANT may, with the CITY's prior written consent, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-insurance. CONSULTANT shall only be permitted to utilize such self-insurance if, in the opinion of the CITY, CONSULTANT's (i) net worth and (ii) reserves for payment of claims of liability against CONSULTANT are sufficient to adequately compensate for the lack of other insurance coverage required by this Agreement. CONSULTANT's utilization of self-insurance shall not in any way limit the liabilities assumed by CONSULTANT pursuant to this Agreement.

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

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

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

- a. CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall indemnify, defend and hold harmless the CITY, its officials, officers, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, the payment of all consequential damages and reasonable attorney's fees and other related litigation costs and expenses (collectively, "Claims"), of every nature caused by, arising out of, or in connection with CONSULTANT's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY, and only to the extent such Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT. Further, in no event shall the cost to defend charged to the CONSULTANT exceed the CONSULTANT's proportionate percentage of fault.

- b. CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, employees, and volunteers from and against any and all Claims caused by, arising under, or resulting from any violation, or claim of violation, of the San Diego Municipal Storm Water Permit (Order No. R9- 2013-0001, as amended) of the California Regional Water Quality Control Board, Region 9, San Diego, that the CITY might suffer, incur, or become subject to by reason of, or occurring as a result of, or allegedly caused by, any work performed pursuant to this Agreement.
  - c. All terms and provisions within this Section 8 shall survive the termination of this Agreement.
9. Anti-Assignment Clause. Because the CITY has relied on the particular skills of CONSULTANT in entering into this Agreement, CONSULTANT shall not assign, delegate, subcontract, or otherwise transfer any duty or right under this Agreement, including as to any portion of the Services, without the CITY's prior written consent. Any purported assignment, delegation, subcontract, or other transfer made without the CITY's consent shall be void and ineffective. Unless CONSULTANT assigns this entire Agreement, including all rights and duties herein, to a third party with the CITY's prior written consent, CONSULTANT shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.
  10. Attorney's Fees and Costs. In any action to enforce the terms and conditions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs.
  11. Independent Contractor. CONSULTANT is an independent contractor, and no agency or employment relationship is created by the execution of this Agreement.
  12. Amendment. This Agreement shall not be amended except in a writing signed by the CITY and CONSULTANT.
  13. Merger Clause. This Agreement, together with its attachments or other documents described or incorporated herein, if any, constitutes the entire agreement and understanding of the CITY and CONSULTANT concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. In the event of any conflict between the provisions of this Agreement and any of its attachments or related documents, if any, the provisions of this Agreement shall prevail.
  14. Anti-Waiver Clause. None of the provisions of this Agreement shall be waived by the CITY because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived by the CITY, in whole or in part.
  15. Severability. This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.
  16. Governing Law. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Venue for any action arising from this Agreement shall be conducted only in the state or federal courts of San Diego County, California.
  17. Counterparts. This Agreement may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement by electronic means, including an attachment to an email, shall be effective as delivery of an executed original. The Agreement on file with the City is the copy of the Agreement that shall take precedence if any differences exist between or among copies or counterparts of the Agreement.

18. Provisions Cumulative. The foregoing provisions are cumulative to, in addition to, and not in limitation of any other rights or remedies available to the CITY.
19. Notice. Any statements, communications, or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated herein, and the CITY and CONSULTANT shall promptly provide the other Party with notice of any changes to such contact information.
20. Business License. CONSULTANT shall obtain a City of Escondido Business License prior to execution of this Agreement and shall maintain such Business License throughout the term of this Agreement.
21. Compliance with Laws, Permits, and Licenses. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements in effect during the term of this Agreement. CONSULTANT shall obtain any and all permits, licenses, and other authorizations necessary to perform the Services. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
22. Prevailing Wages. If applicable, pursuant to California Labor Code section 1770 et seq., CONSULTANT agrees that a prevailing rate and scale of wages, in accordance with applicable laws, shall be paid in performing this Agreement. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements pertaining to the payment of prevailing wages. The prevailing rate and scale to be paid shall be the same as the applicable "General Prevailing Wage Determination" approved by the Department of Industrial Relations as of the Effective Date of this Agreement, which are available online at <http://www.dir.ca.gov/opri/dprevwagedetermination.htm> and incorporated into this Agreement by this reference. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
23. Immigration Reform and Control Act of 1986. CONSULTANT shall keep itself informed of and shall comply with the Immigration Reform and Control Act of 1986 ("IRCA"). CONSULTANT represents and warrants that all of its employees and the employees of any subcontractor retained by CONSULTANT who perform any of the Services under this Agreement, are and will be authorized to perform the Services in full compliance with the IRCA. CONSULTANT affirms that as a licensed contractor and employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will perform the Services. CONSULTANT agrees to comply with the IRCA before commencing any Services, and continuously throughout the performance of the Services and the term of this Agreement.
24. The Parties acknowledge that American Rescue Plan Act (CSLFRF/ARPA) funds awarded by the U.S. Department of the Treasury will be used to fund all or a portion of this Agreement. The CONSULTANT shall comply with all applicable federal laws, regulations, executive orders, policies, procedures, and directives relating to such federal funds.
25. Clean Air Act. CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. CONSULTANT agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Awarding Agency, and the appropriate Environmental Protection Agency Regional Office. CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the Federal Awarding Agency.

26. Federal Water Pollution Control Act. CONSULTANT agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. CONSULTANT agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Awarding Agency, and the appropriate Environmental Protection Agency Regional Office. CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the Federal Awarding Agency.
27. Debarment and Suspension.
- a. This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, CONSULTANT is required to verify that none of CONSULTANT's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
  - b. CONSULTANT shall comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction CONSULTANT enters into.
  - c. This certification is a material representation of fact relied upon by the CITY. If it is later determined that CONSULTANT did not comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, in addition to remedies available to the CITY, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.
  - d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.
28. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).
- a. Prior to entering into this Agreement, CONSULTANT shall file the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended)). Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the Federal Awarding Agency.
  - b. Required Certification. At the time CONSULTANT executes this Agreement, CONSULTANT shall provide the CITY with a completed Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying. A blank Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying is attached to this Agreement as **Attachment "C"** and incorporated herein by this reference.
29. Procurement of Recovered Materials. In the performance of this Agreement, CONSULTANT shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (1) competitively within a timeframe providing for compliance with the Agreement's performance schedule, (2) meeting Agreement performance requirements, or (3) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines website, located at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. CONSULTANT shall also comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

30. Access to Records. The following access to records requirements apply to this Agreement: (1) CONSULTANT agrees to provide the CITY, the Federal Awarding Agency Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of CONSULTANT that are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. CONSULTANT agrees to provide the Federal Awarding Agency Administrator or their authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement. In compliance with the Disaster Recovery Act of 2018, the CITY and CONSULTANT acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the Federal Awarding Agency Administrator or the Comptroller General of the United States.
31. Federal Awarding Agency Seal, Logo, and Flags. CONSULTANT shall not use the Federal Awarding Agency seal(s), logos, crests, or reproductions of flags or likenesses of Federal Awarding Agency officials without specific Federal Awarding Agency pre-approval.
32. No Obligation by Federal Government. The United States Federal Government is not a party to this Agreement and is not subject to any obligations or Agreement to the CITY, CONSULTANT, or any other party pertaining to any matter resulting from this Agreement.
33. Program Fraud and False or Fraudulent Statements or Related Acts. CONSULTANT acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to CONSULTANT's actions pertaining to this Agreement.
34. Effective Date. Unless a different date is provided in this Agreement, the effective date of this Agreement shall be the latest date of execution set forth by the names of the signatories below.

(SIGNATURE PAGE FOLLOWS)



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

CITY OF ESCONDIDO

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

\_\_\_\_\_  
Dane White, Mayor

TY Lin International

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name & Title (please print)

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

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

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

## ATTACHMENT A

### Scope of Work

#### A. General

T.Y. Lin International Group, Ltd., a Delaware Corporation ("Consultant") will provide the City of Escondido, a California municipal corporation ("City") with environmental services and construction management related to the Escondido Creek Trail Multi-Use Path Project ("Project").

#### B. Location

Consultant to provide services for the Escondido Creek Trail Multi-Use Path Project, along the Escondido Creek Trail as shown in the plans and engineering drawings. The project starts near Citracado Parkway on the west end and continues to Midway Drive on the east end.

#### C. Services

A detailed scope of work is attached as **Exhibit 1**. In the event of a conflict between this Agreement (including this Scope of Work) and Exhibit 1, the terms of this Agreement shall prevail. Services shall generally include:

1. Resident Engineer, Construction Management and Inspection.
2. SWPPP QSD, stormwater monitoring and oversight
3. Schedule Analysis
4. Project Administration and Accounting
5. Environmental Services
  - Worker Environmental Awareness Program
  - Bat Habitat and Acoustic Survey
  - Nighttime Emergence Survey, if necessary
  - Bat Mitigation and Avoidance Plan, if necessary
  - Pre-construction Nesting Bird Survey
  - Preconstruction Survey Report
  - Biological Monitoring
  - Cultural Monitoring
  - Archaeological Monitoring
  - Noise Monitoring
  - Final Monitoring Report
6. Geology, Soil Monitoring, Sampling and Testing
  - Hazardous Monitoring and Sampling
  - Lab Analysis and Testing
  - Field Inspection
  - Project Management
7. Electrical Services
  - Pre-construction submittals review
  - Electrical Inspection
  - Street Lighting Inspection

#### D. Scheduling

Specific dates of work will be dictated by the construction schedule for the Project. Coordination with the City will be through Jonathan Schauble at 760-839-4072 or [jonathan.schauble@escondido.gov](mailto:jonathan.schauble@escondido.gov).

**E. Contract Price and Payment Terms**

The total contract price shall not exceed **\$1,074,473**. Consultant shall submit monthly invoices to the City detailing hours worked and tasks performed by which staff person. Consultant shall not bill the City for any incidental costs or transportation costs.

The CITY shall make payment of all undisputed portions of such invoice and provide written justification for the withholding of any disputed portions to CONSULTANT within 30 calendar days after receipt of CONSULTANT 's monthly invoice. If any undisputed payment is more than thirty (30) days late, CONSULTANT shall (i) provide notice of late payment to CITY, and (ii) if the relevant payment is not made within thirty (30) days of receipt of such late notice, CONSULTANT shall have the option to suspend its provision of Services.

**F. Term**

The term of this Agreement shall begin from the Effective Date of this Consulting Agreement through **June 30, 2027**.

**G. Other**

Consultant's duties and services under this Agreement shall not include preparing or assisting the City with any portion of the City's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the City. The City entering this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this Project. Consultant's participation in the planning, discussions, or drawing of Project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Consultant shall cooperate with the City to ensure that all bidders for a subsequent contract on any subsequent phase of this Project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant pursuant to this Agreement.



## ATTACHMENT B Personnel List

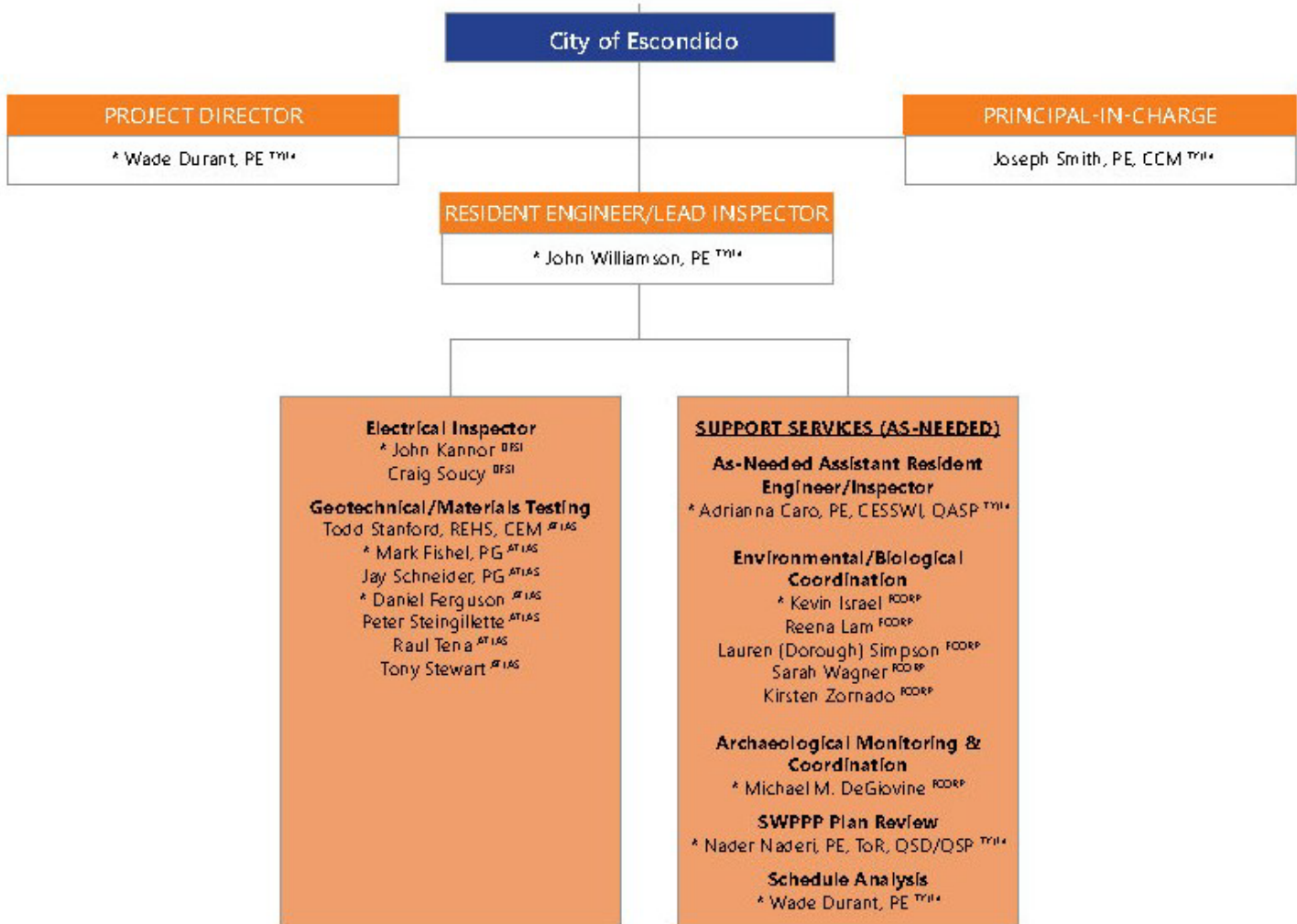
Pursuant to Section 4 of the Agreement, CONSULTANT shall only assign performance of Services to persons listed below:

### ORGANIZATIONAL CHART OF PROPOSED TEAM

**TEAM LEGEND**

TYLin International.....TYLin  
 ATLAS.....ATLAS  
 Dynamic Engineering Services, Inc.....DESI  
 ECORP Consulting, Inc.....ECORP

*\*Indicates Resumes included*



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

Acknowledged by:



Date: 07/17/2024

Joseph Smith, Vice President

### ATTACHMENT C

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

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

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

The CONSULTANT, T.Y. Lin International Group, Ltd., a Delaware Corporation, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



\_\_\_\_\_  
Signature of Consultant's Authorized Official

Joseph Smith  
Vice President

\_\_\_\_\_  
Name and Title of Consultant's Authorized Official

07/17/2024  
\_\_\_\_\_  
Date

EXHIBIT 1

# Project Understanding & Scope of Services





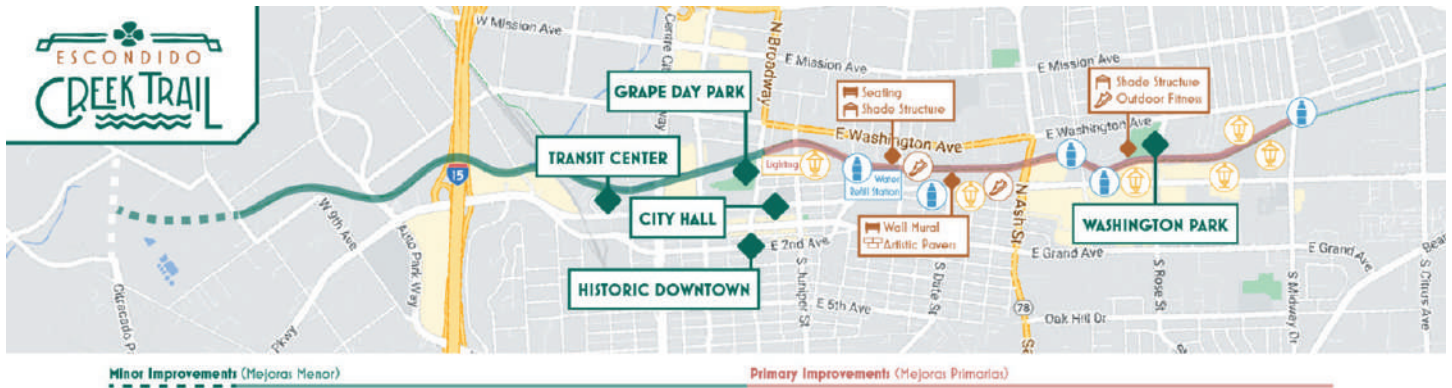
# PROJECT UNDERSTANDING AND SCOPE OF SERVICES

## Project Understanding

The City has completed construction plans for improvements to the Escondido Creek Trail that will beautify the space and increase public access to parkland and recreational opportunities. This project will

improve and beautify the existing bike path and trail inviting safe and healthy activities accessible through the heart of the City. The project will provide an enhanced sense of security, lighting, enhanced street crossings, fitness and play amenities, native and CA-friendly landscaping, and

further opportunities for walking and jogging in addition to improvements to the bike path. The improved Trail will serve to enhance the surrounding community through enhanced activities and partnerships with local businesses, artists, schools and other organizations.



Escondido Creek provides control for stormwater through Escondido from east to west. The creek is concrete lined through the City with access roads on both sides. Much of the roads are paved with asphalt concrete and striped for multiuse, but in some locations, they are decomposed gravel trails suitable for bicycles as well as walking.

Project improvements will include branded signage, lighting, bottle filling stations, rest benches, dog and waste receptacles, exercise stations with equipment, as well as new fencing and railing, with irrigation and planting. Of course, the paved portions of the trail will be entirely

resurfaced and re-striped. The finished product will provide a beautiful and attractive opportunity to walk or bike into the downtown without contending with traffic hazards or parking scarcity.

### Project Approach:

Following our Notice to Proceed Resident Engineer John Williamson will initiate a kick-off meeting with the City project manager as well as the lead designer from RRM Design Group, the project designers. The purpose of the meeting will be to establish the level of support RRM will be able to provide and properly divide the expected duties to be performed. It

is expected that RRM will be available to review contractor submittals for exercise equipment, benches, special lighting and railing, and special paving referenced in the plans. Mr. Williamson will establish the procedures and lead-time requirements needed by RRM so that the contractor can avoid delay with tardy submittals.

Other basic project questions and background information will be answered during this meeting as the responsibility for the project's success transitions to the construction management team. Typical questions to be clarified during the transition are:

QUESTION	RISK/OPPORTUNITY
Level of support for submittal reviews	Avoid confusion and expedite reviews
Closure requirements for the trail	Needed to make a construction schedule
Electrical Points of Service planning	Avoid schedule delays
Long lead item planning	Avoid schedule delays
Neighbors and right of way concerns	Avoid project conflicts
Staging Concepts considered?	Effective project delivery
Define materials "provided by owner"	Avoid delay and confusion

It is expected that the contractor will desire to be able to close portions of the trail to perform the different elements of the work. It appears that this would be feasible, since the trail exists on both sides of the creek. However, it will be important to carefully define the City's expectations for access and clearly communicate them to the bidders through the project specifications when the project is advertised for bid.

The project includes the installation of several new electrical points of service. SDG&E is the utility provider for this area. It is critical that applications have been made and are in process so that the power can be made available when needed to initiate irrigation and lighting throughout the project. Ideally, contact has already been initiated by the designer or the City and the service applications are well along in the review and approval process.

Material availability will be a large factor in the contractor's construction schedule. It is important that Mr. Williamson coordinate with RRM's representative to identify any long lead items. These items should be identified and specified to be fast-tracked for review and delivery to minimize the construction impact to the public. The contractor's schedule can be adjusted to remain productive while long lead items are being prepared for delivery.

During this handoff meeting, Mr. Williamson will request any documentation that has been prepared to minimize potential right of way issues. Are there fence removals to be coordinated with property owners? Are there access constraints to be resolved? Are private trees or landscaping impacting the project footprint? These are questions that will need to be resolved during construction and any preliminary discussions or agreements should be passed onto the construction management team.

It appears that the project can be completed in a piecemeal manner, block by block and side to side. This approach will eliminate extended closures of the trail, allow the work to proceed to completion at each location minimizing periods of inactivity, and deliver portions of the project to the residents relatively quickly after initiating work at a specific segment

of the trail.

This approach may impose a cost impact to the contractor for elements that are more efficiently performed in large quantities such as striping or fencing. However, mitigations can be proposed that will minimize added costs.

The plans show materials that are to be provided by the owner. It is very important that the City understands the responsibility to meet the time and terms that the contractor will impose for these deliveries. Clear language in the specifications is needed.

#### Pre-Bid Period:

Following the kick-off meeting and resolution of these and other important questions, Mr. Williamson will lead the TYLin Team in an in-depth constructability review of the project plans and specifications. The review will serve to clearly communicate the requirements and expectations of the contract documents to the potential bidders. Clear documents assure that bidders understand their responsibilities and constraints to construct the project and include ample budget to meet all expectations.

A careful check of the contract bid items and quantities will be performed. This will serve to prevent unexpected cost overruns because of plan discrepancies with the actual quantities of work to be performed.

We have divided the project scope into three distinct phases, Pre-Construction, Construction Management and Inspection, and Post Construction. The following section describes our approach to achieving success at each phase of the project. Mr. Williamson will lead the TYLin Team in executing the scope and delivering a successful project and a satisfied client.

### 1 | PRE-CONSTRUCTION

The TYLin Team values the pre-construction period as an opportunity to get ahead of issues, establish our tools, set-up our system, and begin to develop relationships with the designer, the City, and other stakeholders.

#### COORDINATION WITH THE DESIGNER

— Depending on the wishes of the City and the outcome of the initial kick-off meeting,

we would love to continue a robust working relationship with the Design team. Their project vision and background will be of great value as we help to execute their vision and the City's expectation.

**PUBLIC OUTREACH** — Depending on the requirements of the City and the planned staging for the project. It will be important to provide notification to the public as portions of the existing Creek Trail are closed for construction. Fortunately, for the majority of route the Photo and video logs are very important tools to document the progress of work and to reduce the potential of claims. Our team will continue documenting the progress of work during construction by daily still photographs and video of all major construction operations. All drone photos will be available to the City for their use in public updates or any other purposes they want to use them for. The existing trail exists on both sides of the creek. It is anticipated that one side of the creek can be closed, and the improvements constructed, while the other side remains open. With a bit of planning and foresight, coupled with adequate public notifications, disruptions to trail access will be minimal throughout the project.

**UTILITIES** — Coordination with SDG&E will be critical to the schedule. Installation of the points of service are needed to provide power for new irrigation controllers. Without a firm schedule for these power sources, the contractor cannot install plant materials and final project completion will likely be delayed. Application for power should be made well in advance of the beginning of the project. We hope to assume the application from the design team and follow through to assure prompt installation when needed for the irrigation. John Kannor of DESI will review the contractor's schedule for installation of new points of electrical services. He will inspect and confirm the installation of the new irrigation services and coordinate a seamless connection for the new systems.

#### CONSTRUCTION MANAGEMENT

**PREPARATION** — Upon NTP, the TYLin Team will begin to set-up the project files in accordance with the Caltrans Construction Manual. We will establish our quantity sheets, our daily diary forms,

submittals log, RFI tracking log, CCO log, material testing log sheets, pile layout sheets, concrete pour record forms, and other tools that are consistent with Caltrans Construction Manual and the Bridge Records and Procedures Manual. We will set up and populate spreadsheets used to track payments and overall control of the contract. Monthly progress payments will be reviewed with the City prior to submission for payment.

**PRE-CONSTRUCTION MEETING** – TYLin shall schedule and conduct a pre-construction meeting with the approved contractor. TYLin Team members shall be present and will contact City personnel, members of the contractor's team, local authorities (police, fire, etc.), the design engineer, and SDG&E. Topics will include agency expectations, traffic control, safety, labor compliance, Equal Employment Opportunity (EEO) compliance, environmental permits, SWPPP, materials testing and compliance, contractor submittals, encroachment permits, quality control and quality assurance (QA/QC) expectations, and payment process. A meeting notice, agenda, and sign-in sheet shall be prepared for pre-construction meeting.

**PRE, DURING, AND POST-CONSTRUCTION PHOTO AND VIDEO DOCUMENTATION** – The TYLin Team understands the need for accurate pre-construction documentation of conditions. Our team is prepared to compile a photo and video log of the pre-construction conditions.

Photo and video logs are very important tools to document the progress of work and to reduce the potential of claims.

Our team will continue documenting the progress of work during construction by daily still photographs and video of all major construction operations. All drone photos will be available to the City for their use in public updates or any other purposes they want to use them for.

The team has used drone photos to document the existing utility markouts soon after they were placed at each phase so that once asphalt was removed there was still a detailed record showing

exactly where the utilities were. They were used often to avoid future conflicts when excavating for storm drains or gas lines.

When the project is complete, photographs and video of the completed product will be taken to document the as-built condition of the project.

## 2 | CONSTRUCTION MANAGEMENT AND INSPECTION

The TYLin Team is very familiar with the scope of services identified in the RFP. The duties of contract administration, project documentation, project schedule control, quality assurance inspection, material testing, geotechnical services, and environmental monitoring are what we do on all of our projects. The following paragraphs describe a portion of the TYLin Team's approach to the project with the goal of strict adherence to project specifications, a well-defined pathway for all expenditures, documentation of all items of work and conversations, and a firm control over the project schedule. Please be assured that our team will satisfy all the scope items requested.

**CONTRACT ADMINISTRATION** – To allow for the City to obtain full funding reimbursement, this State-funded project will adhere to the Caltrans Local Assistance Procedure Manual (LAPM), specifically Chapters 16 and 17. To account for this, we will have to create and maintain comprehensive documentation throughout the project duration to certify that the project was administered in accordance with State and Federal guidelines. The TYLin Team will administer this project per the latest revisions of the Caltrans Construction and Local Assistance Procedures Manuals and all applicable bridge and roadway manuals. Our core team members have dedicated their careers to working on Caltrans related projects and have years of experience utilizing the Caltrans filing system. TYLin understands that the City has made assurances that various permit requirements will be upheld and work that encroaches on other party's right-of-way will be performed in strict accordance with established agreements. Parties to these related commitments include the

multiple permitting agencies, affected utilities, the design team and associated funding agreements. TYLin will administer the contract while meeting all contractual commitments and allowing the contractor to focus on completing the project without unnecessary delay or cost. TYLin administered projects have been audited dozens of times by FHWA representatives resulting in minimal findings.

**SAFETY** – TYLin wants every individual that travels through or works on the project to feel safe and free of hazards. We want every worker to go home at night free of injury. TYLin follows a company safety plan which requires regional safety representatives to perform routine checks of all projects within their domain to verify that training is ongoing, and that applicable documentation is kept. Each Resident Engineer must create a separate safety plan for their project and submit it for review. In addition, biweekly virtual and hands on safety meetings must be attended and attendance documented.

Our team will consider the public, various contractors (prime, subs, material deliveries, and utility contractors), and any nearby projects (highway, local, or utility projects), when considering the safety of an operation. Employees will have all the required Personal Protective Equipment (PPE) necessary to perform their work, including fall protection harnesses, lanyards, and respirators when necessary. Key team members will also attend the contractor's Monday morning safety meetings so they are fully briefed on the upcoming work and potential safety hazards that could occur. All work will be performed within Cal OSHA requirements.

**TRAFFIC CONTROL** – Consistent and clear communication with the City, emergency services, and local businesses and residents will be maintained to minimize the impacts of construction traffic through the City during project construction. When it is necessary to close a section of the trail, advanced signage will be posted. When construction activities necessitate the closure of a local road, traffic control will be implemented in conformance with the Manual of Uniform Traffic Control Devices, (MUCTD) and the traffic control plan approved by the City.

**WEEKLY MEETINGS** — To maintain communication on the project and to provide a forum for discussion and collaboration, Mr. Williamson will administer a weekly construction progress meeting. For consistency, the meeting will be held the same time and day of the week, each week. At this meeting, it is expected that the contractor will provide a four-week look-ahead schedule that will allow the TYLin Team to analyze workload and determine staffing needs for the near future. This will also assist Mr. Williamson to provide the City with a weekly project update so that any upcoming staffing/ inspection requirements by the City, the TYLin Team, the Designer, and utility agencies can be planned for.

**SCHEDULE CONTROL** — The contractor's construction schedule will be monitored and reviewed throughout the duration of the project. Beginning with the initial baseline schedule, Mr. Williamson will review and confirm that it is being followed. Monthly updates will show the actual progress of the work compared to the planned production. If the schedule slips, a recovery schedule will be required to show how the project can catch up the contract completion date.

TYLin is experienced in reviewing CPM schedules and has the necessary software to automatically detect and report changes made in a monthly update that can save time during schedule reviews and also find potential errors in a contractor's schedule that could lead to problems later if not detected early. As mentioned previously, one major key on maintaining this Project's schedule will be coordination with the utility companies early and ensuring they are prepared for their work when the site is available for them to start.

**COST CONTROL** — The cost control program for the project will mimic the methodology of the Caltrans Construction Manual for calculating and tracking payment on a monthly basis. Quantity sheets are created by the field inspector on a daily and weekly basis documenting the actual field measured quantity of work that is installed and referenced in daily diaries. The Q-sheet includes prior work completed, work completed during the

current month, and the total to date. Also documented are stationing or location of the work, quantity dimensions (length, width, etc.), and reference to verification of material acceptance for any materials included in the payment. All quantity sheets are backed up with calculations, photos, or other means of verification, and are checked by an independent party and referenced to the prior month's sheet to confirm that payment is not duplicated or skipped.

All monthly quantities are entered into a progress payment spreadsheet and rechecked for accuracy before submission for payment. TYLin has successfully passed many FHWA audits using this process. TYLin will submit a monthly report to the City with overview items identifying percent complete, percent paid, CCOs, and potential issues, as well as the status of the CM budget.

Changes or unforeseen conditions are inevitable on every project. CCOs are requested by either the contractor or the owner, depending on the situation.

Mr. Williamson will receive and review and track all CCO requests. All requests will be reviewed for merit and discussed with the City. If it is determined that the change has merit, the TYLin Team will determine the most efficient and economical means of performing the added work.

Once the scope of work for a change is clearly defined, Mr. Williamson will prepare an independent cost estimate of the proposed work for review. If agreement of cost and method of

payment is reached with the contractor, a CCO will be prepared for review and approval. If the agreement cannot be reached, the work will proceed based on the contract specifications for force account. Regardless of the method of payment the actual work performed is tracked separately on daily reports to confirm compliance to the language of the CCO. With final documentation and acceptance, payment can be made on the next progress period. Each CCO will have its own file category and payment will be measured each month until the entire CCO is completed and paid in full.

**PROJECT DOCUMENTATION** — Although TYLin has experience utilizing web-based document control systems, for most projects, we use simple Microsoft Excel tracking sheets to monitor submittals, RFIs, CCOs, and budgets. Our team will utilize a system that is compatible with the City, the contractor, and other important stakeholders. Many contractors have a web-based system for tracking RFIs and submittals, and TYLin has accounts with some of these systems so we can utilize whatever system the contractor is already set up with. On recent projects with two well-known contractors, we utilized ProCore very successfully. We have recent experience utilizing VPM on a City of Escondido project.

TYLin is committed to administering public projects in accordance with the standard Caltrans procedures. This establishes the Construction Manual and the Bridge Construction Record and Procedures Manual as the main documents by which documentation will be produced. Adequate, concise, and searchable documentation allows for project research and provides the strength of a position in a dispute proceeding.

TYLin Team members shall perform daily inspection of all contractor activities to ensure compliance with contract documents. We will evaluate, approve, or reject the contractor's and subcontractor's work in accordance with the contract documents and keep the City's interest as the top priority throughout the duration of construction. We will record all inspection observances

in a daily diary form which will track date, weather, item of work performed, hours of work performed, measurement of items installed, workers names and classifications, equipment numbers, subcontractor's personnel, conversations, conflicts and resolutions, photographs of ongoing operations, and non-compliance notices (if necessary). When the contractor encounters difficulties in completing an item of work, the daily diary will provide the record of what was done, by whom, and what actual costs were expended to complete the work. Project activities will be photographed daily, labeled, and filed by date for easy cross reference with daily reports. Accurate diaries also allow for an accurate estimate of extra work and assist in adjusting unit prices where applicable per the specifications.

Inspection reports will document the contractor's compliance with the project plans and specifications. Specific elements of construction that will be monitored for his project include, installation of all project fencing and environmental controls, clearing and grubbing of surface materials, trenching and installation of all conduit and drainage materials, resurfacing of all asphalt concrete surfaces. Installation of lighting and irrigation materials, installation of all plant materials, and installation of all recreational and exercise equipment.

TYLin will perform the majority of these inspections with support from DESI for electrical and irrigation, and Atlas for the grading and asphalt sealing work.

The daily and weekly Resident Engineer diaries are also important pieces of documentation. These provide another level of assurance that daily conversations with the contractor and his subcontractors, and daily events that may impact cost and schedule are recorded and maintained in an accessible location.

#### REQUEST FOR INFORMATION (RFIS)

—Tracking and responding to RFIs will be critical to maintaining the project schedule. Mr. Williamson shall receive, record, review, and determine who shall respond to all RFIs. RFIs will be distributed to third parties for review as necessary. The RFI log

will be discussed at all weekly meetings. Response times will be determined and adhered to. Mr. Williamson will make every effort to respond to an RFI without involving the City or the design team if it is within his or his team's area of expertise and appropriate to be answered by someone other than the designer. Some RFIs will require the Engineer of Record to respond to them personally.

#### QUALITY ASSURANCE INSPECTION

— The TYLin Team understands that we shall endeavor to guard the City against defects and deficiencies in the work and ensure that the contractor complies with all contractual obligations while creating the highest quality product. Mr. Williamson will orchestrate the mobilization of TYLin subconsultants to provide testing and inspection of materials, such that only approved materials are incorporated into the work. Non-complying tests will be tracked and re-tests will be taken after the contractor increases his efforts towards compliance.

A detailed photographic history of all phases of the project will be maintained on a daily basis. Photos will be taken of the opening or changing of detours, barricade placement, disputed work, work that must be duplicated, replaced or removed, completed work, and extra work. Existing conditions of private property will be documented to help resolve final project completion disputes.

#### MATERIAL TESTING AND ACCEPTANCE, GEOTECHNICAL SERVICES

— Atlas is part of the team to provide materials testing and inspection services and geotechnical services. This includes all materials and acceptance testing, backfill and pavement density testing, geotechnical testing, and hazardous materials monitoring and testing as needed for environmental compliance.

We will provide daily inspection reports describing the work inspected and stating compliance or non-compliance with the project documents. Atlas daily field reports will be sent to the requested recipients electronically daily. We will provide supervision of our project personnel by our project engineer, a Registered Civil

Engineer. The project engineer will review reports and test results, attend site meetings as requested, and review billing. Additionally, the project engineer will act as a point of contact and will be available to answer questions that may arise.

#### ENVIRONMENTAL COMPLIANCE —

The TYLin Team will assist the City with maintaining environmental compliance from the pre-construction phase until the end of the 1-year plant establishment period. The Mitigation and Monitoring Program (MMRP) has several measures that will be addressed by the TYLin Team, and there are several permits which also have additional requirements that must be met. The TYLin Team will provide a Biological Monitor, Archaeological Monitor, Paleontologist, and Paleontological Monitor and an environmental compliance binder will be maintained throughout the duration of the Project to document surveys, monitoring, data, and correspondence. In addition, the TYLin Team will conduct audits of ongoing construction operations and records and assist with external audits that may be performed by regulatory agencies.

Atlas will be available to provide monitoring for hazardous materials. The SGMP indicates that no active hazardous materials were identified within the project corridor based on reviews of the Department of Toxic Substances Control Envirostor or California State Water Resources Control Board Geotracker databases. However, the SGMP establishes provisions for assessing and managing unanticipated contaminated soil or groundwater that may be encountered during construction. Examples of possible sources of soil contamination include aerially deposited lead (ADL) associated with historical motor vehicle emissions along Interstate 15 and migration of contaminants from offsite release sources.

Atlas will be available to respond to requests originating from the General Contractor regarding suspected impacted soil encountered during future construction activities. Examples of construction activities that may encounter impacted soil include but are not necessarily limited to subsurface

construction or repair, utility line work, or other subgrade activities (e.g., deep landscaping work or sub-slab excavation or grading).

In the event that such conditions are encountered, the GC will be responsible for reporting evidence of suspected contamination in soil to the City and the TYLin Team, including Atlas. The GC will suspend further excavation or grading activities until such time that Atlas has completed preliminary assessment activities. The preliminary assessment activities will include conducting air monitoring using a photoionization detector (PID) to assess the concentrations of VOCs within the suspected source area (i.e., at the interface between soil and air) and within the breathing zone of onsite workers or adjacent properties, as applicable. If determined appropriate by Atlas personnel, the preliminary assessment activities may include the collection and subsequent laboratory analysis of soil samples to either 1) define the vertical and lateral extent of impacted soil in-situ or 2) to characterize stockpiled soil for the purpose of determining appropriate soil management and disposal requirements.

The laboratory analytical requirements for soil samples collected may vary depending on the suspected contaminants of potential concern and/or for waste classification purposes. Examples of anticipated laboratory analytical methods for soil samples include, but are not necessarily limited to the following:

- ▶ Total Petroleum Hydrocarbons, Full Scan (EPA Method 8015B)
- ▶ VOCs (EPA Method 8260B)
- ▶ Organochlorine Pesticides (EPA Method 8081)
- ▶ Polychlorinated Biphenyls (EPA Method 8082)
- ▶ CAM 17 Metals (EPA Method 6010B/7471A)
- ▶ Polynuclear Aromatic Hydrocarbons (EPA Method 8270 SIM or EPA Method 8310)

Depending on the results of the initial

sampling, subsequent laboratory analyses may be necessary to determine whether waste soil exhibits a characteristic of hazardous waste that would require special soil management and disposal requirements. Examples of additional waste characterization analyses include Soluble Threshold Limit Concentration (STLC) and Toxicity Characteristic Leaching Procedure (TCLP).

ECORP has reviewed of the Project permits and plans, and prepared the following scope of services that are in compliance with biological, cultural (archaeological monitoring), and noise components of the Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP) for the Project.

The ECORP project manager will be Kevin Israel, a senior biologist with 12 years of environmental consulting experience in southern California. He will oversee all environmental oversight on this project. He will be supported by experienced biologists, with specific experience in bat habitat and roosting assessments as well as archaeologist, Michael DeGiovine.

The Scope of Work below contains the technical approach proposed by ECORP for compliance with the associated mitigation measures of the Mitigation Monitoring and Reporting Program (MMRP) for the Project.

#### **TASK 1 – WORKER ENVIRONMENTAL AWARENESS PROGRAM (WEAP)**

In compliance with mitigation measure BIO-1, a qualified ECORP biologist will provide one Worker Environmental Awareness Program (WEAP) training for the construction crew. Each employee (including temporary, contractors, and subcontractors) will receive the WEAP on the first day of working on the Project. They will be advised of the potential impact to special-status species and the potential penalties for taking such species. The WEAP will cover potential occurrence of the special-status species in the area, their general ecology, sensitivity of the species to human activities, legal protection afforded these species, penalties for violations of Federal and State laws, and project features designed

to reduce direct and indirect impacts to these species. It will be expressed that construction personnel shall temporarily halt restriping activities if a lizard is observed ahead of restriping equipment on the maintenance road, until the lizard is no longer present on the road. All workers attending the WEAP training will be documented on a sign-in sheet to be included in the Final Summary Monitoring Report, Task 9.

#### **TASK 2 – PRE-CONSTRUCTION BAT HABITAT AND ACOUSTIC SURVEY**

In compliance with mitigation measure BIO-2, a qualified ECORP bat biologist will conduct a bat acoustic survey and habitat assessment of the queen palm trees to be removed as well as the Date Street Pedestrian bridge structure near Date Street to determine if suitable habitat for roosting bats is present as well as for the presence of bats and bat sign (guano, urine staining, audible chatter, culled insect parts, etc.). The survey will be conducted within 60 days prior to construction. ECORP assumes that access to the channel to view the underside of the Date Street Bridge will be granted prior to conducting the survey. Photographs of bat habitat areas will be taken to document their presence. The results of the daytime habitat assessment will be documented in a Pre-Construction Survey Report, included here as Task 4. Results of the survey will be presented to provide the exact location of any bat-roosting resources found during the survey.

#### **OPTIONAL TASK 2A – NIGHTTIME EMERGENCE SURVEY**

If suitable roosting habitat and/or evidence of bat roosting is observed during the daytime survey, nighttime bat surveys will be conducted at each of the locations identified during the daytime survey simultaneously to verify occupancy and to determine approximate numbers and species present. Nighttime surveys will begin no later than one-half hour before sunset and continue until up to three hours after sunset to permit detection of both day and night-roosting bats. Numbers of emerging bats will be determined visually at dusk using night vision equipment. If

maternity roosts for bats are suspected to be located, these will be documented thoroughly. Acoustic data will be collected using ultrasonic bat detectors followed by analysis of the data to determine species present. In particular, the survey data will be examined for evidence of occupation by sensitive bat species. The results of the nighttime emergence survey will be incorporated into the Pre-Construction Survey Report, included here as Task 4.

#### **OPTIONAL TASK 2B – BAT MITIGATION AND AVOIDANCE PLAN**

If bat roosts are identified during the surveys conducted in Task 2 and Optional Task 2A, a Bat Mitigation and Avoidance Plan will be prepared for CDFW approval. The plan will include recommendations for avoidance, minimization, and mitigation measures to be implemented to protect bat roosting habitat on site. These protection measures shall include, as appropriate: establishment of 300-foot no-work avoidance buffers, adjusting construction timing to avoid sensitive seasons, biological monitoring, two-step tree removal, and installation of alternative roosting habitat. Since no work shall occur within the buffer until after the roosting season is over, the ECORP biologist will monitor the area periodically throughout the roosting season as an aspect of Biological Monitoring, Task 5, to determine if the roost is no longer active, in which case activity in the area may proceed. All monitoring activities related to bats will be included in the Final Monitoring Summary Report at the conclusion of the project, included here as Task 9.

#### **TASK 3 – PRE-CONSTRUCTION NESTING BIRD SURVEY**

In compliance with mitigation measure BIO-3, if construction begins within the avian breeding season (February 1 through August 31), a qualified ECORP biologist will conduct a pre-construction nesting bird survey no more than three days prior to initiation of ground disturbance and/or vegetation removal activities. The pre-construction survey will be conducted within the project site, plus a 300-foot no work buffer (500-foot for raptors), on foot, and within inaccessible areas

(i.e., private properties) or afar using binoculars to the extent practical. The survey will be conducted by a biologist familiar with the identification of avian species known to occur in southern California coastal communities. If nests are found, an avoidance buffer (which is dependent upon the species, the proposed work activity, and existing disturbances associated with land uses in and around the site) will be determined and demarcated by the biologist with bright orange construction fencing, flagging, construction lathe, or other means to mark the boundary. All construction personnel will be notified as to the existence of the buffer zone and to avoid entering the buffer zone during the nesting season. The ECORP biologist will monitor the area periodically throughout the nesting season and no ground disturbing activities will occur within the buffer until the biologist has confirmed that breeding/nesting is completed, and the young have fledged the nest. Any encroachment into the buffer will be coordinated with the biologist.

#### **TASK 4 – PRE-CONSTRUCTION SURVEY REPORT**

To document results of the Bat Acoustic Survey and Nesting Bird Survey, ECORP will prepare a Pre-Construction Survey Report within one week of completion of surveys. A draft version of the report will be submitted electronically for review. After receiving one round of compiled comments, a final version will be prepared and submitted electronically.

#### **TASK 5 – BIOLOGICAL MONITORING**

To ensure compliance with required mitigation measures, ECORP biologists will monitor activities through the duration of construction as coordinated with the City, on an approximately once-weekly basis throughout the anticipated 200 working days (40 weeks). Status and location of project activities will be identified to determine the need for noise monitoring or consultation with the client to recommend avoidance or minimization measures.

#### **TASK 6 – CULTURAL RESOURCES MEETING ATTENDANCE**

In compliance with mitigation measures

CUL-1 through CUL-10 and the Tribal Cultural Resource Treatment and Monitoring Agreement for the Project (also known as a Pre-Excavation Agreement), ECORP will provide a qualified archaeological monitor and coordinate with a Native American monitor from a tribe that is traditionally and culturally affiliated with the Project location (“TCA Tribe”) to implement the monitoring program.

In accordance with CUL-3 of the mitigation monitoring and reporting program, an ECORP qualified archaeologist will attend any required pre-construction meeting with the general contractor, the Native American monitor, and any subcontractors to explain the cultural resource mitigation measures prior to the start of construction activities. For the purposes of this scope of work ECORP assumes only one preconstruction meeting will be required.

#### **TASK 7 – ARCHAEOLOGICAL MONITORING**

ECORP will provide one qualified professional archaeologist to monitor ground disturbing activities in accordance with CUL-4 of the mitigation monitoring and reporting program. The monitor will be, or will be working under the direct supervision of, a professional archaeologist meeting the Secretary of the Interior’s Standards for archaeology. ECORP will submit a list of all archaeologists who may work on the Project for approval by the city of Escondido for approval. For the purposes of this cost estimate, ECORP will provide a daily rate for archaeological monitoring and assumes monitoring will occur over 62 days out of the anticipated 200 days of work. A half day rate is also provided to be utilized as needed and not included in the cost estimate totals herein.

In the event that unanticipated cultural resources or human remains are observed, all work will stop within the immediate vicinity of the find and the discovery notification procedures outlined in the mitigation monitoring and reporting program (CUL-5, -6, and -8) will be followed. Because the cost to evaluate significance, develop and implement a treatment plan, and serve as liaison with

jurisdictional agencies and tribes varies greatly depending on the nature, size, and age of the discovery, ECORP will negotiate a contract amendment upon the discovery of a resource.

#### TASK 8 – NOISE MONITORING

In compliance with mitigation measures N-1, N-2, and N-3, the City shall ensure that, where residences, schools, or other noise-sensitive uses are located within 500 feet of construction sites for active transportation projects, appropriate measures shall be implemented to reduce noise exposure to the extent feasible. The City shall ensure that equipment and trucks used for construction utilize the best available noise control techniques (including mufflers, use of intake silencers, ducts, engine enclosures and acoustically attenuating shields or shrouds). The City shall ensure that impact equipment

(e.g., jack hammers, pavement breakers, and rock drills) used for construction be hydraulically or electrically powered wherever feasible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Whenever feasible, quieter procedures shall be utilized, such as drilling rather than impact equipment operation. ECORP will provide acoustic (noise) monitoring to ensure compliance with these measures.

#### TASK 9 – FINAL SUMMARY MONITORING REPORT

Upon completion of construction activities ECORP will prepare a Final Summary Monitoring Report to document the WEAP and biological, cultural, and noise monitoring efforts and results. A draft version of the report will be submitted electronically for review. After receiving one round of compiled comments, a final

version will be prepared and submitted electronically.

#### DELIVERABLES:

All of the above scope items for Environmental Monitoring will be thoroughly documented and submitted for review. The reports will document any training, details and frequency of any field studies along with the results of all studies and observations. Any resulting activities or mitigation recommendations will be documented along with confirmation of the results.

A final report for all environmental and archaeological monitoring will be submitted for the use of the City at the close of the project, documenting full compliance with the requirements of the MMRP.





Prepared for: City of Escondido  
 Escondido Creek Path Construction Management  
 ESTIMATED COST PROPOSAL (Time and materials)



Last Update : 5/1/2024

NAME	POSITION	Fee Estimate							
		Labor Rates		ODCs/SUBS	Total			Subtotal per Firm	
		2024	2025		Hours	\$	%		
<b>T.Y. LIN INTERNATIONAL</b>									<b>T.Y. LIN INTERNATIONAL</b>
JOHN WILLIAMSON	RESIDENT ENGINEER	\$205.00	\$212.00	\$20,000	2016	\$439,272	41.52%	\$537,117	50.8%
ADRIANNA CARO	AS-NEEDED INSPECTOR	\$168.00	\$174.72		216	\$36,933	3.49%	(incl ODCs in JW line item)	
NADER NADERI	SWPPP QSD	\$234.00	\$243.00		100	\$23,760	2.25%		
WADE DURANT	SCHEDULE ANALYSIS	\$245.00	\$253.00		112	\$27,696	2.62%		
CATHY SALAS	PROJECT ADMINISTRATION/ACCOUNTING	\$129.60	\$134.79		72	\$9,456	0.89%		
<b>ECORP</b>								<b>ECORP</b>	
	WORKER ENVIRONMENTAL AWARENESS PROGRAM			\$850		\$850	0.08%	\$271,150	25.6%
	PRECONSTRUCTION BAT HABITAT AND AUCOUSTIC SURVEY			\$3,200		\$3,200	0.30%	See attached details	
	NIGHTTIME EMERGENCE SURVEY (OPTIONAL)			\$9,650			0.00%	\$9,650	Optional
	BAT MITIGATION AND AVOIDANCE PLAN (OPTIONAL)			\$6,800			0.00%	\$6,800	not incl
	PRECONSTRUCTION NESTING BIRD SURVEY			\$5,500		\$5,500	0.52%	in total per	
	PRECONSTRUCTION SURVEY REPORT			\$4,950		\$4,950	0.47%	RFP	
	BIOLOGICAL MONITORING			\$106,000		\$106,000	10.02%		
	CULTURAL MONITORING			\$1,700		\$1,700	0.16%		
	ARCHAEOLOGICAL MONITORING			\$117,800		\$117,800	11.13%		
	NOISE MONITORING			\$16,000		\$16,000	1.51%		
	FINAL MONITORING REPORT			\$15,150		\$15,150	1.43%		
<b>ATLAS</b>								<b>ATLAS</b>	
	SENIOR GEOLOGIST - HAZ 1-6 MONITORING AND SAMPLING			\$8,250		\$8,250	0.78%	\$203,507	19.2%
	LAB ANALYSIS			\$4,000		\$4,000	0.38%	See attached details	
	FIELD INSPECTION			\$159,300		\$159,300	15.06%		
	PROJECT MANAGEMENT			\$14,625		\$14,625	1.38%		
	PROFESSIONAL STAFF			\$6,810		\$6,810	0.64%		
	MATERIALS LAB TESTING			\$10,522		\$10,522	0.99%		
<b>DESI</b>								<b>DESI</b>	
	PRECONSTRUCTION/SUBMITTALS (NON-PW)	\$173.72	\$180.67	\$4,000	40	\$10,949	1.03%	\$46,249	4.4%
	ELECTRICAL SERVICE CONNECTION INSPECTION**	\$173.72	\$180.67		100	\$17,650	1.67%	(incl ODCs in precon line item)	
	STREET LIGHTING INSPECTION**	\$173.72	\$180.67		100	\$17,650	1.67%		
				\$515,107.00	2756	\$1,058,023	100%	Totals	100.0%

(T&M)  
**COST PROPOSAL TOTAL \$1,058,023**

Including Optional Items  
**\$1,074,472.58**



# STAFF REPORT

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August 28, 2024  
File Number 0230-35

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## SUBJECT

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, EXPRESSING ITS POSITION AND RECOMMENDATIONS ON BATTERY ENERGY STORAGE SYSTEM PROJECTS IN AND ADJACENT TO THE CITY OF ESCONDIDO**

## DEPARTMENT

City Council

## RECOMMENDATION

Request the City Council adopt Resolution No. 2024-113 expressing its position and recommendations on Battery Energy Storage System Projects in and adjacent to the City of Escondido.

Staff Recommendation: Approval (City Council: Mayor Dane White, Councilmember Mike Morasco)

Presenter: Mayor Dane White

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

**COUNCIL PRIORITY** – Improve Public Safety

## FISCAL ANALYSIS

N/A

## PREVIOUS ACTION

None

## BACKGROUND

On June 5, 2024, Mayor White and Councilmember Morasco requested an item be placed on the Future Agenda to approve expressing the City Council's position and recommendations on Battery Energy Storage System Projects in and adjacent to the City of Escondido.



# CITY *of* ESCONDIDO

STAFF REPORT

## RESOLUTIONS

- a. Resolution No. 2024-113

## RESOLUTION NO. 2024-113

## A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, EXPRESSING ITS POSITION AND RECOMMENDATIONS ON BATTERY ENERGY STORAGE SYSTEM PROJECTS IN AND ADJACENT TO THE CITY OF ESCONDIDO

WHEREAS, the City Council of the City of Escondido (“City Council”) is responsible for ensuring the health, safety and welfare of its citizens; and

WHEREAS, the City Council is mindful of the need for dependable and sustainable energy at reasonable cost to all residents and businesses, particularly at times of high demand; and

WHEREAS, the City of Escondido (“City”) is committed to the initiation and development of CleanTech projects and approved the construction and operation of a San Diego Gas & Electric 30MW energy storage facility which, at the time constructed, was the largest such project in the world; and

WHEREAS, in an effort to develop alternative energy supplies, there has been an increasing number of proposed and constructed Battery Energy Storage System (“BESS”) projects in the County of San Diego whose technology is fairly new, rapidly evolving and for which there is not a well-documented history of impacts of these projects on local communities; and

WHEREAS, on June 7, 2023, the Escondido City Council approved the 2023 to 2028 Comprehensive Economic Development Strategy (“CEDS”), a five-year roadmap which outlined a plan to improve the City’s local economy which made many findings including that the City had relatively high concentrations of less-than-optimal industries and building types which can impede employment growth and economic opportunity and deter more robust drivers to the City’s economy; and

WHEREAS, the operational model for BESS projects is remote management and low onsite staffing and therefore placement of these projects in and around the City's jurisdiction fails to achieve the critical long-range goals of increasing economic and employment opportunities for City residents; optimizing available properties to their highest and best land use; increasing land values; and developing land uses that attract families and business investment; and

WHEREAS, BESS projects do not bring realistic economic benefits to the City, including jobs and new local tax revenue and, instead, may burden the City with health and safety risks; long-term static land use; negative impact on existing residential land values; disincentivizing employers and businesses from locating into the area; and creating lower-than-optimum local sales and ad valorem tax opportunities; and

WHEREAS, the City is located in an area of San Diego County subject to severe and destructive wildfires and as such, its residents have been required to undertake extensive fire safety efforts at their homes and have experienced issues such as ever-increasing home insurance premiums or non-renewals of existing policies due to the potential of fires; and

WHEREAS, one health and safety concern reasonably related to BESS projects is the potential for the ignition of fires, explosions and "thermal runaway" events which, once initiated, are extremely difficult to extinguish and may require the deployment of City fire and safety resources and personnel to battle those fires; and

WHEREAS, in those cases where BESS projects are placed outside of but adjacent to the City's jurisdictional boundaries, the City Council will not have the ability to review, consider and vote on the project and therefore will not have a sufficient opportunity to control and address the above-referenced concerns about these types of projects or provide oversight of the ongoing operation in the future; and

WHEREAS, on July 17, 2024, the County of San Diego Board of Supervisors (“Board”) adopted Minute Order No. 8 wherein the Board made several recommendations to the County’s Chief Administrative Officer to establish development standards for siting BESS projects in the unincorporated areas of the County and seek stakeholder input on standards and project review criteria for any projects that may be proposed for Board consideration and approval; and

WHEREAS, the City Council concurs in the need for the consideration of local and region-wide design guidelines, development regulations, location placement restrictions, and related controls and criteria subject to input by all relevant stakeholders including residents, urban planners, legislative bodies, utility regulators, energy storage subject matter experts, and industry representatives.

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

1. The above recitations are true and are incorporated herein as though fully set forth.
2. That as currently designed and constructed, the City Council of the City of Escondido does not find that BESS projects accomplish the fundamental development and health and safety goals of the City and those projects planned to be located in the City’s jurisdictional boundaries and/or in its sphere of influence should demonstrate compliance with and promote the values of the City’s CEDS, be safe for residents, and advance all City Council priorities.
3. That the City Council desires to have stringent development standards for any proposed BESS within the City and encourages all city and county development agencies to ensure that any BESS project in the county is adequately studied, safe, promote good economic value for the inhabitants of the region, and utilize the most up-to-date technology for long-term value.
4. That the City Council of the City of Escondido desires to express and declare its concerns over BESS projects generally as they relate to the future development of this City and this Resolution does

not constitute the expression of any final determination on a particular development application or BESS project.



# STAFF REPORT

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August 28, 2024  
File Number 0650-10

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## SUBJECT

**CANCELLATION OF NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION FOR THE POSITION OF CITY TREASURER AND THE APPOINTMENT OF THE INCUMBENT CANDIDATE TO THE OFFICE OF CITY TREASURER**

## DEPARTMENT

City Clerk's Office

## RECOMMENDATION

Request the City Council approve the City Clerk's certification that there are not more candidates than offices to be filled for the position of City Treasurer for the City of Escondido's ("City") General Municipal Election on November 5, 2024; and consider and discuss whether to cancel the City Election and appoint the respective incumbent as the only verified candidate for the open office, or hold the City Election as scheduled.

Staff recommends adopting Resolution No. 2024-125 to authorize cancelling the November 5, 2024, General Municipal Election for the Office of City Treasurer for the four-year term from 2024-2028 and appoint the incumbent City Treasurer to the position.

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

Presenter: Zack Beck, City Clerk

**ESSENTIAL SERVICE – No**

**COUNCIL PRIORITY – Eliminate Structural Deficit**

## FISCAL ANALYSIS

General municipal election costs are determined by the County of San Diego Registrar of Voters, who has estimated a cost of \$110,000 to \$160,000 for the City Treasurer's Office. The cancellation of the November 5, 2024, General Municipal Election for the position of City Treasurer and appointing the incumbent to their respective office will save the City approximately \$110,000 to \$160,000.

## PREVIOUS ACTION

None





# CITY of ESCONDIDO

## STAFF REPORT

### BACKGROUND

On July 1, 2024, the City Clerk published a Notice of Election (Attachment “1”) for Public Office providing that the City would be holding a General Municipal Election on Tuesday, November 5, 2024, and inviting candidacy and nomination papers for the offices of City Treasurer, City Council District 3 and City Council District 4. The deadline for candidates to file nomination papers to seek any of these offices was Friday, August 9, 2024 (the City Council District 4 filing deadline was extended to August 14, 2024, as the incumbent did not seek re-election to that office). At the close of the nomination period, the City Clerk's office received one verified candidate filing for the office of City Treasurer from the incumbent, City Treasurer Douglas W. Shultz.

After the close of the nomination period, the City Clerk submitted a written certification to the City Council that there is only one candidate (incumbent) nominated for the office of City Treasurer, which is scheduled to be filled at the upcoming City Election; a copy of the certification is attached (Attachment “2”) to this Staff Report.

Because there are no candidates challenging the incumbent City Treasurer, the City Council has the option to cancel the upcoming City Election for the office of City Treasurer and appoint the incumbent candidate to the office of City Treasurer. Alternatively, the City Council could choose to hold the City Election as scheduled.

California Elections Code Section 10229 permits the governing body to take one of the following courses of action when the number of candidates nominated for office does not exceed the number of offices to be filled at a municipal election:

1. Appoint to the office the person who has been nominated; or
- \*2. Appoint to the office an eligible elector if no one has been nominated; or
3. Hold the election, if either no one or only one person has been nominated.

\*Option 2 is not applicable; therefore, the City Council may consider and act on either option 1 or 3.

Adopting Resolution No. 2024-125 would result in the cancellation of the upcoming City Election with respect to the office(s) under consideration, and would result in the appointment of the uncontested incumbent(s) to the office(s) under consideration for a four-year term from 2024-2028. Appointed incumbent(s) would qualify, take office and serve exactly as if elected at a general municipal election, and would take the Oath of Office, be formally seated and begin their new terms at the December 11, 2024 City Council meeting. Additionally, the City Clerk would not be permitted to accept for filing any statement of write-in candidacy submitted for the City Election.



# CITY *of* ESCONDIDO

## STAFF REPORT

### RESOLUTIONS

- a. Resolution No. 2024-125

### ATTACHMENTS

- a. Attachment "1" – Notice of Election
- b. Attachment "2" – Nomination Certification

## RESOLUTION NO. 2024-125

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, CANCELLING THE NOVEMBER 5, 2024, GENERAL MUNICIPAL ELECTION FOR THE OFFICE OF CITY TREASURER AND APPOINTMENT OF THE INCUMBENT FOR THE FULL FOUR-YEAR TERM FROM 2024-2028

WHEREAS, the City of Escondido ("City") has scheduled a General Municipal Election on November 5, 2024, to elect an individual to fill one (1) City Treasurer seat; and

WHEREAS, at the close of the nomination period on August 9, 2024, the only candidate papers received and verified by the City Clerk for the office of City Treasurer were from the incumbent City Treasurer; and

WHEREAS, on August 9, 2024, the City Clerk submitted a written certification to the City Council providing there are not more candidates nominated for the office of City Treasurer than seats to be filled at the General Municipal Election; and

WHEREAS, pursuant to California Elections Code Section 10229, the City Council is authorized to take one of the following courses of action when the number of candidates nominated does not exceed the number of offices to be filled at a municipal election:

1. Appoint to the office the person who has been nominated; or
2. Appoint to the office an eligible elector if no one has been nominated; or
3. Hold the election, if either no one or only one person has been nominated.

WHEREAS, a notice of the foregoing facts was published in the Times Advocate, a newspaper of general circulation in the City of Escondido.

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

1. That the above recitations are true.
2. That the City of Escondido General Municipal Election scheduled to be held on Tuesday, November 5, 2024, is hereby cancelled with respect to the office of City Treasurer only.
3. Pursuant to California Elections Code Section 10229, the following incumbent is hereby appointed to the office to which he was nominated:

Name	Office	Term
Douglas W. Shultz	City Treasurer	Four Years

4. The appointed City Treasurer shall qualify and take office and serve exactly as if elected at a general municipal election for the office.
5. The Oath of Office shall be administered and the appointed City Treasurer shall be formally seated and begin his new term at the December 11, 2024, City Council meeting.
6. The City Clerk shall not accept for filing any statement of write-in candidacy for the office of City Treasurer which may be submitted for the General Municipal Election.
7. The City Clerk shall certify to the passage and adoption of this Resolution and shall file a certified copy of this Resolution with the County of San Diego Registrar of Voters.

**ESCONDIDO TIMES-ADVOCATE**

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

**PROOF OF PUBLICATION**

See Proof on Next Page

City Clerk Escondido  
City of Escondido  
City Hall, Second Floor


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

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

Published in: ESCONDIDO TIMES-ADVOCATE  
Run Dates:  
Jul. 4, 2024

Executed on: 7-4-24  
At Escondido, CA

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

  
\_\_\_\_\_  
Signature

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



# MEMORANDUM

## NOTICE OF ELECTION

NOTICE IS HEREBY GIVEN that a General Municipal Election will be held in the City of Escondido on Tuesday, November 5, 2024, for the following Officers:

- For One (1) Member of the City Council – District Three (Full term of four years)
- For One (1) Member of the City Council – District Four (Full term of four years)
- For One (1) Treasurer (Full term of four years)

The nomination period for these offices begins on July 15, 2024 and closes on August 9, 2024 at 5:00 p.m.

If nomination papers for an incumbent officer of the city are not filed by August 9, 2024 (the 88<sup>th</sup> day before the election), the voters shall have until the 83<sup>rd</sup> day before the election, August 14, 2024, to nominate candidates other than the person(s) who are the incumbents on the 88<sup>th</sup> day before the election, for that incumbent's elective office. This extension is not applicable where there is no incumbent eligible to be elected.

If no one or only one person is nominated for an elective office, appointment to the elective office may be made as prescribed by § 10229, Elections Code of the State of California.

DocuSigned by:  
*Zack Beck*  
A58535D08DC1430...

Zack Beck, CMC, CPMC  
City Clerk

Published in THE ESCONDIDO TIMES-ADVOCATE:  
07/04/24



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

**NOTICE OF CITY CLERK CERTIFICATION THAT THERE ARE NOT MORE  
CANDIDATES THAN OFFICES TO BE ELECTED FOR THE SEAT OF CITY  
TREASURER**

I, ZACK BECK, City Clerk of the City of Escondido, do hereby certify, that pursuant to the Elections Code Section 10229 of the State of California, to the following facts relating to the General Municipal Election to be held on Tuesday, November 5, 2024.

As of the close of the nomination period on August 9, 2024, there are not more candidates than offices to be elected for the seat of City Treasurer.

The person(s) so nominated are:

Douglas W. Shultz — City Treasurer

That Section 10229 of the Elections Code allows one of the following courses of action to be taken by the City Council:

1. Appoint to the office the person(s) who has / have been nominated.
2. Appoint to the office any eligible elector if no one has been nominated.
3. Hold the election, if either no one or only one person has been nominated.

A notice of these facts will be published on August 15, 2024, in a newspaper of general circulation in the city pursuant to Section 6061 of the Government Code. After the fifth day following the date of publication, the City Council will meet to either make the appointment(s) or direct an election to be held. The person(s) appointed, if any, shall qualify and take office and serve exactly as if elected at a municipal election for the office.

If, by the 75th day before the municipal election, no person has been appointed to the office(s) pursuant to (1) or (2) above, the election shall be held.

If the City Council makes an appointment pursuant to Elections Code Section 10229, the City Clerk shall not accept for filing any statement of write-in candidacy which is submitted after the appointment is made.

DocuSigned by:

*Zack Beck*

A58535D0BDC1430...

Zack Beck  
City Clerk