



CITY COUNCIL
HOUSING AUTHORITY AND
SUCCESSOR AGENCY TO THE EL CAJON
REDEVELOPMENT AGENCY

Council Chamber
200 Civic Center Way
El Cajon, CA 92020

Agenda JUNE 22, 2021, 3:00 p.m.

Bill Wells, Mayor

Gary Kendrick, Mayor Pro Tem

Steve Goble, Councilmember

Michelle Metschel, Councilmember

Phil Ortiz, Councilmember

Graham Mitchell, City Manager

Vince DiMaggio, Assistant City Manager

Morgan Foley, City Attorney

Angela Cortez, City Clerk

CALL TO ORDER: Mayor Bill Wells

ROLL CALL: City Clerk Angela Cortez

PLEDGE OF ALLEGIANCE TO FLAG AND MOMENT OF SILENCE

POSTINGS: The City Clerk posted Orders of Adjournment of the June 8, 2021, Meeting and the Agenda of the June 22, 2021, Meeting in accordance to State Law and Council/Authority/Successor Agency to the Redevelopment Agency Policy.

PRESENTATIONS:

- Fentanyl's Impact on our Community
- Redistricting Update

AGENDA CHANGES:

CONSENT ITEMS:

Consent Items are routine matters enacted by one motion according to the RECOMMENDATION listed below. With the concurrence of the City Council, a Council Member or person in attendance may request discussion of a *Consent Item* at this time.

1. Minutes of the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency Meeting

RECOMMENDATION:

That the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency approves Minutes of the June 8, 2021, Meeting of the El Cajon City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency.

2. Warrants

RECOMMENDATION:

That the City Council approves payment of Warrants as submitted by the Finance Department.

3. Approval of Reading Ordinances by Title Only

RECOMMENDATION:

That the City Council approves the reading by title and waives the reading in full of all Ordinances on the Agenda.

4. Maintenance, Support, and Equipment Replacement Agreement for Cardiac Devices

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, to authorize the City Manager, in accordance with Municipal Code section 3.20.010 (C) (5), to execute a ten-year equipment lease agreement with Flex Financial, a division of Stryker Sales, LLC, and a ten-year service agreement with Stryker Medical, a division of Stryker Corporation, in the combined annual amount of \$121,160.

5. Purchase of Battery Energy Storage Systems for the Public Safety Center

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, to authorize the City Manager to execute purchase and service agreements, including subsequent amendments, in the not-to-exceed amount of \$655,000, to support the procurement of battery energy storage systems (BESS) for the Public Safety Center.

6. 2019 Operation Stonegarden Grant (OPSG) - Funded by the Office of Homeland Security

RECOMMENDATION:

That the City Council takes the following actions:

1. Authorize the City Manager or designee to accept the 2019 Operation Stonegarden Grant (OPSG) in the amount of \$30,000, and to execute any grant documents and agreements necessary for the receipt and use of these funds; and
2. Appropriate funding in the amount of \$30,000 to reimburse the El Cajon Police Department for overtime (\$28,340), fringe benefits (\$1,178), and mileage costs (\$482) while participating in OPSG coordinated operations.

7. Subdivision Agreement for Private Improvements for Tentative Subdivision Map (TSM) 645R, 1075 East Washington Avenue, Rocky Hill Pointe

RECOMMENDATION:

That the City Council:

1. Approves the Subdivision Agreement for Private Improvements between the City of El Cajon and Rocky Hill Partners, LLC;
2. Authorizes the City Manager to execute the agreement and related documentation; and
3. Authorizes the City Clerk to release bonds after completion of improvements.

8. Amendment to Resolution No. 042-21, adopted at the 05/11/2021 Meeting

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, to amend Resolution No. 042-21 to include \$100,000 for COVID-19 vaccinations as approved by the City Council.

PUBLIC COMMENT:

At this time, any person may address a matter within the jurisdiction of the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency that is not on the Agenda. Comments relating to items on today's docket are to be taken at the time the item is heard. State law prohibits discussion or action on items not on the Agenda; however, Council, Authority and Agency Members may briefly respond to statements or questions. An item may be placed on a future Agenda.

WRITTEN COMMUNICATIONS:

PUBLIC HEARINGS:

9. Fiscal Year 2021-22 Annual City, Housing Authority, and Successor Agency Budgets

RECOMMENDATION:

That the City Council, Housing Authority, and the City of El Cajon as Successor Agency to the former Redevelopment Agency hold a joint public hearing to consider the Fiscal Year 2021-22 Proposed Budgets. After closing the public hearing, staff recommends the following:

1. Acting as the City Council, individually adopt the following:
 - a. Resolution of the City of El Cajon Adopting the Fiscal Year 2021-22 Annual Budget.
 - b. Resolution Approving and Adopting the Annual Appropriations Limit for Fiscal Year 2021-22.
 - c. Resolution Approving Designation of General Fund Balances.
2. Acting as the Housing Authority Board of Directors, adopt Resolution titled: Resolution of the El Cajon Housing Authority Adopting the Fiscal Year 2021-22 Budget.
3. Acting as the Successor Agency to the former Redevelopment Agency Board of Directors, adopt Resolution titled: Resolution of the City Council of the City Of El Cajon as the Successor Agency to the former El Cajon Redevelopment Agency Adopting the Fiscal Year 2021-22 Budget.

ADMINISTRATIVE REPORTS:

10. American Rescue Plan Act Funding Appropriations & Update

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, to appropriate American Rescue Plan Act funds for designated projects.

11. Compensation for Executive and Unrepresented Employees (A-29), City Manager, and City Attorney

RECOMMENDATION:

That the Mayor provides an oral report summarizing recommended changes in compensation for the City's "local agency executives" and, following the report, that the City Council:

1. Approves the changes to City Council Policy A-29 described below and reflected in the attachment; and
2. Adopts the next Resolutions, in order, to approve the amendments to the employment contracts with the city manager and city attorney, and authorizing the Mayor to execute the amendments, substantially in the forms as presented.

12. City of El Cajon Parks and Recreation Memorial Bench and Picnic Table Program

RECOMMENDATION:

That the City Council approves the City of El Cajon Parks and Recreation Memorial Bench and Picnic Table Program.

13. COVID-19 Status Report

RECOMMENDATION:

No action required.

COMMISSION REPORTS:

ACTIVITIES REPORTS/COMMENTS OF MAYOR WELLS

SANDAG (San Diego Association of Governments) Board of Directors; SANDAG – Audit Committee, San Diego Division; LAFCO.

14. Council Activity Report

ACTIVITIES REPORTS/COMMENTS OF COUNCILMEMBERS:

15. **COUNCILMEMBER STEVE GOBLE**

MTS (Metropolitan Transit System Board); East County Advanced Water Purification Joint Powers Authority Board; Chamber of Commerce – Government Affairs Committee; SANDAG – Board of Directors – Alternate; SANDAG Public Safety Committee – Alternate; METRO Commission/Wastewater JPA – Alternate.

16. **MAYOR PRO TEM GARY KENDRICK**

METRO Commission/Wastewater JPA; Heartland Communications; Heartland Fire Training JPA.

17. **COUNCILMEMBER MICHELLE METSCHEL**

Harry Griffen Park Joint Steering Committee; Heartland Communications – Alternate; Heartland Fire Training JPA – Alternate.

18. **COUNCILMEMBER PHIL ORTIZ**

League of California Cities, San Diego Division; East County Economic Development Council; MTS (Metropolitan Transit System Board) – Alternate; East County Advanced Water Purification Joint Powers Authority Board – Alternate; Chamber of Commerce – Government Affairs Committee – Alternate.

GENERAL INFORMATION ITEMS FOR DISCUSSION:

ORDINANCES: FIRST READING

ORDINANCES: SECOND READING AND ADOPTION

CLOSED SESSIONS:

ADJOURNMENT: The Adjourned Regular Joint Meeting of the El Cajon City Council/ El Cajon Housing Authority/Successor Agency to the El Cajon Redevelopment Agency held this 22nd day of June 2021, is adjourned to Tuesday, July 13, 2021, at 3:00 p.m.



City Council
Agenda Report

Agenda Item 1.

DATE: June 22, 2021

TO: Honorable Mayor and City Councilmembers

FROM: Angela Cortez, City Clerk

SUBJECT: Minutes of the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency Meeting

RECOMMENDATION:

That the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency approves Minutes of the June 8, 2021, Meeting of the El Cajon City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency.

Attachments

06-08-21 DRAFT minutes - 3PM

JOINT MEETING OF THE EL CAJON CITY COUNCIL/HOUSING AUTHORITY/SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY



MINUTES

CITY OF EL CAJON EL CAJON, CALIFORNIA

June 8, 2021

A Regular Joint Meeting of the El Cajon City Council/Housing Authority/ Successor Agency to the El Cajon Redevelopment Agency, held Tuesday, June 8, 2021, was called to order by Mayor Pro Tem Gary Kendrick at 3:01 p.m., in the Council Chambers, 200 Civic Center Way, El Cajon, California.

ROLL CALL

Council/Agencymembers present: Goble, Metschel, and Ortiz
Council/Agencymembers absent: None
Deputy Mayor/Vice Chair present: Kendrick
Mayor/Chair Absent: Wells
Other Officers present: Mitchell, City Manager/Executive Director
DiMaggio, Assistant City Manager
Foley, City Attorney/General Counsel
Cortez, City Clerk/Secretary

PLEDGE OF ALLEGIANCE TO FLAG led by Mayor Pro Tem Kendrick and MOMENT OF SILENCE. The meeting was dedicated to the Memory of Mr. Ed Burr, co-founder of EDCO Disposal Corporation. (The Courts have concluded that sectarian prayer, as part of City Council Meetings, is not permitted under the Constitution).

POSTINGS: The City Clerk posted Orders of Adjournment of the May 25, 2021, meeting and the Agenda of the June 8, 2021, meeting in accordance with State Law and El Cajon City/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency Policy.

PRESENTATIONS: None

AGENDA CHANGES: None

CONSENT ITEMS: (1 – 3)

MOTION BY KENDRICK, SECOND BY ORTIZ, to APPROVE Consent Items 1 to 3.

MOTION CARRIED BY UNANIMOUS VOTE OF THOSE PRESENT (WELLS – Absent).

1. Minutes of El Cajon City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency Meetings

Approves Minutes of the May 25, 2021, Meeting of the El Cajon City Council/ Housing Authority/Successor Agency to the El Cajon Redevelopment Agency.

2. Warrants

Approves payment of Warrants as submitted by the Finance Department.

3. Approval of Reading Ordinances by Title only

Approves the reading by title and waives the reading in full of all Ordinances on the Agenda.

PUBLIC COMMENT: None

WRITTEN COMMUNICATIONS: None

PUBLIC HEARINGS: None

Remainder of page intentionally left blank.

ADMINISTRATIVE REPORTS:

4. Evidence of Residency for Mayor and City Council Candidates

RECOMMENDATION:

That the City Council provides feedback on a proposed policy to collect evidence of residency for the offices of Mayor and City Council Candidates.

DISCUSSION

City Attorney Foley provided detailed information of the Item.

Discussion ensued among Council and Staff concerning the following:

- City follows the State Election Code for Election Requirements;
- Difference between residence and domicile;
- Council preference to request documents to prove residency; and
- Suggestion to request an affidavit from candidates.

Stephanie Harper submitted an online comment to support the proposed policy.

A list of documents to be considered by the City Council will be provided by staff in a future meeting.

5. Fiscal Year 2021-22 Preliminary Annual Budget

RECOMMENDATION:

That the City Council, Housing Authority, and the City of El Cajon as Successor Agency to the former Redevelopment Agency receives information related to the proposed Fiscal Year 2021-22 Preliminary Annual Budget.

DISCUSSION

City Manager Mitchell introduced Director of Finance, Clay Schoen, who provided detailed information of the Item.

Discussion ensued among Council and Staff concerning the following:

- Request to increase the Police budget by \$100,000;
- De-escalation and non-lethal training for Police force;
- Request for more information on Pension Obligation Bonds (POB) and how POB's affect the budget; and
- Recommended figure to keep as budget reserves.

ADMINISTRATIVE REPORTS: (Item 5 - Continued)

Online comments were submitted to express support for the El Cajon Police Department from the following:

1. Ivan Andujar
2. Daniel Bickford
3. S. Osburn
4. Michael Mylar
5. Sharon Murphy
6. Johs Turchin
7. Mark Miller

Stephanie Harper submitted an online comment with questions on allocations for the Wells' park improvements.

A Public Hearing is scheduled for June 22, 2021 to adopt the proposed budget.

6. American Rescue Plan Act - Eligible Use of Funds & Current Programs Update

RECOMMENDATION:

That the City Council provides direction regarding possible uses of American Rescue Plan Act funds.

DISCUSSION

City Manager Mitchell provided detailed information of the Item.

Discussion ensued among Council and Staff to find methods to provide information to the non-social media population, and consideration of the proposed ideas to provide relief from economic impact to households and business affected by the pandemic.

No comments were received for the Item.

7. COVID-19 Status Report

RECOMMENDATION:

That the City Council provides direction regarding the format of City Council and Planning Commission meetings after the June 15, 2021 "Beyond the Blueprint" direction from the State of California.

DISCUSSION

City Manager Mitchell provided detailed information of the Item.

ADMINISTRATIVE REPORTS: (Item 7 - Continued)

Discussion ensued among Council and Staff concerning the following:

- Hybrid meetings, with Brown Act limitations;
- Continue streaming with Facebook Live;
- Accepting comments via webmaster with a cut-off time;
- Limit of one councilmember to attend the meeting via Zoom; and
- Mask requirements to be determined by the California Occupational Safety and Health Standards Board.

COMMISSION REPORTS: None

ACTIVITIES REPORTS/COMMENTS OF MAYOR WELLS:

SANDAG (San Diego Association of Governments) Board of Directors; SANDAG – Audit Committee; LAFCO.

8. Council Activities Report/Comments

Report as stated.

9. Legislative Update

Assistant City Manager DiMaggio provided a comprehensive report on the Legislative Bills of interest to the City and highlighted the following bills:

- AB 333 – Participation in a criminal street gang: Enhanced sentence;
- AB 339 – Local government: Open and public meetings;
- AB 989 – Housing accountability act: appeals: Housing Accountability Committee;
- AB 1401 – Residential and commercial development: Parking requirements;
- SB 2 – Peace officers: Certification: Civil rights;
- SB 300 – Crimes: murder: punishment; and
- SB 519 – Controlled substances: decriminalization of certain hallucinogenic substances.

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ACTIVITIES REPORTS OF COUNCILMEMBERS:

10. COUNCILMEMBER STEVE GOBLE
MTS (Metropolitan Transit System Board); East County Advanced Water Purification Joint Powers Authority Board; Chamber of Commerce – Government Affairs Committee; SANDAG – Board of Directors – Alternate; SANDAG Public Safety Committee – Alternate; METRO Commission/Wastewater JPA – Alternate.

Council Activities Report/Comments.

In addition to the submitted report, Councilmember Goble stated he participated on a call between the Elected Officials and the County Public Health Office on June 3, 2021; and on June 4, 2021, he attended the East County Water Purification meeting.

11. MAYOR PRO TEM GARY KENDRICK
METRO Commission/Wastewater JPA; Heartland Communications; Heartland Fire Training JPA.

Council Activities Report/Comments.

Report as stated.

12. COUNCILMEMBER MICHELLE METSCHEL
Harry Griffen Park Joint Steering Committee; Heartland Communications – Alternate; Heartland Fire Training JPA – Alternate.

Council Activities Report/Comments.

Report as stated.

13. COUNCILMEMBER PHIL ORTIZ
League of California Cities, San Diego Division; East County Economic Development Council; MTS (Metropolitan Transit System Board) – Alternate; East County Advanced Water Purification Joint Powers Authority Board – Alternate; Chamber of Commerce – Government Affairs Committee – Alternate.

Council Activities Report/Comments.

Report as stated.

JOINT COUNCILMEMBER REPORTS: None

GENERAL INFORMATION ITEMS FOR DISCUSSION: None

ORDINANCES: FIRST READING - None

ORDINANCES: SECOND READING AND ADOPTION

14. Remove Conditional Use Permit Requirement for Outdoor Dining on City Sidewalks

RECOMMENDATION:

That Mayor Wells requests the City Clerk to recite the title.

DISCUSSION

The City Clerk recited the title of the ordinance for a second reading.

AN ORDINANCE TO AMEND SECTIONS 12.09.030 AND 12.09.060 OF THE EL CAJON MUNICIPAL CODE TO ELIMINATE THE NEED FOR A CONDITIONAL USE PERMIT FOR SIDEWALK DINING IN THE CITY.

MOTION BY ORTIZ, SECOND BY GOBLE, to ADOPT Ordinance No. 5111, to amend sections 12.09.030 and 12.09.060 of the El Cajon Municipal Code to eliminate the need for a Conditional Use Permit for sidewalk dining in the City.

MOTION CARRIED BY UNANIMOUS VOTE OF THOSE PRESENT (WELLS – Absent).

CLOSED SESSIONS: None

Adjournment: Mayor Wells adjourned the Regular Joint Meeting of the El Cajon City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency held this 8th day of June, 2021, at 5:15 p.m., to Tuesday, June 22, 2021, at 3:00 p.m.

ANGELA L. CORTEZ, CMC
City Clerk/Secretary



City Council
Agenda Report

DATE: June 22, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Mara Romano, Senior Buyer
SUBJECT: Maintenance, Support, and Equipment Replacement Agreement for Cardiac Devices

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, to authorize the City Manager, in accordance with Municipal Code section 3.20.010 (C) (5), to execute a ten-year equipment lease agreement with Flex Financial, a division of Stryker Sales, LLC, and a ten-year service agreement with Stryker Medical, a division of Stryker Corporation, in the combined annual amount of \$121,160.

BACKGROUND:

The cardiac heart monitors, defibrillators, and CPR devices utilized by the Fire Department are an essential public safety tool and key to providing lifesaving measures to the public.

Stryker Medical (Stryker) has been providing as-needed cardiac equipment and the associated maintenance and service for over 17 years to the Fire Department. LifePak and Lucas heart monitors, defibrillators, and CPR devices are the standardized equipment for Heartland Fire and Rescue because the devices are in all fire vehicles and fire personnel has had extensive training utilizing the devices. In addition, if new equipment was introduced, there would be extensive costs in replacing the units and accessories and substantial time re-training staff. Stryker is the sole U.S. provider of these devices and associated maintenance and service.

Stryker has offered the El Cajon Fire Department and Heartland Fire & Rescue cities their Advanced Life Support 360 plan (ALS). The newly structured agreement will lease the equipment to the City with the option for the City to purchase the equipment at the end of the 10-year lease for \$1.00, and includes the addition of equipment replacement to take place in the first and fifth years. The costs of both agreements will be financed through Flex Financial, a division of Stryker Sales, LLC, with the annual lease payments sufficient to cover annual principal and interest payable to Flex Financial for financing the purchase of the equipment. The ALS includes a separate service agreement with Stryker Medical, a division of Stryker Corporation, that runs concurrent with the equipment lease agreement, and will cover service and maintenance expenses in addition to equipment replacement for a 10-year period with fixed annual pricing at today's costs. In executing the equipment lease agreement at today's costs, the City is projected to save approximately \$500,000 over the life of the contract. The 10-year cost of \$1,211,600 will be divided into annual payments of \$121,160. Both the equipment lease and service agreements contemplate that the City Council will appropriate the annual lease

payments for the entire 10-year period. If the payments are not appropriated in any year the City can terminate both agreements and return the equipment to Stryker.

The sole source request has been reviewed by the Purchasing Division and determined to be in the best interest of the City. As a result, this procurement is recommended as an exception to the City's competitive bidding requirement, pursuant to Municipal Code section 3.20.010 (C) (5). In addition to the contract execution, subsequent amendments to the agreement to be approved by the City Manager.

FISCAL IMPACT:

The initial fiscal impact of this purchase is \$121,160 and subsequent one-year costs are estimated to total \$1,090,440 resulting in a projected \$500,000 savings over the 10-year term. Sufficient funds are included in the proposed Fiscal Year 2021-22 Fire Annual Budget: Emergency Medical Services (146000), contingent upon City Council approval.

Prepared By: Mara Romano, Acting Purchasing Agent

Reviewed By: Steve Swaney, Fire Chief

Approved By: Graham Mitchell, City Manager

Attachments

Resolution - Stryker Equipment Lease

Master Agreement

Support Agreement

RESOLUTION NO. ____-21

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF EL CAJON APPROVING
AND AUTHORIZING THE EXECUTION OF AN
AGREEMENT FOR MAINTENANCE, SUPPORT AND
EQUIPMENT REPLACEMENT OF CARDIAC DEVICES

WHEREAS, the cardiac heart monitors, defibrillators, and CPR devices utilized by the Fire Department of the City of El Cajon (the "City") are an essential public safety tool and key to providing lifesaving measures to the public; and

WHEREAS, Stryker Sales, LLC, a division of Stryker Corporation ("Stryker") has been providing as-needed cardiac equipment and the associated maintenance and service for over seventeen years to the Fire Department; and

WHEREAS, LifePak and Lucas heart monitors, defibrillators, and CPR devices (the "Devices") are the standardized equipment for Heartland Fire and Rescue ("Heartland") and are in all fire vehicles, and fire personnel have been extensively trained utilizing the Devices; and

WHEREAS, if new equipment was introduced, extensive costs would be incurred in replacing the units and accessories, and substantial time would be necessary to re-train staff in the proper use and operation of the new equipment; and

WHEREAS, Stryker is the sole provider in the United States of the Devices and associated maintenance and service, and has offered to lease their Advanced Life Support 360 plan (the "ALS") to the City and the other cities that are part of Heartland for a 10-year period with fixed annual lease payments priced at today's costs; and

WHEREAS, the newly-structured agreement (the "Agreement") is structured as an equipment lease for a period of 10 years, with an option to purchase the equipment for \$1.00, and includes the addition of equipment replacement in the first (1st) and fifth (5th) years; and

WHEREAS, Flex Financial, a division of Stryker Sales, LLC ("Flex Financial"), provides financing for the lease of the equipment to the City; and

WHEREAS, the ALS includes a 10-year service agreement (the "Service Agreement") between the City and Stryker Medical, a division of Stryker Corporation, in order to maintain the leased equipment over the life of the lease, and will cover service and maintenance expenses, in addition to equipment replacement; and

WHEREAS, in executing the Agreement at this time, the City is projected to save approximately \$500,000 over the life of the lease, and the total ten-year cost of \$1,211,600 will be divided into ten annual lease payments of \$121,160 each; and

WHEREAS, the sole source request has been reviewed by the Purchasing Division and determined to be in the best interest of the City, and staff therefore recommends this procurement as an exception to the City's competitive bidding requirement, pursuant to El Cajon Municipal Code section 3.20.010 (C) (5); and

WHEREAS, sufficient funds are included in the proposed Fiscal Year 2021-22 Fire Annual Budget: Emergency Medical Services, contingent upon City Council approval; and

WHEREAS, the City Council believes it to be in the City's best interest to execute the Agreement and the Service Agreement with Stryker, each for a ten-year term at a total cost of \$1,211,600, with annual payments of \$121,160 for maintenance, support and equipment replacement of the Devices.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. The above recitals are true and correct, and are the findings of the City Council.

2. The City Council hereby approves entering into the Agreement with Flex Financial, a division of Stryker Sales, LLC, for the lease of the Devices as presented to the City Council at this meeting, and further approves entering into the Service Agreement with Stryker Medical, a division of Stryker Corporation, for maintenance, support and equipment replacement of the Devices, each for a term of ten years at a total, combined, cost of \$1,211,600, with annual payments of \$121,160.

3. The City Council hereby authorizes the City Manager, or such person as is designated by the City Manager, to execute the Agreement and the Service Agreement, with any such changes and refinements as may be necessary and approved by the City Manager.

4. The City Manager, or such person as is designated by the City Manager, is hereby authorized and directed to execute any subsequent amendments to the Agreement, the Service Agreement, or other documents necessary, as may be approved by the City Manager, on behalf of the City of El Cajon.

/Flex Financial, a division of Stryker Sales,
LLC1901 Romence Road Parkway
Portage, MI 49002
t: 1-888-308-3146 f: 877-204-1332
www.stryker.com



Date: April 28, 2021

RE: Reference no: 0110133244

City of El Cajon
200 CIVIC CENTER WAY
EL CAJON, California 92020-3916

Thank you for choosing Stryker for your equipment needs. Enclosed please find the documents necessary to enter into the arrangement. Once all of the documents are completed, properly executed and returned to us, we will issue an order for the equipment.

PLEASE COMPLETE ALL ENCLOSED DOCUMENTS TO EXPEDITE THE SHIPMENT OF YOUR ORDER.

**Master Agreement
Equipment Schedule No. 001 (Equipment Rental Schedule)
Exhibit A to Rental Schedule 001 – Description of Equipment
Insurance Authorization and Verification
State and Local Government Rider
Addendum**

****Conditions of Approval: Insurance Authorization and Verification, State and Local Government Rider , Federal ID**

PLEASE PROVIDE THE FOLLOWING WITH THE COMPLETED DOCUMENTS:

Federal tax ID number:	_____	AP address:	_____
Purchase order number:	_____	Contact name:	_____
Phone number:	_____	Email address:	_____

Please email completed documents to (877) 204-1332. Documents, as listed above, will be routed via DocuSign for execution by both parties.

Your personal documentation specialist is Michelle Warren and can be reached at 269-389-1909 or by email michelle.warren@stryker.com for any questions regarding these documents.

The proposal evidenced by these documents is valid through the last business day of **June, 2021**

Sincerely,

Flex Financial, a division of Stryker Sales, LLC

Notice: To help the government fight the funding of terrorism and money laundering activities, U.S. Federal law requires financial institutions to obtain, verify and record information that identifies each person (individuals or businesses) who opens an account. What this means for you: When you open an account or add any additional service, we will ask you for your name, address, federal employer identification number and other information that will allow us to identify you. We may also ask to see other identifying documents. For your records, the federal employer identification number for Flex Financial, a Division of Stryker Sales, LLC is 38-2902424.

MASTER AGREEMENT No. 0110133244

<p>Owner: Flex Financial, a division of Stryker Sales, LLC 1901 Romence Road Parkway Portage, MI 49002</p>	<p>Customer: City of El Cajon 200 CIVIC CENTER WAY EL CAJON, California 92020-3916</p>
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1. Master agreement. The City of El Cajon ("**Customer**") unconditionally and irrevocably agrees with the above referenced Owner (together with all of its successors and Assignees, collectively, "**Owner**") to use or acquire, as applicable, the equipment and other personal property and services, if any (together with all additions and attachments to it and all substitutions for it, collectively, the "**Equipment**") described in each Equipment Schedule referencing this Agreement (which may be in the form of an Equipment Lease Schedule, Equipment Rental Schedule, Equipment Use Schedule, Fee Per Disposable Schedule, Fee Per Implant Schedule, Equipment Purchase Schedule or other schedule referencing this Agreement, each, together with any attachments thereto, an "**Equipment Schedule**") and purchased from the Supplier(s) noted in the applicable Equipment Schedule (each a "**Supplier**"). Each Equipment Schedule shall incorporate by reference all of the terms of this Agreement and shall constitute a separate agreement (each such Equipment Schedule, together with such incorporated terms of this Agreement, collectively, a "**Schedule**") that is assignable separately from each other Schedule. In the event of a conflict between this Agreement and the terms of an Equipment Schedule, the terms of the Equipment Schedule shall prevail. No provision of a Schedule may be amended except in a writing signed by Owner's and Customer's duly authorized representatives.

2. Risk of loss. Effective upon delivery to Customer and continuing until the Equipment is returned to Owner in accordance with the terms of each Schedule, Customer shall bear all risks of loss or damage to the Equipment and if any loss occurs Customer is nevertheless required to satisfy all of its obligations under each Schedule.

3. Payments/fees. All periodic payments, "Semi-Annual Differential" (if a Fee Per Disposable Schedule or Fee Per Implant Schedule) and other amounts due from Customer to Owner under a Schedule are collectively referred to as "**Payments**". Unless otherwise instructed by Owner in writing, all Payments shall be made to Owner's address in the applicable Equipment Schedule No. 001. Any payment by or on behalf of Customer that purports to be payment in full for any obligation under any Schedule may only be made after Owner's prior written agreement to accept such payment amount. If Customer fails to pay any amount due under a Schedule within thirty (30) days after its due date, Customer agrees to pay a late charge equal to (as reasonable liquidated damages and not as a penalty) one and one-half percent (1.5%) of the amount of each such late payment. If any check or funds transfer request for any Payment is returned to Owner unpaid, Customer shall pay Owner a service charge of \$55 for each such returned check or request. Customer authorizes Owner to adjust the Payments at any time if taxes included in the Payments differ from Owner's estimate. Customer agrees that the Payments under a Schedule were calculated by Owner based, in part, on an interest rate equivalent as quoted on the Intercontinental Exchange website, at <https://www.theice.com/marketdata/reports/180>, under the USD Rates 1100 Series, that would have a repayment term equivalent to the initial term (or an interpolated rate if a like-term is not available) as reasonably determined by us and in the event the date the Equipment is delivered to Customer under any Schedule is more than 30 days after Owner sends the Schedule to Customer, Owner may adjust the Payments once to compensate Owner, in good faith, for any increase in such rate.

4. Equipment. Customer shall keep the Equipment free of liens, claims and encumbrances, and shall not modify, move, sell, transfer, or otherwise encumber any Equipment or permit any Equipment to be used by others or become attached to any realty, in each case without the prior written consent of Owner, which consent shall not be unreasonably withheld. Any modification or addition to any Equipment shall automatically become the sole property of Owner, unless the Schedule is an Equipment Purchase Schedule or Customer selects \$1.00 Buyout for any Schedule. Owner shall have the right to enter Customer's premises during business hours to inspect any Equipment and observe its use upon at least five (5) day's prior written or verbal notice. Customer shall comply with all applicable laws, rules and regulations concerning the operation, ownership, use and/or possession of the Equipment.

5. Obligations absolute. Customer's Payments and other obligations under each Schedule are absolute and unconditional regardless of loss of possession, use or destruction of the Equipment (or Disposables/Implants, if applicable) and are not subject to any set-offs, recoupment, claims, abatements or defenses, provided that neither this Agreement nor any Equipment Schedule shall impair any express warranties or indemnifications, written service agreements or other obligations of Stryker Corporation or any of its subsidiaries to Customer regarding the Equipment and Owner hereby assigns all of its rights in any Equipment warranties to Customer. Customer waives all rights to any indirect, punitive, special or consequential damages in connection with the Equipment or any Schedule.

6. Use/assignment/disclaimers. All Equipment shall be used solely for business purposes, and not for personal or household use. Customer shall maintain the Equipment in good repair in accordance with the instructions of the Supplier so that it shall be able to operate in accordance with the manufacturer's specifications. **CUSTOMER SHALL NOT TRANSFER OR ASSIGN ANY OF ITS RIGHTS OR OBLIGATIONS UNDER ANY SCHEDULE OR EQUIPMENT** without Owner's prior written consent, which consent shall not be unreasonably withheld. Customer shall promptly notify Owner in writing of any loss or damage to any Equipment. Owner shall own the Equipment (unless the Schedule is an Equipment Purchase Schedule or Customer selects \$1.00 Buyout for any Schedule). Owner may sell, assign, transfer or grant a security interest to any third party (each, an "**Assignee**") in any Equipment, Payments and/or Schedule, or interest therein, in whole or in part, with written consent by Customer prior to assignment. Customer's written consent represents agreement that Owner may assign its rights under and/or interest in each Schedule and the related Equipment to an Assignee immediately upon or any time after Owner's acceptance of each Schedule and upon such assignment, Customer consents to such assignment and acknowledges that references herein to "Owner" shall mean the Assignee. No Assignee shall assume or be liable for any of the Original Owner's (as defined below) obligations to Customer even though an Assignee may continue to bill and collect all of Customer's obligations under this Agreement in the name of "Flex Financial, a division of Stryker Sales, LLC". Customer acknowledges that such Assignee is not the manufacturer or supplier of any Equipment and is not responsible for its delivery, installation, repair, maintenance or servicing and no Assignee shall have any obligations or liabilities of any kind whatsoever concerning or relating to the Equipment. Customer has selected each Supplier and manufacturer and all of the Equipment. Neither the Original Owner, Supplier nor any manufacturer is an agent of any Assignee, and no representative of the Original Owner, manufacturer or any Supplier is authorized to bind any Assignee for any purpose or make any representation on Assignee's behalf. Customer agrees to look only to Stryker Sales, LLC (the "**Original Owner**"), the Supplier(s) or the manufacturer(s) for any defect or breach of warranty regarding the Equipment. **AS TO ANY ASSIGNEE, CUSTOMER TAKES AND USES THE EQUIPMENT ON AN "AS-IS", "WHERE-IS" BASIS. ASSIGNEE MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, REGARDING ANY EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TO THE EXTENT, IF ANY, THAT CUSTOMER HAS ANY CLAIMS, RIGHTS OR DEFENSES AGAINST THE ORIGINAL OWNER, ANY MANUFACTURER AND/OR ANY SUPPLIER, CUSTOMER SHALL RAISE SUCH CLAIMS, RIGHTS OR DEFENSES ONLY AGAINST THE ORIGINAL OWNER, MANUFACTURER OR SUPPLIER AND NOT AGAINST ASSIGNEE AND SHALL NONE-THE-LESS PAY ALL PAYMENTS AND OTHER AMOUNTS DUE UNDER A SCHEDULE TO THE ASSIGNEE ON THEIR RESPECTIVE DUE DATES WITHOUT ANY DEFENSE, RECOUPMENT, SETOFF, ABATEMENT, CLAIM OR COUNTERCLAIM OF ANY NATURE. THE ORIGINAL OWNER (INCLUDING FLEX FINANCIAL, A DIVISION OF STRYKER SALES, LLC) MAKES NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING ANY EQUIPMENT.**

7. Insurance/indemnification. Customer shall at all times maintain and provide Owner with certificates of insurance evidencing (i) third-party general liability insurance (covering death and personal injury and damage to third party property) with a minimum limit of \$1 million combined single limit per occurrence and (ii) property insurance covering the Equipment against fire, theft, and other loss, damage or casualty for the full replacement value of the Equipment in each case with insurers acceptable to Owner. Such policies shall list Owner and each Assignee as an additional insured and sole loss payee, as applicable, for such insurance. In the event that Owner determines that the insurance is not in effect, Owner may (but shall not be required to) obtain such insurance and add an insurance fee (which may include a profit) to the amounts due from Customer under the applicable Schedule. Upon any loss or damage to any Equipment, Customer shall continue to pay all Payments due under the related Schedule for the remainder of its term and return to Owner for repair or replacement. Proceeds of insurance shall be paid to Owner with respect to any Equipment loss, damage, theft or other casualty and shall, at the election of Owner, be applied to the repair of the Equipment by payment by Owner directly to the party completing the repairs. To the extent not expressly prohibited by applicable law, Customer will reimburse and defend Owner, including each Assignee for and against any losses, injuries, damages, liabilities, expenses, claims or legal proceedings asserted against or incurred by Owner, including any Assignee, relating to the Equipment and which relate to or arise out of Customer's act or omission or the act or omission of Customer's agents or employees or others (excluding Owner) with access to the Equipment. All Taxes and indemnity obligations shall survive the termination, cancellation or expiration of a Schedule.

8. UCC filings. If and to the extent that this Agreement or a Schedule is deemed a security agreement (or if the Schedule is an Equipment Purchase Schedule or Customer selects \$1.00 Buyout for any Schedule), Customer hereby grants to Owner, its successors and assigns, a security interest in all of Customer's rights under and interest in the Equipment, all additions to the Equipment and all proceeds of the foregoing *provided, however*, that under no circumstances shall any account or accounts receivable be included in the Schedule or otherwise subject to any security interest on the part of the Owner. Such security interest secures all Payments and other obligations owing by Customer to Owner under the applicable Schedule. Customer authorizes Owner and any Assignee to file UCC financing statements disclosing Owner's or Assignee's interest in the Equipment. Customer shall provide Owner with at least 45 days' prior written notice of any change to Customer's principal place of business, organization or incorporation.

9. Taxes.
 (a) Reporting and Payment. If permitted by applicable law and except as noted below, Owner shall pay when and as due all sales, use, property, excise and other taxes, and all license and registration fees now or hereafter imposed by any governmental body or agency upon any Schedule or the ownership, use, possession, or sale of the Equipment, together with all interest and penalties for their late payment or non-payment ("Taxes"). Customer shall indemnify and hold Owner harmless from any such Taxes. Owner shall prepare and file all tax returns relating to Taxes for which Owner is responsible hereunder or which Owner is permitted to file under the laws of the applicable taxing jurisdiction. Except with respect to Equipment subject to an Equipment Purchase Schedule or \$1.00 Buyout, Customer will not list any of the Equipment for property tax purposes or report any property tax assessed against the Equipment. Upon receipt of any tax bill pertaining to the Equipment from the appropriate taxing authority, Owner will pay such tax and will invoice Customer for the expense. Upon receipt of such invoice, including copies of any such tax bill, Customer will promptly reimburse Owner for such expense. If the Equipment is subject to an Equipment Purchase Schedule or \$1.00 Buyout, Customer shall report and pay all applicable property taxes on such Equipment. Nothing in this Subsection shall be deemed to prohibit Customer from reporting, for informational purposes only and to the extent required under applicable law, that it uses the Equipment.

(b) Tax Ownership.

(i) If Customer selects \$1.00 Buyout for any Schedule, the parties intend that Customer shall be considered the owner of the Equipment for tax purposes; provided, however, that Owner shall not be deemed to have violated this Agreement or any Schedule by taking a tax position inconsistent with the foregoing to the extent such a position is required by law or is taken though inadvertent so long as such inadvertent tax position is reversed by Owner promptly upon its discovery.

(ii) If Customer selects the Fair Market Value Option or the Fixed Purchase Option for any Schedule, the parties intend that the Schedule will not be a "conditional sale", and that Owner shall at all times and for all purposes be considered the owner of the Equipment (including for income taxes purposes), and that such Schedule will convey to Customer no right, title or interest in any of the Equipment except the right to use the Equipment as described in the Schedule. Customer will not take any actions or positions inconsistent with treating Owner as the owner of the Equipment on or with respect to any income tax return.

Should either the United States government (or agency thereof) or any state or local tax authority disallow, eliminate, reduce, recapture, or disqualify, in whole or in part, the Equipment tax benefits claimed under a Schedule by Owner as a result of any act or omission of Customer (collectively, "Tax Loss"), to the extent not prohibited by applicable law, Customer will indemnify Owner (on a net after tax basis) against all Tax Losses suffered, including the amount of any interest or penalties which might be assessed on Owner by the governmental authority(ies) with respect to such Tax Loss. All references to Owner in this Section include Owner and the consolidated taxpayer group of which Owner is a member. All of Owner's (including any Assignee's) rights, privileges and indemnities contained in this Section shall survive the expiration or other termination of this Agreement. The rights, privileges and indemnities contained herein are expressly made for the benefit of, and shall be enforceable by Owner (including any Assignee), or its respective successors and assigns.

10. Facsimile copies. Owner may from time to time, in its sole discretion, accept a photocopy or email of this Agreement and/or any Schedule (bearing a photocopied or electronically transmitted copy of Customer's signature) as the binding and effective record of such agreement(s) whether or not an ink signed counterpart thereof is also received by Owner from Customer, provided, however, that no Schedule shall be binding on Owner unless and until executed by Owner. Any such photocopy or electronically transmitted copy received by Owner shall when executed by Owner, constitute an original document for the purposes of establishing the provisions thereof and shall be legally admissible under the "best evidence rule" and binding on Customer as if Customer's manual ink signature was personally delivered.

11. Notices. All notices required or provided for in any Schedule, shall be in writing and shall be addressed to Customer or Owner, as the case may be, at its address set forth above or such other address as either such party may later designate in writing to the other party. Such notice shall be considered delivered and effective: (a) upon receipt, if delivered by hand or overnight courier, or (b) three (3) days after deposit with the U.S. Postal Service, if sent certified mail, return receipt requested with postage prepaid. No other means of delivery of notices shall be permitted.

12. Default; remedies. Customer will be in "default" under a Schedule, if any one or more of the following shall occur: (a) Customer or any Guarantor of any Schedule ("Guarantor") fails to pay Owner any Payment due under any Schedule within thirty (30) days after it is due, or (b) Customer or any such Guarantor breaches any other term of any Schedule, or (c) Customer or any such Guarantor makes any intentional misrepresentation to Owner, or (d) Customer or any such Guarantor fails to pay any other material obligation owed to Owner, any of Owner's affiliates, or any other party, or (e) Customer or any such Guarantor shall consent to the appointment of a receiver, trustee or liquidator of itself or a substantial part of its assets, or (f) there shall be filed by or against Customer or any

MASTER AGREEMENT No. 0110133244

such Guarantor a petition in bankruptcy, or (g) Customer's articles of incorporation or other formation documents shall be amended to change Customer's name and Customer fails to give Owner written notice of such change (including a copy of any such amendment) on or before the date such amendment becomes effective, or (h) Customer's legal existence in its state of incorporation or formation shall have lapsed or terminated, or (i) Customer shall dissolve, sell, transfer or otherwise dispose of all or substantially all of its assets, without Owner's prior written consent, which consent shall not be unreasonably withheld, or (j) without prior written consent of Owner, which consent shall not be unreasonably withheld, Customer merges or consolidates with any other entity and Customer is not the survivor of such merger or consolidation. Upon default, Owner may do any one or more of the following: (1) recover from Customer the sum of (A) any and all Payments, late charges and other amounts then due and owing under any or all Schedules, (B) accelerate and collect the unpaid balance of the remaining Payments scheduled to be paid under any or all Schedules, and (C) Owner's related reasonable attorneys' fees, collection costs and expenses; (2) enter upon Customer's premises and take possession of any or all of such Equipment; (3) terminate any or all Schedules; and/or (4) utilize any other right or remedy provided by applicable law. Customer shall also pay to Owner interest on all unpaid amounts due under a Schedule from the due date of such amounts until paid in full, at a rate per annum equal to the lower of 1-1/2% per month or the highest rate of interest permitted by applicable law (the "**Default Interest Rate**"). In the event the Equipment is returned or repossessed by Owner, Owner will, if commercially reasonable, sell or otherwise dispose of the Equipment, with notice as required by law, and apply the net proceeds after deducting the costs and expenses of such sale or other disposition, to Customer's obligations hereunder with Customer remaining liable for any deficiency and with any excess being retained by Owner or applied as required by law. If Customer fails to perform or comply with any of its agreements or obligations, Owner may perform or comply with such agreements or obligations in its own name or in Customer's name as attorney-in-fact and the amount of any payments and expenses of Owner incurred in connection with such performance or compliance, together with interest thereon at the Default Interest Rate, shall be payable by Customer to Owner upon demand. No express or implied waiver by Owner of any default or breach of Customer's obligations hereunder shall constitute a waiver of any other default or breach of Customer's obligations hereunder.

13. Miscellaneous. All Schedules shall be binding on Customer's successors and permitted assigns, and shall be for the benefit of Owner and its successors and Assignees. **EACH SCHEDULE SHALL BE GOVERNED BY THE LAWS OF CALIFORNIA, WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICT OF LAWS OR CHOICE OF LAW. THE PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ANY ACTION OR PROCEEDING RELATING TO ANY SCHEDULE OR EQUIPMENT. The parties do not intend to exceed any applicable usury laws. If for any reason a Schedule is held to constitute a loan of money, any amounts payable under such Schedule in excess of the applicable highest lawful rate of interest shall be deemed a prepayment of any principal amount due under the Schedule and, if such principal is paid in full, such excess amounts shall be immediately refunded to Customer.** Customer agrees that it shall upon request from Owner, promptly provide to Owner a copy of Customer's most recent annual financial statements and any other financial information of Customer (including interim financial statements) that Owner may request. Customer authorizes Owner to share such information with Owner's affiliates for purposes of credit approval. Customer expressly authorizes credit reporting agencies and other persons to furnish credit information to Owner and its Assignees (and prospective Assignees), separately or jointly with other creditors or Owners, for use in connection with this Agreement or any Schedule. Customer agrees that Owner may provide any information or knowledge Owner may have about Customer or about any matter relating to this Agreement or any Schedule to any one or more Assignees (and prospective Assignees). Owners and joint users of such information are authorized to receive and exchange credit information and to update such information as appropriate during the term of this Agreement and each Schedule. Information about Customer may be shared with Owner's affiliates. Customer may direct Owner not to share that information (except transaction and experience information and information needed for credit approval) with Owner's affiliates by writing to the Owner's address referenced above. This Agreement will not be valid until executed by both parties. Customer represents and warrants to Owner, that effective on the date on which Customer executes this Agreement and each Schedule: (i) if Customer is a partnership, corporation, limited liability company or other legal entity, the execution and delivery of this Agreement and each Schedule and the performance of Customer's obligations hereunder and thereunder have been duly authorized by all necessary action on the part of the Customer; (ii) the person signing this Agreement and each Schedule on behalf of Customer is duly authorized; (iii) all information provided by Customer to Owner in connection with this Agreement and each Schedule is true and correct; and (iv) this Agreement and each Schedule constitute legal, valid and binding obligations of Customer, enforceable against Customer in accordance with their terms. This Agreement and each Schedule may be executed in counterparts and any facsimile, photographic or other electronic transmission and/or electronic signing of this Agreement and each Schedule by Customer and when electronically countersigned by Owner or attached to Owner's original signature counterpart and/or in Owner's possession shall constitute the sole original chattel paper as defined in the UCC for all purposes and will be admissible as legal evidence thereof. No security interest in this Agreement and each Schedule can be perfected by possession of any counterpart other than the counterpart bearing Owner's original signature. Customer agrees not to raise as a defense to the enforcement of this Agreement or any related documents hereto the fact that such documents were executed by electronic means. Any provision of a Schedule which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions of the Schedule, and any such unenforceability in any jurisdiction shall not render unenforceable such provision in any other jurisdiction. Paragraph headings are for convenience only, are not part of the Schedule and shall not be deemed to affect the meaning or construction of any of the provisions hereof. Customer has not received any tax or accounting advice from Owner, and Owner has not received any tax opinions or advice from the Customer. This Agreement, any Schedules, any attachments to this Agreement or any Schedules and any express warranties made by Stryker Sales, LLC constitute the entire agreement between the parties hereto regarding the Equipment and its use and possession and supersede all prior agreements and discussions regarding the Equipment and any prior course of conduct. There are no agreements, oral or written, between the parties which are contrary to the terms of this Agreement and such other documents.

CUSTOMER HAS READ THIS AGREEMENT AND EACH SCHEDULE BEFORE SIGNING IT.

Customer signature	
Signature:	Date:
Print name:	
Title:	

Accepted by Flex Financial, a division of Stryker Sales, LLC	
Signature:	Date:
Print name:	
Title:	

**EQUIPMENT SCHEDULE NO. 001 TO MASTER AGREEMENT NO. 0110133244
(Equipment Rental Schedule)**

Owner: Flex Financial, a division of Stryker Sales, LLC 1901 Romence Road Parkway Portage, MI 49002	Customer: City of El Cajon 200 CIVIC CENTER WAY EL CAJON, California 92020-3916
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Supplier: Stryker Sales, LLC 3800 E. Centre Avenue Portage, MI 49002
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Equipment description: see part I on attached Exhibit A (and/or as described in invoice(s) or equipment list attached hereto and made a part hereof collectively, the "Equipment")

Equipment location: 200 CIVIC CENTER WAY, EL CAJON, California 92020-3916

Schedule of periodic rent payments:

10 Annual payments of **\$83,631.90** (First payment due 30 days after Agreement is commenced), (Plus Applicable Sales/Use Tax)

Term in months: 120	Minimum monthly uses: <u>n/a</u>	Fee per use: <u>n/a</u>
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TERMS AND CONDITIONS

1. Rental agreement/term/acceptance/payments. The City of El Cajon ("**Customer**") unconditionally and irrevocably agrees to rent from the Owner whose name is listed above ("**Owner**") the Equipment described above, on the terms specified in this Schedule, including all attachments to this Schedule and in the Master Agreement referred to above (as amended from time to time, the "**Agreement**"). Except as modified herein, the terms of the Agreement are hereby ratified and incorporated into this Schedule as if set forth herein in full, and shall remain fully enforceable throughout the Term of this Schedule (as defined below). Capitalized terms used and not otherwise defined in this Schedule have the respective meanings given to those terms in the Agreement. The term of this Schedule ("**Term**") shall start on the day the Equipment is delivered to Customer and shall continue for the number of months set forth above beginning with the Rent Commencement Date (as defined below). Customer shall be deemed to have accepted the Equipment for rent under this Schedule on the date that is ten (10) days after the date it is received by Customer from the Supplier ("**Acceptance Date**") and, at Owner's request, Customer shall confirm for Owner such acceptance in writing. **No acceptance of any item of Equipment may be revoked by Customer.** The Periodic Rent Payments described above ("**Periodic Rent**") shall be paid 30 days after receipt of invoice. Unless otherwise instructed by Owner in writing, all Periodic Rent and other amounts due hereunder shall be made to Owner's address above. Any payment by or on behalf of Customer that purports to be payment in full for any obligation under this Schedule may only be made after Owner's prior written agreement to accept such payment amount. Periodic Rent is due annually beginning on the Rent Commencement Date and continuing on the same day of each consecutive month thereafter during the Term regardless of whether or not Customer receives an invoice for it.

2. Return of equipment. Customer will give Owner at least 90 days but not more than 180 days written notice (the "Return Notice") (to Owner's address above) before the initial Term (or any one-year renewal term) expiration of Customer's intention to return the Equipment, whereupon Customers shall: return all of the Equipment in good working condition at Customer's cost how, when and where Owner directs. If Customer fails to give Return Notice or the Return Notice is not sent timely, the Term will be automatically extended (upon the same terms and payments) until the first Periodic Rent payment date which is more than 90 days after Customer has given Owner written notice by certified mail that Customer will return Equipment to Owner and at the end of such extended Term, Customer shall return the Equipment as described above. All Equipment upon return to Owner shall be in the same condition and appearance as when delivered to Customer, excepting only reasonable wear and tear from proper use and all such equipment shall be eligible for manufacturer's maintenance. If Customer fails to return the Equipment as and when required, Customer shall continue to remit Periodic Rent ("**Remedial Payments**") to Owner on an annual basis as if this Schedule had not expired or terminated.

3. Miscellaneous. If Customer fails to pay (within thirty days of invoice date) any freight, sales tax or other amounts related to the Equipment which are not financed hereunder and are billed directly by Owner to Customer, such amounts shall be added to the Periodic Rent Payments set forth above (plus interest) and Customer authorizes Owner to adjust such Periodic Rent Payments accordingly. Customer agrees that this Schedule is intended to be a "finance lease" as defined in §2A-103(1)(g) of the Uniform Commercial Code. This Schedule will not be valid until executed by both parties. Customer acknowledges that Customer has not received any tax or accounting advice from Owner. If Customer is required to report the components of its payment obligations hereunder to certain state and/or federal agencies or public health coverage programs such as Medicare, Medicaid, SCHIP or others, and such amounts are not adequately disclosed in any attachment hereto, then Stryker Sales, LLC will, upon Customer's written request, provide Customer with a detailed outline of the components of its payments which may include equipment, software, service and other related components.

CUSTOMER HAS READ (AND UNDERSTANDS THE TERMS OF) THIS SCHEDULE BEFORE SIGNING IT:

Customer signature	
Signature:	Date:
Print name:	
Title:	

Accepted by Flex Financial, a division of Stryker Sales, LLC	
Signature:	Date:
Print name:	
Title:	

Exhibit A to Rental Schedule 001 to Master Agreement No. 0110133244
Description of equipment

Customer name: City of El Cajon

Delivery address: 200 CIVIC CENTER WAY, EL CAJON, California 92020-3916

Part I - Equipment

Model number	Equipment description	Quantity
99577-001957	LP15,ENSPO2CO3L/12LEXNIBP	11
11577-000004	LI-ION CHARGER,STATIONSTD P	11
41577-000288	LP15 ACCRY SHIPKIT,AHA,S	11
11171-000082	RC-4,EMSRAINBOWPATIENT	11
11171-000049	RAINBOW DCI ADT REUSABLESENSOR	11
11171-000050	RAINBOW DCIP PED REUSABLE SENS	11
21300-008159	NIBP - TUBING,6FTBAYONET	11
11160-000013	NIBP CUFF-REUSEABLE,CHILDBAY	11
11160-000017	NIBP CUFF-REUSEABLE,LARGE ADUL	11
11160-000019	NIBP CUFF- REUSEABLE,X-LARGE A	11
11577-000002	KIT - CARRY BAG,MAIN BAG	11
11220-000028	TOP POUCH	11
11260-000039	KIT - CARRY BAG,REAR POUCH3	11
21330-001176	LP 15 Lithium-ion Battery 5.7 amp hrs	44
99576-000063	LUCAS 3,3.1IN SHIPPING BOX	6
11576-000060	LUCAS BATTERY CHARGER,MAINS PL	6
11576-000071	LUCAS POWER SUPPLY WITHCORD,RE	6
11576-000080	BATTERY,LUCASDARK GRAYY	6
99425-000025	LP1000,ENSTDECG DISPM	1
11101-000016	ELECTASSY-AED INFANTCHILD REDUCED ENERGY-WW	1
11996-000474	ASSEMBLY, GATEWAY, 4G, MULTITECH, VERIZON, SIM	11
11600-000030	CODE-STAT 11 DATA REVIEWSEAT LICENSE	1

Customer signature	
Signature:	Date:
Print name:	
Title:	

Accepted by Flex Financial, a division of Stryker Sales, LLC	
Signature:	Date:
Print name:	
Title:	

Insurance Authorization and Verification



Date: April 28, 2021

Schedule 001 to Master Agreement Number 0110133244

To: City of El Cajon ("Customer")
200 CIVIC CENTER WAY
EL CAJON , California 92020-3916

From: Flex Financial, a division of Stryker Sales, LLC ("Creditor")
1901 Romence Road Parkway
Portage, MI 49002

TO THE CUSTOMER: In connection with one or more financing arrangements, Creditor may require proof in the form of this document, executed by both Customer* and Customer's agent, that Customer's insurable interest in the financed property (the "Property") meets the requirements as follows, with coverage including, but not limited to, fire, extended coverage, vandalism, and theft:

Creditor, and its successors and assigns shall be covered as both **ADDITIONAL INSURED** and **LENDER'S LOSS PAYEE** with regard to all equipment financed or acquired for use by policy holder through or from Creditor.

Customer must carry **GENERAL LIABILITY** (and/or, for vehicles, Automobile Liability) in the amount of **no less than \$1,000,000.00** (one million dollars).

Customer must carry **PROPERTY Insurance** (or, for vehicles, Physical Damage Insurance) in an amount **no less than the 'Insurable Value' \$905,315.33** with deductibles **no more than \$10,000.00**.

*PLEASE PROVIDE THE INSURANCE AGENTS INFORMATION REQUESTED BELOW & SIGN WHERE INDICATED

By signing, Customer authorizes the Agent named below: 1) to complete and return this form as indicated; and 2) to endorse the policy and subsequent renewals to reflect the required coverage as outlined above.

Insurance agency:	
Agent name:	
Address:	
Phone/fax:	
Email address:	

City of El Cajon	
Signature:	Date:
Print name:	
Title:	

*Customer: Creditor will fax the executed form to your insurance agency for endorsement. In Lieu of agent endorsement, Customer's agency may submit insurance certificates demonstrating compliance with all requirements. If fully executed form (or Customer-executed form plus certificates) is not provided within 15 days, we have the right but not the obligation to obtain such insurance at your expense. Should you have any questions please contact Michelle Warren at 269-389-1909.

TO THE AGENT: In lieu of providing a certificate, please execute this form in the space below and promptly fax it to Creditor at 877-204-1332 . This fully endorsed form shall serve as proof that Customer's insurance meets the above requirements.

Agent hereby verifies that the above requirements have been met in regard to the Property listed below.

Agent signature	
Signature:	Date:
Print name:	
Title:	
Carrier name:	
Carrier policy number :	
Policy expiration date:	

Insurable value: \$905,315.33

ATTACHED: PROPERTY DESCRIPTION FOR Schedule 001 to Master Agreement Number 0110133244

See Exhibit A to Schedule 001 to Master Agreement Number 0110133244

TOGETHER WITH ALL REPLACEMENTS, PARTS, REPAIRS, ADDITIONS, ACCESSIONS AND ACCESSORIES INCORPORATED THEREIN OR AFFIXED OR ATTACHED THERETO AND ANY AND ALL PROCEEDS OF THE FOREGOING, INCLUDING, WITHOUT LIMITATION, INSURANCE RECOVERIES.

State and Local Government Customer Rider

This State and Local Government Customer Rider (the "Rider") is an addition to and hereby made a part of **Schedule 001 to Master Agreement Number 0110133244** (the "Agreement") between **Flex Financial**, a division of Stryker Sales, LLC ("Owner") and City of El Cajon ("**Customer**") to be executed simultaneously herewith and to which this Rider is attached. Capitalized terms used but not defined in this Rider shall have the respective meanings provided in the Agreement. Owner and Customer agree as follows:

1. Customer represents and warrants to Owner that as of the date of, and throughout the Term of, the Agreement: (a) Customer is a charter city and municipal corporation and, for purposes of Title 26 of the United States Code, a political subdivision of the state or commonwealth in which it is located and is organized and existing under the constitution and laws of such state or commonwealth; (b) Customer has complied, and will comply, fully with all applicable laws, rules, ordinances, and regulations governing open meetings, public bidding and appropriations required in connection with the Agreement, the performance of its obligations under the Agreement and the acquisition and use of the Equipment; (c) The person(s) signing the Agreement and any other documents required to be delivered in connection with the Agreement (collectively, the "Documents") have the authority to do so, are acting with the full authorization of Customer's governing body, and hold the offices indicated below their signatures, each of which are genuine; (d) The Documents are and will remain valid, legal and binding agreements, and are and will remain enforceable against Customer in accordance with their terms; and (e) The Equipment is essential to the immediate performance of a governmental or proprietary function by Customer within the scope of its authority and will be used during the Term of the Agreement only by Customer and only to perform such function. Customer further represents and warrants to Owner that, as of the date each item of Equipment becomes subject to the Agreement and any applicable schedule, it has funds available to pay all Agreement payments payable thereunder until the end of Customer's then current fiscal year, and, in this regard and upon Owner's request, Customer shall deliver in a form acceptable to Owner a resolution enacted by Customer's governing body, authorizing the appropriation of funds for the payment of Customer's obligations under the Agreement during Customer's then current fiscal year.
2. To the extent permitted by applicable law, Customer agrees to take all necessary and timely action during the Agreement Term to obtain and maintain funds appropriations sufficient to satisfy its payment obligations under the Agreement (the "Obligations"), including, without limitation, providing for the Obligations in each budget submitted to obtain applicable appropriations, causing approval of such budget, and exhausting all available reviews and appeals if an appropriation sufficient to satisfy the Obligations is not made.
3. Notwithstanding anything to the contrary provided in the Agreement, if Customer does not appropriate funds sufficient to make all payments due during any fiscal year under the Agreement and Customer does not otherwise have funds available to lawfully pay the Agreement payments (a "Non-Appropriation Event"), and provided Customer is not in default of any of Customer's obligations under such Agreement as of the effective date of such termination, Customer may terminate such Agreement effective as of the end of Customer's last funded fiscal year ("Termination Date") without liability for future monthly or annual charges or the early termination charge under such Agreement, if any, by giving at least 60 days' prior written notice of termination ("Termination Notice") to Owner.
4. If Customer terminates the Agreement prior to the expiration of the end of the Agreement's initial (primary) term, or any extension or annual renewal thereof, as permitted under Section 3 above, Customer shall (i) on or before the Termination Date, at its expense, pack and insure the related Equipment and send it freight prepaid to a location designated by Owner in the contiguous 48 states of the United States and all Equipment upon its return to Owner shall be in the same condition and appearance as when delivered to Customer, excepting only reasonable wear and tear from proper use and all such Equipment shall be eligible for manufacturer's maintenance, (ii) provide in the Termination Notice a certification of a responsible official that a Non-Appropriation Event has occurred, (iii) deliver to Owner, upon request by Owner, an opinion of Customer's counsel (addressed to Owner) verifying that the Non-Appropriation Event as set forth in the Termination Notice has occurred, and (iv) pay Owner all sums payable to Owner under the Agreement up to and including the Termination Date.
5. Any provisions in this Rider that are in conflict with any applicable statute, law or rule shall be deemed omitted, modified or altered to the extent required to conform thereto, but the remaining provisions hereof shall remain enforceable as written.

Customer signature	
Signature:	Date:
Print name:	
Title:	

Accepted by Flex Financial, a division of Stryker Sales, LLC	
Signature:	Date:
Print name:	
Title:	

**ADDENDUM TO RENTAL SCHEDULE 001 TO MASTER AGREEMENT NO. 0110133244
BETWEEN FLEX FINANCIAL, A DIVISION OF STRYKER SALES, LLC AND CITY OF EL CAJON**

This Addendum is hereby made a part of the agreement described above (the "Agreement"). In the event of a conflict between the provisions of this Addendum and the provisions of the Agreement, the provisions of this Addendum shall control.

The parties hereby agree as follows:

1. A new Section 4 is hereby added to the end of the Schedule which shall read as follows:

4. Upgrade. Provided no default or event of default has occurred and is continuing under this Agreement, at any time between the thirty-sixth (36th) month and the sixtieth (60th) month of the Term, Customer shall have the option to upgrade (the "Upgrade Option") any or all of the Equipment in the event Owner releases for sale in the United States a new product model ("New Product") that replaces some or all of the Equipment (the "Superseded Equipment"). This option can be exercised by Customer one time for each Equipment line item listed on Exhibit A during the Term. The New Product must have substantially the same functionality and specification and be of equal or greater value as the related item of Superseded Equipment, all as reasonably determined by Owner. If Customer elects to exercise the upgrade option, Customer shall notify Owner of such election, in writing, and include in such notice a description of the Superseded Equipment. Immediately upon Customer's receipt of the New Product, Customer shall return the Superseded Equipment to Owner at Customer's expense and in the condition and otherwise provided for as required under this Schedule. If the New Product's list price, as determined by Owner, is greater than 110% of the list price of the Equipment's list price when originally placed with Customer, as determined by Owner, then Owner may increase the Periodic Rent Payment of the New Product in its reasonable discretion with written consent by Customer.

If at the sixtieth (60th) month of the Term Owner has not released New Equipment Customer shall have the option to exchange (the "Like-Kind Exchange Option") the Superseded Equipment for new Equipment of the same make and model (the "Like-Kind Equipment") as the Superseded Equipment. If Customer elects to exercise the Like-Kind Exchange Option, Customer shall notify Owner of such election, in writing, and include in such notice a description of the Superseded Equipment. Immediately upon Customer's receipt of the Like-Kind Equipment, Customer shall return the Superseded Equipment to Owner at Customer's expense and in the condition and otherwise provided for as required under this Schedule. If the Like-Kind Equipment's list price, as determined by Owner, is greater than 110% of the list price of the Equipment's list price when originally placed with Customer, as determined by Owner, then Owner may increase the Periodic Rent Payment of the New Product in its reasonable discretion with written consent by Customer. If Customer exercises the Like-Kind Exchange Option, Customer shall no longer have the Upgrade Option.

Customer signature	
Signature:	Date:
Print name:	
Title:	

Accepted by Flex Financial, a division of Stryker Sales, LLC	
Signature:	Date:
Print name:	
Title:	

Sales Rep Name: Craig Chandler
 ProCare Service Rep: Craig Chandler

3800 E. Centre Ave
 Portage, MI 49009

Date: 4/23/2021
 ID #: 210423143036

PROCARE PROPOSAL SUBMITTED TO:

Billing Acc Num:	Name:
Shipping Acct Num:	Title:
Account Name City of El Cajon	Phone:
Account Address	Email:
City, State Zip	

PROCARE COVERAGE

Item No.	Model Number	Model Description	ProCare Program	Qty	Yrs		
1	LP15	LifePak 15	LP15 Prevent Onsite	11	10		
2	LUCAS	LUCAS	LUCAS Prevent Onsite	6	10		
3	LP1000	LifePak 1000	LP1000 Prevent Onsite	1	10		
4	CODE-STAT	CODE-STAT		1	10		
5	Verizon Kore Data	Verizon Kore Data		11	10		
6	Lifenet Asset	Lifenet Asset		17	10		

PROGRAM INCLUDES:

LUCAS Prevent Onsite:

- Update software to the most current version
 - Check all batteries and battery pins
 - Inspect the integrity of accessories and recommend replacement as needed
 - Test linear sensor and recalibrate if needed
 - Lubricate and adjust mechanical parts, including compression module and claw lock
 - Clean hood, fan, intake and bellows
 - Perform functional test on all mechanical components and electronics
 - Computer-aided diagnostics
 - Replacement of LUCAS Disposable suction cup, LUCAS Patient Straps, or LUCAS Stabilization Strap, as deemed necessary by Stryker
 - Repairs (parts and labor) to restore equipment to manufacturer specifications
 - Replace up to 2 LUCAS chest compression system batteries in accordance with the Instructions for Use or upon battery failure*
 - LUCAS Battery Desk-Top Charger, LUCAS Aux Power Supply, LUCAS Car Cable repair or replacement as deemed necessary by Stryker*
 - Replacement of LUCAS Disposable suction cup, LUCAS Patient Straps, or LUCAS Stabilization Strap
- ** (Onsite Repairs or Depot Depending on Agreement) **

LP15 Prevent Onsite:

- Update software to the most current version
 - Check all batteries and battery pins
 - Inspect the integrity of accessories and recommend replacement as needed
 - Test the integrity of all cables and recommend replacement as needed
 - Electrical safety check in accordance with NFPA guidelines
 - Computer-aided diagnostics to test 30 device dimensions and verify the unit functions accurately, from waveform shape and defibrillation energy to pacing current and capnography readings (if present)
 - Check electrode expiration dates and recommend replacement as needed
 - Check printer operation and trace quality
 - Repairs (parts and labor) to restore equipment to manufacturer specifications
 - LIFEPAK battery-charger repair or replacement as deemed necessary by Stryker*
 - Power-adapter repair or replacement
 - Replace up to 3 lithium-ion batteries in accordance with the device operating instructions or upon failure*
 - Replace up to 1 coin cell memory battery in accordance with the device operating instructions or upon failure*
 - Replacement of protective display shield, corner bumper guards, CO2 connector cover, shoulder strap, handle, device labels, and battery pins as deemed necessary by Stryker at time of annual inspection.
- ** (Onsite Repairs or Depot Depending on Agreement) **

LP1000 Prevent Onsite:

- Update software to the most current version
 - Check all batteries and battery pins
 - Inspect the integrity of accessories and recommend replacement as needed
 - Test the integrity of all cables and recommend replacement as needed
 - Electrical safety check in accordance with NFPA guidelines
 - Computer-aided diagnostics to verify the unit functions accurately, including waveform shape and defibrillation energy
 - Replace up to 1 battery pack in accordance with the device operating instructions or upon battery failure
 - Replace 1 set of expired adult therapy electrodes at scheduled time of service
 - Repairs (parts and labor) to restore equipment to manufacturer specifications
- ** (Onsite Repairs or Depot Depending on Agreement) **

Unless otherwise stated on contract, payment is expected upfront. Annual Payments \$30,628.47	ProCare Total	\$306,284.67

See below for complete payment schedule

FINAL TOTAL

\$306,284.67

Start Date: 7/1/2021

End Date: 6/30/2031

Stryker Signature

Date

Customer Signature

Date

The Terms and Conditions of this quote and any subsequent purchase order of the Customer are governed by the Terms and Conditions located at

<https://techweb.stryker.com>

The terms and conditions referenced in the immediately preceding sentence do not apply where Customer and Stryker are parties to a Master Service Agreement.

Purchase Order Number

If contract is over \$5,000 an encrypted document will be emailed

COMMENTS:

Please email signed Proposal and Purchase Order to procarecoordinators@stryker.com.

A

PAYMENT SCHEDULE

<u>Date</u>	<u>Payment</u>	<u>Int Paid</u>	<u>Prin. Remaining</u>	<u>Balance</u>
Starting Balance				\$ 306,284.67
7/1/2021	\$ 30,628.47	\$ -	\$ 275,656.20	\$ 275,656.20
7/1/2022	\$ 30,628.47	\$ -	\$ 245,027.74	\$ 245,027.74
7/1/2023	\$ 30,628.47	\$ -	\$ 214,399.27	\$ 214,399.27
7/1/2024	\$ 30,628.47	\$ -	\$ 183,770.80	\$ 183,770.80
7/1/2025	\$ 30,628.47	\$ -	\$ 153,142.34	\$ 153,142.34
7/1/2026	\$ 30,628.47	\$ -	\$ 122,513.87	\$ 122,513.87
7/1/2027	\$ 30,628.47	\$ -	\$ 91,885.40	\$ 91,885.40
7/1/2028	\$ 30,628.47	\$ -	\$ 61,256.93	\$ 61,256.93
7/1/2029	\$ 30,628.47	\$ -	\$ 30,628.47	\$ 30,628.47
7/1/2030	\$ 30,628.47	\$ -	\$ -	\$ -

SERIAL NUMBER SHEET

Item No.	Model	Serial Number	Program
1	LP15	LP15TBD	LP15 Prevent Onsite
2	LUCAS	LUCASTBD	LUCAS Prevent Onsite
3	LP1000	LP1000TBD	LP1000 Prevent Onsite
4	CODE-STAT		
5	Verizon Kore Data		
6	Lifenet Asset		

LIFEPAK® 15 service

Stryker has been notified by our global parts providers that some components used on certain LIFEPAK 15 monitor/defibrillator models (Part Numbers beginning with V15-2) are no longer available in the market. Service on the LIFEPAK 15 with Part Number beginning with v15-5 or v15-7 is unaffected.

Stryker will continue to offer service support for this subset of the LIFEPAK 15 as follows:

- All service parts with available inventory can be purchased by our end users
- Transactional service (time and material) is available for non-contract customers
 - o If a component has failed on your device, your local Sales Representative should be contacted for support
- Contractual service
 - o Stryker will continue to offer contractual service on a yearly basis only
 - o Preventive maintenance will continue to be done on devices less than eight (8) years old. After this point, we will cease to conduct preventative maintenance and shift to device inspections
 - o If a component fails on your device, please contact your local Sales Representative for support. A pro-rated credit for any pre-paid service will be provided should a unit become non-serviceable due to part availability

It is important to note that the LIFEPAK 15 has an expected life of eight (8) years from the date of manufacture. If you are uncertain of the manufacture date of your products, please contact your local Sales Representative for a full fleet assessment.

We want to ensure the highest quality products and services for our customers. As such, it is important to know that Stryker is the only FDA-approved service provider for our products. We do not contract with third party service providers, nor will we be providing them with any additional parts for these repairs. As such, we cannot guarantee the safety and efficacy of any device that is repaired by a third-party service agency.

SERVICE AGREEMENT

This document sets forth the entire Product Service Plan Agreement ("Agreement") between Stryker Medical, (a division of Stryker Corporation), herein and after referred to as "Stryker", and City of El Cajon, herein and after, referred to as the "Customer". This is the entire Agreement and no other oral modifications are valid. This Agreement shall remain in effect unless canceled upon thirty (30) days written notice from one party to another or modified by a written instrument and mutually agreed upon by both parties according to the following terms and conditions.

1. SERVICE COVERAGE AND TERM

Stryker shall provide to Customer the services (the "Services") as defined on Page 1 of the Stryker Quote as the equipment ProCare Program (hereinafter each, a "Service Plan"). The equipment covered under said Service Plan is set forth on Flex Financial, a division of Stryker Sales, LLC Master Agreement No. 0110133244 (including all exhibits, attachments, and riders thereto) (the "Master Agreement") Exhibit A to the Quote (the "Equipment"). The Services and Service Plan are ancillary to and not a complete substitute for the requirements of Customer to adhere to the routine maintenance instructions provided by Stryker, its equipment and operations manuals, and accompanying labels and/or inserts for the Equipment. Customer covenants and agrees that its personnel will follow the instructions and contents of those manuals, labels and inserts. When Equipment or a component is replaced, the item provided in replacement will be the Customer's property (if Customer owns the Equipment) and the replaced item will be Stryker's property. The Service Plan coverage, term, start date, and price of the Services appear on the Service Plan.

2. EQUIPMENT SCHEDULE CHANGES

During the term of the Agreement and upon each party's written consent, additional Equipment may be included in the Exhibit A. All additions are subject to the terms and conditions contained herein. Stryker shall adjust the charges and modify Exhibit A to reflect the additions.

3. INSPECTION SCHEDULING

Service inspections will be scheduled in advance at a mutually agreed upon time for such period of time as is reasonably necessary to complete the Services. Equipment not made available at the specified time will be serviced at the next scheduled service inspection unless specific arrangements are made with Stryker. Such arrangements will include travel authorized in advance and in writing by an authorized Customer representative at Stryker's then current rates. Under no circumstances will Customer be responsible for more than the governmental rates for travel, including air fare at economy class, hotel accommodations at government rates, rental charges for a standard vehicle, and mileage at the rate approved by the Internal Revenue Service for the period of travel.

4. INSPECTION ACTIVITY

On each scheduled service inspection, Stryker's Service Representative will inspect each available item of Equipment as required in accordance with Stryker's then current Maintenance procedures for said Equipment. If there is any discrepancy or questions on the number of inspections, price, or Equipment, Stryker may amend this Agreement by written instrument upon mutual consent.

5. SERVICE INVOICING

Invoices will be sent on the agreed payment method. All prices are exclusive of state and local use, sales or similar taxes. In states assessing upfront sales and use tax, Customer's payments will be adjusted to include all applicable sales and use tax amortized over the Service Plan term using a rate that preserves for Stryker, its affiliates and /or assigns, the intended economic yield for the transaction described in this Agreement. All invoices issued under this Agreement are to be paid within thirty (30) days of the date of the invoice. Failure to comply with Net 30 Day terms will constitute breach of contract and future Service will only be made on a prepaid or COD basis, or until the previous obligation is satisfied, or both.

6. PRICE CHANGES

The Service prices specified herein are those in effect as of the date of acceptance of this Agreement and will continue in effect throughout the term of the Service Plan.

7. INITIAL INSPECTION

This Agreement shall be applicable only to such Equipment as listed in Exhibit A, which has been determined by a Stryker's Representative to be in good operating condition upon his/her initial inspection thereof.

8. OPERATION MAINTENANCE

Stryker's Services are ancillary to and not a complete substitute for the requirements of Customer to adhere to the routine maintenance instructions provided by Stryker, its Equipment and operations manuals, and accompanying labels and/or inserts for each item of Equipment. Customer's appropriate user personnel should be entirely familiar with the instructions and contents of those manuals, labels and inserts and implement them accordingly.

9. SERVICE PLAN WARRANTY AND LIMITATIONS

Stryker represents and warrants that the Services shall be performed in a workmanlike manner and with professional diligence and skill. Services will comply with all applicable laws and regulations. During the term of the Service Plan, Stryker will maintain the Equipment in good working condition. Notwithstanding any other provision of this Agreement, the Service Plan does not include repairs or other services made necessary by or related to, the following: (1) abnormal wear or damage caused by misuse or by failure to perform normal and routine maintenance as set out in the Stryker maintenance manual or operating instructions. (2) accidents (3) catastrophe (4) acts of god (5) any malfunction resulting from faulty maintenance, improper repair, damage and/or alteration by non-Stryker authorized personnel (6) Equipment on which any original serial numbers or other identification marks have been removed or destroyed; or (7) Equipment that has been repaired with any unauthorized or non-Stryker components. In addition, in order to ensure safe operation of the Equipment, only Stryker accessories should be used. Stryker reserves the right to invalidate the Service Plan if Equipment is used with accessories not manufactured by Stryker.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES APPLICABLE TO THE SERVICES AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTY BY STRYKER, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

10. WAIVER EXCLUSIONS

No failure to exercise and no delay by Stryker in exercising any right, power or privilege hereunder shall operate as a waiver thereof. No waiver of any breach of any provision by Stryker shall be deemed to be a waiver by Stryker of any preceding or succeeding breach of the same or any other provision. No extension of time by Stryker for performance of any obligations or other acts hereunder or under any other Agreement shall be deemed to be an extension of time for performances of any other obligations or any other acts by Stryker.

11. LIMITATION OF LIABILITY

EXCEPT FOR THIRD PARTY DAMAGES RELATED TO STRYKER'S INDEMNITY OBLIGATIONS UNDER SECTION 13, IN NO INSTANCE SHALL EITHER PARTY'S LIABILITY TO THE OTHER PARTY ARISING FROM DIRECT DAMAGES UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF SERVICE FEES PAID DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. IN NO INSTANCE WILL EITHER PARTY BE LIABLE FOR INCIDENTAL, PUNITIVE, SPECIAL, COVER, EXEMPLARY, MULTIPLIED OR CONSEQUENTIAL DAMAGES OR ATTORNEYS' FEES OR COSTS FOR ANY ACTIONS UNDER OR RELATED TO THIS AGREEMENT.

12. INDEMNIFICATION

Stryker shall indemnify and hold harmless Customer from any loss or damage brought by a third party which Customer may suffer directly as a result of the negligence or willful misconduct of Stryker or its employees or agents in the course of providing Services. The foregoing indemnification will not apply to any liability arising from: (i) an injury or damage due to the negligence of any person other than Stryker's employee or agent; (ii) the failure of any person other than Stryker's employee or agent to follow any instructions outlined in the labeling, manual, and/or instructions for use of the Equipment; or (iii) the use of any equipment or part not purchased from Stryker or any equipment or any part thereof that has been modified, altered or repaired by any person other than Stryker's employee or agent. Customer agrees to hold Stryker harmless from and indemnify Stryker for any claims or losses or injuries arising from (i)-(iii) above resulting solely from Customer's or its employees' or agents' actions.

13. TERM AND TERMINATION

The Agreement shall commence July 1, 2021 and shall continue until June 30, 2031. This Agreement may be terminated by Customer in the same manner as provided for a Non-Appropriation Event in the Master Agreement.

14. FORCE MAJEURE

Except for Customer's payment obligations, which may only be delayed and not excused entirely, neither party to this Agreement will be liable for any delay or failure of performance that is the result of any happening or event that could not reasonably have been avoided or that is otherwise beyond its control, provided that the party hindered or delayed immediately notifies the other party describing the circumstances causing delay. Such happenings or events will include, but not be limited to, terrorism, acts of war, riots, civil disorder, rebellions, fire, flood, earthquake, explosion, action of the elements, acts of God, inability to obtain or shortage of material, equipment or transportation, governmental orders, restrictions, priorities or rationing, accidents and strikes, lockouts or other labor trouble or shortage provided that written notice thereof must be given by such Party to the other Party within twenty (20) days after occurrence of such cause or event.

15. INSURANCE REQUIREMENTS

Stryker shall maintain the following insurance coverage during the term of the Agreement: (i) commercial general liability coverage, including coverage for products and completed operations liability, with minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate applying to bodily injury, personal injury, and property damage; (ii) automobile liability insurance with combined single limits of \$1,000,000.00 for owned, hired, and non-owned vehicles; and (iii) worker's compensation insurance as required by applicable law. The City of El Cajon, and its elected and appointed officials, officers, employees and volunteers shall be named as additionally insured with respects to the commercial general liability. At Customer's written request, certificates of insurance and applicable endorsements shall be provided by Stryker prior to commencement of the Services at any premises owned or operated by Customer in accordance with Customer's City of El Cajon City Council Policy D-3 attached as Exhibit A. To the extent permitted by applicable laws and regulations, Stryker shall be permitted to meet the above requirements through a program of self-insurance.

16. WARRANTY OF NON-EXCLUSION

Each party represents and warrants that as of the Effective Date, neither it nor any of its employees, are or have been excluded terminated, suspended, or debarred from a federal or state health care program or from participation in any federal or state procurement or non-procurement programs. Each party further represents that no final adverse action by the federal or state government has occurred or is pending or threatened against the party, its affiliates, or, to its knowledge, against any employee, Stryker, or agent engaged to provide Services under this Agreement. Each party also represents that if during the term of this Agreement it, or any of its employees becomes so excluded, terminated, suspended, or debarred from a federal or state health care program or from participation in any federal or state procurement or non-procurement programs, such will notify the other party within thirty (30) days by written notice. Each party retains the right to terminate or modify this Agreement in the event of the other party's exclusion from a federal or state health care program.

17. COMPLIANCE

Stryker, as supplier, hereby informs Customer, as buyer, of Customer's obligation to make all reports and disclosures required by law or contract, including without limitation properly reporting and appropriately reflecting actual prices paid for each item supplied hereunder net of any discount (including rebates and credits, if any) applicable to such item on Customer's Medicare cost reports, and as otherwise required under the Federal Medicare and Medicaid Anti-Kickback Statute and the regulations thereunder (42 CFR Part 1001.952(h)). Pricing under this Agreement (and each Service Plan) may constitute discounts on the purchase of Services. Customer represents that (i) it shall make all required cost reports, and (ii) it has the corporate power and authority to make or cause such cost reports to be made. To the extent required by law, Customer and Stryker agree to comply with the Omnibus Reconciliation Act of 1980 (P.L. 96Z499) and its implementing regulations (42 CFR, Part 420). To the extent applicable to the activities of Stryker hereunder, Stryker further specifically agrees that until the expiration of four (4) years after furnishing Services pursuant to this Agreement, Stryker shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, this Agreement and the books, documents and records of Stryker that are necessary to verify the nature and extent of the costs charged to Customer hereunder. Stryker further agrees that if Stryker carries out any of the duties of this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives the subcontract, and books and documents and records of such organization that are necessary to verify the nature and extent of such costs.

18. CONFIDENTIALITY

To the extent allowed by applicable laws, including, without limitation, the California Public Records Act (California Government Code sections 6250 et seq.) or an order of a court of competent jurisdiction, the parties hereto intend to hold in confidence any proprietary or confidential information and materials which are related to the business of the other, which a reasonable person would consider to be proprietary or confidential information; and (b) hereby covenant that they shall not disclose such information to any third party without prior written authorization of the one to whom such information relates, unless such information is in the public domain. Upon the request for the inspection or copying of any information or materials that a party claims is proprietary or confidential, the party intending to release such information shall first notify the other party of the request and allow a reasonable period of time for the other party to seek a protective order preventing the release of the information or materials. "Reasonable period" shall be not less than ten (10) calendar days prior to release. The rights and remedies available to a party hereunder shall not limit or preclude any other available equitable or legal remedies.

19. HIPAA

Stryker is not a "business associate" of Customer, as the term "business associate" is defined by HIPAA (the Health Insurance Portability and Accountability Act of 1996 and 45 C.F.R. parts 142 and 160-164, as amended). To the extent the parties mutually agree that Stryker becomes a business associate of Customer, the parties agree to negotiate to amend the Service Plan or this Agreement as necessary to comply with HIPAA, and if an agreement cannot be reached the applicable Service Plan will immediately terminate. All medical information and/or data concerning specific patients (including, but not limited to, the identity of the patients), derived incidentally during the course of this Agreement, shall be treated by both parties as confidential, and shall not be released, disclosed, or published to any party other than as required or permitted under applicable laws. Notwithstanding the foregoing, Stryker may be considered a "business associate" of Customers related to any Service Plan for wireless products and/or other designated business associate services. If Stryker is considered a "business associate" of Customer, Stryker will agree to enter into a business associate agreement with Customer as required by HIPAA.

20. MISCELLANEOUS

Neither party may assign or transfer their rights and/or benefits under this Agreement without the prior written consent of the other party, except that Stryker shall have the right to assign this Agreement or any rights under or interests in this Agreement to any parent, subsidiary or affiliate of Stryker. All of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of, and be enforceable by permitted successors and assigns of the parties to this Agreement. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. The invalidity, in whole or in part, of any of the foregoing paragraphs, where determined to be illegal, invalid, or unenforceable by a court or authority of competent jurisdiction, will not affect or impair the enforceability of the remainder of the Agreement. This Agreement in conjunction with the Master Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations and agreements between the parties concerning the subject matter of this Agreement. In the event of an inconsistency or conflict between this Agreement and any purchase order, invoice, or similar document, this Agreement will control. Any inconsistency or conflict between the terms of this Agreement and a Service Plan shall be resolved in favor of the Service Plan. The sections entitled Limitation of Liability, Indemnification, Compliance, Confidentiality and Miscellaneous of this Agreement shall survive its termination or expiration.

21. MAINTENANCE INSPECTION

This service contract may include products which are beyond their warranty period and tested expected service life. Any such product will be inspected to determine if the product meets the operations and maintenance manual guidelines for that particular product as of the date of inspection. Despite any such inspection, Stryker makes no claims or assurances as to future performance, including no express or implied warranty, for any product which was inspected outside of its warranty period or beyond its tested expected service life.

EXHIBIT A

CITY OF EL CAJON
CITY COUNCIL POLICY

SUBJECT: Insurance Requirements		POLICY D-3
REFERENCE: Adopted 7/26/94, Amended 11/29/05, Amended 4/14/15, Amended 1/12/21	EFFECTIVE 1/12/21	PAGE 1 of 5

Article I.
General Insurance Requirements

All individuals, contractors, agencies, and organizations conducting business either for the City of El Cajon or pursuant to an ordinance, resolution, agreement or policy requiring the maintenance of liability insurance shall provide proof of liability insurance in compliance with this policy.

Contractors shall procure and maintain insurance for the duration of the contract insuring against claims for injuries to persons or damages to property that may arise from or in connections with performance of the work and results of that work by the contractor, agents, representatives, employees or subcontractors. Maintenance of proper insurance coverage is a material term of any contract with the City and failure to maintain or renew coverage or to provide evidence of renewal may be treated as a material breach of contract.

MINIMUM SCOPE OF INSURANCE

Except as otherwise required by Articles II or III of this policy, the following minimum amounts of insurance are required:

Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.

Workers' Compensation: as required by the State of California, Statutory Limits.

OTHER INSURANCE PROVISIONS

Additional Insured Status

The City of El Cajon, and its elected and appointed officials, officers, employees and volunteers are to be covered as additionally insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. If the contract involves the El Cajon Housing Authority, the additional insured endorsement shall include both the City and the Housing Authority, with appropriate modifications to pronouns. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance. Acceptable endorsements must be as broad as the most recent version(s) of ISO Form(s):

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Insurance Requirements (Policy D-3)

PAGE
2 of 5

- CG 20 10 (ongoing operations)

and/or

- CG 20 37 (completed operations) or Form CG 20 10 11 85 (ongoing and completed operations)

Additional Insured endorsements are not required for workers' compensation and professional liability policies.

Primary Coverage

For any claims related to contracts, the Contractor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects to the City of El Cajon, and its elected and appointed officials, officers, employees and volunteers. Any insurance or self-insurance maintained by the City, its elected and appointed officials, officers, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required shall provide that **coverage shall not be canceled, except with not less than 10 days' written notice to the City of El Cajon.**

Workers' Compensation Waiver of Subrogation

Contractor shall grant to the City of El Cajon a waiver of any right to subrogation which any insurer of said 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 provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City of El Cajon. The City may require the contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Claims-Made Policies

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Insurance Requirements (Policy D-3)

PAGE
3 of 5

Admitted Carrier:

Insurance is to be placed with insurers authorized to conduct business in the State of California with a current **AM Best** rating of no less than **A-VII**, unless otherwise acceptable to the City.

Non-Admitted Carriers:

Exceptions to the “admitted” requirement may be considered when a non-admitted insurance carrier meets all other standards herein and:

1. Is listed on the current California Department of Insurance Lists of Approved Surplus Line Insurers (LASLI),

or
2. Is a party to a co-operation agreement with foreign insurance regulatory authorities acceptable to the City Manager or City Attorney (e.g. Lloyds of London);
 - a. Either the carrier or its parent company has an AM Best’s rating of A-, Class XII;
 - b. Has ten years or more experience in the business of insurance; and,
 - c. If applicable, the reinsurance carrier has a qualified rating.

An exception to the rating requirement may be made for the California State Compensation Insurance Fund.

VERIFICATION OF COVERAGE

Contractor shall furnish the City of El Cajon with certificates and amendatory endorsements or copies of the applicable policy language affecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to work beginning shall not waive the Contractor’s responsibility to insure against City losses under the contract nor their obligation to provide the documents. The City reserves the right to require and approve complete copies of all required insurance policies, including certificates and endorsements required by these specifications, at any time.

SPECIAL RISKS OR CIRCUMSTANCES

The City of El Cajon reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. The City may also require other policies (e.g. Automobile, Professional Liability (Errors and Omissions), Builder’s Risk, and Garage Keepers).

ALTERNATIVE RISK MANAGEMENT PRACTICES

Alternative risk management practices, such as self-insurance, risk pooling, risk retention groups, and other such programs, may be accepted in lieu of commercial insurance policies provided that the coverage meets the requirements of this Policy. Any such alternative risk management practices must meet the financial strength and surplus requirements reflected by the AM Best’s Ratings required of commercial insurance under this Policy.

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Insurance Requirements (Policy D-3)

PAGE
4 of 5

Article II.
Public Right-of-Way Insurance Requirements

MINIMUM SCOPE OF INSURANCE

An applicant for permit(s) to do work within the public right-of-way may establish satisfactory proof of liability insurance in the following manner:

1. ***Contractors***

Contractors must furnish the City with a certificate of liability insurance, which meets the requirements set forth in Article I, above, and any other City requirements contained in this policy.

2. ***Property or Homeowners***

Homeowners/Property owners requesting a permit to do work within the City rights-of-way or easements immediately adjacent to their respective owned or occupied property, solely for the owner's personal benefit, shall be required to furnish the City with a copy of their homeowner's/property owner's liability insurance policy, which meets the requirements set forth in Article I, above, but with the minimum limits described in subsection (3) below. The policy must be effective during the entire period of the proposed work, plus two calendar years, and must provide coverage for claims arising from the work performed, or improvements owned, by the homeowner in the right-of-way or easement. If the encroachment is ongoing, annual proof of insurance shall be required. The requirements to name the City as an additional insured, and the requirement for a policy for two additional calendar years, may each be waived by the City Council or the City Manager or designee in cases of extreme hardship, in their discretion.

3. ***Property Owner / Small Business Limits***

A combined single limit policy with aggregate limits in the amount of **\$250,000** for homeowners insurance or **\$500,000** for commercial general liability insurance for small businesses owners (two or fewer employees), in either event only where the insurance is required for work in the public right-of-way.

POLLUTION EXCLUSION

Applications for the installation of monitoring wells for the evaluation of groundwater pollution or for the discharge of formerly polluted groundwater into the City sewer system must be accompanied by a certificate of liability insurance provided by the property owner. Such liability insurance may not contain a pollution exclusion clause and must explicitly indemnify the City against all hazards which may result from either of these activities, including a worsening of pollution, either within the subsurface adjacent to the original pollution or within the City sewer system.

If the property owner is unable to provide insurance which addresses both general liability and pollution liability, the environmental company or other appropriately qualified entity contracting with the property

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Insurance Requirements (Policy D-3)

PAGE
5 of 5

owner for either monitoring well installation or groundwater pollution remediation, may furnish pollution liability insurance on behalf of the property owner.

Any insurance approved under this subsection shall be an occurrence policy, and shall otherwise comply with the provisions of this Policy.

PUBLIC UTILITIES

This policy as it relates to work in the public right-of-way shall not be applicable to Cable TV, Helix Water District, Padre Dam Municipal Water Authority, San Diego Gas & Electric, or any other public utility.

TRANSPORTATION/OVERSIZED LOADS – PERMITS

See Chapter 10.24 of the El Cajon Municipal Code.

**Article III.
Construction Contracts Insurance Requirements**

In addition to the standards set forth in Article I, above, insurance policies for public works projects must also meet insurance requirements set out in the most recent edition of the Standard Specifications for Public Works Projects (the “Greenbook”) adopted by the City Council. Requirements of the Greenbook shall prevail.

Contractors must also comply with Labor Code § 3700 and § 3800.

MINIMUM SCOPE OF INSURANCE

Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence and aggregate limits in the amount of \$2,000,000. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.



City Council Agenda Report

Agenda Item 5.

DATE: June 22, 2021

TO: Honorable Mayor and City Councilmembers

FROM: Yazmin Arellano, Director of Public of Works

SUBJECT: Purchase of Battery Energy Storage Systems for the Public Safety Center

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, to authorize the City Manager to execute purchase and service agreements, including subsequent amendments, in the not-to-exceed amount of \$655,000, to support the procurement of battery energy storage systems (BESS) for the Public Safety Center.

BACKGROUND:

In June 2020, the City Council authorized an open-market purchase of renewable energy technology for public safety facilities, specifically solar photovoltaic panels (“Solar PV”) and battery energy storage systems (“BESS”). The action was prompted after receiving no responses from a Request for Proposals (RFP) solicitation where design-build contractors were sought. A stipulation of the open-market purchase required staff to return to City Council with a negotiated contract for procurement after evaluating competitive proposals from providers in the industry.

In the following months, staff, in conjunction with an energy consultant, reached out to over eight BESS providers in pursuit of viable and cost-effective options for the project. Of those approached, three providers offered solutions appropriate for the project and each were evaluated for pricing and estimated financial performance. Given current material shortages and inherent lead times associated with BESS, staff recommends directly purchasing this equipment in order to ensure the remaining project scope, specifically Solar PV, aligns with the scheduled milestones for the project.

Further, given the availability of battery energy storage rebates offered through California’s Self-Generation Incentive Program (SGIP), net cost was included in the comparative analysis and represents approximately a forty-percent (40%) offset to the total cost. Rebates through the program are received after the equipment has been installed and successful operation has been demonstrated.

Following is a summary of the cost proposals received, estimated rebates, and the estimated savings each provide:

Systems Provider	Total Systems Cost	Estimated Rebate (SGIP)	Net Cost After Rebate	Estimated Annual Savings
STEM, Inc.	\$655,000	\$284,000	\$371,000	\$71,000
Socomec	\$817,000	\$284,000	\$533,000	\$66,000
ELM	\$750,000	\$284,000	\$466,000	\$65,000

Given the performance metrics and overall costs evaluated for the three providers, Staff recommends a direct purchase be made from STEM, Inc. in the not to exceed amount of \$655,000. The equipment provided by STEM, Inc. is the most cost-effective solution among those evaluated, results in the most savings, and has the highest number of successful deployments in California. Once rebates are received for the equipment purchased, said funding will be allocated back to the project and respective funding source(s).

Lastly, staff will be formally bidding the Solar PV scope of the project, which is separate from this purchase. As staff is currently approaching final design with this component of the project, advertisement for the construction bid is planned for late summer 2021.

FISCAL IMPACT:

Funding in the amount of \$655,000 is available in City Capital Improvement Program Fund (501).

Prepared By: Jeffrey Manchester, Deputy Director / City Engineer

Reviewed By: Yazmin Arellano, Director of Public Works

Approved By: Graham Mitchell, City Manager

Attachments

Resolution

Master Purchase Agreement

Master Services Agreement

Systems Order

Services Order

RESOLUTION NO. ___-21

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF EL CAJON APPROVING THE PURCHASE
OF BATTERY ENERGY STORAGE SYSTEMS,
AND AUTHORIZING THE EXECUTION OF
PURCHASE AND SERVICES AGREEMENTS

WHEREAS, in June 2020, due to a lack of responses to a request for proposals solicitation seeking design-build contractors, the City Council authorized an open-market purchase of renewable energy technology for public safety facilities, specifically solar photovoltaic panels ("Solar PV") and battery energy storage systems ("BESS") (the "Project"); and

WHEREAS, a stipulation of the open-market purchase required staff to return to City Council with a negotiated contract for procurement after evaluating competitive proposals from providers in the industry; and

WHEREAS, staff reached out to over eight (8) BESS providers in pursuit of viable and cost-effective options for the Project, including sales tax, shipping, import fees, extended (15-year) warranty, and ongoing service and maintenance ("total system"), and of those, three (3) providers offered solutions appropriate for the Project; and

WHEREAS, in consideration of the current material shortages and inherent lead times associated with BESS, staff recommends directly purchasing the equipment in order to ensure that the remaining Project scope (specifically Solar PV) aligns with the scheduled milestones for the Project; and

WHEREAS, given the availability of BESS rebates offered through California's Self-Generation Incentive Program, net cost was included in the comparative analysis and represents approximately a forty-percent (40%) offset to the total cost; and

WHEREAS, once rebates are received for the equipment purchased, said funding will be allocated back to the Project and respective funding source(s); and

WHEREAS, the total system proposals received from Stem, Inc. ("Stem"), Socomec, and ELM were \$655,000, \$817,000 and \$750,000, respectively; and

WHEREAS, after evaluation of the performance metrics and overall costs for the providers, and factoring in an anticipated rebate of \$284,000, the bid by Stem provided the lowest net cost of \$371,000 after rebate, with an estimated annual savings of \$71,000; and

WHEREAS, staff recommends a direct purchase for a total system from Stem in the amount of \$655,000, as the equipment provided by Stem is the most cost-effective solution among those evaluated, results in the most savings, and has the highest number of successful deployments in California; and

WHEREAS, staff is currently finalizing design of the Solar PV scope of the Project, which is separate from this purchase, and anticipates formal bidding in late summer 2021; and

WHEREAS, sufficient funds in the amount of \$655,000 are available in City Capital Improvement Program Fund; and

WHEREAS, the City Council believes it to be in the City of El Cajon's best interest to enter into the Stem Master Purchase Agreement, including Systems Order S-0321-11087, and the Stem Master Services Agreement, including Services Order – California S-0321-11087, (collectively the "Agreements") in the not-to-exceed amount of \$655,000, to support the procurement of BESS and total system for the Public Safety Center.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. The above recitals are true and correct, and are the findings of the City Council.

2. The City Council hereby approves entering into the Agreements, in the not-to-exceed amount of \$655,000, to support the procurement of BESS and a total system for the Public Safety Center.

3. The City Council hereby authorizes the City Manager, or such person as is designated by the City Manager, to execute the Agreements, with any such changes and refinements as may be necessary and approved by the City Manager.

4. The City Manager, or such person as is designated by the City Manager, is hereby authorized and directed to execute any subsequent amendments to the Agreements, or other documents necessary, as may be approved by the City Manager, on behalf of the City of El Cajon.

STEM MASTER PURCHASE AGREEMENT

A-0050375

This agreement ("Agreement") is between CITY OF EL CAJON, a California municipality ("Customer"), and Stem, Inc., a Delaware corporation together with its successors and assigns ("Stem").

Stem offers for sale specific energy storage systems and associated services, and Customer intends to purchase and install or have installed such energy storage systems.

Concurrently with this Agreement, Customer has executed a Services Agreement through which Stem will provide certain services, warranty management, and administration services for the purchased Systems.

In consideration of the mutual promises and agreements stated in this Agreement, the parties agree as follows.

1. ATTACHMENTS AND EXHIBITS

The following attachments and exhibits are incorporated into this Agreement by reference: Attachment 1, Defined Terms, and Exhibit 1, Template Systems Order.

2. SYSTEMS ORDER; PURCHASE ORDERS

- 2.1. **Systems Orders.** Customer may with a Systems Order in substantially the same format as shown in exhibit 1 indicate the intent to purchase Systems. The Systems Order will specify the Systems, such other items intended to be included in a purchase, the associated pricing and fees, cancellation fees, and payment terms.
- 2.2. **Systems Order Validity Period.** The parties agree that each executed Systems Order will remain in effect for a period not to exceed the Systems Order Validity Period as reflected in the Systems Order unless otherwise extended in writing between the parties. Once the Systems Order Validity Period has expired, Stem may, but shall have no obligation to, accept any portion of the expired Systems Order.
- 2.3. **Systems Order Cancellation.** Before the end of the Systems Order Validity Period, Customer may cancel a Systems Order in writing without any penalty or further liability of any kind whatsoever. Stem may only cancel a Systems Order without further liability to Customer if Stem experiences a cost increase that renders the Systems Order economically infeasible to Stem.
- 2.4. **Customer Purchase Orders.** During the Systems Order Validity Period, Customer may submit a binding purchase order. In addition to other information as may be required, and unless otherwise agreed in writing by the parties, a valid purchase order will contain the same information as is included in the associated Systems Order. Each purchase order must be signed by Customer's authorized representative and provide for the countersignature by Stem.
- 2.5. **Purchase Order Acceptance Period.** Stem shall accept each valid purchase order within ten Business Days after Stem's receipt of a valid purchase order. The acceptance period may be adjusted due to requirements by the manufacturer and with Stem's written notice of such adjustment to Customer.
- 2.6. **Purchase Order Cancellation.** If Customer cancels a purchase order that has been accepted by Stem for any reason other than a termination under section 13.1 resulting from Stem's breach, or if Stem cancels a purchase order under section 4.5, section 4.8, or in connection with termination under section 13.1 resulting from Customer's breach, Customer shall pay to Stem, as Stem's sole and exclusive remedy for such cancellation, the Cancellation Fee as detailed in the Systems Order associated with the accepted purchase order, and any applicable fees as defined in sections 4.7, of this Agreement.
- 2.7. **Cancellation Payments.** Customer shall pay any Cancellation Payments due within 30 days of receipt of an invoice from Stem. The parties agree that Cancellation Payments are not a penalty and represent a reasonable estimate of fair compensation for the foreseeable losses resulting from such termination/cancellation. To the extent that the total amount paid by Customer to Stem under the applicable purchase order as of the date of said cancellation exceeds the Cancellation Payments due to Stem, Stem shall, within 30 days of Customer's notice of cancellation, refund Customer an amount equal to the total amount paid by Customer as of the date of cancellation less the Cancellation Payments amounts due.
- 2.8. **Systems Order or Purchase Order Changes.** Except as expressly stated in this Agreement, the information on a fully signed Systems Order may only be changed through an amendment to the Systems Order. An accepted purchase order can only be changed through a change order, or a restated or reissued purchase order each as issued and signed by Customer. Acceptance by Stem of such change order or restated or reissued purchase order will be in accordance with section 2.5.
- 2.9. **Forecasts.** Every 90 days, on a predetermined schedule, as mutually agreed by the parties, Customer will provide Stem with a non-binding forecast of the Systems Customer anticipates ordering during the following six-month period, which forecasts may be amended by written notice to Stem. Customer shall make all reasonable efforts to

ensure the accuracy of the forecast. Customer agrees that any purchase orders submitted to Stem for Systems that exceed such forecasts may be subject to longer lead-times.

2.10. **All Sales Final.** Subject to section 5.4 and section 13.1, all sales are final upon delivery. Stem is under no obligation under any circumstance to accept returns of Systems.

3. PRICES; PAYMENTS

3.1. **Prices and Fees.** Prices and fees are stated in each Systems Order and subsequent related purchase order.

3.2. **Taxes.** Prices and fees do not include Taxes. Taxes will not include income or other similar taxes owed by Stem on revenue from the Systems' sale or any other product or service provided under this Agreement or any associated purchase order. Except as otherwise provided herein, all Taxes are Customer's responsibility. To the extent that Stem is required by Applicable Law to pay or collect such Taxes from Customer, Stem shall invoice Customer, and Customer shall pay such amounts directly to Stem. If Customer is exempt from any such Taxes, Customer shall submit to Stem its exemption certification in the proper form issued by the applicable taxing authority before the time when such Taxes would be otherwise collected and paid.

3.3. **Import/Export.** Prices and fees include all Import Duties applicable to the Systems or Component Parts. Customer shall be solely responsible for any increases in Import Duties that occur after the Systems Order's effective date or acceptance of subsequent purchase orders. To the extent that Stem is required by Applicable Law to pay on behalf of Customer or collect Import Duties or any increases to Import Duties from Customer, Stem shall invoice Customer, and Customer shall pay such amounts directly to Stem.

3.4. **Payments.** Customer shall pay all undisputed invoices forwarded by Stem under each purchase order, without offset, abatement, reduction, within 30 days of receipt, or as stated in the Systems Order and in accordance with each invoice. Payment terms are specific to each Systems manufacturer and may be adjusted by Stem, in writing, as required by the manufacturer. Payment will be made free of any currency controls or other restrictions and currency, as stated in the invoice.

3.5. **Late Payment.** All undisputed payments that are not received by Stem in accordance with section 3.4 or as otherwise stated in an accepted purchase order may be charged interest until paid in full at the rate of the lesser of 1.5% per month or the maximum permitted by law. If an undisputed amount is past due more than 30 days, without limitation to Stem's termination rights under section 13, Stem will have the right but not the obligation to suspend performance under the affected purchase order until all overdue amounts are paid to Stem. Additionally, late payments may result in a day for day delay in the Delivery Date; such delay will be deemed to have been caused by Customer.

3.6. **Costs and Fees.** In addition to any other remedies available to Stem at law or equity, Customer shall pay on demand all of Stem's reasonable attorney fees and additional costs incurred by Stem to collect any undisputed payments that have not been paid under the associated invoice. Customer may withhold from any payment any amounts in dispute, or an amount sufficient to reasonably protect Customer from loss, damage, or expense arising out of a third-party assertion of any claim or lien against Customer arising in connection with this Agreement or any accepted purchase order.

4. SHIPPING; DELIVERY; DELIVERY DELAY; ALTERNATE DELIVERY LOCATION

4.1. **Shipping.** The Systems will be packaged and marked for shipment to the Location. Except as otherwise stated, the costs associated with the delivery of the Systems from Stem's or manufacturer's warehouse or the port of entry into the United States to the Location or Alternate Delivery Location will be stated as an estimate in each Systems Order and subsequent purchase order and invoiced upon completion of each delivery. Customer shall be solely responsible for any increases in the shipping costs that occur after the acceptance of a purchase order insofar as such increases are not due to any action or inaction on the part of Stem.

4.2. **Delivery.** Stem shall cause the Systems or Component Parts to be delivered on or before the Delivery Date as specified in each accepted purchase order, change order, or restated purchase order. Stem may with Customer's prior written consent, which consent will not be unreasonably withheld, deliver the Systems or any Component Part earlier than the scheduled Delivery Date. Stem shall deliver the Systems or Component Parts directly to the Location as stated on the purchase order or as otherwise instructed in writing by Customer. Stem shall provide a bill of lading or similar shipping documentation for each shipment. Customer acknowledges and agrees that Delivery Dates are estimates only. Delivery of the Systems or any Component Parts may be delayed if Customer delays any payment due under an accepted purchase order or due to a Force Majeure event. Stem shall promptly notify Customer of such delays.

4.3. **Delivery Requirements.** For each delivery of Systems or Component Parts, Customer shall take such actions as are necessary to (i) prepare the delivered Component Parts delivered under the Initial Shipment and, where applicable, Interim Shipment for the receipt of the Final Shipment, (ii) maintain and comply with the respective

Manufacturers' Warranties, (iii) comply with delivery requirements as more fully described in the Systems Documentation provided in accordance with section 6.3 and (iv) comply with all requirements of any governmental authority (including, without limitation, any physical enclosure requirements) for each of the shipments.

- 4.4. **Delivery of Shipments.** The delivery of shipments of Systems or Component Parts will be one full shipment or two or more shipments of Component Parts. The number of deliveries is dependent on the manufacturer and the size of the shipment.
- A. **Initial Shipment.** The first shipment of Component Parts as delivered to Customer in a single calendar day is the initial shipment ("Initial Shipment"). Delivery of the Initial Shipment will be on, or with Customers prior written consent, before the Delivery Date shown on each purchase order. In some cases, the Initial Shipment and the Final Shipment are the same.
 - B. **Interim Shipment.** If applicable, additional interim deliveries of Component Parts may be required for items such as, but not restricted to, battery racking ("Interim Shipment").
 - C. **Final Shipment.** Dependent on the manufacturer, the Final Shipment is either: (i) the remainder of the Component Parts, such as the equipment to be housed within the enclosures, batteries at the module level, battery modules previously integrated into the rack-level, or battery modules previously integrated into larger battery blocks or stacks, or (ii) when Systems are delivered in a single shipment the full shipment of the Systems ((i) or (ii) may be referred to as "Final Shipment"). The Final Shipment may be delivered in one or more deliveries depending on the Systems' size. In the case where there is an Initial Shipment and a Final Shipment, the Delivery Date for Final Shipment will be specified by Customer on the purchase order and confirmed before the completion of the installation of the Initial Shipment and, where applicable, Interim Shipments. A Final Shipment will not be delivered before the completion of the installation of the Component Parts delivered in the Initial Shipment and, where applicable, Interim Shipments unless otherwise requested and specified by the Customer and approved by Stem and the associated manufacturer.
- 4.5. **Delivery Delay by Customer.** Customer may, through an amended purchase order or change order, as agreed and executed by the parties, reschedule the Delivery Date of the Systems or Component Parts subject to the fees as stated in section 4.7 and the following:
- A. Delivery Delay requests must be submitted in writing to Stem at least ten Business Days before the then-current Delivery Date and are subject to approval by Stem and where appropriate the manufacturer, which approvals will not be unreasonably withheld.
 - B. The last three weeks of any calendar quarter are considered a Stem blackout period. Stem will not accept Delivery Delay requests that occur during, extend into, or extend beyond any Stem blackout period.
 - C. Delivery Delays will not exceed 60 days. In no case will any Delivery Delay period be extended beyond the end of the calendar quarter in which the initial Delivery Date was scheduled, as reflected on the original purchase order.
 - D. Stem will invoice Customer in accordance with, and Customer's payment obligations remain linked to the initial Delivery Date as represented in the purchase order except in the case where such initial Delivery Date has been moved to an earlier date at Customer's written request or through a change order or amended purchase order, in that case, payment obligations will be linked to the new, earlier Delivery Date.
 - E. The Acceptance Period, as stated in section 5.4 will be waived until the shipment subject to the Delivery Delay is either delivered to the Location or an Alternate Delivery Location, and payments will be due under the issued invoice.
 - F. At least ten days before the expiration of a Delivery Delay, or at the time of the request of a Delivery Delay if the requested Delivery Delay is less than ten days, Customer shall provide written confirmation to Stem of the date of delivery of the delayed shipment. Stem will deliver the delayed shipment to either the Location or Alternate Delivery Location as instructed by Customer.
 - G. Stem will have the right but not the obligation to consider Customer's failure to take delivery at the expiration of an accepted Delivery Delay period as a cancellation of the purchase order by Customer in accordance with section 2.6, and the then-effective Cancellation Payments will apply.
 - H. Customer acknowledges that any change in the Delivery Date will not affect the commencement of the term of the Manufacturers' Warranties, as stated in section 9.1.
- 4.6. **Delivery to Alternate Delivery Location.** Customer may request that Stem deliver a shipment to an Alternate Delivery Location if (i) Customer is unable to accept delivery of the Systems or Component Parts on the Delivery Date and a Delivery Delay is not accepted by Stem or, where applicable, the manufacturer, or (ii) a Delivery Delay

is due to expire. Stem will deliver a scheduled shipment to an Alternate Delivery Location subject to the fees, as stated in section 4.7 and the following:

- A. The request for delivery to an Alternate Delivery Location must be submitted in writing to Stem at least ten Business Days before the then-current Delivery Date or in the case of a Delivery Delay at least ten Business Days before the expiration of such Delivery Delay.
 - B. Where Customer does not have access to an Alternate Delivery Location (such as a Customer controlled warehouse or other holding facility), Stem will, at Customer's written request, sole responsibility, and cost facilitate locating an Alternate Delivery Location. Upon Customer's written confirmation to Stem of the Alternate Delivery Location Stem will reroute the shipment to the Alternate Delivery Location. Customer shall be solely responsible for all contracts with any Alternate Delivery Location and any additional costs associated with delivery to an Alternate Delivery Location.
 - C. Customer shall be responsible for ensuring that the Systems are stored in compliance with the Manufacturers' Warranties.
 - D. Delivery to an Alternate Delivery Location will be considered delivery to Customer. The Acceptance Period as stated in section 5.4 will commence upon such delivery. Customer's payment obligations (except where already invoiced through a Delivery Delay) will remain as stated in the associated purchase order. Title will pass to Customer as stated in section 6.1.
 - E. Unloading of any shipment delivered to an Alternate Delivery Location will be as stated in section 5.1. A.
 - F. Risk of loss for any shipment delivered to an Alternate Delivery Location will be as stated in section 5.3 A.
 - G. Placing the Systems or Component Parts in an Alternate Delivery Location will not affect the commencement of the term of the Manufacturers' Warranties, as stated in section 9.1.
 - H. Customer will be responsible for delivery of all portions of shipments that are placed in an Alternate Delivery Location to the Location.
- 4.7. **Delivery Delay and Alternate Location Delivery Fees.** In the case of a Delivery Delay or delivery to an Alternate Delivery Location, the following fees may apply. These fees will be invoiced to Customer by Stem. Payment will be in accordance with the invoice.
- A. **Warehousing Fees.** An amount equal to Stem's then-current fee associated with warehousing or placing any portion of the Systems or Component Parts in a temporary holding facility due to an accepted Delivery Delay. These fees will be provided to Customer before acceptance of a Delivery Delay and include, but are not limited to unloading fees, insurance, facility fees, and reloading fees as applicable. These fees are only applicable for a Delivery Delay. Customer has sole responsibility and liability for any fees incurred due to delivery to or utilization of an Alternate Delivery Location.
 - B. **Warehousing Transportation Costs.** An amount equal to the documented and additional transportation costs associated with (i) routing a delivery to a warehouse or temporary holding facility due to a Delivery Delay, or (ii) the delivery of the Systems or Component Parts subject to a Delivery Delay from the warehouse or temporary holding facility to the Location or Alternate Delivery Location as instructed by Customer at the completion of the Delivery Delay, or (iii) the delivery of the Systems or Component Parts subject to an Alternate Delivery Location as instructed by Customer.
 - C. **Rescheduling Fees.** Where applicable, an amount equal to the manufacturers' fees for the rescheduling of a shipment. In this case, Stem agrees to make commercially reasonable efforts to mitigate such fees by working with Customer and the manufacturer on a resolution.
 - D. **Administration Fee.** An amount equal to 5% of the fees and costs, as stated in sections 4.7 A., 4.7 B.
- 4.8. **Delivery Rejection by Customer.** If Stem delivers or causes to be delivered any portion of the Systems or Component Parts in accordance with section 4, and Customer rejects such delivery, except where such rejection is in accordance with section 5.4, or due to a termination of such purchase order or this Agreement under section 13.1 resulting from Stem's breach, Stem may, at Stem's sole discretion consider such rejection as a cancellation of the affected purchase order by Customer in accordance with section 2.6, and the then-effective Cancellation Payments will apply.
5. **UNLOADING; MANUFACTURERS' ON-SITE SCOPE; RISK OF LOSS; INSPECTION AND ACCEPTANCE**
- 5.1. **Unloading.** Unloading of the Systems or Component Parts will be as follows:
- A. **Unloading of Shipments at Alternate Delivery Location.** Customer will be responsible for unloading all Systems or Component Parts delivered to an Alternate Delivery Location by Stem or the manufacturer.

- B. **Unloading of Shipments at Location.** Except as stated in section 5.1 C. below, Customer will be responsible for unloading all Systems or Component Parts delivered to the Location by Stem or the manufacturer.
- C. **Unloading of Shipments at Location with Manufacturers' On-Site Scope.** If a Final Shipment is subject to Manufacturers' On-Site Scope, the manufacturer will be responsible for unloading the Systems or Component Parts delivered to the Location whether the Final Shipment is delivered directly to the Location by Stem or the manufacturer, or by Customer as routed from an Alternate Delivery Location.
- 5.2. **Manufacturers' On-Site Scope.** In some instances, the manufacturer will be responsible for performing Manufacturers' On-Site Scope as associated with the Final Shipment to the Location. Unless otherwise requested and specified in writing by the Customer and approved in writing by Stem and the associated manufacturer, or as otherwise stated in the associated Systems Order, Manufacturers' On-Site Scope will not commence until the Systems and Component Parts delivered as part the Initial Shipment and any Interim Shipment have been both (i) delivered to the Location either directly by Stem or the manufacturer or by Customer from an Alternate Delivery Location, and (ii) unloaded and installed at the Location by Customer. Stem shall cause the manufacturer to repair or replace delivered Component Parts that are damaged during the Manufacturers' On-Site Scope if (a) such damage occurred during the performance of Manufacturers' On-Site Scope, (b) the damage was caused by any act or omission of the manufacturer or its representatives, (c) such damage is discovered before the completion of manufacturer's commissioning of the portion of the Systems or Component Parts associated with the Manufacturers' On-Site Scope, and (d) Customer has provided evidence to prove it was the manufacturer or the manufacturer's agents or subcontractors that caused such damage. If the damage is discovered after the completion of the commissioning of the Systems or Component Parts associated with the Manufacturers' On-Site Scope Customer may file a claim under the Manufacturers Warranties.
- 5.3. **Risk of Loss.** The transfer of risk of loss will be as follows:
- A. **Risk of Loss for Shipments to Alternate Delivery Location.** The risk of loss for all shipments of Systems or Component Parts that are delivered to an Alternate Delivery Location by Stem or the manufacturer will transfer to Customer upon commencement of Customer's unloading of the shipment at the Alternate Delivery Location.
- B. **Risk of Loss for Shipments Directly to Location.** Except as stated in section 5.3 C. below, the risk of loss for all shipments of Systems or Component Parts that are delivered directly to the Location by Stem or the manufacturer will transfer to Customer upon commencement of Customer's unloading of the shipment at the Location.
- C. **Risk of Loss of Shipments Subject to Manufacturers' On-Site Scope.** If the Final Shipment is delivered directly to the Location by Stem or the manufacture, and if the manufacturer is responsible for Manufacturers' On-Site Scope and the risk of loss for the delivered Systems or Component Parts will transfer to Customer upon completion of the Manufacturers' On-Site Scope.
- 5.4. **Inspection and Acceptance.** Customer shall have ten days after the delivery to the Location or Alternate Delivery Location, as applicable, of either the Initial Shipment, Interim Shipment, or Final Shipment to inspect the delivered Systems or Component Parts (the "Acceptance Period"). Such inspection is for visible external damage, defective, or nonconformance with this Agreement's requirements or the applicable purchase order. Customer shall provide Stem written notification of any nonconformity before the completion of the Acceptance Period. Stem will have 15 Business Days to correct such nonconformity. The Acceptance Period will re-start on the date that either Stem delivers conforming goods or provides written notice of correction of any reported nonconformity. A shipment will be considered accepted by Customer upon Stem's receipt of Customer's written acceptance of each shipment to Stem within the Acceptance Period or expiration of the Acceptance Period.
6. **TITLE; INSTALLATION; SYSTEMS DOCUMENTATION; COMMISSIONING**
- 6.1. **Systems Title.** Stem shall cause legal title to pass to Customer, free and clear of all security interests, liens, and encumbrances, upon delivery of the Systems to the Location or an Alternate Delivery Location except that, until payment in full for the delivered Systems is received, Customer grants Stem a first priority security interest in any of Customer's existing and after-acquired rights in the Systems including all modifications, accessions, accessories, replacements, and proceeds.
- 6.2. **Systems Installation.** Except for installation that is performed through Manufacturers' On-Site Scope, which will be completed by the manufacturer at Stem's sole cost and expense, Stem shall have no responsibility to cause any portion of the Systems to be installed. Stem shall provide all necessary specifications, instructions, documentation, and reasonable requirements to Customer in writing in accordance with section 6.3. Customer acknowledges and agrees that failure to comply with installation requirements may void any applicable warranties.
- 6.3. **Systems Documentation.** Stem will, through a secure web portal, provide Customer with (i) operating and safety instructions describing the operation of the Systems, (ii) copies of the Manufacturers' Warranties, (iii) all required

installation and commissioning documentation and instructions for the Systems, and (iv) such other documentation as required (collectively "Systems Documentation"). All provided Systems Documentation will be as listed in an attachment to each Systems Order for informational purposes only, and the final listing in an attachment to each purchase order.

- 6.4. **Systems Commissioning with Manufacturers' On-Site Scope.** When the manufacturer commissions the Systems during the completion of Manufacturers' On-Site Scope, Stem shall coordinate with the Customer to allow the manufacturer's completion of the Systems' remote and on-site commissioning. Additionally, Stem shall coordinate with Customer to enable the Systems to be granted permission to operate by the associated utility before the Stem Services' commencement as provided under a Services Agreement.
- 6.5. **Systems Commissioning without Manufacturers' On-Site Scope.** Except when the manufacturer commissions the Systems during the completion of Manufacturers' On-Site Scope, upon completion of the installation of the Systems, Customer shall provide or cause to be provided to Stem certain documents (which may include but are not limited to a manufacturers' construction checklist, a Systems equipment checklist, and interval data from the associated utility). Stem shall coordinate with the Customer to allow the completion of the remote and on-site commissioning of the Systems by the manufacturer. Additionally, Stem shall coordinate with Customer to allow the Systems to be granted permission to operate by the associated utility before the Stem Services' commencement as provided under a Services Agreement.

7. FIRMWARE UPDATES

- 7.1. **Remote Access.** Remote access for firmware and software updates by the manufacturer is provided directly through the Systems.

8. REPRESENTATIONS AND WARRANTIES

- 8.1. **Representations.** Each party represents that (i) it is organized, validly existing, and in good standing under the laws of its organization and in each jurisdiction where it is required to be so qualified in connection with the transactions contemplated under this Agreement, (ii) it has the right to enter into this Agreement, and (iii) the execution of this Agreement will not violate the terms of any contract, obligation, Applicable Law, regulation, or ordinance to which it is subject.
- 8.2. **Warranties.** Each party represents and warrants that it shall comply with Applicable Law in executing this Agreement and the provision or use of any Systems. A party will notify the other party within 14 days in the event that it receives written notification of non-compliance with any laws from any person or entity in connection with its use of any Systems.
- 8.3. **Customer Acknowledgements.** Customer acknowledges that: (i) Stem is not a utility and is not purchasing from nor selling to Customer electricity, (ii) Stem shall have no responsibility for any costs or liabilities associated with the procurement, purchase, and use of any electricity in connection with the Systems, (iii) Stem shall have no direct or indirect liability or obligation to any Assignee Owner or Designee relating to this Agreement or any associated Systems Order or purchase order except as stated in this Agreement, and (iv) that the Systems are not designed nor made available for life support, critical care, medical, safety equipment, or similar applications where Systems failure could result in loss of life or personal or physical harm and accordingly that Stem disclaims all liability, and Customer assumes all risks arising from any such or similar application of the Systems.
- 8.4. **Stem Warranty and Representation.** Stem represents and warrants that (i) Stem shall deliver good, exclusive, and marketable title to the Systems free and clear of all liens, security interests, claims, and encumbrances; (ii) the Systems will be free from defects in design, materials, and workmanship, and will comply with all final written descriptions, specifications, drawings, and representations, including those specified in the Agreement and the applicable Systems purchase order, and Applicable Law; (iii) no federal, state, local or foreign statute, law, rule, regulation, or order will be violated in manufacturing, selling, or delivering of the Systems; and (iv) any services performed by or on behalf of Stem under this Agreement will be performed in a safe and workmanlike matter in accordance with industry standards and Applicable Law, and will not limit or void any Manufacturers' Warranties; (v) as of the acceptance date of the applicable purchase order, Stem has the authority to freely assign the Manufacturers' Warranties to Customer without the consent of or additional notice to the applicable manufacturer, and (vi) Stem has the right to administer, on behalf of Customer, an Interim Warranty Coverage in section 9.1 during the applicable period of the Interim Warranty Coverage.

9. SYSTEMS WARRANTY

- 9.1. **Transfer of Manufacturers' Warranties.** Stem agrees to assign to Customer the warranties, as provided by the manufacturers, for the components of the Systems (each a "Manufacturer's Warranty" and collectively "Manufacturers' Warranties") on or before the commencement date of such Manufacturers' Warranties and in accordance with the Manufacturers' Warranties requirements. Until the date that Stem assigns to Customer each Manufacturer's Warranty ("Manufacturer's Warranty Assignment"), Stem shall provide Interim Warranty Coverage from the respective manufacturer that is identical in quality and quantity to the warranty coverage under the

applicable Manufacturer's Warranty ("Interim Warranty Coverage"). The terms of each Interim Warranty Coverage will be enforceable by Customer against Stem commencing upon delivery of the Systems to Customer until the applicable Manufacturer's Warranty assignment. Interim Warranty Coverage is non-transferable. Upon completing the Manufacturer's Warranty Assignment for each Manufacturer's Warranty, Stem shall have no further liability or obligation to Customer to fulfill any of the obligations under such Manufacturer's Warranty or any of Stem's obligations under the Interim Warranty Coverage.

- 9.2. **Further Assignment of Manufacturers' Warranties.** Upon the transfer of title to the Systems and completion of the Manufacturer Warranty Assignment from Stem to Customer, Customer may further assign the Manufacturers' Warranties in accordance with the terms of such Manufacturers' Warranties.
- 9.3. **Disclaimer of Warranties.** Manufacturers' Warranties and Interim Warranty Coverage contain all warranties provided with respect to the Systems. Such warranties are expressly in lieu of and exclude all other express or implied warranties and all other obligations or liabilities on the part of Stem under this Agreement.
- 9.4. **Extension of Warranties.** Stem agrees and acknowledges that delay in delivery may impact the benefit that Customer or an Assignee Owner may receive from a Manufacturer's Warranty. Therefore, in the event of any such delay in delivery, and where such delay in delivery has been caused by Stem, which causes such benefit to decrease by a particular number of days, Stem agrees to take such action necessary to cause the affected Manufacturer's Warranty to be extended by the equivalent number of days.
- 9.5. **Actions of Stem.** Stem agrees and acknowledges that if the acts or omissions of Stem or its subcontractors limit or void the Interim Warranty Coverage or the Manufacturers' Warranties, then Stem shall take such actions to cause the affected Interim Warranty Coverage or Manufacturers' Warranties to be reinstated, for the original periods, at no cost to Customer.

10. INDEMNIFICATION; NO CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY

- 10.1. **Indemnification.** Each party (the "Indemnitor") shall indemnify and save the other party, its Affiliates and their directors, elected official, officers, employees, volunteers, and agents (each, an "Indemnitee") harmless from and against all third-party claims, losses, damages, injuries, and liability, and all costs and expenses attributable to such third-party claims or resulting from or arising out of the gross negligence or willful misconduct of the Indemnitor or its employees or agents. This indemnity will not be available to the extent such claims, losses, damages, injuries, or liabilities are resulting from the gross negligence or willful misconduct of the Indemnitee.
- 10.2. **No Consequential Damages.** Neither party, nor any party's Affiliates, subcontractors, agents, elected and appointed officials, volunteers, or employees, shall be liable to the other for any incidental, indirect, special, punitive, consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, or damages relating to the loss of use, profits, business, reputation, financing, revenue, power, information or data, or the cost of capital, or such damages based on a party's third-party contracts.
- 10.3. **Limitation of Liability.** Except for Customer's payment obligations under this Agreement and each purchase order, the maximum liability of each party, its Affiliates, subcontractors, agents, and employees, arising out of the performance or nonperformance of obligations in connection with this Agreement or a purchase order, under any theory of recovery, whether based in contract, in tort (including negligence and strict liability), or otherwise, (each a "damage") will not exceed an amount equal to payments made under the affected purchase order with respect to the applicable Systems or Component Parts. The parties agree that the above limitations and exclusions will not apply to losses or damages that are due to the other party's or its employees', agents', or subcontractors' gross negligence, willful misconduct, breach of confidentiality, or the parties' respective express indemnity obligations under this Agreement. Neither party shall be liable for penalties of any kind. Any action resulting from any breach on the part of either party as to the Systems sold through this Agreement must be commenced within one year after the cause of action has accrued or in accordance with Applicable Law.

11. OWNERSHIP IN INTELLECTUAL PROPERTY

- 11.1. **Ownership of Intellectual Property.** All Intellectual Property rights in the Systems, including but not limited to copyrights, trademarks, patents, and trade secrets, including without limitation rights as to their design, functionality, and embedded or provided software, are the sole and exclusive property of the manufacturer of the Systems and Component Parts. The manufacturer of the Systems and Component Parts reserves all rights not expressly granted in this Agreement, including, without limitation, all rights to modifications and derivative works based on such property. This Agreement involves the sale of Systems by Stem and licensing by the manufacturer of such Systems of the use of related embedded software and is not a sale of any Intellectual Property rights.
- 11.2. **Intellectual Property Indemnity.** Stem shall indemnify and defend Customer and Assignee Owner from and against all third-party claims, costs, expenses, liabilities, actions, losses, demands, damages, and other relief sought, including but not limited to attorney fees and expert costs, arising out of, or relating to actual or alleged infringement of any Intellectual Property that is a part of the Systems.

12. CONFIDENTIALITY

- 12.1. **Duty to Protect Confidential Information.** During the term of this Agreement, each party may provide the other party with certain information regarding the disclosing party's business, technology, products, or services or other confidential or proprietary information. The disclosing party will mark all Confidential Information in tangible form as "confidential" or "proprietary" or with a similar legend, and identify all Confidential Information disclosed orally as confidential at the time of disclosure and provide a written summary of such Confidential Information within 30 days after such oral disclosure. Upon the receipt of Confidential Information, the receiving party agrees (i) to hold the disclosing party's Confidential Information in confidence and to take reasonable precautions to protect such Confidential Information (including, without limitation, all precautions the receiving party employs with respect to its confidential materials); (ii) not to divulge any such Confidential Information to any third party, except to those Customer or Assignee Owner employees and subcontractors that need to know such Confidential Information for the purpose of performing this Agreement. Each such Customer or Assignee Owner employee and subcontractor shall be subject to a written agreement that includes binding use and disclosure restrictions that are at least as protective as the restrictions stated in this Agreement; (iii) not to make any use whatsoever at any time of such Confidential Information except to perform its obligations under this Agreement; and (iv) not to copy, decrypt, reverse assemble, disassemble, decompile, or reverse engineer any such Confidential Information. Without granting any right or license, the disclosing party agrees that the preceding will not apply with respect to any information after five years following the disclosure of such information or any information that the receiving party can document (a) is or becomes (through no improper action or inaction by the receiving party) readily available to the public, (b) was in its possession or known by it without restriction before receipt from the disclosing party, (c) was rightfully disclosed to it by a third party that rightfully received such information without restriction on disclosure or use, or (d) was independently developed without the use of any Confidential Information of the disclosing party.
- 12.2. **Disclosures Required by Law.** The receiving party may make disclosures required by law or court order. The receiving party shall use reasonable efforts to limit such disclosures and shall provide the disclosing party with notice prior to the release of the records in order to allow the disclosing party a reasonable amount of time to seek a protective order at the disclosing party's sole cost and expense.
- 12.3. **Feedback.** Customer, Customer's Designees, end-users, representatives, or any other entity or Person associated with Customer may, but are not required to, provide Feedback to Stem. Feedback is not Confidential Information and may be used, disclosed, disseminated, or published by Stem for any purpose, including developing, manufacturing, and marketing products and services incorporating such Feedback, without obligation of any kind to any feedback provider. For this section, "Feedback" means suggestions, comments, improvements, modifications, and other information, including any ideas, concepts, know-how, or techniques, that any feedback provider provides to Stem about the Systems.

13. BREACH

- 13.1. **Breach.** Each of the following events will constitute a default or breach if not cured within the period stated (each, a "Cure Period"): (i) If a party breaches any material term of this Agreement and fails to cure such breach within 30 days after receipt of written notice of default from the non-breaching party, (ii) If a party becomes insolvent, or a receiver or receiver-manager is appointed for any part of the property of that party, or a party makes an assignment, proposal or arrangement for the benefit of creditors or proceedings are commenced by or for a party under any bankruptcy, insolvency or debtor's relief law that are not terminated within 60 days, (iii) If a party fails to make a payment when due (each a "Payment Default") and fails to cure such Payment Default within ten Business Days after receipt of written notice from the non-breaching party. The parties may mutually agree in writing to extend any of the notices of breach or termination.
- 13.2. **Remedies for Breach.** If a party fails to cure any default or breach within the applicable Cure Period, then the non-breaching party, at its option may, in addition to any other remedies it may have under this Agreement or at law or in equity, immediately terminate the applicable Systems Orders or purchase orders, or this Agreement upon written notice to the other party.
- 13.3. **Survival.** Those provisions of this Agreement, any exhibit or attachment to this Agreement, which by their nature should survive termination or should reasonably remain in effect during any extension of this Agreement, will survive. Additionally, any sums due from either party that by the terms of this Agreement or any associated purchase order would be payable, or are incapable of calculation until, after the expiration or termination of this Agreement, will survive and remain a continuing obligation until paid. Any obligations of either party that by the terms of this Agreement are to be performed after the expiration or termination of this Agreement will survive and remain a continuing obligation until performed.

14. GENERAL PROVISIONS.

- 14.1. **Assignment.** Except for the Manufacturers' Warranties' assignment, this Agreement is not assignable without the parties' mutual written consent. Customer will be entitled to assign all or any of its rights or obligations under this Agreement with respect to a purchase order, upon notice to but without the prior consent of Stem to an Affiliate, an

entity that obtains ownership of the Systems under such purchase order, or as security or collateral to any lender, financier, or provider of equity, tax equity, or debt, in connection with the financing of such purchase order. Such assignment will not relieve Customer of its payment obligations under any assigned purchase order. Any assignment in violation of the preceding (i) will be null and void, (ii) will be deemed a material breach of this Agreement, (iii) and will give the non-assigning party the right to terminate this Agreement in accordance with section 13.1. Subject to the preceding, this Agreement will inure to the benefit of and be binding upon the parties and their representatives, successors, permitted assigns, and other legal representatives.

- 14.2. **Conflict Between Documents.** In the event of a conflict between the terms contained in the body of this Agreement and the terms contained in any exhibit or attachment to this Agreement, the relevant terms contained in the body of this Agreement will control. In the event of a conflict between the terms of this Agreement and any Systems Order, the Systems Order will control. In the event of a conflict between the terms of any Systems Order and the associated accepted purchase order, the purchase order will control.
- 14.3. **Cooperation, Further Assurances, and Joint Preparation of Agreement.** Upon receiving a written request from the other party, each party shall execute such additional documents, instruments, estoppels, and assurances and take such further actions as reasonably necessary and desirable to carry out the terms and intent. Neither party will unreasonably withhold, condition, or delay its compliance with any reasonable request made under this section. Preparation of this Agreement has been a joint effort of the parties, and the resulting document will not be construed more severely against one of the parties than against the other.
- 14.4. **Designated Representative.** Except where restricted explicitly in this Agreement, Customer may exercise any of its rights under this Agreement through a Designee. Customer is liable for any acts or omissions of any Designee that, if performed or not performed by Customer, would be a breach of this Agreement or any specific Systems Order or purchase order. Any breach of this Agreement by a Designee will be deemed a breach by Customer.
- 14.5. **Dispute Resolution.** Stem and Customer shall use best efforts to resolve any dispute resulting from this Agreement or the Systems' use through negotiation between the parties. If any such dispute has not been resolved within 30 days of the negotiation initiation regarding such dispute, Stem and Customer shall make a good faith attempt to settle such dispute by the current Commercial Mediation Rules of the American Arbitration Association and administered by the AAA.
- 14.6. **English Version Controlling.** This Agreement and each associated document are originally written in the English language. All rights and duties of the parties will be governed by and interpreted under the English version.
- 14.7. **Entire Agreement.** This Agreement and its exhibits and attachments (and any terms and documents incorporated in this Agreement by reference) is the parties' entire agreement relating to the subject matter and supersedes all prior or contemporaneous oral or written communications, proposals, representations, and warranties, and prevails over any conflicting or additional terms of any communication between the parties relating to its subject matter. All terms of any document provided by Customer, including but not limited to any pre-printed terms thereon and any terms that are inconsistent or conflict with this Agreement, will be null and void and of no legal force or effect.
- 14.8. **Equitable Relief.** Each party agrees and acknowledges that the infringement of either party's Intellectual Property rights may cause irreparable injury. Accordingly, both parties agree that both parties will be entitled to apply for equitable relief, including injunction or injunctions as may be required to prevent any breach, infringement, or further breach or infringement of any Intellectual Property rights or disclosure or misuse of Confidential Information, and may specifically enforce such provisions or protect these rights by an action instituted in any court having jurisdiction. Both parties acknowledge that damages may be an inadequate remedy for such a breach or infringement. Both parties agree the aggrieved party may apply for such equitable relief without posting a bond or surety. Nothing in this Agreement will prevent or prohibit either party from disputing the occurrence of such a breach or infringement, including the occurrence of the default giving rise to the application for such injunctive relief.
- 14.9. **Execution and Counterparts.** This Agreement may be signed in two or more counterparts, each of which together will be deemed to be an original and all of which together will constitute the same instrument. The signing of this Agreement and transmission by facsimile, electronic document transfer, or email will be acceptable and binding upon the parties.
- 14.10. **Export Restrictions.** Neither the Systems nor any underlying information or technology may be exported or re-exported, directly, or indirectly, contrary to U.S. law or U.S. government export controls.
- 14.11. **Force Majeure.** Either party will be excused from any obligation to the extent performance of such obligation is rendered impossible by a Force Majeure event.
- 14.12. **Governing Law.** These terms are governed by the laws of the state in which the Systems will be installed without reference to conflict of law principles. In the event of a dispute concerning this Agreement or any purchase order that has not been remedied under section 14.5, the parties' consent to the sole and exclusive personal jurisdiction

of the courts of competency in the governing state. Either party may also seek and obtain appropriate relief for claims regarding (i) the scope of any licenses granted through this Agreement or (ii) its intellectual property rights and confidential information. The prevailing party in an action to enforce this Agreement will be entitled to costs and attorneys and experts fees and expenses.

- 14.13. **Headings.** Headings used in this Agreement are provided for convenience only and are not intended to construe meaning or intent.
- 14.14. **Independent Contractors.** The relationship of the parties is that of independent contractors. Nothing in this Agreement may be construed to make either party the agent or partner of the other. Neither party may legally bind the other in any manner. No obligations will be owed one to the other, or to third parties under this Agreement, based in any way on the law of partnership, joint ventures, or similar legal theories.
- 14.15. **Invalidity.** If any part of this Agreement is held unenforceable, the remaining provisions' validity will not be affected. If any provision of this Agreement is held to be unenforceable for any reason, such provision will be reformed only to the extent necessary to make it enforceable. To the extent that any provision of this Agreement (including its exhibits or attachments) will exclude or limit any statutory liability which, according to mandatory provisions of Applicable Law, cannot be contractually excluded or limited by mutual agreement of the parties, then such provision will be given only such effect if any, as is permitted by the Applicable Law.
- 14.16. **Modification and Waiver.** No modification to this Agreement will be binding unless in writing and signed by an authorized representative of each party. Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement, nor will such waiver constitute a waiver of any other provision. Any waiver will be effective only if it is in writing and signed by the parties.
- 14.17. **Notices.** All notices required or permitted under this Agreement will be in writing, the English language, to the other party's authorized representative, and will be deemed given when delivered personally or when sent by email or other electronic means. All communications will be sent to the email addresses stated in this section or other email addresses as designated by a party in writing. Invoices will be deemed delivered when delivered by email or other electronic means.

STEM, INC.	
100 Rollins Road Millbrae, CA 94030	
<i>Attention</i>	
Payments	Accounts Receivable
Email:	Stemaccounting@bill.com
All Other Attn:	Commercial Operations
Email:	Legal.documents@stem.com
Telephone:	415.937.7836

City of El Cajon	
200 Civic Center Way El Cajon, CA 92020	
<i>Attention</i>	
Invoices Attn:	Jeffrey R. Manchester
Email:	jmanchester@cityofelcajon.us
All Other Attn:	Hope Gold
Email:	publicworks@cityofelcajon.us
Telephone	619-441-1653

- 14.18. **Reference.** With prior written consent from Customer, Stem may use Customer as a customer reference, use Customer's name and logo in marketing materials, or ask Customer to participate in communication efforts such as quotes, press releases, case studies, and video testimonials.
- 14.19. **Term.** The term of this Agreement will commence on the Effective Date. This Agreement will remain in effect for so long as any associated purchase order incorporating this Agreement is in effect or until terminated by either party upon 30 days' prior written notice. This Agreement will remain in effect with respect to any purchase orders entered into before the effective date of such termination until both parties have fulfilled all of their obligations under such purchase orders, or such purchase orders have been canceled under section 2.6, section 4.5, section 4.8, or terminated in accordance with section 13 or section 14.
- 14.20. **Validity.** This Agreement each associated Systems Order and purchase order will only be valid if the parties have entered into a Services Agreement and related Services Order for the Systems as represented in the Systems Order.

The parties have caused this Agreement to be executed by their authorized representatives as of the date stated below.

STEM, INC.

Signature: _____
 Printed Name: Alan Russo
 Title: Chief Revenue Officer
 Email: alan.russo@stem.com
 Date: _____

CITY OF EL CAJON

Signature: _____
 Printed Name: Graham Mitchell
 Title: City Manager
 Email: citymanager@cityofelcajon.us
 Date: _____



ATTACHMENT 1 DEFINED TERMS

Capitalized terms utilized in this Agreement and any associated Systems Order and or purchase order will have the meaning where first used or defined in this attachment 1. These terms will apply both to the singular or plural forms, as the context may require.

- a) "Affiliate" means, when used regarding a specified Person, any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person.
- b) "Alternate Delivery Location" means the address of the premises where the Systems will be delivered by Stem specifically for temporary holding by Customer. An Alternate Delivery Location may be a Customer controlled or contracted warehouse or other temporary holding facility where Customer directs Stem, in writing to deliver a shipment. See also: Location.
- c) "Applicable Law" means any law, statute, rule, regulation, ordinance, order, code, governmental approval, interpretation, judgment, decree, injunction, directive, or decision of any governmental authority having jurisdiction over the matter, Person, or property in question.
- d) "Assignee Owner" means a third party to whom Customer has transferred or intends to transfer ownership of the Systems and all associated Manufacturers' Warranties under any purchase order.
- e) "Business Day" means any day, during the hours of 9:00 a.m. to 5:00 p.m. Pacific Prevailing Time, other than Saturday, Sunday, or other days on which commercial banks in San Francisco are required or authorized by Applicable Law to be closed, or the Customer's administrative offices are closed for the whole of any day.
- f) "Cancellation Payment" means the fees associated with the cancellation of a purchase order at any time after the acceptance of such purchase order by Stem.
- g) "Component Parts" means portions of the Systems, including but not limited to inverters, inverter enclosures, battery enclosures, battery racking, thermal conditioning units, equipment to be housed within the enclosures, batteries at the module level, battery modules previously integrated into the rack-level, or battery modules integrated into larger battery blocks or stack.
- h) "Confidential Information" means information relating to a party's business, including, without limitation, computer programs, software, technical drawings, algorithms, know-how, trade secrets, formulas, processes, ideas, inventions (whether patentable or not), designs, schematics and other technical, business, financial, customer and product information, data and development plans, of any nature and in any form, which to the extent previously, presently or subsequently disclosed to another party (provided such information was or is marked or designated in writing as "confidential," "proprietary," or any other similar term or designation or was or is disclosed in a manner that a reasonable person would have understood that such information is confidential and proprietary). Confidential information also includes Customer's solar energy estimates, conceptual layouts, installation techniques, and proposals provided to Stem.
- i) "Delivery Date" means the date reflected in a purchase order by which the Systems or Component Parts are to be delivered. Unless otherwise arranged, Delivery Dates that are not Business Days will be automatically moved to the next Business Day, which date will be accepted as the Delivery Date.
- j) "Delivery Delay" means a delay in the Delivery Date of the Systems or any Component Part as applicable and as requested or caused by Customer.
- k) "Designee" means a third party designated in writing by Customer, to act on behalf of or represent the Customer for certain Customer obligations stated in this Agreement.
- l) "Effective Date" means the date this Agreement has been signed by the last party, as indicated by the date associated with that party's signature. If Customer signs but fails to date a signature, the date Stem receives Customer's signature will be deemed the date that Customer signed this Agreement.
- m) "Force Majeure" means any event that includes, but is not limited to, acts of God, fire, flood, riots, pandemics, strikes, governmental acts or actions, disasters, earthquakes, acts of terrorism, and material shortages or the inability to obtain labor or materials through its regular sources as caused by Force Majeure events or any other reason beyond the reasonable control of the affected party. Such acts, events, or conditions listed above will only be deemed Force Majeure to the extent they (i) directly impact the Systems or services performed under this Agreement and are beyond the reasonable control of the party claiming a delay, (ii) are not the result of the willful misconduct or negligent act or omission of the party asserting the delay (or any person over whom that party has control), (iii) are not an act, event, condition, or the risk of consequence of which such party has expressly assumed under this Agreement, and (iv) cannot be cured, remedied, avoided, offset, or otherwise overcome by the prompt exercise of reasonable diligence by the party (or any person over which that party has control). The obligation to make any payment due under any purchase order will only be excused by a Force Majeure event that solely impacts a party's ability to make payment.
- n) "Import Duties" means customs duties, duties, tariffs, import taxes, import tariffs, or any other charges applicable to and imposed by Applicable Law on the importation of the Systems or Component Parts.
- o) "Intellectual Property" means copyrights, patents, trademarks, service marks, service names, trade names, domain names, together with all associated goodwill, registrations and applications for the purpose, technology rights and licenses, computer software (including any source or object codes or related documentation), trade secrets, franchises, know-how, inventions, and other Intellectual Property rights.
- p) "Location" means the address of the premises where the Systems will be delivered for installation. The Location will be indicated on the associated purchase order, change order, or restated purchase order. See also: Alternate Delivery Location.
- q) "Manufacturers' On-Site Scope" means the performance of certain duties by the Systems manufacturer with regard to the Component Parts delivered to the Location in the Final Shipment. Manufacturers' On-Site Scope may include any or all of the following dependent on the manufacturer and as detailed in the Systems Order (i) unloading the Component Parts (ii) installation of the Component Parts, and (iii) commissioning of the Systems. Manufacturers' On-Site Scope is limited to certain manufacturers and

ATTACHMENT 1 DEFINED TERMS

is not applicable to all Final Shipments. When applicable, the associated purchase order will indicate the Delivery Date of the Final Shipment that is subject to Manufacturers' On-Site Scope.

- r) "Person" means any individual, corporation, partnership, joint venture, trust, unincorporated organization, association, or governmental authority.
- s) "Services Agreement" means a separately negotiated and executed agreement for the provisioning of Stem Services.
- t) "Services Order" means a separately negotiated and executed document directly associated with a Services Agreement and details the specific services provided by Stem to Customer.
- u) "Site" means the actual area and the associated utility meter number, when applicable, within the Location as identified in a Services Order, where the Systems are or will be installed.
- v) "Stem Services" means all services provided by Stem to Customer for Systems, as stated in a Services Agreement.
- w) "Systems" means a battery energy storage system purchased by Stem from the original equipment manufacturer and sold by Stem to Customer. Systems include all embedded software, operating systems, and license required to use such embedded software and operating systems as provided by the original equipment manufacturer.
- x) "Systems Order" means a document that details the specific Systems and other items to be stated in Customer's purchase order.
- y) "Taxes" means all federal, state, local, and foreign taxes, including, without limitation, sales, use, value-added, or ad valorem that apply to or are measured by a taxing or governmental agency, or are imposed upon a party with respect to the sale, purchase, or transfer of the Systems, or the value, presence in a taxing jurisdiction, or use of the Systems.

SYSTEMS ORDER

EXHIBIT 1 TEMPLATE SYSTEMS ORDER

[This document will be completed and provided separately for each Systems Order – the format may be revised for each specific order]

TERM		INFORMATION	
Purchase Agreement			Effective Date
Purchase Agreement Parties		Customer	
		Stem	Stem, Inc., a Delaware corporation
Systems Order			Effective Date
Systems Order Parties		Customer	
		Stem	Stem, Inc., a Delaware corporation
Services Agreement			Effective Date
Services Agreement Parties		Customer	
		Stem	Stem, Inc., a Delaware corporation
Services Order			Effective Date
Services Order Parties		Customer	
		Stem	Stem, Inc., a Delaware corporation
Systems Order Validity Period		Expires 60 days after the Systems Order Effective Date	
Attachment 1	Purchase Order Requirements	Attachment 2	Systems Documentation Listing
System #	Site Name	Location (for delivery)	

This Systems Order is between Customer and Stem and is executed and delivered in accordance with and incorporates the above-listed Purchase Agreement by reference. In the event of any conflict between the Purchase Agreement and this Systems Order, the terms of the Purchase Agreement will govern except as specifically changed by this Systems Order. This Systems Order may only be modified by a written instrument signed by both parties.

1. **Systems Order Validity.** Insofar as the parties have executed the Purchase Agreement, this Systems Order, the Services Agreement, and the associated Services Order, each as identified above, this Systems Order will remain in effect for a period not to exceed the Systems Order Validity Period. The Systems Order Validity Period may be extended by written agreement between the parties. Upon the expiration of the Systems Order Validity Period, Stem may, but shall have no obligation to accept the terms, conditions, or fees, as stated in this Systems Order.

2. **Purchase Order.** In addition to required information as stated in attachment 1 and except as otherwise agreed between the parties, Customer's purchase order will contain the information provided in this Systems Order. All terms included in a purchase order as provided by Customer, including but not limited to any pre-printed terms and any terms that are inconsistent or conflict with the Purchase Agreement or this Systems Order, will be null and void and of no legal force or effect. The purchase order must be signed and dated by Customer's authorized representative. Any purchase order issued and signed by Customer against this Systems Order must be received by Stem within the Systems Order Validity Period. Due to capacity constraints and until further notice, Customer acknowledges that some manufacturers' purchase order acceptance period may be greater than ten days., Limited to the purchase order issued in accordance with this Systems Order and section 2.5 of the Purchase Agreement. Customer waives the written notice requirement as stated in the Purchase Agreement. The exact timing of the purchase order acceptance will be on a case-by-case basis.

3. **Prices and Fees.** The amounts associated with the Systems' purchase and any other items intended to be represented in the purchase order are listed below. The fees for the Stem Services as stated in the associated Services Order may also be included. Except where expressly indicated, price and fee amounts do not include any items except as listed below.

PRICES AND FEES			
SYSTEMS			
Manufacturer	Description	Qty	Total
SYSTEMS Sub-Total			
ADDITIONAL ITEMS (SYSTEMS COMPONENT PARTS, ADDITIONAL HARDWARE, AND OTHER ADDITIONAL ITEMS)			
Description	Qty	Total	
ADDITIONAL ITEMS Sub-Total			



SYSTEMS ORDER

	SYSTEMS Sub-Total <i>(from above)</i>	
	ADDITIONAL ITEMS Sub-Total <i>(from above)</i>	
	TOTAL PURCHASE PRICE	
	Estimated Shipping Fee	

4. **Payment Terms for Total Purchase Price.** The payment milestones and payment terms, as listed below, will be reflected in the purchase order. These terms are specific to the manufacturer. Stem will provide valid proof of payment as delivered from the original equipment manufacturer. In addition to such, payment for Milestone D will require proof that battery systems are available for immediate installation (i.e., within two Business Days from the date of the Final Delivery).

[THIS SECTION WILL BE UPDATED WITH THE APPROPRIATE PAYMENT TERMS AND CANCELLATION FEE SCHEDULE FOR THE APPLICABLE MANUFACTURER – ALL PAYMENT TERMS AND CANCELLATION FEES ARE DETAILED IN SCHEDULE AT THE END OF THIS TEMPLATE]

5. **Cancellation Fees.** The above listed cancellation fees apply to the Total Purchase Price and all Preventive Maintenance, and Manufacturers’ Warranties fees whether such fees are stated in section 3 above or in the associated Services Order.

6. **Payment Terms for Shipping.** The fees for shipping will be invoiced as applicable to the Initial Shipment, each Interim Shipment, and the Final Shipment or, at Stem’s option, in total with the Final Shipment.

7. **Manufacturers’ On-Site Scope.** Where applicable, Manufacturers’ On-Site Scope is listed in the table in section 4.

The parties have caused this Systems Order to be executed by their authorized representatives as of the date stated below.

STEM, INC.

Signature: _____
 Printed Name: _____
 Title: _____
 Email: _____
 Date: _____

CUSTOMER NAME

Signature: _____
 Printed Name: _____
 Title: _____
 Email: _____
 Date: _____

**ATTACHMENT 1
PURCHASE ORDER REQUIRED INFORMATION**

The following information is required to be reflected in Customer's purchase order.

INFORMATION	NOTES
Stem, Inc. identified as supplier	Information as stated in Systems Order.
Ship to address	Information as stated in Systems Order, this information may be changed by the purchase order.
Customer Purchase Order Number	This number will be generated and provided by Customer.
Issue date (Purchase or Change Order, or Amendment (as applicable))	This date is required, the acceptance period does not commence until Stem receives a purchase order that complies with the Systems Order.
Stem Record Number	This number is recorded at the top of the Systems Order and is « OPPORTUNITY_OPP_ID »
System # (Systems ID)	This number is recorded in the second table on the Systems Order and is «TableStart:syst» System_Record_ID «TableEnd:syst»
Delivery Date - Initial Shipment	This date is required.
Delivery Date – Final Shipment	This date is required if Manufacturers' On-Site Scope is applicable. This date must be no later than four week following the Delivery Date of the Initial Shipment.
Purchase Agreement (reference)	This reference is located in the first table on the Systems Order
Item Descriptions, Prices, and Fees	This information is detailed in the Payment and Fees table in section 3 of the Systems Order. For avoidance of confusion, descriptions of the items being purchased should closely match the descriptions provided in the Systems Order.
Payment Terms	May reference Systems Order – cannot be changed by a purchase order
Cancellation Terms	May reference Systems Order – cannot be changed by a purchase order
Purchase Order Notes	As required by Customer
Stem, Inc. signature block	Signer Mark Triplett
	Title Chief Operating Officer
	Email Mark.triplett@stem.com
Customer signature block	Reflecting Signer's name, title, and email address.

If any information in the table above is to be adjusted after purchase order acceptance, modifications will be made in compliance with the agreement between the parties.

WIRING INSTRUCTIONS	
BANK: Silicon Valley Bank Address: 3003 Tasman Dr., Santa Clara, CA 95054 Phone: 408.654.7400	FOR THE CREDIT OF: Stem, Inc. Operating Account #: 330 077 6369 ABA / Routing #: 121 140 399
All wires can be confirmed with William Bush, CFO email: bill.bush@stem.com / phone 925.980.5256	

**ATTACHMENT 2
SYSTEMS DOCUMENTATION LISTING**

The following documents are made available to Customer by Stem through a secure web portal. The parties agree that the documents applicable to the Systems purchased by Customer under a purchase order will be published on the web portal as of the purchase order's acceptance date. The terms of such documents are incorporated into the terms of each purchase order.

The list provided below is for informational purposes only; the valid list of documents will be attached to or provided with each purchase order upon acceptance by Stem.

DRAFT

**ATTACHMENT 2
SYSTEMS DOCUMENTATION LISTING
PAYMENT TERMS BY MANUFACTURER**

[This schedule will be removed when the appropriate table is inserted into the executable Systems Order]

This schedule may be adjusted according to the manufacturers' payment requirements but generally no more frequent than one time each calendar year. If such adjustment is required, Stem will provide a revised schedule.

MANUFACTURER		TESLA	EFFECTIVE DATE	1 January 2021
MILESTONE	INVOICED PERCENTAGE Total Purchase Price	INVOICE TIMING		PAYMENT DUE
A.	30%	Invoiced at Stem's acceptance of Customer's purchase order		Net 30 days from Customer's receipt of invoice
B.	50%	Invoiced 60 days prior to the Delivery Date of any portion of the scheduled shipment		Net 30 days from Customer's receipt of invoice
C.	10%	Invoiced at Customer's acceptance of the Initial Shipment in accordance with the Purchase Agreement		Net 30 days from Customer's receipt of invoice
D.	10%	Milestone D. amount will be invoiced on the earlier of either of the below		
		Invoiced at Customer's acceptance of the Final Shipment in accordance with the Purchase Agreement Stem will send Customer a Systems delivery notice upon completion of the Final Shipment		Net 30 days from Customer's receipt of invoice
		OR		
		Invoiced 30 days from Customer's acceptance of the Initial Shipment in accordance with the Purchase Agreement except where the Final Shipment has been delayed and such delay is not due to an action or inaction on the part of Customer.		Net 30 days from Customer's receipt of invoice
If the Initial Shipment and Final Shipment are the same, milestone C. will be invoiced with milestone D.				

Cancellation Fee Schedule - Tesla	
Timing of Cancellation	Cancellation Fee
Any time after the acceptance of the purchase order	100%

MANUFACTURER		SUNGROW	EFFECTIVE DATE	1 January 2021
MILESTONE	INVOICED PERCENTAGE of Total Purchase Price	INVOICE TIMING		PAYMENT DUE
A.	30%	Invoiced at Stem's acceptance of Customer's purchase order		Net 30 days from Customer's receipt of invoice
B.	40%	Milestone B. amount will be invoiced on the earlier of either of the below		
		Invoiced at commencement of production of the Initial Shipment		Net 30 days from Customer's receipt of invoice
		OR		
		Invoiced when Initial Shipment is transferred to port of departure		Net 10 days from Customer's receipt of invoice
C.	20%	Invoiced at Customer's acceptance of the Initial Shipment in accordance with the Purchase Agreement		Net 30 days from Customer's receipt of invoice
D.	10%	Milestone D. amount will be invoiced on the earlier of either of the below		
		Invoiced at Customer's acceptance of the Final Shipment in accordance with the Purchase Agreement Stem will send Customer a Systems delivery notice upon completion of the Final Shipment		Net 30 days from Customer's receipt of invoice
		OR		
		Invoiced 30 days from Customer's acceptance of the Initial Shipment in accordance with the Purchase Agreement except where the Final Shipment has been delayed and such delay is not due to an action or inaction on the part of Customer.		Net 30 days from Customer's receipt of invoice
If the Initial Shipment and Final Shipment are the same, milestone C. will be invoiced with milestone D.				

Cancellation Fee Schedule - Sungrow	
Weeks prior to guaranteed Delivery Date	Cancellation Fee
More than 25 weeks	0%

**ATTACHMENT 2
SYSTEMS DOCUMENTATION LISTING**

Cancellation Fee Schedule - Sungrow	
Weeks prior to guaranteed Delivery Date	Cancellation Fee
Between 24 and 21 weeks	35%
Between 20 and 15 weeks	65%
Between 14 and 10 weeks	80%
Fewer than 10 weeks	100%

Manufacturers' On-Site Scope - Sungrow
(i) unloading the Component Parts as delivered in the Final Shipment (ii) installation of the Component Parts as delivered in the Final Shipment (iii) commissioning of the Systems

Manufacturers' On-Site Scope – Sungrow (air cooled and liquid cooled LFP)
(i) commissioning of the Systems

MANUFACTURER		POWIN	EFFECTIVE DATE	1 January 2021
MILESTONE	INVOICED PERCENTAGE of Total Purchase Price	INVOICE TIMING		PAYMENT DUE
A.	30%	Invoiced at Stem's acceptance of Customer's purchase order		Net 30 days from Customer's receipt of invoice
B.	40%	Invoiced when Initial Shipment is transferred to port of departure		Net 30 days from Customer's receipt of invoice
C.	20%	Invoiced at Customer's acceptance of the Initial Shipment in accordance with sections 4.1 or 5.8 of the Purchase Agreement		Net 30 days from Customer's receipt of invoice
D.	10%	Milestone D. amount will be invoiced on the earlier of either of the below		
		Invoiced at Customer's acceptance of the Final Shipment in accordance with the Purchase Agreement. Stem will send Customer a Systems delivery notice upon completion of the Final Shipment		Net 30 days from Customer's receipt of invoice
		OR		
		Invoiced 30 days from Customer's acceptance of the Initial Shipment in accordance with the Purchase Agreement except where the Final Shipment has been delayed and such delay is not due to an action or inaction on the part of Customer.		Net 30 days from Customer's receipt of invoice
If the Initial Shipment and Final Shipment are the same, milestone C. will be invoiced with milestone D.				

Cancellation Fee Schedule - Powin	
The below conditions will be confirmed with the manufacturer in the case of a cancellation for convenience by Customer	
Timing of Cancellation	Cancellation Fee
After the acceptance date of the purchase order but prior to manufacturing commencement	35%
After manufacturing commencement but prior to completion of such manufacturing	65%
After completion of manufacturing but prior to staging at the port of departure	80%
After staging at the port of departure	100%

Manufacturers' On-Site Scope - Powin
(i) installation of climate control and fire protection and suppression systems (ii) commissioning of the Systems.

STEM MASTER SERVICES AGREEMENT

A-0050375

This agreement ("Agreement") is between CITY OF EL CAJON, a California municipality ("Customer"), and Stem, Inc., a Delaware corporation together with its successors and assigns ("Stem").

Customer has purchased Systems in through a separately negotiated and executed Purchase Agreement. Customer intends to install the Systems at one or more Sites in accordance with each associated Services Order. Such installation may be in combination with Customer's solar generation systems.

Customer wants to obtain certain services to support the installed Systems, and Stem, directly and through its assignees and subcontractors, is willing to provide such services subject to the terms and conditions of this Agreement and each associated Services Order.

In consideration of the mutual promises and agreements stated in this Agreement, the parties agree as follows.

1. ATTACHMENTS

The following attachments are incorporated by reference: Attachment 1, Defined Terms, and Exhibit 1, Form of Transfer Agreement.

2. PRICES AND FEES; PAYMENTS

- 2.1. **Prices and Fees.** The prices and fees associated with the Stem Services are stated in each separately executed Services Order. Prices and fees do not include taxes, customs, duties, tariffs, excises, assessments, bonds, levies, other fees, or charges of any kind which are imposed on the prices and fee amounts, or any other sums that may be applicable to the exportation of the Stem Services from the United States (collectively "Additional Amounts"). Customer shall pay all Additional Amounts either directly to the appropriate party, or when Stem has paid such Additional Amounts on behalf of Customer, to Stem. If Customer is exempt from any such Additional Amounts, Customer will provide Stem with documentation of the valid exemption.
- 2.2. **Payments.** Customer shall pay all undisputed invoices forwarded by Stem under each Services Order, without offset, abatement, reduction, and in accordance with each invoice. Payment will be made free of any currency controls or other restrictions, and in the currency, as stated in the invoice.
- 2.3. **Late Payments.** All payments that are not received by Stem in accordance with section 2.2 or as otherwise stated in a Services Order may be charged interest until paid in full at the rate of the lesser of 1.5% per month or the maximum permitted by law. If an undisputed amount is past due more than 30 days, without limitation to Stem's termination rights under section 11, Stem will have the right but not the obligation to suspend performance under the effected Services Order until all overdue amounts are paid to Stem.
- 2.4. **Costs and Fees.** In addition to any other remedies available to Stem at law or equity, Customer shall pay on demand all of Stem's reasonable attorney fees and other costs incurred by Stem to collect any late payments due, late fees, or related interest due to Stem under an Integrated Services Contract. Customer may withhold from any payments (i) amounts in dispute, or (ii) an amount sufficient to reasonably protect Customer from loss, damage, or expense arising out of assertions by other parties of any claim or lien against Customer arising in connection with an Integrated Services Contract.

3. SERVICES

- 3.1. **Services Orders.** Following the Effective Date of this Agreement, Customer may, through one or more Services Orders, place orders for Stem Services. Stem Services will only include those items specifically identified in each Services Order and will be provided in accordance with this Agreement, as amended, and each applicable Services Order.
- 3.2. **Integrated Services Contract.** The parties acknowledge that each fully executed Services Order and this Agreement constitutes a standalone, separable Integrated Services Contract, which Integrated Services Contract may be assigned in accordance section 13.1.
- 3.3. **Scope of Stem Services.** Stem, either directly or through its subcontractors, agrees to provide the Stem Services described in the applicable Services Order. Any delegation or other engagement with any subcontractor will not relieve Stem of any of its duties, responsibilities, obligations, or liabilities under an Integrated Services Contract.
- 3.4. **Delivery and Installation of Stem Owned Equipment:** Stem will provide to Customer the Stem Equipment for Customers installation at the Location.
- 3.5. **Access Rights.** Upon reasonable notice by Stem, Customer shall grant to Stem (including Stem's agents and representatives) access to Sites and any utility lines, electrical lines, metering equipment and the like, and any other areas as may be reasonably necessary for the maintenance, care, repair, operation, and monitoring of the Stem Equipment, and to provide the Stem Services. In the event of an emergency or malfunction of the Systems or the Stem Equipment, access will be granted as needed to effect repairs or corrections to the Systems and the Stem



Equipment. At all times, Stem will have remote access to performance data generated by the Systems or the Customer with respect to the Systems. Customer shall ensure that other Persons allowed access to Locations by Customer do not interfere with the Systems or the performance of the Stem Services.

- 3.6. **Operation and Maintenance of Stem Equipment.** Stem will operate and maintain the Stem Equipment in a reliable manner. Customer shall promptly notify Stem of any visual or audible malfunction of the Stem Equipment or potential threat to the Stem Equipment of which Customer becomes aware. If the Stem Equipment is damaged, lost, impaired, or destroyed, in whole or in part, and such damage, loss, impairment, or destruction has not been caused by an action or inaction on the part of Stem and is not covered by the Stem Services Warranty as stated in section 6, Stem will, at Stem's sole discretion, either repair or replace the Stem Equipment or affected portion and invoice Customer for the costs and expenses associated with such repair or replacement.
- 3.7. **Stem Title to Services and Stem Equipment.** Customer agrees that Stem will retain title to and be the legal and beneficial owner of the Stem Services, Stem Equipment, and all alterations, additions, or improvements made to the Stem Services or Stem Equipment. Customer acknowledges and agrees that the Stem Services and Stem Equipment will at all times retain the legal status of personal property and will not be or be deemed to be Customer's or any other Person's real property or any fixture to real property. Customer acknowledges that it will in no event have any ownership or leasehold interest of any kind or nature in any portion of the Stem Services or Stem Equipment including, but not limited to all technology and software components, and Customer disclaims any and all interest or ownership at any time.
- 3.8. **Liens.** Stem will not permit or suffer any liens or encumbrances on Systems or Sites arising directly from the performance of the Stem Services by Stem or any of its subcontractors.
- 3.9. **Documentation.** Stem will provide Customer with (i) operating and safety instructions describing the operation of the Systems, (ii) copies of the Manufacturers' Warranties, and (ii) such other documentation as required, through a secure Stem web portal. All provided documentation will be as listed in an attachment in each Services Order.
- 3.10. **Operations and Maintenance.** During the applicable Services Order term, Stem shall safely and reliably cause the Systems to be operated and maintained and to remain in good condition and repair in accordance with (i) each Integrated Services Contract, (ii) the associated Services Order, (iii) Prudent Industry Practices, (iv) Applicable Law, (v) Manufacturers' Warranties, (vi) the Preventive Maintenance Plan, and (vii) applicable permits.
- 3.11. **Firmware Updates.** Stem will facilitate firmware updates to the Systems as provided by the manufacturer. Stem will make commercially reasonable efforts to maintain the Stem Services' compatibility with the Systems firmware updates insofar as maintaining such compatibility is not economically infeasible to Stem. In the case where a firmware update negatively impacts the Stem Services, Stem will, where possible, maintain the most current viable version of the firmware.
- 3.12. **Utility Data.** Customer receives certain data from its utility and grants to Stem during the term of each associated Services Order the right to use such data to perform the Stem Services, verify the performance of the Systems, calculate payments under the applicable Services Order, and for all other purposes required for an Integrated Services Contract. Within ten Business Days from receipt of Stem's written request, Customer shall cause Stem to be authorized to request and receive all such utility data for the Sites as is required to perform the Stem Services.
- 3.13. **Electricity Supply.** Customer agrees that Stem is not purchasing from or selling to Customer any electricity and that Stem is not a utility. Customer is responsible for all costs and liabilities associated with the procurement, purchase, and use of any electricity, whether from on-site generation or supplied by the utility.
- 3.14. **Notice of Non-Compliance.** A party will notify the other party within 14 days if (i) it receives written notification of non-compliance with any Applicable Laws from any person or entity in connection with its use of the Systems or (ii) it learns of an incident or accident of any type relating to the Systems.
- 3.15. **Removal of Stem Equipment.** Upon the expiration or earlier termination of any Services Order, Stem will, no later than 90 days after such expiration or termination, remove the Stem Equipment, and will leave the Sites in neat and clean order. Stem will ensure that all conduit and wiring are safely capped but left in place. Such removal will be at Stem's sole cost except for termination in accordance with section 11.2, where Customer will pay such costs.

4. NEW REVENUE SERVICES; ENVIRONMENTAL INCENTIVES

- 4.1. **New Revenue Services.** During the term of an Integrated Services Contract, either party may identify potential additional revenue streams from services that could be provided by the Systems through Stem Services but are not within the scope of an Integrated Services Contract ("New Revenue Services"). The parties agree to confer to determine (i) if such New Revenue Services are feasible, (ii) projected revenues and costs associated with such New Revenue Services (iii) any potential impacts to Customer, End Users, the Stem Services, or the Customer Equipment performance, including any potential upgrade requirements, and (iv) the terms on which any New

Revenue Services will be provided. Stem shall have no obligation to provide New Revenue Services until the parties (and, if applicable, the End User) agree in writing to such New Revenue Services.

- 4.2. **Environmental Incentives.** Except for those Environmental Incentives associated with New Revenue Services or as otherwise stated in a Services Order, Stem will have no rights, title, or interest in any Environmental Incentives related to, or resulting from, the installation and operation of the Systems.

5. REPRESENTATIONS AND COVENANTS OF THE PARTIES

- 5.1. **Representations.** Each party represents that (i) it is organized, validly existing, and in good standing under the laws of its organization and each jurisdiction where it is required for the transactions contemplated under each Integrated Services Contract, (ii) it has the right to enter into this Agreement, and (iii) the execution of this Agreement will not violate the terms of any contract, obligation, law, regulation, or ordinance to which it is subject.
- 5.2. **Covenants.** Each party shall comply with all Applicable Law in the execution of this Agreement, in performance of the Stem Services, and use of the Systems.
- 5.3. **Customer Additional Covenants.** During the Term, Customer covenants that it will not (i) modify, alter, relocate, or replace the Stem Equipment (ii) modify, alter, relocate, or replace the Systems without written notice to Stem and Stem's written acknowledgement of such notice, (iii) misuse, abuse, damage, impair, or otherwise cause the Stem Equipment or Systems at any Site, subject to the relevant Integrated Services Contract, to become non-functional for its intended purpose, (iv) turn-off or disconnect from the power supply the Systems except for emergency purposes and in accordance with the Systems manufacturers' guidelines, or (v) do anything, permit, or allow to exist any condition or circumstance that would cause the Systems not to operate as intended at the Sites. Additionally, Customer acknowledges that the Stem Services are not designed nor made available for life support, critical care, medical, safety equipment, or similar applications where a failure in the Stem Services could result in loss of life or personal or physical harm and accordingly that Stem disclaims all liability, and Customer assumes all risks arising from any such or similar application of the Systems.

6. STEM SERVICES WARRANTY

- 6.1. **Stem Services Warranty.** During the term of each Services Order, Stem warrants that the Stem Services and the associated Stem Equipment will be free from material defects in workmanship, material, and design. The Stem Services will be performed, and the Stem Equipment will be operated and maintained in accordance with (i) the Integrated Services Contract, (ii) Prudent Industry Practice, (iii) Applicable Law, (iv) applicable permits, and (v) the Manufacturers' Warranties and Preventive Maintenance Plan applicable to the Systems. For the avoidance of doubt, and without limiting any Manufacturers' Warranties applicable to the Systems, the Stem Services Warranty is not a warranty for the Systems or any other component or equipment including but not limited to meters, relays, breakers, inverters, or any other items that are not part of the Stem Equipment. Stem shall use commercially reasonable efforts to perform the Stem Services and operate and maintain the Stem Equipment in a manner that will minimize interference with the Sites.
- 6.2. **Remedy Under Warranty.** Following notice from Customer, or upon Stem becoming aware of a defect covered by the Stem Services Warranty and subject to section 6.3, Stem shall, at its sole cost and expense and as commercially reasonable, effect re-performance of the Stem Services or take such other action as is necessary, as reasonably determined by Stem, to cure such defect and to bring it to conformance with the Stem Services Warranty.
- 6.3. **Limitations of Warranty.** Stem will be excused under section 6.2 to the extent the defect or Stem's inability to perform the Stem Services in accordance with the standards stated in section 6.1 is due to any of the following: (i) a Force Majeure event, (ii) defects in, damage to, or destruction of the Systems not caused by Stem (including any issues that are subject to a Systems warranty claim), (iii) any changes to the Sites not caused by Stem, (iv) the inoperability of any components not caused by Stem, (v) the inoperability of any equipment or services at a Site not connected to the Systems or connected to the Systems and required by the Systems to operate, in each case not caused by Stem, (vi) Customer's or End User's breach of any provision of an Integrated Services Contract, or act or omission, negligence, gross negligence, or willful misconduct, (vii) the presence of any Hazardous Materials at the Sites not introduced at the Sites by Stem, (viii) cancellation or termination of the Manufacturers' Warranties, where such cancellation or termination has not been caused by any action or inaction on the part of Stem, or (ix) cancellation or termination of the Manufacturers' Warranties, where such cancellation or termination has been caused by an action or inaction on the part of Stem, and where such action or inaction has been required by Customer, in writing, but only if Stem has provided notice of the possibility that such action or inaction may result in a cancellation or termination of the Manufacturers' Warranties.
- 6.4. **Disclaimer of Warranties.** SUBJECT TO ANY LIMITATIONS UNDER APPLICABLE LAW, THE LIMITED WARRANTIES STATED IN THIS AGREEMENT ARE EXPRESSLY IN LIEU OF AND EXCLUDE ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR PARTICULAR PURPOSE, USE, OR APPLICATION, AND ALL

OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF STEM. EXCEPT AS SPECIFIED IN THESE LIMITED WARRANTIES, OR ELSEWHERE IN THIS AGREEMENT OR ANY ASSOCIATED SERVICES ORDER, ALL STEM SERVICES ARE PROVIDED "AS IS."

7. INDEMNIFICATION

- 7.1. **Indemnification by Stem – Losses.** Stem shall fully indemnify, hold harmless and defend Customer, Customer's Affiliates, End Users, and their respective shareholders, members and partners, and each of their respective representatives, employees, elected and appointed officials, officers, volunteers, directors, and agents (collectively, the "Customer Indemnitee") from and against all third-party claims and all expenses ("Losses") incurred by Customer Indemnitee in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person, caused by (i) the negligence, to the extent of such negligence, of Stem or its Affiliates, agents, employees or others under Stem's control (which, for greater certainty, will not include Customer, its Affiliates, or subcontractors or such party or parties' willful misconduct), or (ii) a breach by Stem of any of its obligations under the affected Integrated Services Contract.
- 7.2. **Indemnification by Stem – Infringement.** Stem specifically agrees to indemnify, defend and hold the Customer Indemnitee harmless from and against all Losses of any kind whatsoever arising from actual or alleged infringement or misappropriation of any Intellectual Property rights of a third party based on the technology used by Stem to perform the Stem Services or in Stem's performance of the Stem Services ("Infringement"), except where such claim is based on (i) infringement of non-Stem Services technology used by Customer with any technology provided by Stem under the affected Integrated Services Contract, but only to the extent that the infringement is applicable to the non-Stem Services technology; or (ii) any modifications to the Stem Services with the introduction of new technology and not performed by Stem. For the avoidance of doubt, the indemnity in this section does not pertain to the Systems and does not cover any claims or Losses related to infringement or misappropriation of Intellectual Property related to the Systems not provided by Stem. In addition, for any claims of infringement or misappropriation of Intellectual Property rights for which Stem must indemnify Customer (or if Stem reasonably believes that such a claim is likely), Stem, at its option, may choose to modify, and Customer shall permit Stem to so modify as necessary, the technology which is the basis of the claim to rectify any alleged infringement or misappropriation.
- 7.3. **Indemnification by Customer.** Customer shall fully indemnify, hold harmless and defend Stem, Stem's Affiliates, and their respective shareholders, members and partners, and each of their respective representatives, employees, officers, directors, and agents (collectively, the "Stem Indemnitee") from and against all Losses incurred by Stem Indemnitee in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person, but only to the extent caused by (i) the negligence, to the extent of such negligence, of Customer or its Affiliates, agents or employees or others under Customer's control (which, for greater certainty, will not include Stem, its Affiliates or subcontractors), or (ii) a breach by Customer of any of its obligations under the affected Integrated Services Contract.
- 7.4. **Indemnification Remedies.** If any claim is brought against any Customer Indemnitee or Stem Indemnitee (the "Indemnified Party"), the Indemnified Party shall promptly, but no more than ten Business Days after becoming aware of such claim, provide notice of such claim to the other party (the "Indemnifying Party"). The Indemnifying Party will be entitled to participate in, and, unless in the opinion of counsel for the Indemnified Party, acting reasonably, a conflict of interest between the parties may exist with respect to such claim, assume the defense of such claim, with counsel reasonably acceptable to the Indemnified Party. If the Indemnifying Party does not assume the defense of the Indemnified Party, or if a conflict of interest precludes the Indemnifying Party from assuming the defense, then the Indemnifying Party shall reimburse the Indemnified Party on a monthly basis for the Indemnified Party's defense through separate counsel of the Indemnified Party's choice. Even if the Indemnifying Party assumes the defense of the Indemnified Party with acceptable counsel, the Indemnified Party, at its sole option, may participate in the defense, at its own expense, and with counsel of its own choice without relieving the Indemnifying Party of any of its obligations under the affected Integrated Services Contract.

8. LIMITATION OF LIABILITY

- 8.1. **No Consequential Damages.** Neither party, any End User, nor any party's or End User's affiliates, subcontractors, agents, or employees, elected and appointed officials, and volunteers shall be liable to the other for any incidental, indirect, special, punitive, or consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including damages relating to the loss of use, profits, business, reputation, financing, revenue, power, information or data, or the cost of capital, or such damages based on a party's third-party contracts. The parties agree that the above waiver and limitation will not apply to losses or damages that are due to the parties' respective express indemnity obligations as stated in sections 7.1, 7.2 and 7.3 and that such losses or damages under sections 7.1, 7.2, and 7.3 will be limited to the amounts covered by insurance as stated in section 12.

- 8.2. **Limitation of Liability.** EXCEPT FOR THE CUSTOMER'S PAYMENT OBLIGATIONS UNDER EACH INTEGRATED SERVICES CONTRACT, THE MAXIMUM LIABILITY OF EACH PARTY, ITS AFFILIATES, SUBCONTRACTORS, AGENTS, AND EMPLOYEES, ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE OF OBLIGATIONS IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF ANY SERVICES PROVIDED THROUGH ANY SPECIFIC INTEGRATED SERVICES CONTRACT, UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, (EACH A "DAMAGE") WILL NOT EXCEED AN AMOUNT GREATER THAN THE EQUIVALENT OF 12 MONTHS WORTH OF THE STEM SERVICES FEES, AS REPRESENTED IN THE AFFECTED SERVICES ORDER, IF SUCH FEES WERE PAID IN EQUAL INSTALLMENTS OVER THE TERM OF THE AFFECTED SERVICES ORDER. THE PARTIES AGREE THAT THE ABOVE LIMITATIONS AND EXCLUSIONS WILL NOT APPLY TO LOSSES OR DAMAGES THAT ARE DUE TO THE OTHER PARTY'S, ITS EMPLOYEES', AGENTS', OR SUBCONTRACTORS' GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF CONFIDENTIALITY, AND THE PARTIES' RESPECTIVE EXPRESS INDEMNITY OBLIGATIONS UNDER THE AFFECTED INTEGRATED SERVICES CONTRACT. NEITHER PARTY SHALL BE LIABLE FOR PENALTIES OF ANY KIND. ANY ACTION RESULTING FROM ANY BREACH ON THE PART OF STEM AS TO THE STEM SERVICES PROVIDED THROUGH ANY INTEGRATED SERVICES CONTRACT MUST BE COMMENCED WITHIN THE EARLIER OF ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED OR IN ACCORDANCE WITH APPLICABLE LAW.

9. OWNERSHIP OF INTELLECTUAL PROPERTY AND DERIVATIVE WORKS

- 9.1. **Ownership of Intellectual Property.** All Intellectual Property rights in the Stem Services, including but not limited to copyrights, trademarks, patents, and trade secrets, including without limitation rights as to their design, functionality, and embedded or provided software or applications, are Stem's sole and exclusive property or, where applicable, the property of Stem's suppliers and Affiliates. Stem reserves all rights not expressly granted in an Integrated Services Contract, including without limitation, all rights to modifications and derivative works based on such property. An Integrated Services Contract involves the provisioning of Stem Services and limited right to the use of related and provided applications or software and is not a sale of any Intellectual Property rights of any of such Stem Services. Customer acknowledges the foregoing and that such Intellectual Property is protected by trade secrets, patent and copyright laws, and other laws protecting Intellectual Property.
- 9.2. **License to Stem Services.** Stem grants to Customer and End Users a limited, personal, non-sublicensable, non-transferable, non-exclusive license to use Stem's Intellectual Property rights in the Stem Services during the term of each Integrated Services Contract to the extent it is necessary for, and for the sole purpose of, using the Stem Services in compliance with the purposes for which the Stem Services are designed. Except as provided in this Agreement or an Integrated Services Contract, Customer and End Users shall not (i) copy, make available, provide access to, or distribute, license, or otherwise transfer, directly or indirectly, any Intellectual Property rights in the Stem Services to any third party; (ii) decompile, disassemble, reverse-assemble, analyze, or otherwise examine such property, equipment, or software for reverse engineering; (iii) unless otherwise agreed to in writing, use any Stem Services or the Intellectual Property rights to develop other products, devices, inventions, hardware, or software; (iv) use, test or analyze the Stem Service for comparison or competitive testing or "benchmarking" (except for Customer's confidential internal purposes) or publish, disclose or disseminate the results; or (v) remove, fail to maintain or obscure any proprietary notices on the Stem Services.
- 9.3. **Derivative Works.** In connection with the Stem Services and in accordance with one or more Services Order, Stem may create software or other content for use with Systems owned by Customer, which software or content may be derivative of Stem Intellectual Property ("Derivative Work"). Stem will be the sole and exclusive owner of any Derivative Work, and upon its creation, any such Derivative Work will be Stem Intellectual Property. Such Derivative Works will not be considered "work for hire."

10. CONFIDENTIALITY

- 10.1. **Duty to Protect Confidential Information.** During the term of this Agreement, each party may provide the other party with certain information regarding the disclosing party's business, technology, products, or services or other confidential or proprietary information. The disclosing party will mark all Confidential Information in tangible form as "confidential" or "proprietary" or with a similar legend, and identify all Confidential Information disclosed orally as confidential at the time of disclosure and provide a written summary of such Confidential Information within 30 days after such oral disclosure. Upon the receipt of Confidential Information, the receiving party agrees (i) to hold the disclosing party's Confidential Information in confidence and to take reasonable precautions to protect such Confidential Information (including, without limitation, all precautions the receiving party employs with respect to its confidential materials); (ii) not to divulge any such Confidential Information to any third party, except to those End Users, or Customer or End User employees and subcontractors that need to know such Confidential Information for the purpose of performing under an Integrated Services Contract, provided that each such End User, or Customer or End User employee and subcontractor is subject to a written agreement that includes binding use and

disclosure restrictions that are at least as protective as the restrictions stated in this Agreement; (iii) not to make any use whatsoever at any time of such Confidential Information except to perform its obligations under an Integrated Services Contract; and (iv) not to copy, decrypt, reverse assemble, disassemble, decompile, or reverse engineer any such Confidential Information. Without granting any right or license, the disclosing party agrees that the preceding will not apply with respect to any information after five years following the disclosure of such information or any information that the receiving party can document (a) is or becomes (through no improper action or inaction by the receiving party) readily available to the public, (b) was in its possession or known by it without restriction before receipt from the disclosing party, (c) was rightfully disclosed to it by a third party that rightfully received such information without restriction on disclosure or use, or (d) was independently developed without the use of any Confidential Information of the disclosing party.

- 10.2. **Disclosures Required by Law.** The receiving party may make disclosures required by law or court order. The receiving party shall use reasonable efforts to limit such disclosures and shall provide the disclosing party with notice prior to the release of the records in order to allow the disclosing party a reasonable amount of time to seek a protective order at the disclosing party's sole cost and expense.
- 10.3. **Feedback.** Customer, representatives, End Users, or any other entity or Person associated with Customer may, but is not required to, provide Feedback to Stem. Feedback is not Confidential Information and may be used, disclosed, disseminated, or published by Stem for any purpose, including developing, manufacturing, and marketing products and services incorporating such Feedback, without obligation of any kind to any feedback provider. Customer waives on its behalf and behalf of any feedback provider any rights whatsoever in or to all Feedback. For this section, "Feedback" means suggestions, comments, improvements, modifications, and other information, including any ideas, concepts, know-how, or techniques, that any feedback provider provides to Stem about the Stem Services.

11. TERM AND TERMINATION

- 11.1. **Stem Services Term.** This Agreement will commence on the Effective Date and will remain in effect for so long as any associated Services Order incorporating this Agreement is in effect or until terminated by either party upon 30 days' prior written notice ("Term"). This Agreement will remain in effect for any other Services Order entered into before the effective date of such termination until both parties have fulfilled all of their obligations under such Services Order, or such Services Order has been terminated in accordance with this section.
- 11.2. **Termination and Effects of Termination.** Stem will only terminate an Integrated Services Contract in whole or in part following a default or breach by Customer of an Integrated Services Contract. In the case of such termination by Stem, or if Customer terminates any Integrated Services Contract in whole or in part before the completion of the term of the Integrated Services Contract, then, except where such termination is due to a Stem breach or default, Customer shall pay to Stem a Termination Payment. For this section, "Termination Payment" means (i) an amount that is the lesser of (a) the fees remaining to be paid for Stem Services under any Services Order so terminated (either by the termination of an individual Services Order or the Integrated Services Contract), or (b) 12 months' worth of fees under such Services Order, or (ii) the amount as otherwise stated in the affected Services Order. Termination Payments will be in addition to any other payments or fees due or previously paid for the Stem Services. Stem will refund to Customer any Stem Services fee amounts that have been pre-paid by Customer less the applicable Termination Payment.
- 11.3. **Breach.** Each of the following events will constitute a default or breach if not cured within the period stated: (i) If a party breaches any material term of an Integrated Services Contract and fails to cure such breach within 30 days after receipt of written notice of termination for reasons of breach from the non-breaching party, (ii) If a party becomes insolvent, or a receiver or receiver-manager is appointed for any part of the property of that party, or the other party makes an assignment, proposal or arrangement for the benefit of creditors or proceedings are commenced by or for the other party under any bankruptcy, insolvency or debtor's relief law that are not terminated within 30 days after receipt of written notice of termination for reasons of breach from the non-breaching party (iii) If a party fails to make a payment when due (each a "Payment Default") and fails to cure such Payment Default within ten Business Days after receipt of written notice from the non-breaching party. The parties may mutually agree in writing to extend any of the notices mentioned above of breach or termination. Customer may, at any time, terminate an Integrated Services Contract, for convenience, upon written notice to Stem and payment of all Termination Payments in accordance with section.
- 11.4. **Survival.** Those provisions of each Integrated Services Contract and any exhibit or attachment which by their nature should survive termination or should reasonably remain in effect during any extension of this Agreement or such Integrated Services Contract will survive. Additionally, any sums due from either party that by the terms of an Integrated Services Contract would be payable, or are incapable of calculation until, after the expiration or termination of this Agreement or the affected Integrated Services Contract, will survive and remain a continuing obligation until paid. Any obligations of either party that by the terms of an Integrated Services Contract are to be

performed after the expiration or termination of the Integrated Services Contract will survive and remain a continuing obligation until performed.

12. INSURANCE

- 12.1. **Insurance in Connection with Stem Services.** Before Stem enters a Locations or the commencement of any work, each party shall procure and maintain at its sole expense throughout the term of the Stem Services, the following forms of insurance.
- 12.2. **Generally.** Each party shall maintain the following insurance coverages in full force and effect throughout the term of the Stem Services either through insurance policies or acceptable self-insured retentions (i) Workers' Compensation Insurance as may be from time to time required under applicable federal and state law, and (ii) Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence and in compliance with Customer's City Council Policy D-3.
- 12.3. **Certificates of Insurance.** Each party shall furnish current certificates evidencing that the insurance required under the previous section is being maintained.
- 12.4. **Insurer Qualifications.** All such policies will be with financially sound and reputable insurance companies that have an A.M. Best rating of A- and a financial strength category of "VII" or higher.

13. GENERAL PROVISIONS

- 13.1. **Assignment.** Customer may, without Stem's consent, assign all of its rights or obligations under any Integrated Services Contract to an Affiliate or financing party. Such assignment will not relieve Customer of any its obligations or liabilities under such Integrated Services Contract. Customer may, through the full execution of a transfer agreement, the form of which is provided exhibit 1, assign all of its rights or obligations under any Integrated Services Contract to an End User insofar as, upon such assignment, Customer will, at Customer's sole expense, also assign to the End User, all Manufacturers' Warranties associated with the Systems as listed the Services Order. Stem may, with written notice to and written approval by Customer, assign all of its rights or obligations under any Integrated Services Contract to an Affiliate or successor in interest. Such assignment by Stem will be to a party that is qualified to perform Stem's obligations under such Integrated Services Contract. Any assignment in violation of the foregoing will be null and void, will be deemed a material breach of this Agreement, and by extension, the associated Integrated Services Contract, and the assigning party will give the other party the right to terminate the affected Integrated Services Contract for reasons of breach. Subject to the foregoing, this Agreement or any Integrated Services Contract will inure to the benefit of, and be binding upon, the parties and their representatives, successors, permitted assigns, and other legal representatives. Any Integrated Services Contract assigned in accordance with this section will incorporate the terms of this Agreement as they exist on the date of such assignment.
- 13.2. **Conflict Between Documents.** In the event of a conflict between the terms contained in the body of this Agreement and the terms contained in any exhibit or attachment to this Agreement, the relevant terms contained in the body of this Agreement will control. In the event of a conflict between the terms of this Agreement and any Services Order, this Agreement will control except as changed explicitly by the Services Order.
- 13.3. **Cooperation, Further Assurances, and Joint Preparation of Agreement.** Upon the receipt of a written request from the other party, each party shall execute such additional documents, instruments, estoppels, and assurances and take such additional actions as are reasonably necessary to carry out the terms and intent, including but not limited to building permit applications, utility interconnection applications, and utility rebate forms. Neither party will unreasonably withhold, condition, nor delay compliance with any reasonable request made in accordance with this section. Preparation of this Agreement has been a joint effort of the parties, and the resulting document will not be construed more severely against one of the parties than against the other.
- 13.4. **Dispute Resolution.** Stem and Customer shall use commercially reasonable efforts to resolve any dispute resulting from this Agreement or any Integrated Services Contract, or the use of the Systems through negotiation between the parties or mediation. If any such dispute has not been resolved within 30 Business Days of the initiation of negotiation regarding such dispute, Stem and Customer shall make a good faith attempt to settle such dispute by the current Construction Industry Arbitration Rules of the AAA and administered by the AAA.
- 13.5. **Effective Date.** This Agreement will become effective on the date signed by the last party, as indicated by the date associated with that party's signature ("Effective Date"). If Customer signs but fails to date a signature, the date that Stem receives Customer's signature will be deemed to be the date that Customer signed this Agreement.
- 13.6. **English Version Controlling.** This Agreement and each Integrated Services Contract is originally written in the English language, and all rights and duties of the parties will be governed by and interpreted under the English version.

- 13.7. **Entire Agreement.** Any Integrated Services Contract entered into under this Agreement and including all exhibits and attachments (and any terms and documents incorporated by reference) is the parties' entire agreement relating to the subject matter and supersedes all prior or contemporaneous oral or written communications, proposals, representations, and warranties and prevails over any conflicting or additional terms of any communication between the parties relating to its subject matter. All terms of any purchase order or similar document provided by Customer, including but not limited to any pre-printed terms and any terms that are inconsistent or conflict with this Agreement or any Integrated Services Contract, will be null and void and of no legal force or effect.
- 13.8. **Equitable Relief.** Each party agrees and acknowledges that the infringement of either party's Intellectual Property rights may cause irreparable injury. Either party will be entitled to apply for equitable relief, including injunction or injunctions as may be required to prevent any breach, infringement, or further breach or infringement of any Intellectual Property rights or disclosure or misuse of Confidential Information. A party may specifically enforce such provisions or protect these rights by an action instituted in any court having jurisdiction. Both parties acknowledge that damages may be an inadequate remedy for such a breach or infringement. Both parties agree the aggrieved party may apply for such equitable relief without posting a bond or surety. Nothing in this Agreement will prevent or prohibit either party from disputing the occurrence of such a breach or infringement, including the occurrence of the default giving rise to the application for such injunctive relief.
- 13.9. **Execution and Counterparts.** This Agreement may be signed in two or more counterparts, each of which together will be deemed to be an original and all of which together will constitute the same instrument. The signing of this Agreement and each associated Services Order and transmission by electronic document transfer or email will be acceptable and binding upon the parties.
- 13.10. **Export Restrictions.** No Stem Services, nor any underlying information or technology, may be exported or re-exported, directly, or indirectly, contrary to U.S. law or U.S. government export controls.
- 13.11. **Force Majeure.** Either party will be excused from any obligation to the extent such performance is rendered impossible by a Force Majeure event.
- 13.12. **Governing Law.** These terms are governed by the laws of the State of California without reference to conflict of law principles. In the event of a dispute concerning this Agreement or any Integrated Services Contract, Customer consents to the sole and exclusive personal jurisdiction of the courts of competency in San Diego County, California. Additionally, Stem may also seek and obtain appropriate relief in any court of competent jurisdiction for claims regarding (i) the scope of any licenses granted in any Integrated Services Contract, or (ii) its Intellectual Property rights and confidential information. The prevailing party in an action to enforce any Integrated Services Contract will be entitled to costs and attorneys' and experts' fees and expenses. Stem expressly waives any right to remove any action from San Diego County as is otherwise permitted by California Code of Civil Procedure section 394.
- 13.13. **Headings.** Headings used in this Agreement and each Services Order are provided for convenience only and are not intended to construe meaning or intent.
- 13.14. **Independent Contractors.** The relationship of the parties is that of independent contractors. Nothing in this Agreement or any Integrated Services Contract may be construed to make either party the agent or partner of the other. Neither party may legally bind the other in any manner. No obligations will be owed one to the other, or to third parties under this Agreement or any associated Integrated Services Contract based in any way on the law of partnership, joint ventures, or similar legal theories.
- 13.15. **Invalidity.** If any part of this Agreement or any Integrated Services Contract is held unenforceable for any reason, such provision will be reformed only to the extent necessary to make it enforceable, and the validity of the remaining provisions will not be affected and will be valid and enforceable to the fullest extent permitted by Applicable Law. To the extent that any provisions of this Agreement or any Integrated Services Contract will exclude or limit any statutory liability which, according to mandatory provisions of Applicable Law, cannot be contractually excluded or limited by mutual agreement of the parties, then such provision will be given only such effect if any, as is permitted by Applicable Law.
- 13.16. **Modification and Waiver.** No modification to this Agreement, an individual Services Order, or any Integrated Services Contract will be binding unless in writing and signed by an authorized representative of each party. Any express waiver or failure to exercise promptly any right under this Agreement or any Integrated Services Contract will not create a continuing waiver or any expectation of non-enforcement, nor will such waiver constitute a waiver of any other provision, whether or not similar. Any waiver will be effective only if it is in writing and signed by the parties.
- 13.17. **Notices.** All notices required or permitted under this Agreement will be in writing, the English language, to the other party's authorized representative, and will be deemed given when delivered personally or when sent by email or other electronic means. All communications will be sent to the email addresses stated in this section or to such

other email address as may be designated by a party in writing. Invoices will be deemed delivered when delivered by email or other electronic means.

STEM, INC.	
100 Rollins Road Millbrae, CA 94030, USA	
<i>Attention</i>	
Payments	Accounts Receivable
Email:	Stemaccounting@bill.com
All Other Attn:	Commercial Operations
Email:	Legal.documents@stem.com
Telephone:	415.937.7836

City of El Cajon	
200 Civic Center Way El Cajon, CA 92020	
<i>Attention</i>	
Invoices Attn:	Jeffrey R. Manchester
Email:	jmanchester@cityofelcajon.us
All Other Attn:	Hope Gold
Email:	publicworks@cityofelcajon.us
Telephone	619-441-1653

13.18. **Reference.** Stem may, with Customer's prior written consent, use Customer as a customer reference, use Customer's name and logo in marketing materials, or ask Customer to participate in communication efforts such as quotes, press releases, case studies, or video testimonials.

13.19. **Validity.** This Agreement and each associated Services Order that creates an Integrated Services Contract will only be valid if the parties have entered into a Purchase Agreement and associated orders for the purchase of the Systems as represented in each Services Order.

The parties have caused this Agreement to be executed by their authorized representatives as of the date stated below.

STEM, INC.

Signature: _____
 Printed Name: Alan Russo
 Title: Chief Revenue Officer
 Email: alan.russo@stem.com
 Date: _____

CITY OF EL CAJON

Signature: _____
 Printed Name: Graham Mitchell
 Title: City Manager
 Email: citymanager@cityofelcajon.us
 Date: _____

ATTACHMENT 1 DEFINED TERMS

Capitalized terms utilized in this Agreement, any associated Services Order, or any Integrated Services Contract will have the meaning where first used, or as defined in this attachment 1. These terms will apply both to the singular or plural forms, as the context may require.

- a. "Affiliate" means, when used regarding a specified Person or any Person that directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person.
- b. "Applicable Law" means any law, statute, rule, regulation, ordinance, order, code, governmental approval, interpretation, judgment, decree, injunction, directive, or decision of any governmental authority having jurisdiction over the matter, Person, or property in question.
- c. "Business Day" means any day, during the hours of 9:00 a.m. to 5:00 p.m. Pacific Prevailing Time, other than Saturday, Sunday, or any other day on which commercial banks in San Francisco are required or authorized by Applicable Law to be closed.
- d. "Commercial Operation Date" means the date on which Customer has obtained all necessary approvals as may be required by Applicable Law for the installation and operation of the Systems and the Systems are ready for Stem to perform the Stem Services.
- e. "Confidential Information" means information relating to a party's business, including, without limitation, computer programs, software, technical drawings, algorithms, know-how, trade secrets, formulas, processes, ideas, inventions (whether patentable or not), designs, schematics and other technical, business, financial, customer and product information, data and development plans, of any nature and in any form, which to the extent previously, presently or subsequently disclosed to another party (provided such information was or is marked or designated in writing as "confidential," "proprietary," or any other similar term or designation or was or is disclosed in a manner that a reasonable person would have understood that such information is confidential and proprietary). Confidential information also includes Customer's solar energy estimates, conceptual layouts, installation techniques, and proposals provided to Stem are Customer's Confidential Information.
- f. "End User" means the Person under contract with Customer that may be utilizing the Stem Services at the Sites. Stem assumes no direct or indirect liability or obligation to any End User relating to this Agreement or any Integrated Services Contract except if the Integrated Services Contract has been assigned to such End User in accordance with section 13.1.
- g. "Environmental Incentives" means all rights, credits (including tax credits), rebates, benefits, reductions, offsets, and allowances and entitlements of any kind, however, entitled or named (including carbon, SOx, and NOx credits and allowances), whether arising under federal, state, or local law, international treaty, trade association membership, or the like, attributable to the installation or ownership of the Systems or performance of the Stem Services. Without limiting the foregoing, Environmental Incentives include self-generation incentives, green tags, white tags, renewable energy credits, capacity credits, demand response credits, tradeable renewable certificates, portfolio energy credits, and the right to apply for (and entitlement to receive) rebates or other incentives under any demand-side management or energy efficiency programs offered by a utility company, a third-party provider, or any governmental authority.
- h. "Force Majeure" means any event that includes, but is not limited to, acts of God, fire, flood, riots, pandemics, strikes, governmental acts or actions, disasters, earthquakes, acts of terrorism, and material shortages or the inability to obtain labor or materials through its regular sources as caused by Force Majeure events or any other reason beyond the reasonable control of the affected party. Such acts, events, or conditions listed above will only be deemed Force Majeure to the extent they (i) directly impact the Systems or Stem Services performed under an Integrated Services Contract and are beyond the reasonable control of the party claiming a delay, (ii) are not the result of the willful misconduct or negligent act or omission of the party claiming the delay (or any person over whom that party has control), (iii) are not an act, event, condition, or the risk of consequence of which such party has expressly assumed under this Agreement or an Integrated Services Contract, and (iv) cannot be cured, remedied, avoided, offset, or otherwise overcome by the prompt exercise of reasonable diligence by the party (or any Person over which that party has control). The obligation to make any payment due under any Integrated Services Contract or any purchase order will only be excused by a Force Majeure event that solely impacts a party's ability to make payment.
- i. "Hazardous Materials" means any chemical, material or substance in any form, whether solid, liquid, gaseous, semisolid, or any combination of such substances, whether waste material, chemical, or any other material, that is defined, listed or regulated or as to which liability could be imposed, under Applicable Laws as a "hazardous" or "toxic" substance or waste or material, or as a "pollutant" or contaminant," (or words of similar meaning or import) or is otherwise listed or regulated, or as to which liability could be imposed, under Applicable Laws; including without limitation, petroleum products, petroleum-derived substances, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, urea-formaldehyde foam insulation, and lead-containing paints or coatings.
- j. "Integrated Services Contract" means (i) any Services Order signed by the parties (including all exhibits, other attachments, and amendments to such Services Orders) and (ii) this Agreement (including all exhibits, amendments, and other attachments) which are, upon full execution of such Services Order incorporated into that Services Order. The fully executed Integrated Services Contract constitutes a standalone, separable instrument that may be assigned by Customer in accordance section 13.1.
- k. "Intellectual Property" means copyrights, patents, trademarks, service marks, service names, trade names, domain names, together with all associated goodwill, registrations and applications for the purpose, technology rights and licenses, computer software (including any source or object codes or related documentation), trade secrets, franchises, know-how, inventions, and other Intellectual Property rights.
- l. "Location" means the address of the building or premises of the Site where the Stem Services are to be provided for the installed Systems as identified in each Services Order.
- m. "Manufacturers' Warranties" means the warranties, as provided by the manufacturers of the Systems, and where applicable, for the components of the Systems (each a "Manufacturer's Warranty" and collectively "Manufacturers' Warranties")

ATTACHMENT 1 DEFINED TERMS

- n. "Person" means any individual, corporation, partnership, joint venture, trust, unincorporated organization, association, or governmental authority.
- o. "Preventive Maintenance Plan" means the plan, as provided by the manufacturers of the Systems, and where applicable, for the components of the Systems that details the preventive maintenance to be provided by the manufacturer for the Systems.
- p. "Prudent Industry Practices" means the practices, methods, specifications, and acts engaged in or approved by a significant portion of the energy optimization service industry operating in the United States that at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, reliability, safety, environmental protection, economy, and expedition.
- q. "Purchase Agreement" means a separately negotiated and executed agreement for the purchase of Systems.
- r. "Services Order" means the individual and specific document provided by Stem to Customer that is signed by both parties and details the Stem Services, the associated prices and fees, and may provide additional terms and conditions. A Services Order issued in connection with this Agreement will identify this Agreement and will incorporate by reference the terms and conditions of this Agreement except where specifically restricted, or otherwise changed or excluded. Upon entry by the parties into any Services Order, the Integrated Services Contract formed will be a standalone, separable instrument, incorporating the terms of this Agreement as they exist on the effective date of such Services Order.
- s. "Site" means the actual area and the associated utility meter number, when applicable, within the Locations as identified in a Services Order, where the Systems are or will be installed.
- t. "Stem Equipment" means certain components as further detailed in each Services Order and as provided by Stem for the explicit purpose of providing the Stem Services.
- u. "Stem Services" means the services to be provided by Stem to Customer with respect to the Systems. The specific services and any associated terms, conditions, or restrictions for the provisioning of the Stem Services are stated in each applicable Services Order and this Agreement.
- v. "Stem Services Warranty" means the warranties, as provided by Stem with regard to the Stem Services and Stem Equipment.
- w. "Systems" means a battery energy storage system that is purchased by Stem from the original equipment manufacturer and sold by Stem to Customer. Systems include all embedded software, operating systems, and licenses required to use such embedded software and operating systems as provided by the original equipment manufacturer.

STEM TRANSFER AGREEMENT

«ACCOUNT_CUSTOMER_NO»

EXHIBIT 1 FORM OF STEM TRANSFER AGREEMENT

TERM	INFORMATION		
Services Agreement	Stem Master Services Agreement «ACCOUNT_CUSTOMER_NO»		Effective Date
	Transferring Party	«ACCOUNT_LEGAL_ENTITY» a «ACCOUNT_STATE_OF_INCORPORATION» «ACCOUNT_LEGAL_ENTITY_TYPE»	
Services Agreement Parties	Stem	Stem, Inc. a Delaware corporation	
Services Order	Stem Services Order - «OPPORTUNITY_OPP_ID»		Effective Date
	Transferring Party	«ACCOUNT_LEGAL_ENTITY» a «ACCOUNT_STATE_OF_INCORPORATION» «ACCOUNT_LEGAL_ENTITY_TYPE»	
Services Order Parties	Stem	Stem, Inc. a Delaware corporation	
Acquiring Party			
Transfer Date			

Transferring Party and Stem have entered into a Services Agreement and one or more Services Orders (collectively an "Integrated Services Contract") for the provisioning and administration of services by Stem for the energy storage equipment detailed in exhibit 1 of the Services Order ("Systems"). Transferring Party intends to transfer its obligations, interests, and rights under the Integrated Services Contract to Acquiring Party. References to the Services Agreement, the Services Order, or the Integrated Services Contract will include any amendment or addenda to those documents that are in effect at the date of such transfer.

- DEFINED TERMS.** Capitalized terms in this transfer agreement will have the meaning stated above, where first used or defined, or as defined in the Services Agreement or Services Order. These terms will apply both to the singular or plural.
- ASSIGNMENT AND ASSUMPTION OF OBLIGATIONS.** As of the Transfer Date, Transferring Party shall assign, and Acquiring Party shall assume the obligations, interests, and rights as provided through the Integrated Services Contract.
- RELEASE OF OBLIGATIONS.** As of the Transfer Date, Stem and Transferring Party release the other from any further obligation and liability arising under or in connection with the Integrated Services Contract accruing on or after the Transfer Date.
- LIMITATIONS.** This transfer agreement will not release Transferring Party or Stem from any obligations or liabilities arising in connection with the Integrated Services Contract that accrued before the Transfer Date, or due to the failure by Stem or Transferring Party to perform its obligations under the Integrated Services Contract before the Transfer Date.
- TRANSFERRING PARTY INDEMNITY.** For the Integrated Services Contract and subject to section 7, Transferring Party shall defend, indemnify, and hold harmless Acquiring Party from and against all Claims asserted against or incurred by Acquiring Party in connection with any acts or omissions of Transferring Party occurring on or before the Transfer Date (for this transfer agreement "Claims" means any claim, demand, cause of action, loss, damage, liability, judgment, cost, and expenses including reasonable attorneys' fees).
- ACQUIRING PARTY INDEMNITY.** For the Integrated Services Contract and subject to section 7, Acquiring Party shall defend, indemnify and hold harmless Transferring Party from and against all Claims asserted against or incurred by Transferring Party in connection with any acts or omissions of Acquiring Party, occurring on or after the Transfer Date.
- NO CONSEQUENTIAL DAMAGES.** No party to this transfer agreement, End User, or any party's or End User's affiliates, subcontractors, agents, or employees, shall be liable to any other party to this transfer agreement for any incidental, indirect, special, punitive, consequential losses, or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including damages relating to loss of use, profits, business, reputation, financing, revenue, power, information, or data, the cost of capital, or such damages based on a party's third-party contracts.
- TERM.** The term of the Integrated Services Contract will not be affected by this transfer agreement, and this transfer agreement will be coterminous and coextensive with the Integrated Services Contract.
- CONSENT.** By signing this transfer agreement, each party provides written consent to the transfer of the Integrated Services Contract without any changes to any of the terms or conditions of such documents.

STEM TRANSFER AGREEMENT

«ACCOUNT_CUSTOMER_NO»

10. **EFFECTIVE DATE.** This transfer agreement will become effective on the date that it is signed by the last party ("Effective Date"). If a party signs but fails to date a signature, the date that Stem receives that party's signature will be deemed to be the date that the party signed this transfer agreement.

11. **GENERAL.** This transfer agreement and the Integrated Services Contract: (a) are complete; (b) constitute the entire understanding between the parties with respect to the subject matter; and (c) supersede all prior agreements, whether oral or written. No waiver of the Integrated Services Contract or this transfer agreement or any mutually agreed upon attachment will be valid unless in writing and signed by the parties. This assignment will inure to the benefit of and be binding upon the parties and their respective successors and assigns.

12. **GOVERNING LAW.** These terms are governed by the laws of California without reference to conflict of law principles.

The parties have caused this transfer agreement to be executed by their authorized representatives.

STEM, INC.

Signature: _____
Printed Name: _____
Title: _____
Email: _____
Date: _____

TRANSFERRING PARTY

«ACCOUNT_LEGAL_ENTITY»

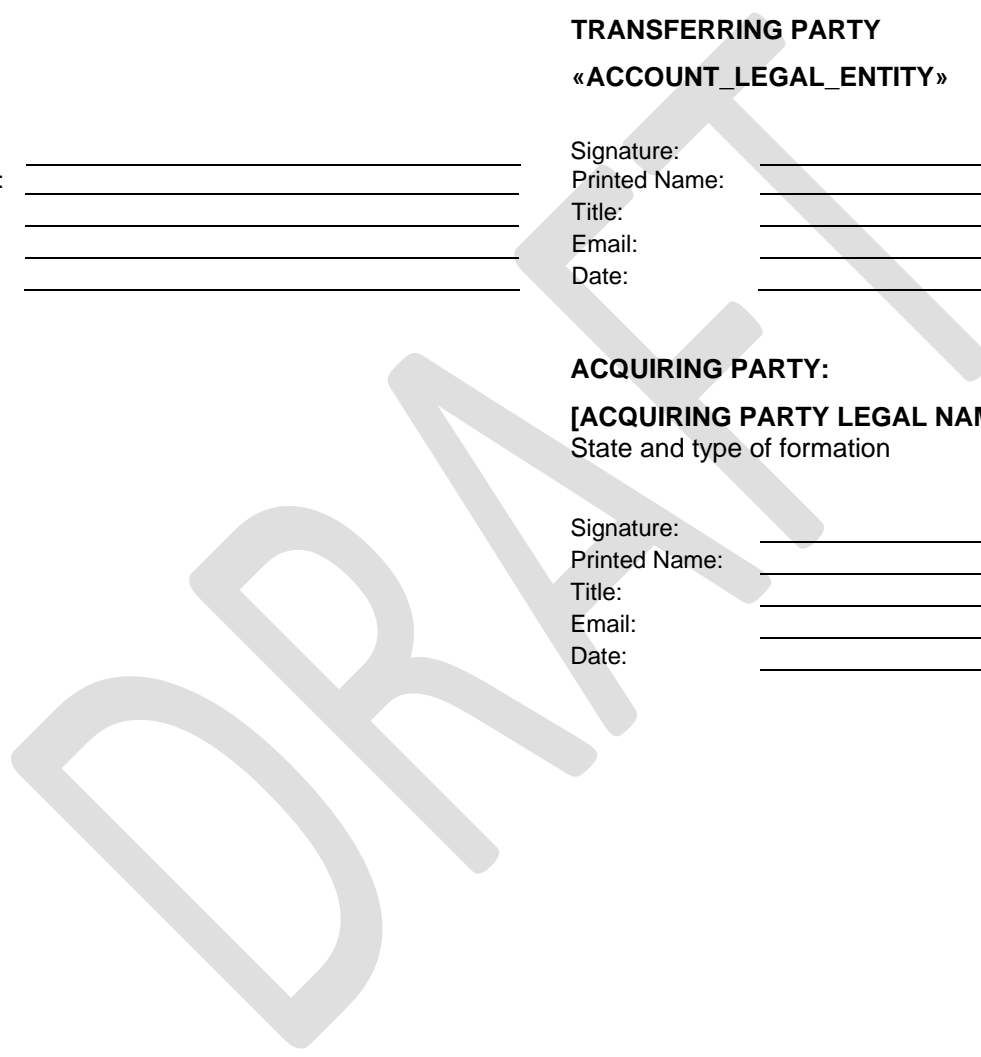
Signature: _____
Printed Name: _____
Title: _____
Email: _____
Date: _____

ACQUIRING PARTY:

[ACQUIRING PARTY LEGAL NAME

State and type of formation

Signature: _____
Printed Name: _____
Title: _____
Email: _____
Date: _____



SYSTEMS ORDER

S-0321-11087

TERM	INFORMATION		
Purchase Agreement	Stem Master Purchase Agreement A-0050375	Effective Date	
Purchase Agreement Parties	Customer	CITY OF EL CAJON, a California Municipality	
	Stem	Stem, Inc., a Delaware corporation	
Systems Order	Systems Order - S-0321-11087	Effective Date	
Systems Order Parties	Customer	CITY OF EL CAJON, a California Municipality	
	Stem	Stem, Inc., a Delaware corporation	
Services Agreement	Stem Master Services Agreement A-0050375	Effective Date	
Services Agreement Parties	Customer	CITY OF EL CAJON, a California Municipality	
	Stem	Stem, Inc., a Delaware corporation	
Services Order	Stem Services Order S-0321-11087	Effective Date	
Services Order Parties	Customer	CITY OF EL CAJON, a California Municipality	
	Stem	Stem, Inc., a Delaware corporation	
Systems Order Validity Period	Expires 60 days after the Systems Order Effective Date		
Attachment 1	Purchase Order Requirements	Attachment 2	Systems Documentation Listing

System #	Site Name	Location (for delivery)
S-0014369	DS - City of El Cajon-CivicCntr_SDGE	100 Civic Center Way, El Cajon, CA 92020

This Systems Order is between Customer and Stem and is executed and delivered in accordance with and incorporates the above-listed Purchase Agreement by reference. In the event of any conflict between the Purchase Agreement and this Systems Order, the terms of the Purchase Agreement will govern except as specifically changed by this Systems Order. This Systems Order may only be modified by a written instrument signed by both parties.

1. **Systems Order Validity.** Insofar as the parties have executed the Purchase Agreement, this Systems Order, the Services Agreement, and the associated Services Order, each as identified above, this Systems Order will remain in effect for a period not to exceed the Systems Order Validity Period. The Systems Order Validity Period may be extended by written agreement between the parties. Upon the expiration of the Systems Order Validity Period, Stem may, but shall have no obligation to accept the terms, conditions, or fees, as stated in this Systems Order.

2. **Purchase Order.** In addition to required information as stated in attachment 1 and except as otherwise agreed between the parties, Customer's purchase order will contain the information provided in this Systems Order. All terms included in a purchase order as provided by Customer, including but not limited to any pre-printed terms and any terms that are inconsistent or conflict with the Purchase Agreement or this Systems Order, will be null and void and of no legal force or effect. The purchase order must be signed and dated by Customer's authorized representative. Any purchase order issued and signed by Customer against this Systems Order must be received by Stem within the Systems Order Validity Period. Due to capacity constraints and until further notice, Customer acknowledges that some manufacturers' purchase order acceptance period may be greater than ten days. Limited to the purchase order issued in accordance with this Systems Order and section 2.5 of the Purchase Agreement. Customer waives the written notice requirement as stated in the Purchase Agreement. The exact timing of the purchase order acceptance will be on a case-by-case basis.

3. **Prices and Fees.** The amounts associated with the Systems' purchase and any other items intended to be represented in the purchase order are listed below. The fees for the Stem Services as stated in the associated Services Order may also be included. Except where expressly indicated, price and fee amounts do not include any items except as listed below.

PRICES AND FEES

SYSTEMS			
Manufacturer	Description	Qty	Total
	8.0.4.A-125-503 - Hardware	2	\$372,058.92
SYSTEMS Sub-Total			\$372,058.92

ADDITIONAL ITEMS (SYSTEMS COMPONENT PARTS, ADDITIONAL HARDWARE, AND OTHER ADDITIONAL ITEMS)			
Description	Qty	Total	
8.0.4.A-125-503 - Additional Import Duties	2	\$23,636.00	
8.0.4.A-125-503 - 15 Year Upfront Preventive Maintenance Plan	2	\$45,000.00	
8.0.4.A-125-503 - Manufacturers On-Site Scope	2	\$19,559.68	
8.0.4.A-125-503 - 15 Year Sungrow Extended Warranty	2	\$61,332.92	
ADDITIONAL ITEMS Sub-Total			\$149,528.60

	SYSTEMS Sub-Total (from above)	\$372,058.92
	ADDITIONAL ITEMS Sub-Total (from above)	\$149,528.60
	TOTAL SYSTEMS PRICE	\$521,587.52



SYSTEMS ORDER

S-0321-11087

SERVICES			
Description	Qty		
Provided in accordance with Services Order S-0321-11087	N/A		N/A
TOTAL SERVICES PRICE			\$0.00
		TOTAL SYSTEMS PRICE (from above)	\$521,587.52
		TOTAL SERVICES PRICE (from above)	\$0.00
TOTAL PURCHASE PRICE			\$521,587.52
Estimated Shipping Fee			\$1,500.00

4. **Payment Terms for Total Purchase Price.** The payment milestones and payment terms, as listed below, will be reflected in the purchase order. These terms are specific to the manufacturer. Stem will provide valid proof of payment as delivered from the original equipment manufacturer. In addition to such, payment for Milestone D will require proof that battery systems are available for immediate installation (i.e., within two Business Days from the date of the Final Delivery).

MANUFACTURER		SUNGROW	EFFECTIVE DATE	1 January 2021
MILESTON E	INVOICED PERCENTAGE of Total Purchase Price	INVOICE TIMING		PAYMENT DUE
A.	30%	Invoiced at Stem's acceptance of Customer's purchase order		Net 30 days after Customer's receipt of invoice
B.	40%	Milestone B. amount will be invoiced on the earlier of either of the below		
		Invoiced at the commencement of production of the Initial Shipment by the manufacturer		Net 30 days after Customer's receipt of invoice
		OR		
		Invoiced when Initial Shipment is transferred to the port of departure		Net 10 days after Customer's receipt of invoice
C.	20%	Invoiced at Customer's acceptance of the Initial Shipment		Net 30 days after Customer's receipt of invoice
D.	10%	Milestone D. amount will be invoiced on the earlier of either of the below		
		Invoiced at Customer's acceptance of the Final Shipment Stem will send Customer a Systems delivery notice upon completion of the Final Shipment		Net 30 days after Customer's receipt of invoice
		OR		
		Invoiced 30 days from Customer's acceptance of the Initial Shipment in accordance with the Purchase Agreement except where the Final Shipment has been delayed and such delay is not due to an action or inaction on the part of Customer.		Net 30 days after Customer's receipt of invoice
If the Initial Shipment and Final Shipment are the same, milestone C. will be invoiced with milestone D.				

Cancellation Fee Schedule - Sungrow	
Weeks before guaranteed Delivery Date	Cancellation Fee
More than 25 weeks	0%
Between 24 and 21 weeks	35%
Between 20 and 15 weeks	65%
Between 14 and 10 weeks	80%
Fewer than 10 weeks	100%

Manufacturers' On-Site Scope - Sungrow
(i) unloading the Component Parts as delivered in the Final Shipment (ii) installation of the Component Parts as delivered in the Final Shipment (iii) commissioning of the Systems

5. **Cancellation Fees.** The above listed cancellation fees apply to the Total Purchase Price and all Preventive Maintenance, and Manufacturers' Warranties fees whether such fees are stated in section 3 above or in the associated Services Order.

6. **Payment Terms for Shipping.** The Fees for Shipping will be invoiced as applicable to the Initial Shipment, each Interim Shipment, and the Final Shipment or, at Stem's option, in total with the Final Shipment.

7. **Manufacturers' On-Site Scope.** Where applicable, Manufacturers' On-Site Scope is as stated in section 4.



SYSTEMS ORDER

S-0321-11087

The parties have caused this Systems Order to be executed by their authorized representatives as of the date stated below.

STEM, INC.

Signature: _____
Printed Name: Alan Russo
Title: Chief Revenue Officer
Email: alan.russo@stem.com
Date: _____

CITY OF EL CAJON

Signature: _____
Printed Name: Graham Mitchell
Title: City Manager
Email: gmitchell@cityofelcajon.us
Date: _____

**ATTACHMENT 1
PURCHASE ORDER REQUIRED INFORMATION**

The following information is required to be reflected in Customer's purchase order.

INFORMATION	NOTES
Stem, Inc. identified as supplier	Information as stated in Systems Order.
Ship to address	Information as stated in Systems Order, this information may be changed by the purchase order.
Customer Purchase Order Number	This number will be generated and provided by Customer.
Issue date (Purchase or Change Order, or Amendment (as applicable))	This date is required, the acceptance period does not commence until Stem receives a purchase order that complies with the Systems Order.
Stem Record Number	This number is recorded at the top of the Systems Order and is S-0321-11087
System # (Systems ID)	This number is recorded in the second table on the Systems Order and is S-0014369
Delivery Date - Initial Shipment	This date is required.
Delivery Date – Final Shipment	This date is required if Manufacturers' On-Site Scope is applicable. This date must be no later than four weeks following the Delivery Date of the Initial Shipment.
Purchase Agreement (reference)	This reference is located in the first table on the Systems Order Stem Master Purchase Agreement A-0050375 effective
Item Descriptions, Prices, and Fees	This information is detailed in the Prices and Fees table in section 3 of the Systems Order. For avoidance of confusion, descriptions of the items being purchased should closely match the descriptions provided in the Systems Order.
Payment Terms	May reference Systems Order – cannot be changed by a purchase order
Cancellation Terms	May reference Systems Order – cannot be changed by a purchase order
Purchase Order Notes	As required by Customer
Stem, Inc. signature block	Signer Mark Triplett
	Title Chief Operating Officer
	Email Mark.triplett@stem.com
Customer signature block	Reflecting Signer's name, title, and email address.

If any information in the table above is to be adjusted after purchase order acceptance, modifications will be made in compliance with the agreement between the parties.

WIRING INSTRUCTIONS	
BANK: Silicon Valley Bank Address: 3003 Tasman Dr., Santa Clara, CA 95054 Phone: 408.654.7400	FOR THE CREDIT OF: Stem, Inc. Operating Account #: 330 077 6369 ABA / Routing #: 121 140 399
All wires can be confirmed with William Bush, CFO email: bill.bush@stem.com / phone 925.980.5256	

ATTACHMENT 2 SYSTEMS DOCUMENTATION LISTING

The following documents are made available to Customer by Stem through a secure web portal. The parties agree that the documents applicable to the Systems purchased by Customer under a purchase order will be published on the web portal as of the purchase order's acceptance date. The terms of such documents are incorporated into the terms of each purchase order.

The list provided below is for informational purposes only; the valid list of documents will be attached to or provided with each purchase order upon acceptance by Stem.

HARDWARE DOCUMENTATION INDEX: SUNGROW 250KW E3 SYSTEMS DE-RATED TO 125KW

This index lists the available, relevant documents for the Sungrow 250kW E3 Battery Energy Storage Systems de-rated to a 125kW E3 Battery Energy Storage System by the manufacturer. Please note that some documents are preliminary and subject to change.

1. Datasheets

Label	ST556KWH-250
System Specification	890-079_05.00_DS_20200611_ST556KWH-250UD_Product Configuration_V11_EN 801-698_03.00_Sungrow-Useable-Energy-and-Efficiency
Battery Datasheet	890-076_01.00_Specification_E3Battery_Tentative
Inverter Datasheet	890-162_01.00-Datasheet_Sungrow-SC60HV-PCS
Transformer requirement	Transformer requirement_V1.3

2. Compliance and Safety

Label	ST556KWH-250
Emergency Response Guide	840-005_01.00_Guide_FirstResponderFireFightingSafetyHandling_PS8.0
UL1741SA	860-015_03.00_SC60_SC75HV_UL_1741_1741_SA_IEEE_1547_15471_HECO_certificate_20200724 SC60HV-Rule21-June22-DocumentPackage.zip
UL9540	860-022_01.00_ST556KWH-250UD_UL_9540_Certificate
UL1973	860-018_01.00_UL1973(Ru)_E3
MSDS - Battery	CR_20191205_E3_MSDS 100Ah capacity E3_V10_EN

3. Design

Label	ST556KWH-250
Mechanical Drawings	890-058_ST556KWH-250UD-Product Drawing
SLD/Inverter Block Diagram	SLD_ST556KWH-250

4. Installation and Commissioning

Label	ST556KWH-250
Installation Manual	ST556KWH-250UD-SEN-Installation Manual
Local Controller User Manual	890-078_01.00_Sungrow_EMS200_User_Manual_Local_Controller
Job Safety	890-014_01.00_Procedure_JobSiteSafetyCheckList_PS8.X
Commissioning Request Form	890-017_01.00_PS8.0_SungrowESSCommissioningRequestForm
On-Site Acceptance Test Report	Pending

5. Operations and Maintenance

Label	ST556KWH-250
Preventative Maintenance Plan	Pending
Performance Guarantee	Pending
Warranty	Pending

SERVICES ORDER – CALIFORNIA

S-0321-11087

TERM		INFORMATION			
Customer		CITY OF EL CAJON			
Purchase Agreement	Stem Master Purchase Agreement A-0050375	Effective Date			
Purchase Agreement Parties		Customer	CITY OF EL CAJON, a California Municipality		
		Stem	Stem, Inc., a Delaware corporation		
Systems Order	Systems Order - S-0321-11087	Effective Date			
Systems Order Parties		Customer	CITY OF EL CAJON, a California Municipality		
		Stem	Stem, Inc., a Delaware corporation		
Services Agreement	Stem Master Services Agreement A-0050375	Effective Date			
Services Agreement Parties		Customer	CITY OF EL CAJON, a California Municipality		
		Stem	Stem, Inc., a Delaware corporation		
Services Order	Stem Services Order S-0321-11087	Effective Date			
Services Order Parties		Customer	CITY OF EL CAJON, a California Municipality		
		Stem	Stem, Inc., a Delaware corporation		
Services Order Term	Commences on the Services Order Effective Date and continues for 180 months from the Commercial Operation Date of the below listed Systems.				
Stem Contact	Attn: Customer Operations	Phone	1-877-374-7836	Email	support@stem.com
Attachment A	Defined Terms				
Exhibit 1	Stem Services (listing)	Exhibit 2	Performance Guarantees		
Exhibit 3	Scope of Stem Services	Exhibit 4	RESERVED		
Exhibit 5	RESERVED	Exhibit 6	Documentation Listing		

This Services Order is between Customer and Stem and is executed and delivered pursuant to the Services Agreement, and as of the Services Order Effective Date, incorporates by reference, the Services Agreement. The Services Agreement and this Services Order form a fully integrated, separate agreement that Customer may assign in accordance with the Services Agreement. In the event of any conflict between the Services Agreement and this Services Order, the terms of the Services Agreement will govern except as changed explicitly by this Services Order. This Services Order may only be modified in writing and signed by both parties. The exhibits referenced above and attached to this Services Order are incorporated in this Services Order.

1. **Payments.** Except where expressly indicated, the fees do not include sales or other associated tax, which will be added in each invoice as applicable and, unless otherwise stated in the relevant invoice are payable within 30 days from Customer's receipt of each invoice. Fees will be invoiced and paid in US dollars.

2. **Sites.** The Sites associated with this Services Order are as follows.

System ID	Site Name	Location Address	Installation ID (where applicable)	Site Type
S-0014369	City of El Cajon-Civic Cntr - SDGE	100 Civic Center Way El Cajon, CA 92020	006690741	BTM

3. **Systems - Hardware Description**

System ID	Manufacturer	Qty	Hardware Description
S-0014369	Sungrow	2	8.0.4.A-125-503 – Hardware De-rated from 250-1006 by manufacturer

4. **Reporting Requirements.** The following document, as provided by Customer, details the projected average hourly solar production as described in the solar output interval data provided through the 8760 Data.

8760 Data (provided by customer)	Dated
CityofElCajon-ElCajonCA_-100CivicCenterWayB_Meter-0741-DataFile_5.3.2021	3 May 2021

5. **Associated Utility and Utility Program.**

Associated Utility	Utility Program
SDG&E	SGIP / General Market

SERVICES ORDER – CALIFORNIA

S-0321-11087

6. **Stem Services Fees.** The Stem Services and fees associated with this Services Order are listed below. These fees will be invoiced annually in advance commencing on the date on which the above listed Systems have achieved Commercial Operation Date.

Stem Services	Fee each 12 months	Services Order Term (years)	TOTAL
Athena Base App - BTM	\$3,018.00	15	\$45,270.00
Base Utility Bill Optimization	\$2,515.00	15	\$37,725.00
California SGIP PBI Optimization	\$0.00	15	\$0.00
Solar Charging Optimization	\$0.00	15	\$0.00
TOTALS	\$5,533.00		\$82,995.00

7. **Manufacturers’ Warranties and Preventive Maintenance.** The below fees are associated with the Manufacturers’ Warranties and Preventive Maintenance plans. These fees will be included in the Systems Order and invoiced under the purchase order for the Systems.

Stem Services			TOTAL
8.0.4.A-125-503 - 15 Year Sungrow Extended Warranty			\$61,332.92
8.0.4.A-125-503 - 15 Year Upfront Preventive Maintenance Plan			\$45,000.00
TOTALS			\$106,332.92

8. **Services Order Validity.** This Services Order will only become valid if the parties have executed the Services Agreement, Purchase Agreement, and Systems Order as detailed above. Additionally, to the extent the Systems Order is terminated or expires, or the purchase order is not accepted, this Services Order will automatically terminate without further notice and Customer shall have no obligation to pay a Termination Payment for this Services Order.

The parties have caused this Services Order to be executed by their authorized representatives as of the date below.

STEM, INC.

Signature: _____
 Printed Name: Alan Russo
 Title: Chief Revenue Officer
 Email: alan.russo@stem.com
 Date: _____

CITY OF EL CAJON

Signature: _____
 Printed Name: Graham Mitchell
 Title: City Manager
 Email: gmitchell@cityofelcajon.us
 Date: _____

ATTACHMENT A DEFINED TERMS

Capitalized terms utilized in this Services Order will have the meaning as stated in the table at the beginning of the document, where first used, as defined below, or as defined in the Services Agreement.

- A. "Athena Cloud Platform" means the cloud-based Stem software that is configured and operated by Stem which when paired with the Athena Power Controller provides the Stem Services.
- B. "Athena Power Controller" means a portion of the Stem owned hardware on which the Athena Base Application is embedded and that is connected to the Systems. The Athena Power Controller is a component of the Stem Equipment as defined below.
- C. "Commercial Operation Date" means the date on which the Systems have obtained all necessary approvals as may be required by Applicable Law for installation and operation.
- D. "Installation ID" means an identifier such as a meter number or utility account number as associated with the Systems at the Site.
- E. "Integrated Services Contract" means (i) this Services Order (including all exhibits, other attachments, and amendments to this Services Order, and (ii) the Services Agreement (including all exhibits, amendments, and other attachments) which are in effect on the Services Order Effective Date. The fully executed Integrated Services Contract constitutes a standalone, separable instrument that may be assigned by Customer in accordance with the Services Agreement.
- F. "NOC" means Stem's network operation center.
- G. "Prudent Industry Practices" means the practices, methods, specifications, and acts engaged in or approved by a significant portion of the energy optimization service industry operating in the United States that at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, reliability, safety, environmental protection, economy, and expedition.
- H. "PV Equipment" means Customer's solar photovoltaic equipment as installed at the Site.
- I. "SGIP" means a California incentive, Self-Generation Incentive Program that provides incentive to support distributed energy resources. SGIP provides rebates for qualifying distributed energy systems that are installed on the Customer's side of the utility meter.
- J. "Site" means the actual area and the Installation ID for the Site, within the Locations as identified in this Services Order, where the Systems is or will be installed.
- K. "Site Type" means the type of Site where the Systems are installed and where the Stem Services will be provided.
 - i. "BTM" means a Site where the installation of the Systems and delivery of the Stem Services will be for the purposes of off-setting facility loads at the Site's point of interconnection with the utility.
 - ii. "FTM" means a Site where the installation of the Systems and delivery of the Stem Services will be for the purposes of delivery of power to the grid at the Site's point of interconnection with the utility.
- L. "Stem Equipment" means the Athena Power Controller and associated communications gateway. Stem Equipment does not include meters, relays, breakers, inverters, Systems as defined below, any other components required for the interconnection of the Systems, which items are not included in the Stem Services and are not covered by the Stem Services Warranty as stated in the Services Agreement.
- M. "Stem Services" means the services provided by Stem to Customer with respect to the operation of the Systems. The listing and detail of the available Stem Services are in exhibit 1 of this Services Order. The Stem Services provided through this Services Order are stated in the Stem Services Fees.
- N. "Stem Services Fees" means the fees associated with the provisioning of the Stem Services.
- O. "Systems" means a battery energy storage system that is purchased by Stem from the original equipment manufacturer and sold by Stem to Customer. Systems include all embedded software, operating systems, and licenses required to use such embedded software and operating systems as provided by the original equipment manufacturer.

**EXHIBIT 1
STEM SERVICES**

Following is a listing of the available Stem Services. Only those Stem Services as listed in the Stem Services Fees section are provided through this Services Order. Through the Stem Services, Stem may limit the operation of the Systems to comply with the Systems manufacturers' requirements.

1. **ATHENA BASE APPLICATION.** The Athena Base Application is Stem's flagship proprietary software and is the foundation on which all Stem Services such as UBO, incentive management, and other value streams are built. The Athena Base Application is installed on the Athena Power Controller, configured in the Athena Cloud Platform, and allows Stem to actively manage the Systems at the Site. With the Athena Base Application, Customer will receive (i) NOC monitoring and asset maintenance services, (ii) data acquisition for Systems, meters, and relay data streams, (iii) data persistence to support Systems warranty compliance, and (iv) operational services for Systems. Athena Base Application has two configurations.

- A. **Behind-the-Meter Base Application** ("BTM Base Application").
- B. **Front-of-the-Meter Base Application** ("FTM Base Application").

2. **UTILITY BILL OPTIMIZATION** or ("UBO"). Through UBO, the Stem Services control the Systems operation such that the Site's electricity usage and generation is optimized for reduced cost compared to the usage that would have occurred without the Systems operation. Costs that are optimized include time-of-use demand charge management, variable-rate energy arbitrage, tariff-based event dispatch, time-of-use energy arbitrage, and coincident peak management. UBO optimizations are as follows.

- A. **Base Utility Bill Optimization** or ("**Base UBO**"). The main objective of this service is to deliver Customer utility bill savings. Base UBO serves the majority of customer locations in key markets such as California, Massachusetts, New York, and elsewhere. The cost savings from Base UBO are calculated by either subtracting the total utility bill cost with active Base UBO on the active tariff from the total utility bill cost without Base UBO on the original tariff that was active before the Effective Date of this Services Order. The total utility bill costs are calculated by using the interval data on electricity usage at the utility billing service point and the applicable tariff schedule.

3. **INCENTIVE MANAGEMENT.** Stem Services manage incentives, as provided through regulators, to reduce costs.

- A. **Solar Charging.** For the 60 months following the Commercial Operation Date, Stem will control the Systems operation such that charging is conducted in coordination with the output of the PV Equipment. Solar Charging may continue after the first 60 months as mutually agreed in writing by the parties.
- B. **California SGIP PBI Application.** For the 60 months following the Commercial Operation Date, Stem will control the Systems operation such that it complies with SGIP annual discharge and greenhouse gas emission reduction requirements. Stem will execute a minimum number of discharge cycles per year to maximize the Site's potential to earn the performance-based incentive. The Associated Utility pays the SGIP incentives directly to Customer in accordance with the Self-Generation Incentive Program Handbook, as available from the SGIP Program Administrators.

4. **BACKUP POWER APPLICATION.** Stem will control the Systems within the parameters of the Backup Power Application and to energize specific circuits during interruptions in power. The Backup Power Application is only available with particular Systems manufacturers.

5. **PERFORMANCE REPORTS.** Commencing on the Commercial Operation Date and subject to the Stem Services provide through this Services Order, Stem shall provide Customer on-going reports with information on the performance of the Systems as associated in the delivery of the Stem Services. Changes in reports (including reporting unit, delivery cadence, and format) may be adjusted from time to time with notice to Customer.

REPORT TITLE (Provided as applicable)	REPORTING UNIT	DELIVERY CADENCE	FORMAT
ITC/Solar Charging Report	Monthly, YTD	Quarterly and Annually	PDF
SGIP Compliance Report	Monthly, YTD	Quarterly and Annually	PDF
Field Service Report	Monthly	Quarterly and Annually	PDF
NOC Operations Report	Monthly	Quarterly and Annually	PDF
Planned Maintenance Report	Quarterly	Quarterly	PDF
Site- and Portfolio-level Savings Report	Monthly	Quarterly and Annually	PDF
Energy Storage System (Systems) Interval Data	15-minute	Daily	API or CSV download

**EXHIBIT 2
PERFORMANCE GUARANTEE**

1. **Performance Guarantee Term.** The Performance Guarantees as provided in this exhibit 2 will commence when the Systems associated with this Services Order has achieved the Commercial Operation Date and will continue for so long as Customer receives Stem Services under this Services Order (“Performance Guarantee Term”).
2. **True-Up Period.** For each 12-months of the Performance Guarantee Term (each a “True-Up Period”), Stem will evaluate the performance of the Systems. The initial evaluation will be performed after the first two True-Up Periods (“Initial True-Up Period”). Successive evaluations will be performed after each subsequent 12-month True-Up Period. Such evaluations may be suspended or voided in accordance with this exhibit 2.
3. **True-Up Report.** The determination made by Stem at the end of the Initial True-Up Period and each successive True-Up Period will be stated in a written report and will be sent to Customer on or before 90 days after the end of the Initial True-Up Period and each successive True-Up Period.
4. **Systems Failure.** This exhibit 2 will be subject to suspension or revision if the Systems are unavailable or unable to perform for longer than 30 consecutive days, and such failure is not due to any action or inaction on the part of Stem or Stem’s breach of the Services Agreement or this Services Order.
5. **Savings Performance Guarantee.** Stem guarantees that the Gross System Savings during each True-Up Period will be greater than, or equal to, the Total Guaranteed Savings Amount as stated in the table below (“Savings Performance Guarantee”).

Required Utility Tariff	Baseline Period	Guaranteed Savings Amount Each True-Up Period
Genability Tariff - DG-R S	1/2019-1/2020	\$44,789.00

- A. **Savings Performance Guarantee Cure.** In the event the Stem Services fail to achieve the Savings Performance Guarantee for any given True-Up Period, Stem will, within 90 days of the last day of such True-Up Period, either issue a credit to Customer or pay to Customer an amount equal to the positive difference between the Total Guaranteed Savings Amount and the Gross System Savings. For clarity, Stem’s liability with respect to the Savings Performance Guarantee will not exceed the Total Guaranteed Savings Amount effective for the True-Up Period in which the liability occurs.
6. **Solar Charging Performance Guarantee.** Stem guarantees that during each True-Up Period for the first 60 months of the Performance Guarantee Term, the Systems will be operated such that the realized Solar Charging Proportion, will be greater than or equal to the Guaranteed Solar Charging Proportion as stated in the table below.

Guaranteed Solar Charging Proportion	Solar Charging Interval
95%	15 minutes

- A. **Solar Charging Performance Guarantee Cure.** In the event the Stem Services fail to achieve the Solar Charging Performance Guarantee for any given True-Up Period, Stem will, within 90 days from the issuance of the True-Up Report, either issue a credit to Customer or pay an amount as equal to the lesser of (i) actual damages defined as the forsaken amount of ITC, or (ii) the equivalent of 12 months’ Stem Services Fees for Athena Base Application and Solar Charging.
7. **General Conditions.** Certain events outside of Stem’s control may adversely affect its ability to meet the Performance Guarantees. If any of the following events occur at any time after the Services Order Effective Date, Stem may, upon notice to Customer, revise the True-Up Periods, any cures, or the Performance Guarantee Cap.
 - A. Prolonged downtime or other lack of functionality from the Systems due to delays in obligated third-party maintenance or timely resolution by the equipment manufacturer of a failure covered by their warranty. In such a circumstance, the cures, as stated in section 5.A and 6.A above, would only be adjusted to exclude the periods during which Systems were unavailable due to no fault of Stem.
 - B. A material change to the Systems configuration or utilization as required or caused by Customer where such change affects Stem’s ability to perform the Stem Services under this Services Order.
 - C. A material change in the external rules that determine the requirements for the SGIP Program.
 - D. A material change in the external rules that determine the requirements for Solar Charging.
 - E. Failure of the local utility to deliver sufficient and timely electric energy to charge the Systems except to the extent such failure is caused by a failure of the Stem Services.
 - F. Failure of the PV Equipment to deliver sufficient electric energy to charge the Systems to required levels and frequently enough to achieve the Performance Guarantees, defined as: (i) if actual solar production over the 24 hours immediately preceding any Material Interval is lower than the Planned Solar Production by more than 30%,

EXHIBIT 2 PERFORMANCE GUARANTEE

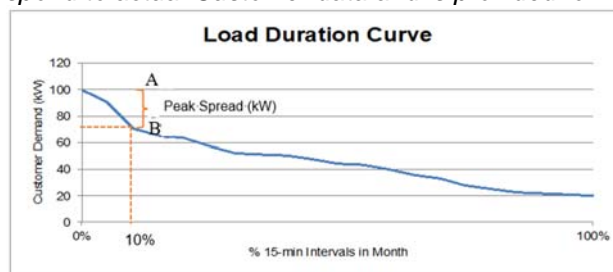
or (ii) if uptime availability of the PV Equipment is less than the Guaranteed Solar Charging Proportion during any given True-Up Period.

- G. The Site's electrical pricing schedule or rate plan (collectively "Utility Tariff"), as indicated on Customer's utility bill, is not the Required Utility Tariff as listed above, whether voluntary or involuntary.
- H. A Material Change in Gross Electric Load Profile as defined below.
- I. A Material Change in Required Utility Tariff as defined below.

8. **Defined Terms.** The following defined terms are only applicable to this Performance Guarantee.

- A. "Baseline Period" means the 12 full utility billing periods, as detailed above.
- B. "Gross Electric Load Profile" means the electric load profile (including solar, fuel cells, or generators, which are counted as part of the Gross Electric Load Profile) measured in average kilowatts over 15-minute intervals of the location before accounting for the effect of the Stem Services on the Locations.
- C. "Gross System Savings" means the aggregate gross savings that accrue as a result of the operation of the Stem Services for BTM Systems as measured based on load and Stem Services metered data and calculated by Stem (by calculating and comparing the billing charges with and without the Systems), and will include, but is not limited to changes in demand charges, energy charges, utility usage taxes, and revenues earned from other grid services programs.
- D. "Load Duration Curve" means the standard method of measuring and visualizing the volatility of a given load profile used across the electric industry. The Site's Load Duration Curve over a given period is constructed by plotting the Site's load values on the vertical axis in descending order of magnitude against the percent of time (on the horizontal axis) that the load values are exceeded. For the purposes of constructing the Site's Load Duration Curve, the load is measured as average load over each 15-minute interval. An example of the Load Duration Curve is provided in the definition of Peak Spread below.
- E. "Material Change in Gross Electric Load Profile" is determined as follows. Stem will calculate the Site's Peak Spreads on the Site's Gross Electric Load Profiles for the Baseline Period. Commencing on the Commercial Operation Date, Stem will calculate the Peak Spread on the Site's Gross Electric Load Profile for every full utility billing period during each True-Up Period (each a "Comparison Period"). Stem will compare the Peak Spread for each full utility billing period in a Comparison Period to the Peak Spread of its corresponding full utility billing period in the Baseline Period to calculate the decrease in Peak Spread for each of the Comparison Period, expressed as a percentage of the Peak Spread in the Baseline Period ("Peak Spread Decrease"). A material change has occurred if the average Peak Spread Decrease for any Comparison Period is greater than 10%.
- F. "Material Change in Required Utility Tariff" occurs if, at any point in time, the price for the most expensive kilowatt of demand during any True-Up Period at the Sites on the rate plan that the Utility offers to Customer decreases by more than 10% versus the Baseline Period.
- G. "Material Interval" means any interval in which a new maximum demand level is set within the billing period (applicable only when the Site Type is BTM).
- H. "Peak Spread" means the kW (or Customer Demand) change between a Site's maximum load as compared to 10% on the horizontal axis. Peak Spreads are measured during each of the 12 full utility billing periods and are utilized in calculating a material change in Gross Electric Load Profile. Over one full utility billing period, let A = Site's maximum load, B = The point on the Site's Load Duration Curve, in kW that corresponds to 10% on the horizontal axis. For this utility bill period, the Peak Spread = A – B.

The below table does not correspond to actual Customer data and is provided for illustrative purposes only.



- I. "Planned Solar Production" means the projected average hourly solar production as described in the solar output interval data provided through the 8760 Data Reporting Data, as listed at the beginning of this Services Order and net of applicable annual degradation.

EXHIBIT 2
PERFORMANCE GUARANTEE

- J. "Required Utility Tariff" means the Utility Tariff that is necessary for this Performance Guarantee to be valid. In the case where Customer's Utility Tariff is not the Required Utility Tariff, Stem will assist Customer in changing to the Required Utility Tariff on or by the Commercial Operation Date of the affected Sites.
- K. "Solar Charging Proportion" means the proportion of energy charged into the Systems by the PV Equipment that corresponds with solar output during the prior Solar Charging Interval. Realized Solar Charging Proportion is measured as a percentage.

EXHIBIT 3
SCOPE OF STEM SERVICES

1. **Commissioning of Stem Equipment and Operational Tests.** Stem shall commission the installed Stem Equipment upon the completion of the manufacturer's commissioning of the Systems. Stem shall verify the installation and run operational tests to confirm acceptance of each Systems for operation in accordance with the terms of the Services Agreement and this Services Order. Stem shall provide a written notice to Customer of such verification and acceptance.
2. **Connectivity.** Stem shall not disconnect the Systems from the electric utility service at the Site unless directed by safety personnel to operate circuit breakers or disconnect or unless otherwise necessary in the interest of safety. Customer shall delegate to Stem any rights of Customer that are necessary to effectuate this obligation.
3. **Systems Operation and Compliance with Agreements.** Stem shall cause the Systems to be operated in a manner that meets all requirements of the Manufacturers' Warranties, Preventive Maintenance Plan, the Services Agreement, and this Services Order (collectively "Services and Warranty Documents").
4. **Firmware Updates.** Stem will facilitate firmware updates to the Systems as provided by the manufacturer.
5. **Administration of Manufacturers' Warranties.** To the extent the Manufacturers' Warranties are in full force and effect, Stem (or through its subcontractors) shall administer the Manufacturers' Warranties on behalf of Customer, which administration will include, but is not limited to, submitting claims to the manufacturer for repairs, replacements or other services under such warranties; provided, after Stem has made commercially reasonable efforts to pursue such claims with the manufacturer, Stem shall have no obligation to pursue a dispute or legal claim (for breach of warranty, or any other legal claim) against the manufacturer.
6. **Administration of Manufacturer's Preventive Maintenance Plan.** To the extent the Preventive Maintenance Plan is in full force and effect, Stem (or through its subcontractor) shall administer the performance of the preventive maintenance services on behalf of Customer and in accordance with the Preventive Maintenance Plan.
 - A. Stem responsibilities under the manufacturer's Preventive Maintenance Plan
 - i. Notify the Customer at least five business days ahead of a site visit for the performance of preventive maintenance.
 - ii. Ensure the performance of the preventive maintenance services in accordance with the Preventive Maintenance Plan.
 - iii. Prepare and submit the annual Preventive Maintenance Plan service report to Customer.
 - iv. Follow all safety procedures as required.
 - v. Document the corrective actions taken to solve any defect found during the preventive maintenance process.
 - B. Customers responsibilities under the manufacturer's Preventive Maintenance Plan
 - i. Complete all mandatory actions resulting from site inspection to the extent required, in accordance with the terms of the Preventive Maintenance Plan.
 - ii. Provide a safety plan for personnel to perform preventive maintenance.
 - iii. Provide the date and time for the performance of preventive maintenance.
 - iv. Ensure Site access for personnel and provide an on-site point of contact who is authorized to make the decision on-site to de-energize the Systems if it is required for the performance of preventive maintenance.
 - v. Sign the annual Preventive Maintenance Plan service report upon completion.
 - vi. Inform Stem of any changes to the inverter or balance of the Systems within five business days of Customer becoming aware of such change.
 - vii. Provide on-site assistance as needed.
7. **Energy Monitoring and Visualization.** The Stem Services may include limited access to this user interface.
8. **Records.** Stem shall prepare and maintain (and provide to Customer as requested) complete and accurate operating logs, records, and reports documenting the operation and maintenance of the Systems, including the Stem Services provided.
9. **Program Compliance and Reporting.** Stem shall provide data in a timely manner to Customer as requested for completion reporting, data processing, and communications with the program administrators.
10. **Fault Response Times.** Stem shall acknowledge faults in the Systems and commence the remedy process within one business day or sooner in emergency situations to any failures in respect of the Systems, or in accordance with the Manufacturers' Warranties, the Services Agreement, this Services Order, and Prudent Industry Practices.
11. **Emergency Services.** In the event of any emergency affecting the safety, health or protection of, or otherwise endangering any persons or property involving any Systems, Stem shall take immediate action as reasonably necessary

EXHIBIT 3
SCOPE OF STEM SERVICES

under the circumstances using its professional judgment to try to avoid or mitigate any damage, injury or loss threatened by such emergency in accordance with the Services and Warranty Documents and Prudent Industry Practices.

12. Programs and Procedures. Stem shall have adopted and implemented programs and procedures intended to ensure the safe and reliable operation of the Systems.

13. System Operations Optimization Services. Stem shall seek to maximize the value delivered by the Systems by co-optimizing Systems operations for the specific Stem Services listed in the Stem Services Fees, Prudent Industry Practices, and any additional Stem Services contracted through an amendment to this Services Order.

14. Acknowledgement. Customer acknowledges that certain conditions may affect Stem's ability to provide the Stem Services. In the case of a material change to any of the following during the Services Order Term, Stem may, at Stem's sole discretion, make changes to the Stem Services, Performance Guarantee, or any scopes of service.

- A. A material change in the configuration or utilization of the Systems as required or caused by Customer where such change affects Stem's ability to perform the Stem Services under this Services Order.
- B. A material change in the validity of the Manufacturer's Warranties except where such change is caused by any action or inaction on the part of Stem.
- C. A material change in the validity of the Preventive Maintenance Plan except where such change is caused by an action or inaction on the part of Stem.
- D. A material change in the utility program compliance requirements where such change affects Stem's ability to perform the Stem Services under this Services Order.

15. SGIP Specific Requirements. The following statements are required by the SGIP Administrators and are only applicable to SGIP.

- A. **SGIP Utility Rebate Incentives.** The Associated Utility will pay the SGIP incentives in accordance with the Self-Generation Incentive Program Handbook, as available from the SGIP Program Administrators.
- B. Customer and Stem will work together to obtain all applicable rebate incentives for the Systems.
- C. Stem does not warrant or guarantee any utility rebate incentives.
- D. Stem shall have no responsibility to file any required rebate incentive applications or pay any rebate deposits to the Associated Utility.
- E. Stem shall have no responsibility to meet such SGIP requirements where such failure is not due to Stem's actions or inactions, or where the Services Agreement has been terminated regardless of the reason for such termination. This includes, but is not limited to, requirement involving minimum discharge cycles per year.
- F. During any period in which Stem is providing Stem Services with respect to any Systems, Stem shall cause the Systems to be operated and maintained in a reliable manner and shall, if the Stem Services include the following, provide the appropriate support, problem diagnosis, on-site repair, and preventive maintenance through this Services Order. Customer shall promptly notify Stem of any visual or audible malfunction or potential threat to the Systems of which Customer becomes aware. Customer will not, nor will Customer permit any Person to, alter or change the interconnection of the Systems to the Sites metered panel, or to service, maintain, modify, repair, move, alter, or otherwise tamper with the Systems that would cause the Systems not to operate as intended. For clarity, the parties recognize and agree that upon transfer of title of the Systems to Customer, Stem will in no event have any ownership or leasehold interest of any kind or nature in the Systems and disclaims any and all interest to the Systems.

**EXHIBIT 4
[RESERVED]**

**EXHIBIT 5
[RESERVED]**

**EXHIBIT 6
DOCUMENTATION LISTING**

The following documents are made available to Customer by Stem through a secure web portal and will be updated, as necessary, upon full acceptance of this Services Order. Any replacement document listing will be incorporated into the terms of this Services Order.

HARDWARE DOCUMENTATION INDEX: SUNGROW 250KW E3 SYSTEMS DE-RATED TO 125KW

This index lists the available, relevant documents for the Sungrow 250kW E3 Battery Energy Storage Systems de-rated to a 125kW E3 Battery Energy Storage System by the manufacturer. Please note that some documents are preliminary and subject to change.

1. Datasheets

Label	ST556KWH-250
System Specification	890-079_05.00_DS_20200611_ST556KWH-250UD_Product Configuration_V11_EN 801-698_03.00_Sungrow-Useable-Energy-and-Efficiency
Battery Datasheet	890-076_01.00_Specification_E3Battery_Tentative
Inverter Datasheet	890-162_01.00-Datasheet_Sungrow-SC60HV-PCS
Transformer requirement	Transformer requirement_V1.3

2. Compliance and Safety

Label	ST556KWH-250
Emergency Response Guide	840-005_01.00_Guide_FirstResponderFireFightingSafetyHandling_PS8.0
UL1741SA	860-015_03.00_SC60_SC75HV_UL_1741_1741_SA_IEEE_1547_15471_HECO_certificate_20200724 SC60HV-Rule21-June22-DocumentPackage.zip
UL9540	860-022_01.00_ST556KWH-250UD_UL_9540_Certificate
UL1973	860-018_01.00_UL1973(Ru)_E3
MSDS - Battery	CR_20191205_E3_MSDS 100Ah capacity E3_V10_EN

3. Design

Label	ST556KWH-250
Mechanical Drawings	890-058_ST556KWH-250UD-Product Drawing
SLD/Inverter Block Diagram	SLD_ST556KWH-250

4. Installation and Commissioning

Label	ST556KWH-250
Installation Manual	ST556KWH-250UD-SEN-Installation Manual
Local Controller User Manual	890-078_01.00_Sungrow_EMS200_User_Manual_Local_Controller
Job Safety	890-014_01.00_Procedure_JobSiteSafetyCheckList_PS8.X
Commissioning Request Form	890-017_01.00_PS8.0_SungrowESSCommissioningRequestForm
On-Site Acceptance Test Report	Pending

5. Operations and Maintenance

Label	ST556KWH-250
Preventative Maintenance Plan	Pending
Performance Guarantee	Pending
Warranty	Pending



City Council Agenda Report

Agenda Item 6.

DATE: June 22, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Mike Moulton, Chief of Police
SUBJECT: 2019 Operation Stonegarden Grant (OPSG) - Funded by the Office of Homeland Security

RECOMMENDATION:

That the City Council takes the following actions:

1. Authorize the City Manager or designee to accept the 2019 Operation Stonegarden Grant (OPSG) in the amount of \$30,000, and to execute any grant documents and agreements necessary for the receipt and use of these funds; and
2. Appropriate funding in the amount of \$30,000 to reimburse the El Cajon Police Department for overtime (\$28,340), fringe benefits (\$1,178), and mileage costs (\$482) while participating in OPSG coordinated operations.

BACKGROUND:

Operation Stonegarden Grant (OPSG) is funded by the U.S. Department of Homeland Security and administered by the San Diego County Sheriff's Department. Through a partnership with the Office of Homeland Security, Customs and Border Protection/Border Patrol, and several local law enforcement agencies, the Stonegarden mission is to:

- disrupt and degrade targeted transnational criminal organizations (TCOs),
- expand opportunities to work cooperatively with several regional agencies on border-related crime, and
- maximize intelligence gathering and enforcement opportunities targeting drug and weapons smuggling, criminal transportation cells, and other border-related crime.

Multi-agency operations, funded through OPSG) will saturate areas known to be used by transnational drug and smuggling groups. The large law enforcement presence will serve as a criminal deterrent and help to maintain secure borders. These operations promote cooperation in the region and lead to drug and vehicle seizures, as well as arrests. These multi-agency operations include target-based, intelligence-led operations, high-profile saturation patrols, undercover operations and interdiction details. The primary areas of focus will be the I-8 egress and the surrounding feeder roads and areas. The El Cajon Police Department will utilize the OPSG funding for overtime, fringe benefits and mileage costs, in order to participate in these coordinated operations.

FISCAL IMPACT:

The 2019 Stonegarden grant will provide \$30,000 in funding to the Police Special Revenue Fund (225900) and will not impact the General Fund. No matching funds are required for this grant. These funds will be used by the El Cajon Police Department for the projects listed above or as modified in the grant workbook and approved by the granting agency.

Prepared By: Julie Wiley

Reviewed By: Mike Moulton, Police Chief

Approved By: Graham Mitchell, City Manager



City Council
Agenda Report

Agenda Item 7.

DATE: June 22, 2021

TO: Honorable Mayor and City Councilmembers

FROM: Yazmin Arellano, Director of Public of Works

SUBJECT: Subdivision Agreement for Private Improvements for Tentative Subdivision Map (TSM) 645R, 1075 East Washington Avenue, Rocky Hill Pointe

RECOMMENDATION:

That the City Council:

1. Approves the Subdivision Agreement for Private Improvements between the City of El Cajon and Rocky Hill Partners, LLC;
2. Authorizes the City Manager to execute the agreement and related documentation; and
3. Authorizes the City Clerk to release bonds after completion of improvements.

BACKGROUND:

On July 14, 2009, the City Council approved TSM 645R for a 27-unit planned residential common-interest development, by Resolution No. 85-09, subject to conditions. The subdivision, known as Rocky Hill Pointe, is located at 1075 East Washington Avenue (Assessor's Parcel Numbers 493-111-09 and 493-111-14).

The proposed agreement provides security for completing private improvements following a Subdivision Construction Phasing Plan as requested by the Developer.

FISCAL IMPACT:

None. The property owner has paid all fees.

Prepared By: Yazmin Arellano, Director of Public Works

Reviewed By: Vince DiMaggio, Assistant City Manager

Approved By: Graham Mitchell, City Manager

Attachments

Subdivision Agreement

Performance Bond

Labor & Material Bond

SUBDIVISION AGREEMENT
(Private Improvements)
(1075 East Washington Avenue)

THIS AGREEMENT entered into by and between the CITY OF EL CAJON, a California charter city and municipal corporation, hereinafter referred to as "City", and ROCKY HILL PARTNERS, LLC, a California limited liability company, hereinafter referred to as "Developer";

WHEREAS, Developer, pursuant to the provisions of the Subdivision Map Act of the State of California and Title 16 of the El Cajon Municipal Code, has filed Tentative Subdivision Map No. 645 ("TSM 645") prior to the completion of certain plans and construction of private improvements as described in El Cajon Planning Commission Resolution No. 10563 (the "Improvements"); and

WHEREAS, the City has estimated the cost of said Improvements to be the sum of ONE HUNDRED TWENTY THOUSAND FOUR HUNDRED DOLLARS AND NO CENTS (\$120,400.00); and

WHEREAS, Developer has or will post a bond or other form of surety (the "Improvement Security") by a surety company admitted in California and acceptable to City (the "Surety Insurer").

NOW, THEREFORE, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. That in consideration of the approval of said TSM 645 prior to the completion of the Improvements for said project, Developer hereby covenants and agrees to prepare plans, obtain permits, and install and construct the said Improvements in accordance with the approved plans, and that said Improvements shall be completed within one (1) year from the date of the recording of the subdivision map by the County Recorder of the County of San Diego.

2. Should Developer fail to complete said Improvements within the time set forth above, City, at its option, has the right to enter onto the property to complete said Improvements. Should the City exercise such option, it shall be at the expense of Developer, or the City may, in the alternative, hold Developer and the Surety Insurer liable for damages.

3. Developer agrees to furnish and City agrees to release the Improvement Security in accordance with Title 16 of the El Cajon Municipal Code to secure warranty, faithful performance, and payment of labor and materials for preparation of plans for the Improvements, the cost of all permits for construction of the Improvements, and for the construction and installation of the Improvements. Any surety bonds shall be issued by corporate sureties admitted to do business in California and approved by the City Attorney. The form of said bonds shall be substantially as set forth in Sections 66499.1 and 66499.2 of the Government Code of the State of California.

4. The City or any officer or employee thereof shall not be liable for any injury to persons or property occasioned by reason of the acts or omissions of Developer, its agents or employees in the performance of this Agreement. Developer further agrees to protect and hold harmless City, its elected and appointed officials, officers and employees, from any and all claims, demands, causes of action, liability or loss of any sort because of, or arising out of, acts or omissions of Developer, its agents or employees, in the performance of this Agreement, including claims, demands, causes of action, liability or loss because of, or arising out of, the design or construction of the Improvements, provided, however, that the approved Improvement Security shall not be required to cover the provisions of this paragraph. Said indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of said subdivision and the Improvements as provided herein, and to adjacent property owners as a consequence of and/or the diversion of waters from the design, construction or maintenance of drainage systems, streets and other improvements. Approval by the City of the Improvements shall not constitute an assumption by the City of any responsibility for such damage or taking.

City shall not be an insurer or surety for the design or construction of the subdivision pursuant to the approved improvement plans, nor shall any officer or employee thereof be liable or responsible for any accident, loss or damage happening or occurring during the construction of the work or Improvements as specified in this Agreement, except as it may be shown that said officers or employees specifically directed that said work or improvement be accomplished in a manner contrary to the wishes and desires of Developer, and Developer has filed a written objection with the City Engineer prior to commencing said work or improvement.

Provisions of this section shall remain in full force and effect for ten (10) years following substantial completion by the Developer of the Improvements.

5. Developer agrees to file with the City Clerk, at the time this executed agreement is submitted, a certificate of insurance by a company approved by the City Attorney in conformance with City Council policy.

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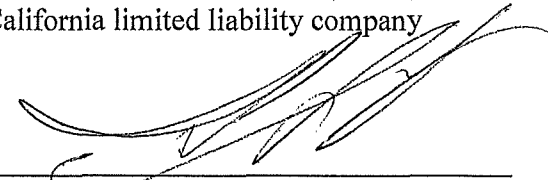
IN WITNESS WHEREOF we have this day set our hands and seals.

Date: June 14, 2021

CITY OF EL CAJON,
a California charter city and
municipal corporation

By _____
Bill Wells, Mayor

ROCKY HILL PARTNERS, LLC,
a California limited liability company

By 
Alexander Lisnevsky, Managing Member

ATTEST:

By _____
Angela L. Cortez, CMC, City Clerk

APPROVED AS TO FORM:

By _____
Morgan L. Foley, City Attorney

ALL PURPOSE 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)
) SS:
COUNTY OF SAN DIEGO)

On 06/14/2021, before me, Jon Scott, a Notary Public, personally appeared Alexander LISNENSKY, 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]
Signature



(SEAL)

PERFORMANCE BOND
(Private Improvements)
(1075 E. Washington Avenue)

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the City Council of the City of El Cajon, and ROCKY HILL PARTNERS, LLC, a California limited liability company, hereinafter designated as "Principal," have entered into an agreement whereby Principal agrees to install and complete certain private improvements, which said agreement, identified as Subdivision Agreement, Tentative Subdivision Map No. 645, is hereby referred to and made a part hereof; and

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

NOW, THEREFORE, we, ROCKY HILL PARTNERS, LLC, a California limited liability company, as Principal, and Hudson Insurance Company, as Surety, are held and firmly bound unto the CITY OF EL CAJON, CALIFORNIA, hereinafter called "Owner", in the penal sum of ONE HUNDRED TWENTY THOUSAND FOUR HUNDRED DOLLARS AND NO CENTS (\$120,400.00), lawful money of the United States of America, for payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that if the above bounded Principal, or heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform all the undertakings, terms, covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, all within the time and in the true intent and meaning, and shall indemnify and save harmless the City of El Cajon, 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 attorneys' fees, incurred by 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 documents or of the work to be performed thereunder, or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive 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.

Performance Bond (Private Improvements)
TSM 645
(continued)

IN WITNESS WHEREOF, the undersigned represent and warrant that they have the right, power, legal capacity and authority to enter into and execute this document on behalf of the above bounden Principal and Surety, and have set their names, titles, and signatures hereon this 14th day of June, 2021.

PRINCIPAL

ROCKY HILL PARTNERS, LLC
a California limited liability company
Name

By: Alexander Lisnevsky, Managing Member

By:

3268 Governor Drive, Suite 200

San Diego, CA 92122
Address

(619) 993-7799
Telephone

SURETY

Hudson Insurance Company
Name & Title

By: Vanessa Copeland, Attorney-in-Fact
Name & Title

By: N/A

Name & Title
100 William Street, 5th Floor

New York, NY 10038
Address

(212)978-2800
Telephone

NOTARY ACKNOWLEDGMENTS OF PRINCIPAL AND SURETY MUST BE ATTACHED.

ALL PURPOSE 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)
) SS:
COUNTY OF SAN DIEGO)

On See Attached, before me, a Notary Public, personally appeared, 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.

Signature (SEAL)

ALL PURPOSE ACKNOWLEDGMENT

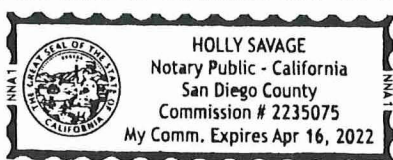
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS:
COUNTY OF SAN DIEGO)

On June 16, 2021, before me, Holly Savage, a Notary Public, personally appeared Alexander Lisneusky, 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.

Holly Savage
Signature



(SEAL)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE 1189

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 Orange)

On 6/14/21 before me, Natassia Kirk-Smith, Notary Public, personally appeared Vanessa Copeland

Name(s) of Signer(s)

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.



Place Notary Seal Above

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:

Handwritten signature of Natassia Kirk-Smith

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could present fraudulent and reattachment of this form to another document.

Description of Attached Document

Type or Title of Document:

Document Date: Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: Vanessa Copeland

- Individual
Corporate Officer - Title(s):
Partner: Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:

Signer Is Representing:

Capacity(ies) Claimed by Signer(s)

Signer's Name:

- Individual
Corporate Officer - Title(s):
Partner: Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:

Signer Is Representing:



POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That HUDSON INSURANCE COMPANY, a corporation of the State of Delaware, with offices at 100 William Street, New York, New York, 10038, has made, constituted and appointed, and by these presents, does make, constitute and appoint

Vanessa Copeland
of the state of California

its true and lawful Attorney(s)-in-Fact, at New York, New York, each of them alone to have full power to act without the other or others, to make, execute and deliver on its behalf, as Surety, bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking shall obligate said Company for any portion of the penal sum thereof in excess of the sum of

One Hundred and Twenty Thousand Four Hundred Dollars and Zero Cents

Such bonds and undertakings when duly executed by said Attorney(s)-in-Fact, shall be binding upon said Company as fully and to the same extent as if signed by the President of said Company under its corporate seal attested by its Secretary.

In Witness Whereof, HUDSON INSURANCE COMPANY has caused these presents to be of its Senior Vice President thereunto duly authorized, on this 16th day of November, 20 17 at New York, New York.

(Corporate seal)

HUDSON INSURANCE COMPANY

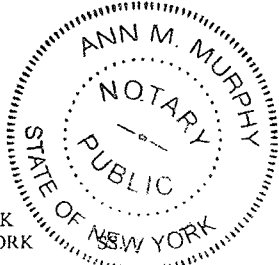
Attest... Dina Daskalakis
Corporate Secretary

By... Michael P. Cifone
Senior Vice President

STATE OF NEW YORK
COUNTY OF NEW YORK. SS.

On the 16th day of November, 20 17 before me personally came Michael P. Cifone to me known, who being by me duly sworn did depose and say that he is a Senior Vice President of HUDSON INSURANCE COMPANY, the corporation described herein and which executed the above instrument, that he knows the seal of said Corporation, that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order.

(Notarial Seal)



ANN M. MURPHY
Notary Public, State of New York
No. 01MU6067553
Qualified in Nassau County
Commission Expires December 10, 2021

STATE OF NEW YORK
COUNTY OF NEW YORK

CERTIFICATION

The undersigned Dina Daskalakis hereby certifies:

That the original resolution, of which the following is a true and correct copy, was duly adopted by unanimous written consent of the Board of Directors of Hudson Insurance Company dated July 27th, 2007, and has not since been revoked, amended or modified:

"RESOLVED, that the President, the Executive Vice Presidents, the Senior Vice Presidents and the Vice Presidents shall have the authority and discretion, to appoint such agent or agents, or attorney or attorneys-in-fact, for the purpose of carrying on this Company's surety business, and to empower such agent or agents, or attorney or attorneys-in-fact, to execute and deliver, under this Company's seal or otherwise, bonds obligations, and recognizances, whether made by this Company as surety thereon or otherwise, indemnity contracts, contracts and certificates, and any and all other contracts and undertakings made in the course of this Company's surety business, and renewals, extensions, agreements, waivers, consents or stipulations regarding undertakings so made; and

FURTHER RESOVLED, that the signature of any such Officer of the Company and the Company's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seal when so used whether heretofore or hereafter, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed."

THAT the above and foregoing is a full, true and correct copy of Power of Attorney issued by said Company, and of the whole of the original and that the said Power of Attorney is still in full force and effect and has not been revoked, and furthermore that the Resolution of the Board of Directors, set forth in the said Power of Attorney is now in force.

Witness the hand of the undersigned and the seal of said Corporation this 14th day of June, 20 21.

(Corporate seal)



By... Dina Daskalakis
Corporate Secretary

LABOR AND MATERIAL BOND
(Private Improvements)
(1075 E. Washington Avenue)

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the City Council of the City of El Cajon, and ROCKY HILL PARTNERS, LLC, a California limited liability company, hereinafter designated as "Principal," have entered into an agreement whereby Principal agrees to install and complete certain private improvements, which said agreement, identified as Subdivision Agreement, Tentative Subdivision Map No. 645, is hereby referred to and made a part hereof; and

WHEREAS, under the terms of said agreement, Principal is required, before entering upon the performance of the work, to file a good and sufficient payment bond with the City of El Cajon to secure the claims to which reference is made in Title 1 (commencing with §8000) of Part 6 of Division 4 of the Civil Code of the State of California.

NOW, THEREFORE, we, ROCKY HILL PARTNERS, LLC, a California limited liability company, as Principal, and Hudson Insurance Company, as Surety, are held and firmly bound unto the CITY OF EL CAJON and all contractors, subcontractors, laborers, and other persons employed in the performance of the aforesaid agreement, and referred to in the aforesaid Civil Code, in the penal sum of SIXTY THOUSAND TWO HUNDRED DOLLARS AND NO CENTS (\$60,200.00) for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said 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 City in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in any judgment 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 1 (commencing with §8000) 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.

Should the condition of this bond be 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 said agreement 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, alteration or addition.

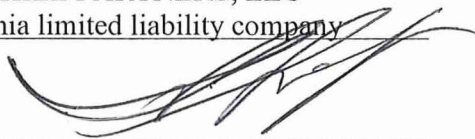
Labor and Material Bond (Private Improvements)
TSM 645
(continued)

IN WITNESS WHEREOF, the undersigned represent and warrant that they have the right, power, legal capacity and authority to enter into and execute this document on behalf of the above bounden Principal and Surety, and have set their names, titles, and signatures hereon this 14th day of June, 2021.

PRINCIPAL

ROCKY HILL PARTNERS, LLC
a California limited liability company

Name



By: Alexander Lisnevsky, Managing Member

By:

3268 Governor Drive, Suite 200

San Diego, CA 92122

Address

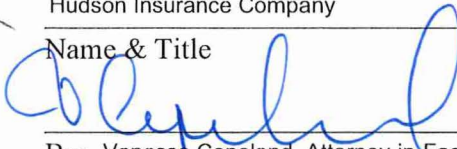
(619) 993-7799

Telephone

SURETY

Hudson Insurance Company

Name & Title



By: Vanessa Copeland, Attorney-in-Fact

Name & Title

By: N/A

Name & Title

100 William Street, 5th Floor

New York, NY 10038

Address

(212)978-2800

Telephone

NOTARY ACKNOWLEDGMENTS OF PRINCIPAL AND SURETY MUST BE ATTACHED.

ALL PURPOSE 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)
) SS:
COUNTY OF SAN DIEGO)

On See Attached, before me, a Notary Public, personally appeared, 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.

Signature

(SEAL)

ALL PURPOSE ACKNOWLEDGMENT

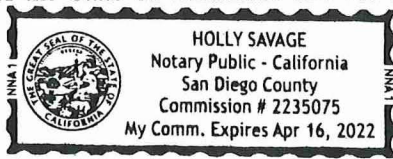
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS:
COUNTY OF SAN DIEGO)

On June 16, 2021, before me, Holly Savage, a Notary Public, personally appeared Alexander Lisnevsky, 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.

Holly Savage
Signature



(SEAL)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE 1189

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 Orange)

On 6/14/21 before me, Natassia Kirk-Smith, Notary Public, personally appeared Vanessa Copeland

Name(s) of Signer(s)

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.



Place Notary Seal Above

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: [Handwritten Signature] Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could present fraudulent and reattachment of this form to another document.

Description of Attached Document

Type or Title of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Vanessa Copeland

- Individual
Corporate Officer - Title(s):
Partner: Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:

Signer Is Representing: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
Corporate Officer - Title(s):
Partner: Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:

Signer Is Representing: _____



POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That HUDSON INSURANCE COMPANY, a corporation of the State of Delaware, with offices at 100 William Street, New York, New York, 10038, has made, constituted and appointed, and by these presents, does make, constitute and appoint

Vanessa Copeland
of the state of California

its true and lawful Attorney(s)-in-Fact, at New York, New York, each of them alone to have full power to act without the other or others, to make, execute and deliver on its behalf, as Surety, bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking shall obligate said Company for any portion of the penal sum thereof in excess of the sum of

One Hundred and Twenty Thousand Four Hundred Dollars and Zero Cents

Such bonds and undertakings when duly executed by said Attorney(s)-in-Fact, shall be binding upon said Company as fully and to the same extent as if signed by the President of said Company under its corporate seal attested by its Secretary.

In Witness Whereof, HUDSON INSURANCE COMPANY has caused these presents to be of its Senior Vice President thereunto duly authorized, on this 16th day of November, 20 17 at New York, New York.

(Corporate seal)

HUDSON INSURANCE COMPANY

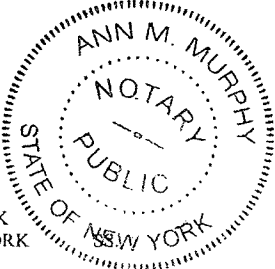
Attest: Dina Daskalakis
Dina Daskalakis
Corporate Secretary

By: Michael P. Cifone
Michael P. Cifone
Senior Vice President

STATE OF NEW YORK
COUNTY OF NEW YORK. SS.

On the 16th day of November, 20 17 before me personally came Michael P. Cifone to me known, who being by me duly sworn did depose and say that he is a Senior Vice President of HUDSON INSURANCE COMPANY, the corporation described herein and which executed the above instrument, that he knows the seal of said Corporation, that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order.

(Notarial Seal)



ANN M. MURPHY
Notary Public, State of New York
No. 01MU6067553
Qualified in Nassau County
Commission Expires December 10, 2021

CERTIFICATION

STATE OF NEW YORK
COUNTY OF NEW YORK

The undersigned Dina Daskalakis hereby certifies:

That the original resolution, of which the following is a true and correct copy, was duly adopted by unanimous written consent of the Board of Directors of Hudson Insurance Company dated July 27th, 2007, and has not since been revoked, amended or modified:

"RESOLVED, that the President, the Executive Vice Presidents, the Senior Vice Presidents and the Vice Presidents shall have the authority and discretion, to appoint such agent or agents, or attorney or attorneys-in-fact, for the purpose of carrying on this Company's surety business, and to empower such agent or agents, or attorney or attorneys-in-fact, to execute and deliver, under this Company's seal or otherwise, bonds obligations, and recognizances, whether made by this Company as surety thereon or otherwise, indemnity contracts, contracts and certificates, and any and all other contracts and undertakings made in the course of this Company's surety business, and renewals, extensions, agreements, waivers, consents or stipulations regarding undertakings so made; and

FURTHER RESOVLED, that the signature of any such Officer of the Company and the Company's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seal when so used whether heretofore or hereafter, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed."

THAT the above and foregoing is a full, true and correct copy of Power of Attorney issued by said Company, and of the whole of the original and that the said Power of Attorney is still in full force and effect and has not been revoked, and furthermore that the Resolution of the Board of Directors, set forth in the said Power of Attorney is now in force.

Witness the hand of the undersigned and the seal of said Corporation this 14th day of June, 20 21

(Corporate seal)



By: Dina Daskalakis
Dina Daskalakis, Corporate Secretary



City Council
Agenda Report

Agenda Item 8.

DATE: June 22, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Angela Cortez, City Clerk
SUBJECT: Amendment to Resolution No. 042-21, adopted at the 05/11/2021 Meeting

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, to amend Resolution No. 042-21 to include \$100,000 for COVID-19 vaccinations as approved by the City Council.

BACKGROUND:

At the May 11, 2021 meeting, City Council recommended that \$100,000 should be appropriated from the American Rescue Plan Act for vaccination efforts.

The recommended Resolution would modify the originally adopted Resolution No. 042-21 to make clear that the prior approval included the designation of \$100,000 as directed.

Prepared By: Angela L. Cortez, City Clerk
Reviewed By: Morgan Foley, City Attorney
Approved By: Graham Mitchell, City Manager

Attachments

Resolution

RESOLUTION NO. ____-21

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF EL CAJON AMENDING RESOLUTION NO. 042-21
BY MODIFYING THE APPROPRIATION OF AMERICAN
RESCUE PLAN ACT OF 2021 FUNDS

WHEREAS, on May 11, 2021, the City Council of the City of El Cajon adopted Resolution No. 042-21 to approve the acceptance of an initial federal disbursement of approximately \$17 million in anticipated American Rescue Plan Act of 2021 ("ARP") funds to assist persons and businesses adversely affected by the COVID-19 pandemic, and the establishment of an account for the initial and any future ARP funds received from the federal government, and authorize the appropriation of these funds in accordance with Department of Treasury requirements; and

WHEREAS, prior to adopting Resolution No. 042-21 the Council also specifically directed the appropriation of \$100,000 of the ARP funds for vaccination efforts, which change was not a part of Resolution No. 042-21; and

WHEREAS, Resolution No. 042-21 should be amended to more accurately reflect the direction to appropriate \$100,000 of the ARP funds for vaccination efforts in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

Section 1. The above recitals are true and correct, and are the findings of the City Council.

Section 2. The City Council hereby amends Resolution No. 042-21 by changing Section 2 to read as follows:

Section 2. The City Council hereby approves the acceptance of an initial federal disbursement of approximately \$17 million in anticipated ARP funds to assist persons and businesses adversely affected by the COVID-19 pandemic, with \$100,000 of the ARP funds specifically to be used toward COVID-19 vaccinations.

Section 3. Except as otherwise provided in Section 2, Resolution No. 042-21 shall remain in full force and effect.



City Council Agenda Report

Agenda Item 9.

DATE: June 22, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Clay Schoen, Director of Finance
SUBJECT: Fiscal Year 2021-22 Annual City, Housing Authority, and Successor Agency Budgets

RECOMMENDATION:

That the City Council, Housing Authority, and the City of El Cajon as Successor Agency to the former Redevelopment Agency hold a joint public hearing to consider the Fiscal Year 2021-22 Proposed Budgets. After closing the public hearing, staff recommends the following:

1. Acting as the City Council, individually adopt the following:
 - a. Resolution of the City of El Cajon Adopting the Fiscal Year 2021-22 Annual Budget.
 - b. Resolution Approving and Adopting the Annual Appropriations Limit for Fiscal Year 2021-22.
 - c. Resolution Approving Designation of General Fund Balances.
2. Acting as the Housing Authority Board of Directors, adopt Resolution titled: Resolution of the El Cajon Housing Authority Adopting the Fiscal Year 2021-22 Budget.
3. Acting as the Successor Agency to the former Redevelopment Agency Board of Directors, adopt Resolution titled: Resolution of the City Council of the City Of El Cajon as the Successor Agency to the former El Cajon Redevelopment Agency Adopting the Fiscal Year 2021-22 Budget.

BACKGROUND:

Presented for adoption are the Fiscal Year 2021-22 Budgets for the City, Housing Authority, and the Successor Agency to the former Redevelopment Agency. After today's public hearing, it is recommended that the City Council/Board approve City, Housing Authority, and Successor Agency resolutions to adopt the Fiscal Year 2021-22 Budgets and the City's Annual Appropriations Limit for Fiscal Year 2021-22.

The Successor Agency budget and a Recognized Obligations Payment Schedule (ROPS) must be prepared by the Successor Agency and presented to the Oversight Board and State Department of Finance for approval. The annual budget and ROPS for Fiscal Year 2021-22 were approved by the Oversight Board on January 21, 2021, and subsequently submitted to the State and County Auditor-Controller for allocation of funding. In addition to the resolutions, attached to this report is the City Manager's Transmittal Letter and the FY 2021-22 Budget cover page. A copy of the full budget can be found at [www.cityofelcajon.us/FY22 Budget](http://www.cityofelcajon.us/FY22_Budget).

FISCAL IMPACT:

Appropriations totaling \$191,376,567 will be established for City of El Cajon and Housing Authority funds in addition to \$4,611,462 for the Successor Agency of the former El Cajon Redevelopment Agency.

Prepared By: Clay Schoen, Director of Finance

Reviewed By: N/A

Approved By: Graham Mitchell, City Manager

Attachments

Reso - City Budget

Reso - Annual Appropriations

Reso - Designation of GF Balances

Reso - Housing Budget

Reso - Successor Agency Budget

Letter from City Manager

Budget Cover

RESOLUTION NO. __-21

RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF EL CAJON ADOPTING THE
FISCAL YEAR 2021-2022 ANNUAL BUDGET

WHEREAS, the City Council of the City of El Cajon reviewed the proposed 2021-2022 annual budget at the June 8, 2021 City Council meeting, and accepted public comments to the proposed budget; and

WHEREAS, on June 22, 2021, the City Council further held a public hearing to accept additional testimony, both oral and written, related to the proposed 2021-2022 annual budget; and

WHEREAS, the annual budget includes all City grants and annual capital improvement budgets; and

WHEREAS, copies of the budget have been provided on the City's website, at various City Hall locations, and made available to the public.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

The City Council does hereby approve and adopt the City of El Cajon budget titled *City of El Cajon Annual Budget 2021-2022*, incorporated herein by reference, and reaffirm all active capital project budgets and related funding transfers.

RESOLUTION NO. __-21

RESOLUTION APPROVING AND ADOPTING THE
ANNUAL APPROPRIATIONS LIMIT FOR
FISCAL YEAR 2021-2022

WHEREAS, Article XIII (B) of the State Constitution places various limitations on the appropriations of the state and local governments; and

WHEREAS, Article XIII (B) provides that the appropriations limit for the fiscal year 2021-2022 is calculated by adjusting the appropriations of the fiscal year 2020-2021 for changes in the price and population; and

WHEREAS, the information necessary for making these adjustments is attached in Exhibit "A," and made a part hereof; and

WHEREAS, the City of El Cajon has complied with all of the provisions of Article XIII (B) in determining the appropriations limit for fiscal year 2021-2022.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

That the appropriations subject to limitations in fiscal year 2021-2022 shall be \$184,109,115 for the City of El Cajon.

EXHIBIT "A"

DETERMINATION OF 2021-2022 APPROPRIATIONS LIMIT CONSTITUTIONAL SPENDING LIMITS

Article XIII (B) of the California Constitution provides that the City's annual appropriations be subject to certain State limitations. This appropriations limit is often referred to as the Gann Limitation. The City's limitation is calculated each year and is established by a resolution of the City Council as a part of the Annual Operating Budget.

The Article XIII (B) limitation for Fiscal Year 2021-2022 is \$184,109,115. The Gann spending limitation is calculated by taking the prior year's limitation of \$173,575,944 and adjusting it by the growth factor in the California Per Capita Personal Income and change in the population within the County of San Diego.

The Article XIII (B) limitation is not a restricting factor for the City of El Cajon due to the population growth during the past several years.

Basic References:

- (1) City of El Cajon Resolution No. 070-20 (established 2020-2021 appropriations limit)
- (2) Article XIII (B), State Constitution, as implemented by SB 1352 of 1980 and amended by Proposition 111 and SB 88 of 1990
- (3) "Price and Population Data for Local Jurisdictions," Department of Finance, State of California, May 2021

Raw Data:

California per Capita Personal Income	Non-Residential New Construction	Population Growth County of San Diego	Population Growth City of El Cajon
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5.73%	*	-.37%	-.32%
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CORRECTED APPROPRIATIONS LIMIT 2020-2021	=	\$173,575,944
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Calculation:

2021-2022 $1.0573 \times 1.0032 = 1.06068336 \times \$173,575,944 = \$184,109,115$

* Unavailable at this time.

RESOLUTION NO. __-21

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF EL CAJON APPROVING
DESIGNATION OF GENERAL FUND BALANCES

WHEREAS, maintaining appropriate levels of fund balance, commonly referred to as reserves, is a critical component of sound financial management and fiscal security; and

WHEREAS, the practice of maintaining reserves was formalized by El Cajon City Council adoption of the Fund Balance City Council Policy B-12 ("CCP B-12") on June 14, 2011, and reinforced by the Pension Reform and Fiscal Responsibility Plan Resolution No. 47-13 adopted on April 9, 2013 ("Resolution 47-13"); and

WHEREAS, by implementation of CCP B-12 and Resolution 47-13, as well as subsequent annual budgets, the following reserve accounts have been established and maintained at various levels:

1. Carryover Reserve (Unassigned Fund Balance): Funded by revenues received in excess of expenditures, and available for future appropriation;
2. Designated for Economic Uncertainty (Assigned Fund Balance): Established for the purpose of stabilizing delivery of City services during periods of structural budget deficits and to mitigate the effects of major economic uncertainties resulting from unforeseen changes in revenues and/or expenditures;
3. Designated for Unfunded PERS/Retirement Obligations (Assigned Fund Balance): Due to increasing retirement contribution rates to CalPERS and unfunded pension obligations, the City Council approved the Pension Reform and Fiscal Responsibility Plan, which includes making periodic additional payments to CalPERS, whenever fiscally prudent; and
4. Operating Reserve (Committed Fund Balance): A long-standing reserve established as 20% of annual expenditures for two purposes (1) to provide General Fund cash flow; and (2) to serve as a reserve of last resort against unexpected events or risks outside the City's control; and

WHEREAS, from time to time it becomes necessary to adjust reserve balances to reflect both changing economic conditions, as well as advance the City Council's commitment to sound financial management; and

WHEREAS, at the completion of Fiscal Year 2019-20 the General Fund had reserves totaling \$48.8 million, as detailed below:

Reserve Account	Balance
Carryover Reserve	\$18,683,215
Designated for Economic Uncertainty	6,500,000
Reserve for Unfunded PERS/Retirement Obligations	8,000,000
Operating Reserve (20% of Expenditures)	<u>15,619,455</u>
Total General Fund Reserve Balance	\$48,802,670

WHEREAS, the General Fund Carryover Reserve is currently 20.5% or approximately two (2) months of operating expenditures, which exceeds current requirements, and allows the opportunity to redirect funds to meet future City needs.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. The above recitals are true and correct, and are the findings of the City Council.
2. The City Council hereby approves the designation of general fund balances as set forth in the table above, to better prepare the City of El Cajon for future financial challenges.
3. The City Manager and the Director of Finance are hereby authorized to designate general fund balances to balance reserve accounts as herein approved.

RESOLUTION NO. ECHA-__

RESOLUTION OF THE EL CAJON HOUSING AUTHORITY
APPROVING THE FISCAL YEAR 2021-2022 BUDGET

WHEREAS, on March 9, 2011, the City Council for the City of El Cajon (the "City Council") established the El Cajon Housing Authority (the "Housing Authority") in order to transfer the affordable housing functions of the Agency, to the Housing Authority; and

WHEREAS, the Housing Authority anticipates the periodic return of Low- and Moderate-Income Housing Asset Funds through the repayment of outstanding Agency contracts, loans, other receivables, or other sources borrowed or generated by the Housing Authority.

NOW, THEREFORE, BE IT RESOLVED BY THE EL CAJON HOUSING AUTHORITY BOARD OF DIRECTORS AS FOLLOWS:

1. The foregoing recitals are true and correct and constitute findings of the Housing Authority Board of Directors.

2. The Housing Authority Board of Directors hereby further finds and determines that the planning and administrative costs paid with Low and Moderate Housing Asset Funds or other funds as may be received, as described in the Low- and Moderate-Income Housing Asset Fund Administration and Capital Improvement Budgets are necessary for the production, improvement or preservation of low- and moderate-income housing as required by subdivision (d) of section 33334.3 or 34200 *et seq.* of the California Health and Safety Code.

3. The Housing Authority Board of Directors hereby further finds and determines that the acquisition/development of properties to be owned by or assisted by the Authority, assistance to Low- and Moderate-Income Households and improvements to properties, including the California Dream First-Time Homebuyer Program, the Rapid Re-housing and Homelessness Project, the Cornerstone Place project, the 812-816 Grossmont project, the Housing Authority Development and Revitalization Project, and the Acquisition/Rehab/New Construction project are of benefit to the project area by helping to eliminate both physical and economic blight by producing and/or replacing affordable housing units, renovating facilities with substandard, defective or obsolete design or construction, and stimulating economic activity.

4. The Housing Authority Board of Directors hereby further finds and determines that no other reasonable means of financing the proposed activities are available to the community to fund these projects at this time.

5. The Fiscal Year 2021-2022 Low and Moderate-Income Housing Asset Fund Budget, including the Administration and Capital Improvement Budget included in the City of El Cajon fiscal year 2021-2022 annual budget, incorporated herein by reference, is hereby approved.

RESOLUTION NO. __-21

RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF EL CAJON
AS THE SUCCESSOR AGENCY TO THE
EL CAJON REDEVELOPMENT AGENCY
ADOPTING THE FISCAL YEAR 2021-2022 BUDGET

WHEREAS, the City of El Cajon formed the El Cajon Redevelopment Agency (the "Agency"), which has continuously engaged in redevelopment activities under the Community Redevelopment Law (Health and Safety Code sections 33000 *et seq.*) (the "Redevelopment Law"); and

WHEREAS, Assembly Bill 1X 26 (the "Dissolution Act") was enacted on June 28, 2011, to significantly modify the Redevelopment Law; and

WHEREAS, the Dissolution Act dissolved all redevelopment agencies in the state of California, including the El Cajon Redevelopment Agency, effective February 1, 2012; and

WHEREAS, section 34173 of the Redevelopment Law, as amended by the Dissolution Act, provides that the City, as the agency authorizing the creation of the Agency, is the successor entity to the Agency upon its dissolution (the "Successor Agency"), and is responsible for those obligations set forth in section 34177 of the Redevelopment Law, which include collecting obligations to the Agency, disposing of assets, winding down the affairs of the Agency, and otherwise performing such functions as required under the Dissolution Act; and

WHEREAS, the San Diego Countywide Redevelopment Successor Agency Oversight Board adopted a Recognized Obligation Payment Schedule ("ROPS") for expenditures for the period of July 1, 2021 through June 30, 2022 on January 21, 2021; and

WHEREAS, in order for the Successor Agency to act as contemplated herein the Agency must adopt an operating budget for the Fiscal Year 2021-2022 of \$4,611,462 for the Successor Agency; and

WHEREAS, the proposed budget is based on the anticipated level of responsibilities transferred to the Successor Agency; and

WHEREAS, the absence of any particular contract or other obligation, from a ROPS does not in any way waive the legal rights of the City of El Cajon to challenge the purported validity of such contracts or obligations under the Dissolution Act.

NOW, THEREFORE, BE IT RESOLVED BY THE EL CAJON CITY COUNCIL AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct.

Section 2. Approval of Budget. The City Council, solely in its capacity as the Successor Agency, hereby approves the operating budget of \$4,611,462 for the Fiscal Year 2021-2022.

Section 3. Appropriations. The appropriations listed in Exhibit "A," establishing the operating and project administrative and debt service budgets for the City of El Cajon as Successor Agency to the former El Cajon Redevelopment Agency, consistent with the ROPS for the period of July 1, 2021 through June 30, 2022, are to be made.

06/22/21 CC Agenda
Reso - Budget – Adopt Successor Agency FY 21-22 Budget 062121

EXHIBIT "A"

SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY
PROPOSED BUDGET
FISCAL YEAR 2021-2022

<u>Activity/Project</u>		<u>Total Fiscal Year 2021-22</u>	
<u>Other Funds</u>			
702110	Successor Agency Administration	\$	41,000
702900	Hazardous Materials Testing-Park & Ballantyne	\$	100,000
<u>RPTTF - Non Administrative</u>			
701100	Successor Agency Debt Service	\$	4,470,462
Total Fiscal Year 2021-22 Budget		\$	4,611,462



City Manager

June 22, 2021

Honorable Mayor, City Council, and El Cajon Residents:

I am pleased to present the City of El Cajon Fiscal Year 2021-2022 (FY 2021-22) Annual Budget. The annual budget establishes funding priorities for the community and supports the City Council's goals, policies, and objectives for the coming year. The budget document serves as the City's financial plan based on the Five-Year Business Plan and the Comprehensive Annual Financial Report. The City's budget focuses on priorities such as fiscal stability, public safety, public infrastructure, and community (such as recreation, beautification, and public events) as well as the five main priorities established through the City Council 2021-22 Priorities & Implementation Plan process. Those priority areas include:

- Communication/Civic Engagement,
- Economic Development,
- Enhancing City Image,
- Homelessness, and
- Public Safety.

Review of Fiscal Year 2020-21 Budget

The global pandemic—and reactions to it—threatened the City's financial stability this past year. As such, the FY 2020-21 budget anticipated a downturn in revenue and included cost control measures. I am pleased to report that revenues in the previous fiscal year were not as dire as anticipated (in part due to the pro-business spirit of our community) and expenditures were strictly controlled. The FY 2020-21 Preliminary Annual Budget anticipated relying on approximately \$3.6 million from General Fund reserves to meet the City's obligations and community needs. However, I am happy to report that current estimates suggest the City required much less of "rainy day" funds to weather the financial impacts of COVID-19.

Summary of Fiscal Year 2021-22 Budget

The FY 2021-22 budget assumes encouraging growth over the past year's revenue and is able to lift some of the cost-saving measures put into places last fiscal year, such as freezing vacated positions.

The following points highlight several elements of the FY 2021-22 budget:

- General Fund revenues total \$83.6 million, \$9.6 million more than last year's budgeted amount—a 12.9% increase.
- General Fund expenditures total \$83.7 million, an increase of \$638,076 from last year's budget—a 0.8% increase.
- At the end of FY 2021-22, the budget anticipates a combined General Fund balance and reserve of \$42.2 million, which is approximately \$498,201 better than anticipated last year.
- An infusion of approximately \$30 million in American Rescue Plan funds will aid the City in its efforts to meet community needs through the next three years.
- The City's 43 non-General Fund budgets, with combined expenditures of nearly \$107.6 million in FY 2021-22, support many of the City's objectives.

I am proud to say that the FY 2021-22 budget maintains service levels while meeting other priorities, such as supporting the City Council's 2021-22 Priorities and Implementation Plan. The following sections demonstrate how community priorities are accomplished through this budget.

Fiscal Stability

The FY 2021-22 budget maintains a strong General Fund reserve of over \$42 million—50.5% of the General Fund's annual expenditure. This balance will protect the City in the event of an economic or natural disaster and will allow the City to maintain services. During the upcoming fiscal year, the City will continue to seek strategies to reduce costs while augmenting revenue through economic development initiatives.

Economic Development

The FY 2021-22 budget includes \$1.0 million for economic development activities from the General Fund. A significant amount of this allocation is for development agreements entered into over the past few years to facilitate vital development (Courtyard Marriott and new car dealerships—BMW, Honda, and Mercedes Benz). Other monies have been allocated for business development activities related to the City's Opportunity Zones, business attraction effort, redevelopment opportunities, and economic development assessment study. The budget also reflects over \$5.0 million in business assistance programs through the American Rescue Plan funds.

Public Safety

The FY 2021-22 budget reflects filling all vacant police positions as well as compensation increases in order to attract and retain professional and trained staff. This budget also reflects the Police Department's ongoing use of the Special Enforcement Unit to address quality of life issues including the impacts of homelessness on the community. Additional funding toward homeless programs and reacting to homelessness continues to be a budget priority in FY 2021-22.

Public Infrastructure/ Enhanced Public Image

Throughout FY 2021-22, the City will continue to implement its aggressive street maintenance program by allocating various transportation funds toward street paving, installation of sidewalks, and improvements to drainage systems. In addition, about \$25 million in grant and non-General Fund monies will improve vehicle/pedestrian/bicycle safety and ADA improvements. Significant improvements are budgeted for projects on Jamacha Road, Madison Avenue, El Cajon Boulevard, and Main Street. Other projects funded in the FY 2021-22 budget include the Broadway Creek Restoration project, Wells Park improvements, and a significant energy

efficiency/solar project. These projects, along with efforts regarding homelessness, economic development, and code enforcement, strive to enhance the image of the community.

SANDAG Smart Growth Grant funding (\$5 million) and San Diego River Conservancy Prop 68 Grant funding (\$500,000) was obtained for improvements along El Cajon Boulevard and Main Street to revitalize the areas surrounding the El Cajon Transit District and the Main Street corridor between Marshall Avenue and El Cajon Boulevard. Of the approximate \$40 million in appropriation for infrastructure improvements in FY 2021-22, about \$38 million is from non-General Fund sources.

Homelessness

Through various funding sources, the FY 2021-22 budget addresses many aspects of homelessness. The City will fund programs aimed to help individuals and households secure permanent housing and to mitigate negative impacts of homelessness in the community. The budget supports the following homelessness and homeless prevention programs in FY 2021-22:

- Homeless Outreach & Housing Assistance,
- A Way Back Home Reunification Program,
- Emergency Shelter,
- Emergency Rotational Shelter,
- Emergency Motel Bridge to Permanent Housing,
- East County Homeless Task Force,
- Neighborhood Quality of Life Team,
- City Homeless Outreach Program,
- Emergency Rental/Mortgage/Utility Assistance, and
- Support to various organizations providing homelessness and homelessness prevention services.

Community (Recreation, Culture, and Public Events)

The FY 2021-22 budget allocates resources to community events and recreation. The budget funds important community events such as the Fourth of July Celebration, HauntFest, Mother Goose Parade, and movies in the parks. This year's budget also includes two new events—America on Your Street and the El Cajon Food/Craft Festival. The FY 2021-22 budget reflects program costs associated with Recreation Dollar Days, a program aimed at increasing use of the City's recreation programs as the City emerges from the COVID-19 pandemic. The FY 2021-22 budget includes allocations of funds for ongoing improvements at Wells Park and new playground surfacing at Bill Beck Park.

The FY 2021-22 budget supports the City's six community centers, four with gymnasiums, and a public swimming pool. Core recreation classes, such as dance, tumbling, cheer, gymnastics, preschool, swim, youth sports and adult enrichment classes will be expanded to meet the diverse needs of the community. With the introduction of Dollar Days, funded through the American Rescue Plan funds, residents will experience greater access to the City's amenities and classes this fiscal year.

Communication/Civic Engagement

Through feedback tools, the City will continue to refine its communication with El Cajon residents and businesses, with an emphasis on engaging with its diverse community. The City freeway sign

will assist in this effort along with improvements to its social media messaging. These efforts will strengthen the City's relationship with those it is charged to serve.

Conclusion

The FY 2021-22 budget represents a fiscally sound plan that effectively addresses the fiscal realities facing cities in California. It allocates scarce resources to meet community needs and priorities. Lastly, it establishes budgeting patterns that will ensure the City's fiscal health for years to come.

This budget document is the result of the dedicated effort of the entire City of El Cajon team, led by the Finance Department. The Finance Department, working with all City departments and the executive team, has prepared a budget that reflects the values and vision set forth by the City Council. The City Council's continued leadership, stability, and foresight continue to be the primary ingredients in El Cajon's success.

Finally, under the direction of the City Council, I am honored to lead a team of dedicated municipal employees with a passion to serve the El Cajon community. I have been impressed by City staff's commitment to serving the community this past year in light of the pandemic and am proud that their commitment never wavered. I am excited for the upcoming year with a renewed focus on meeting community needs and fulfilling City Council priorities.

Respectfully submitted,



Graham Mitchell
City Manager

PRELIMINARY ANNUAL BUDGET SUMMARY



The Valley of Opportunity



FISCAL YEAR 2021-2022



CITY OF EL CAJON



City Council
Agenda Report

DATE: June 22, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Graham Mitchell, City Manager
SUBJECT: American Rescue Plan Act Funding Appropriations & Update

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, to appropriate American Rescue Plan Act funds for designated projects.

BACKGROUND:

On June 8, 2021, staff presented information regarding the eligibility of American Rescue Plan Act (ARPA) funds. In addition, staff presented recommended criteria to guide the best uses for the approximately \$30 million in funds the City is expected to receive over the next year. The June 8th presentation also included a list of suggested uses for the funds. The City Council provided feedback on those items, which are now presented for formal City Council consideration. If approved by resolution, staff will begin allocating funds towards the designated projects and will continue to provide regular updates on their progress. In addition to recommending projects/programs for funding, this agenda item provides a status report on funds already appropriated by the City Council.

Recommended Use of Funds

As a reminder, the ARPA and the U.S. Treasury's guidelines require funds to be spent in one of five categories: 1) COVID-19 Response & Mitigation Efforts, 2) Economic Impacts to Households & Businesses, 3) Replace Public Sector Revenue, 4) Premium Pay for Essential Workers, and 5) Invest in Water, Sewer, and Broadband Infrastructure.

In considering how to appropriate ARPA funds, staff continues to recommend the following six criteria be used:

1. Expenditures should not be ongoing,
2. Lasting community impact,
3. Meets a community need,
4. Results in savings or revenue generation for the City which will strengthen the City's fiscal position so that additional services can be provided,
5. Compliments the City's current mission, and
6. Ensures equitable benefit to all El Cajon stakeholders.

Given the criteria listed above, feedback from the community and the City Council, staff recommends that the City Council establish the following appropriations for the following projects/programs:

COVID-19 Response & Mitigation

Reimbursement for Previous Mitigation Efforts	\$1,000,000
Reducing Vaccine Barriers	\$100,000

Assistance to Households & Businesses

Street Beautification/Safety Projects	\$5,000,000
Small Business Grant Program	\$5,000,000
Recreation Center Upgrades (Cool Zones/Evacuation Sites)	\$3,000,000
Economic Development (Public Improvement Tool)	\$3,000,000
Park Amenities (Pickleball, Soccer Courts, Misc.)	\$2,925,000
"Dollar Days" Recreation Program	\$700,000
Social Worker Response Team Pilot Program	\$500,000
Business License Assistance Funding	\$225,000
Economic Development Studies/Efforts	\$200,000
El Cajon Foodie Fest	\$150,000

Replace Revenue & Re-Invest in City Infrastructure

Solar/Battery Project (Phase 2)	\$5,000,000
City Network/Cybersecurity/Video Equipment Upgrades	\$1,300,000

Infrastructure

Expand Broadband/Fiber Network	\$2,300,000
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In addition to status reports, staff will bring many of these items back for additional City Council discussion and approvals.

Report on Current ARPA Programs

Up to this point, the City Council has appropriated approximately \$6.2 million for specific programs. The section below provides a status report on those programs. The following table summarizes the appropriated project, its funding category, the amount appropriated, and the amount expended or committed for expenditure.

Project	Category	Appropriation	Expended/ Committed
Small Business Grant Program	Assistance to Households/ Businesses	\$5,000,000	\$553,757
Business License Assistance	Assistance to Households/ Businesses	\$225,000	\$225,000
Recreation "Dollar Days"	Assistance to Households/ Businesses	\$700,000	\$63,476
Mitigating Vaccine Barriers	COVID-19 Mitigation	\$100,000	\$8,663
El Cajon Foodie Fest	Assistance to Households/ Businesses	\$150,000	\$0
TOTAL		\$6,175,000	\$850,896

Business Grant Program - as of June 17th, the City has received a total of 78 business grant applications and 42 have been awarded a total of \$553,757.

Business License Assistance - the funds for this program have been appropriated and committed. Staff is determining the most effective way to provide the assistance.

Reducing Barriers to Vaccine - staff has implemented the strategies to help reduce vaccine barriers, such as supporting community vaccination events, establishing a City hotline and website regarding vaccine locations, and working with Meals on Wheels, Elder Help, and the County of San Diego to identify seniors that wish to have the vaccine but do not have transportation to a vaccination site.

"Dollar Days" - as of June 17th, a total of 751 residents have registered for recreation programs through the "Dollar Days" program at an estimated cost to the City of approximately \$63,476. This does not include the estimated \$50,000 for senior day trips being planned and the swim program using school district pools.

El Cajon Foodie Fest - staff continues to work with the San Diego East County Chamber of Commerce, the El Cajon Downtown Business Partnership, and St. Madeleine Sophie's Center to present an El Cajon Foodie Fest with crafts, booths, and entertainment. A date of September 18 for the event has been established.

Prepared By: Graham Mitchell, City Manager

Reviewed By: N/A

Approved By: N/A

Attachments

Resolution

RESOLUTION NO. __-21

RESOLUTION APPROVING
AMERICAN RESCUE PLAN ACT FUNDING
APPROPRIATIONS FOR DESIGNATED PROJECTS

WHEREAS, on March 11, 2021, President Biden signed the American Rescue Plan Act ("ARPA") which designed approximately \$1.9 trillion in funds for state and local governments; and

WHEREAS, the City of El Cajon (the "City") is anticipated to receive \$30,399,751 in ARPA funds over the next one-year period and is required to expend these allocated ARPA funds by December 31, 2024; and

WHEREAS, the City conducted public outreach and discussed possible uses of the funds at several public City Council meetings and the City Council discussed and considered possible uses of ARPA funds at its June 8, 2021 meeting, all consistent with those priorities and restrictions established by the ARPA legislation and the U.S. Department of Treasury; and

WHEREAS, the Fiscal Year 2021-22 budget includes the full amount of ARPA funds of approximately \$30.4 million and find it in the best interest of the public to identify specific uses for the funds.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. The City Council hereby appropriates ARPA funds for the following programs/projects in the amounts herein designated:

COVID-19 Response & Mitigation

Reimbursement for Previous Mitigation Efforts	\$1,000,000
Reducing Vaccine Barriers	\$100,000

Assistance to Households & Businesses

Street Beautification / Safety Projects	\$5,000,000
Small Business Grant Program	\$5,000,000
Recreation Center Upgrades (Cool Zones / Evacuation Sites)	\$3,000,000
Economic Development (Public Improvement Tool)	\$3,000,000
Park Amenities (Pickleball, Soccer Courts, Misc.)	\$2,925,000
"Dollar Days" Recreation Program	\$700,000
Social Worker Response Team Pilot Program	\$500,000
Business License Assistance Funding	\$225,000
Economic Development Studies / Efforts	\$200,000
El Cajon Foodie Fest	\$150,000

Replace Revenue & Re-Invest in City Infrastructure

Solar / Battery Project (Phase 2)	\$5,000,000
City Network / Cybersecurity / Video Equipment Upgrades	\$1,300,000

Infrastructure

Expand Broadband / Fiber Network	\$2,300,000
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2. The City Manager is hereby required to provide periodic reports to the City Council on the expenditures related to ARPA appropriations.

3. The City Council hereby authorizes the City Manager to reallocate ARPA funds between programs/projects as may be necessary and approved by the City Manager.



City Council Agenda Report

Agenda Item 11.

DATE: June 22, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Marisol Thorn, Director of Human Resources
SUBJECT: Compensation for Executive and Unrepresented Employees (A-29), City Manager, and City Attorney

RECOMMENDATION:

That the Mayor provides an oral report summarizing recommended changes in compensation for the City's "local agency executives" and, following the report, that the City Council:

1. Approves the changes to City Council Policy A-29 described below and reflected in the attachment; and
2. Adopts the next Resolutions, in order, to approve the amendments to the employment contracts with the city manager and city attorney, and authorizing the Mayor to execute the amendments, substantially in the forms as presented.

BACKGROUND:

City Council Policy A-29 details the compensation for all employees not represented by any of the City's recognized bargaining groups. These employees include all department directors, confidential and other unrepresented management employees, and part-time/seasonal/temporary (PST) employees. Additionally, the city manager and city attorney typically receive the same cost of living increase as their employees.

SB 1436, adopted in 2016, requires that the City Council provide an oral report with a summary of recommendations for a final action on the salaries or compensation of certain "local agency executives." This oral report must be given by the Mayor during the open meeting in which the final action on compensation, salaries, and benefits is to be taken.

A "local agency executive" is defined as those employees of a local agency not subject to the Meyers-Milias-Brown Act and who is either (1) the chief executive officer, deputy or assistant chief executive officer, (2) the head of a department of a local agency, or (3) is employed under a contract with the local agency. For the City, the "local agency executives" subject to SB 1436 include: City Manager, City Attorney, Assistant City Manager, City Clerk, Director of Community Development, Director of Finance/City Treasurer, Director of Human Resources, Director of Information Technologies, Director of Parks and Recreation, Director of Public Works, Fire Chief, and Police Chief.

As recommended, all the employees in this group will receive a general salary increase of 2.5% effective June 12, 2021, the same increase in pay received by their respective municipal employees. Additionally, the Fire safety employees and Police Chief will continue to receive a

non-PERSable stipend of: \$6,000/Police Chief, \$6,000/Fire Chief, and \$4,200/Fire Division Chief. For these safety classifications, the annual Administrative Leave hours will also increase to 140 hours.

Also, there are proposed market adjustments, as noted in the attached A-29 Policy, for Director of Parks and Recreation, Parks and Recreation Manager, Management Analyst, and Senior Accounting Technician. In addition, the position of Assistant to the City Manager will be added back into the classification system, and educational incentive tiers from the Executive Management pay ranges are being removed.

Lastly, the salary modification requires an amendment to the City Manager Employment Agreement. A resolution and amendment are included as part of this agenda item. Also, the current City Manager Employee Agreement includes a one-time benefit of moving expenses if the city manager were to relocate his household within 15 miles of City Hall. This provision of the Agreement expires on April 24, 2022. During a recent city manager performance evaluation, the City Council expressed interest in extending this provision of the Agreement for an additional four years. Staff recommends establishing a date of June 30, 2026. This modification is also identified in the attached amended agreement.

FISCAL IMPACT:

Compensation changes are within settlement authority provided by the City Council and included in the FY 2021-22 budget.

Prepared By: Marisol Thorn, Director of Human Resources

Reviewed By: N/A

Approved By: Graham Mitchell, City Manager

Attachments

Summary of Proposed A-29 Changes

A-29 Track Changes Version

A-29 Accepted Changes Version

Resolution - CM

CM 3rd Amendment

Resolution - CA

CA 6th Amendment

2021 Summary of Terms for A-29, City Manager and City Attorney Amendments

1. **COLA:** 2.5% cost of living adjustment (COLA) effective the first paycheck issued in July, 2021.
2. **Market Adjustment (effective same date as COLA):**
 - Management Analyst - 3%
 - Parks and Recreation Director - 8%
 - Parks and Recreation Manager - 14%
 - Sr. Accounting Technician - 4%
3. **Police Chief, Fire Chief and Fire Division Chief:**
 - Continue stipends as noted in A-29 Policy
 - Increase Administrative Leave to 140 hours a year for the three classifications
4. **New Classification:** Added back into the classification system Assistant to the City Manager
5. **Educational Incentive Tiers:** Removed educational incentive tiers from the Executive Management pay ranges
6. **Cafeteria Benefits:** An increase in cafeteria benefits from \$1,250 per month to \$1,300 per month effective January 1, 2022. The cash in lieu amount will continue to be capped at \$1,150
7. **Bilingual Pay:** Added bilingual pay of \$120 a month, in line with municipal groups
8. Other non-economical, minor clean-up language to the A-29 Policy

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE

~~January 1, 2024~~
June 12, 2021

PAGE
Page 1 of 21

PURPOSE

To outline in one document the salary and benefits of employees who work in positions not represented by a recognized bargaining group.

A. SALARY – Effective pay period beginning on ~~January 2, 2024~~ June 12, 2021

REQUIRED EDUCATION FOR BASE HOURLY RATE:

~~1. The required education for Assistant City Manager pay ranges are defined as follows:~~

~~Level II: Must possess the following~~

- ~~• Master’s degree directly related to the position with the City, but not required by the classification specification applicable to position; or~~
- ~~• Current California registration certificate as a Professional Civil or Traffic Engineer which is directly related to the position, but not required by the classification specification applicable to the position; or~~
- ~~• Current California designation as a Certified Public Accountant which is directly related to the position, but not required by the classification specification applicable to the position; or~~
- ~~• Current ICMA designation as Credentialed City Manager.~~

~~Level III: Must possess the following~~

- ~~• Master’s degree directly related to the position with the City, but not required by the classification specification applicable to position; or~~
 - ~~• Current California registration certificate as a Professional Civil or Traffic Engineer which is directly related to the position, but not required by the classification specification applicable to the position; or~~
 - ~~• Current California designation as a Certified Public Accountant which is directly related to the position, but not required by the classification specification applicable to the position.~~
- ~~AND~~
- ~~• Current ICMA designation as Credentialed City Manager.~~

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE

January 1,
2024 June 12, 2021

PAGE
Page 2 of 21

~~2.1. The Required education for Executive and Unrepresented Management (excludes Assistant City Manager) pay ranges are defined as follows:~~

~~Level II: Must possess one of the following:~~

- ~~• Master's degree directly related to the position with the City, but not required by the classification specification applicable to position; or~~
- ~~• Current California registration certificate as a Professional Civil or Traffic Engineer which is directly related to the position, but not required by the classification specification applicable to the position; or~~
- ~~• Current California designation as a Certified Public Accountant which is directly related to the position, but not required by the classification specification applicable to the position.~~

~~3.2. The Required education for Fire Chief and Fire Division Chief pay ranges are defined as follows:~~

~~Level II: Must possess the following:~~

- ~~• Associate's degree in Fire Science or a related field.~~

~~Level III: Must possess the following~~

- ~~• Bachelor's degree in any related field.~~

~~4. The required education for Police Chief pay ranges are defined as follows:~~

~~Level II: Must possess the following~~

- ~~• P.O.S.T. Management Certificate AND~~
- ~~• Completion of one of the following:~~
 - ~~• FBI Academy;~~
 - ~~• P.O.S.T. Command College;~~
 - ~~• Senior Management Institute for Police; or~~
 - ~~• Other management classes/educational programs as approved by the City Manager, AND~~
- ~~• Bachelor's degree.~~

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE

January 1,
2024 June 12, 2021

PAGE
Page 3 of 21

Level III: Must possess the following

- ~~P.O.S.T. Management Certificate AND~~
- ~~Completion of one of the following:~~
 - ~~FBI Academy;~~
 - ~~P.O.S.T. Command College;~~
 - ~~Senior Management Institute for Police; or~~
 - ~~Other management classes/educational programs as approved by the City Manager, AND~~
- ~~Bachelor's degree, AND~~
- ~~Master's degree or other advanced degree related to the position.~~

Level IV: Must possess the following

- ~~Advanced P.O.S.T certificate, AND~~
- ~~P.O.S.T. Management Certificate, AND~~
- ~~Completion of one of the following:~~
 - ~~FBI Academy;~~
 - ~~P.O.S.T. Command College;~~
 - ~~Senior Management Institute for Police; or~~
 - ~~Other management classes/educational programs as approved by the City Manager, AND~~
- ~~Bachelor's degree.~~

Level V: Must possess the following

- ~~Advanced P.O.S.T certificate, AND~~
- ~~P.O.S.T. Management Certificate and completion of one of the following:~~
 - ~~FBI Academy;~~
 - ~~P.O.S.T. Command College;~~
 - ~~Senior Management Institute for Police; or~~
 - ~~Other management classes/educational programs as approved by the City Manager, AND~~
- ~~Bachelor's degree, AND~~
- ~~Master's degree or other advanced degree related to the position.~~

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE

January 1,
2024 June 12, 2021

PAGE
Page 4 of 21

EXECUTIVE MANAGEMENT CLASSIFICATION PAY RANGES ARE AS FOLLOWS:

<u>CLASSIFICATION</u>	<u>RANGE</u>	<u>SALARIED POSITIONS TO BE PAID AT EQUIVALENT HOURLY RATE</u>
Assistant City Manager I	138.5	\$87.25 - \$106.31
Assistant City Manager II	140.5	\$91.67 - \$111.69
Assistant City Manager III	142.5 <u>143.5</u>	\$96.31 - \$117.34 <u>\$98.72 - \$120.27</u>
City Clerk I	118.2	\$52.85 - \$64.39
City Clerk II	120.2 <u>121.2</u>	\$55.52 - \$67.65 <u>\$56.91 - \$69.34</u>
Director of Community Development I	130.5	\$71.61 - \$87.25
Director of Community Development II	132.5 <u>133.5</u>	\$75.24 - \$91.67 <u>\$77.12 - \$93.96</u>
Director of Finance/City Treasurer I	129.3	\$69.52 - \$84.70
Director of Finance/City Treasurer II	131.3 <u>132.3</u>	\$73.03 - \$88.99 <u>\$74.86 - \$91.21</u>
Director of Human Resources I	126.9	\$65.53 - \$79.84
Director of Human Resources II	128.9 <u>129.9</u>	\$68.84 - \$83.88 <u>\$70.56 - \$85.98</u>
Director of Information Technology I	128.6	\$68.33 - \$83.25
Director of Information Technology II	130.6 <u>131.6</u>	\$71.79 - \$87.47 <u>\$73.58 - \$89.65</u>

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE

~~January 1,~~
~~2024~~ June 12, 2021

PAGE
Page 5 of 21

Director of Parks and Recreation I	123.6	\$60.39 - \$73.58
Director of Parks and Recreation II	125.6 <u>129.8</u>	\$63.45 - \$77.31 <u>\$70.39 - \$85.76</u>
Director of Public Works I	129.8	\$70.39 - \$85.76
Director of Public Works II	131.8 <u>132.8</u>	\$73.95 - \$90.10 <u>\$75.80 - \$92.36</u>
Fire Chief I	136.4	\$82.84 - \$100.93
Fire Chief II	137.4	\$84.91 - \$103.45
Fire Chief III	138.4 <u>139.4</u>	\$87.03 - \$106.04 <u>\$89.21 - \$108.69</u>
Police Chief I	139.4	\$89.21 - \$108.69
Police Chief II	141.4	\$93.72 - \$114.19
Police Chief III	142.6	\$96.55 - \$117.63
Police Chief IV	144.6	\$101.44 - \$123.59
Police Chief V	145.8 <u>146.8</u>	\$104.49 - \$127.31 <u>\$107.10 - \$130.50</u>

UNREPRESENTED MANAGEMENT CLASSIFICATION PAY RANGES ARE AS FOLLOWS:

<u>CLASSIFICATION</u>	<u>RANGE</u>	<u>SALARIED POSITIONS TO BE PAID AT EQUIVALENT HOURLY RATE</u>
Administrative Analyst I (City Manager and Human Resources)	88.4 <u>89.4</u>	\$25.32 - \$30.85 <u>\$25.96 - \$31.62</u>
Administrative Analyst II (City Manager and Human Resources)	90.4 <u>91.4</u>	\$26.60 - \$32.41 <u>\$27.27 - \$33.23</u>

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE

~~January 1,~~
2024 June 12, 2021

PAGE
Page 6 of 21

<u>Assistant to the City Manager I</u>	<u>113.0</u>	<u>\$46.48 - \$56.63</u>
<u>Assistant to the City Manager II</u>	<u>115.0</u>	<u>\$48.83 - \$59.50</u>
Building Official I	118.5 <u>119.5</u>	\$53.25 - \$64.88 <u>\$54.58 - \$66.50</u>
Building Official II	120.5 <u>121.5</u>	\$55.94 - \$68.16 <u>\$57.34 - \$69.86</u>
City Engineer/Deputy Director of Public Works I	123.5 <u>124.5</u>	\$60.24 - \$73.40 <u>\$61.75 - \$75.24</u>
City Engineer/Deputy Director of Public Works II	125.5 <u>126.5</u>	\$63.29 - \$77.12 <u>\$64.88 - \$79.04</u>
Deputy City Clerk I	94.5 <u>95.5</u>	\$29.44 - \$35.87 <u>\$30.18 - \$36.77</u>
Deputy City Clerk II	96.5 <u>97.5</u>	\$30.93 - \$37.68 <u>\$31.70 - \$38.63</u>
Deputy Director of Community Development I	118.7 <u>119.7</u>	\$53.51 - \$65.20 <u>\$54.85 - \$66.83</u>
Deputy Director of Community Development II	120.7 <u>121.7</u>	\$56.22 - \$68.50 <u>\$57.63 - \$70.21</u>
Deputy Director of Public Works I	119.6 <u>120.6</u>	\$54.71 - \$66.66 <u>\$56.08 - \$68.33</u>
Deputy Director of Public Works II	121.6 <u>122.6</u>	\$57.48 - \$70.04 <u>\$58.92 - \$71.79</u>
Deputy Director – Special Projects (can only be used for six months)	123.6 <u>124.6</u>	\$60.39 - \$73.58 <u>\$61.90 - \$75.42</u>

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE

~~January 1,~~
2024 June 12, 2021

PAGE
Page 7 of 21

Financial Operations Manager I	120.2 <u>121.2</u>	\$55.52 - \$67.65 <u>\$56.91 - \$69.34</u>
Financial Operations Manager II	122.2 <u>123.2</u>	\$58.33 - \$71.08 <u>\$59.79 - \$72.85</u>
Fire Division Chief I	125.5 <u>126.5</u>	\$63.29 - \$77.12 <u>\$64.88 - \$79.04</u>
Fire Division Chief II	126.5	\$64.88 - \$79.04
Fire Division Chief III	127.5 <u>128.5</u>	\$66.50 - \$81.02 <u>\$68.16 - \$83.05</u>
Human Resources Analyst I	100.0 <u>101.0</u>	\$33.72 - \$41.08 <u>\$34.56 - \$42.11</u>
Human Resources Analyst II	102.0 <u>103.0</u>	\$35.43 - \$43.16 <u>\$36.31 - \$44.24</u>
Information Technology Analyst I	98.4 <u>99.4</u>	\$32.41 - \$39.49 <u>\$33.23 - \$40.48</u>
Information Technology Analyst II	100.4 <u>101.4</u>	\$34.06 - \$41.49 <u>\$34.91 - \$42.53</u>
Management Analyst I (City Manager and Human Resources)	97.3 <u>99.5</u>	\$31.55 - \$38.44 <u>\$33.31 - \$40.58</u>
Management Analyst II (City Manager and Human Resources)	99.3 <u>101.5</u>	\$33.14 - \$40.38 <u>\$34.99 - \$42.64</u>
Network Administrator I	105.6 <u>106.6</u>	\$38.72 - \$47.18 <u>\$39.69 - \$48.36</u>
Network Administrator II	107.6 <u>108.6</u>	\$40.68 - \$49.57 <u>\$41.70 - \$50.81</u>

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE

~~January 1,~~
2024 June 12, 2021

PAGE
Page 8 of 21

Parks and Recreation Manager I	106.3 <u>112.9</u>	\$39.40 - \$48.00 <u>\$46.37 - \$56.50</u>
Parks and Recreation Manager II	108.3 <u>114.9</u>	\$41.39 - \$50.43 <u>\$48.72 - \$59.36</u>
Planning Manager I	115.8 <u>116.8</u>	\$49.81 - \$60.70 <u>\$51.06 - \$62.21</u>
Planning Manager II	117.8 <u>118.8</u>	\$52.33 - \$63.77 <u>\$53.64 - \$65.36</u>
Senior Human Resources Analyst I	107.2 <u>108.2</u>	\$40.28 - \$49.08 <u>\$41.29 - \$50.31</u>
Senior Human Resources Analyst II	109.2 <u>110.2</u>	\$42.32 - \$51.56 <u>\$43.38 - \$52.85</u>
Senior Management Analyst I (City Manager and Finance)	107.2 <u>108.2</u>	\$40.28 - \$49.08 <u>\$41.29 - \$50.31</u>
Senior Management Analyst II (City Manager and Finance)	109.2 <u>110.2</u>	\$42.32 - \$51.56 <u>\$43.38 - \$52.85</u>
Senior Risk Management Analyst I	107.2 <u>108.2</u>	\$40.28 - \$49.08 <u>\$41.29 - \$50.31</u>
Senior Risk Management Analyst II	109.2 <u>110.2</u>	\$42.32 - \$51.56 <u>\$43.38 - \$52.85</u>

CONFIDENTIAL CLASSIFICATION PAY RANGES ARE AS FOLLOWS:

<u>CLASSIFICATION</u>	<u>RANGE</u>	<u>HOURLY RATE</u>
Confidential Secretary (CM, HR and Police Chief Administration)	86.0 <u>87.0</u>	\$23.86 - \$29.08 <u>\$24.46 - \$29.80</u>

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE

~~January 1,
2024~~ June 12, 2021

PAGE
Page 9 of 21

Executive Assistant to the City Manager/City Attorney	96.1 <u>97.1</u>	\$30.62 - \$37.31 <u>\$31.39 - \$38.25</u>
Executive Assistant to the Police Chief	90.9 <u>91.9</u>	\$26.93 - \$32.82 <u>\$27.61 - \$33.64</u>
Information Technology Specialist	91.2 <u>92.2</u>	\$27.13 - \$33.06 <u>\$27.81 - \$33.89</u>
Senior Accounting Technician	84.7 <u>87.3</u>	\$23.11 - \$28.16 <u>\$24.64 - \$30.03</u>

UNREPRESENTED GENERAL CLASSIFICATION PAY RANGES ARE AS FOLLOWS:

<u>CLASSIFICATION</u>	<u>RANGE</u>	<u>HOURLY RATE</u>
Police Recruit	97.0 <u>98.0</u>	\$31.31 - \$38.15 <u>\$32.09 - \$39.10</u>

PART-TIME / SEASONAL TEMPORARY (PST) CLASSIFICATIONS ARE AS FOLLOWS:

**PST classifications do not receive any benefits described in this policy with the exception of the City contribution to the appropriate retirement plan in lieu of CalPERS/Social Security and sick leave benefits required by Labor Code §233.*

All PST step increases are 2.5% unless noted otherwise.

<u>CLASSIFICATION</u>	<u>RANGE</u>	<u>HOURLY RATE</u>
Administrative Intern	71.9 <u>72.9</u>	\$16.85 - \$20.53 <u>\$17.27 - \$21.04</u>
Public Safety Aide	62.4 <u>63.4</u>	\$13.33 - \$16.24 <u>\$13.66 - \$16.64</u>
Weed Abatement Inspector	89.3 <u>90.3</u>	\$25.89 - \$31.55 <u>\$26.54 - \$32.33</u>

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE

PAGE
Page 10 of 21

~~January 1,~~
2021 June 12, 2021

Effective January 1, 2021 (Recreation PSTs Only)

Increases are not automatic and reviewed on an annual basis.

Job Class	Range @ 2.5%	Step A	Step A'	Step B	Step B'	Step C	
RS I	64.4	\$ 14.00	\$ 14.35	\$ 14.71	\$ 15.08	\$ 15.45	
RS II	69.4	\$ 15.84	\$ 16.24	\$ 16.64	\$ 17.06	\$ 17.48	
RS III	74.4	\$ 17.92	\$ 18.37	\$ 18.83	\$ 19.30	\$ 20.08	71
RS IV	80	\$ 20.58	\$ 21.62	\$ 22.71	\$ 23.86	\$ 25.07	80
RS V	88.9	\$ 25.64	\$ 26.93	\$ 28.30	\$ 29.73	\$ 31.23	88.9
			Step B	Step C	Step D	Step E	Range

B.A. HEALTH AND WELFARE BENEFITS

1. Cafeteria Plan

The City's cafeteria plan allotment is for enrollment in any of the City's CalPERS' health plans or other eligible benefit programs (e.g., dental, vision, etc.). The cost of the premium for the City's health plan will be deducted from the employee's cafeteria plan allotment. If there is a difference, the employee will be responsible for the remainder of the premium amount to be paid through payroll deductions. Unused cafeteria plan allotment will be paid out as "cash in lieu", up to a maximum of \$1,150 per month (excludes Police Recruit). For Police Recruit the maximum "cash in lieu" is \$287.50 per month. Cash in lieu payments are taxable income and not PERSable.

Any employee who is not enrolled in a City CalPERS health insurance plan, and does not provide proof of enrollment in another group health insurance plan (e.g., coverage under a spouse's employer plan) within 30 days from the beginning of the new plan year will not be eligible to receive cash in lieu.

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees	POLICY A-29
REFERENCE:	EFFECTIVE January 1, 2024 <u>June 12, 2021</u>
	PAGE Page 11 of 21

All benefitted employees must enroll in an available City health program unless they opt out. An employee may receive cash in lieu for opting out of the City’s health program if he/she:

- (1) Provides proof that the employee and all individuals for whom the employee intends to claim a personal exemption deduction for the taxable year or years that begin or end in or with the City’s plan year to which the opt out applies (“tax family”), have or will have minimum essential coverage through another source (other than coverage in the individual market, whether or not obtained through Covered California) for the plan year to which the opt out arrangement applies (“opt out period”); and
- (2) Signs an attestation that the employee and his/her tax family have or will have such minimal essential coverage for the opt out period. An employee must provide the attestation every plan year at open enrollment or within 30 days after the start of the plan year. The opt out payment cannot be made and the City will not in fact make payment if the employer knows or has reason to know that the employee or tax family member doesn’t have such alternative coverage, or if the conditions in this paragraph are not otherwise satisfied.

The City may modify health insurance benefits or cafeteria plan (including, as to both, but not limited to, plan benefits or structure, City or employee contributions and/or opt out amount or requirements) in order to avoid penalties or taxes under the ACA or other statutory scheme that may result from an interpretation of the ACA or other statutory scheme by the Internal Revenue Service or other federal agency (including, but not limited to, a revenue ruling, regulation or other guidance) or state agency, or a ruling by a court of competent jurisdiction.

From July 1, ~~2020-2021~~ through December 31, ~~2020~~2021, the allotment for the cafeteria plan, excluding Police Recruit, shall be ~~\$1,200~~ \$1,250 per month. Effective January 1, ~~2021~~2022, the amount will increase to ~~\$1,250~~ \$1,300 per month. For Police Recruit, the cafeteria plan allotment shall be \$1,300 per month from July 1, 2021 through December 31, 2021, then will increase to \$1,350 per month effective January 1, 2022.

2. Medical Insurance

The City is continuing the CalPERS’ Health Benefits program that was adopted on January 1, 1986. From the total cafeteria plan allotment, the City will pay to CalPERS the statutorily required minimum employer contribution per month toward the cost of any CalPERS’ health plan that the employee chooses to enroll. The employee agrees to be liable for the difference between the total cost of the health plan chosen and the City’s contribution if he/she elects

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE

~~January 1, 2021~~
June 12, 2021

PAGE
Page 12 of 21

to obtain coverage under the CalPERS' health program. This amount shall be included in the total amount of the City's contribution to the employee's Section 125 Cafeteria Plan.

Employees who elect not to be covered under the City's medical insurance plan must have on file with the City a signed waiver of medical benefits. Employees will be provided an opportunity to enroll in the City's medical insurance plan during the designated open enrollment period.

3. Retirement Benefits

All Executive, Unrepresented, and Confidential employees are members of the California Public Employees' Retirement System (CalPERS). Those employees who are "classic members" as defined under the Public Employees' Pension Reform Act of 2013 (PEPRA) pay the employee's share of the retirement cost (8% for Miscellaneous and 9% for Safety Employees), and receive the following contracted benefits:

Miscellaneous Employees <i>"Classic" Members</i>	Safety Employees <i>"Classic" Members Hired on or before March 10,</i>
A. 3% at 60 Benefit Formula (§21354.3)	A. 3% at 50 Benefit Formula (§21362.2)
B. Final Compensation: One Year (§20042)	B. Final Compensation: One Year (§20042)
C. Prior Service (§20055)	C. Prior Service (§20055)
D. [Reserved]	D. [Reserved]
E. Additional Service Credit 2 Years (§20903)	E. [Reserved]
F. Unused Sick Leave Credit (§20965)	F. Unused Sick Leave Credit (§20965)
G. Military Service Credit as Public Service (§21024)	G. Military Service Credit as Public Service (§21024)
H. 2% Annual Cost of Living Allowance Increase (§21329)	H. 2% Annual Cost of Living Allowance Increase (§21329)
I. Pre-Retirement Death Benefits to Continue After Remarriage of Survivor (§21551)	I. Pre-Retirement Death Benefits to Continue After Remarriage of Survivor (§21551)
J. 1959 Survivor Benefit Level Four (§21574)	J. 1959 Survivor Benefit Level Three (§21573)

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE

~~January 1, 2024~~
June 12, 2021

PAGE
Page 13 of 21

K. \$5,000 Retired Death Benefit (§21623.5)	K. \$500 Retired Death Benefit (§21620)
L. [Reserved]	L. Post-Retirement Survivor Allowance (§21624/26/28)
M. [Reserved]	M. Post-Retirement Survivor Allowance to Continue After Remarriage (§21635)
	Local Safety Employees <i>Hired on or after March 11, 2011</i>
	A. 3% at 55 Benefit Formula (§21362.2)
	B. Final Compensation: Three Years – Career Average (§20042)

Those employees who are “new members” as defined under the Public Employees’ Pension Reform Act of 2013 (PEPRA) pay the employee contributions equal to 50% of normal cost (currently 6.25% for Miscellaneous and 12.25% for Safety Employees), and receive the above listed benefits with the exception of the following:

Miscellaneous Employees <i>“New” Members Hired on or after January 1, 2013</i>	Safety Employees <i>“New” Members Hired on or after January 1, 2013</i>
A. 2% at 62 Benefit Formula (§7522.20)	A. 2.7% at 57 Benefit Formula (§7522.25(d))
B. Final Compensation: Three Years – Career Average (§20037)	B. Final Compensation: Three Years – Career Average (§20037)

PST Employees: In lieu of enrollment in the CalPERS’ retirement program, PST employees will be enrolled in an IRS §457 retirement plan. The City contributes 7.5% of the employee’s salary to the IRS §457 plan in lieu of CalPERS and Social Security. PST employees who qualify for membership will be enrolled in the CalPERS retirement program and City contributions to the IRS §457 plan will terminate.

4. Deferred Compensation

All Executive, Unrepresented and Confidential employees are eligible to participate in any of the City’s Internal Revenue Code Section 457 Deferred Compensation Plan(s). Participation is handled through payroll deductions.

The City shall contribute \$300 per month (\$3,600 per year) in deferred compensation on

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE

~~January 1, 2024~~
June 12, 2021

PAGE
Page 14 of 21

behalf of the Assistant City Manager to one of the City approved plans as selected by the Assistant City Manager. Amounts contributed by the City shall be to the benefit of the Assistant City Manager in accordance with the Deferred Compensation Plan participation agreement.

5. Disability Insurance

The City provides Executive Management employees and Unrepresented Management employees with fully paid short-term and long-term disability plans.

Exclusion: Confidential employees, PST employees, and Police Recruit(s) participate in the State Disability Insurance (SDI) Program at their expense.

6. Life and Accidental Death & Dismemberment (AD&D) Insurance [Applies to City Attorney]

The City provides fully paid life insurance and AD&D to Executive and Unrepresented Management employees in the amount of one and one half times the employee's annual salary plus \$25,000.

The City provides fully paid life insurance and AD&D to Confidential and ~~Part-time~~ benefitted employees in the amount of \$25,000.

C.B. LEAVES

1. Vacation Accrual

All Executive, Unrepresented and Confidential employees shall accrue vacation in accordance with the following schedule:

- a. 3.07 hours of vacation accrued and credited bi-weekly from the date of hire until completion of the 36th month;
- b. 4.60 hours of vacation accrued and credited bi-weekly following completion of the 36th month through the 108th month;
- c. 5.52 hours of vacation accrued and credited bi-weekly following completion of the 108th month through the 156th month;

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE

~~January 1, 2021~~
June 12, 2021

PAGE
Page 15 of 21

d. 6.14 hours of vacation accrued and credited bi-weekly following completion of the 156th month.

New hires in Executive and Unrepresented Management classifications may accrue vacation leave at a rate greater than the entry rate at the discretion of the City Manager.

Vacation accrual shall be capped at 620 hours for all executive and unrepresented management employees, and 560 hours for all confidential employees. No employee shall accrue vacation beyond the established cap unless specifically authorized by the City Manager.

Employees have the option of 100% cash reimbursement for unused paid vacation at any time provided that they have used at least 80 hours of vacation/administrative leave during the preceding year (26 pay periods).

2. Administrative Leave

Executive Management (excludes Police Chief, Fire Chief, and Fire Division Chief) employees receive eighty (80) hours administrative leave per year accrued as vacation leave. The Police Chief, Fire Chief and Fire Division receive one hundred forty (140) hours administrative leave per year accrued as vacation. Unrepresented Management employees receive sixty (60) hours administrative leave per year accrued as vacation leave.

3. Holidays

Executive and Unrepresented Management and Confidential employees (excluding the City Attorney) receive the following paid holidays:

New Years' Day	January 1
Martin Luther King's Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Admissions Day*	September 9 (floating holiday)
Columbus Day*	Second Monday in October (floating holiday)
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees	POLICY A-29
REFERENCE:	EFFECTIVE January 1, 2021 June 12, 2021
	PAGE Page 16 of 21

Day after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25
New Year's Eve	December 31

And every day proclaimed by the City Council as a public holiday.

*Two (2) floating holidays in lieu of celebrating Columbus Day and Admissions Day. City facilities shall remain open on both days.

Vacation shall accrue and be credited bi-weekly to compensate for the two floating holidays based on regularly scheduled work shift (permanent shift):

5-8 Schedules: 0.62 hours; **9/80 Schedules:** 0.69 hours; **4/10 Schedules:** 0.77 hours

City Hall will be closed between the observed Christmas Eve holiday in ~~2020~~2021 and the observed New Years' Day holiday in ~~2021~~2022. Employee who take this time off must use Use of paid leave will be required for December 27, 28, 29, 30.

An EMPLOYEE whose day off falls on an observed City holiday (e.g., Friday holiday) will accrue their regularly scheduled hours of vacation leave.

4. Sick Leave

Executive, Unrepresented and Confidential employees accrue sick leave at the rate of 3.68 hours per bi-weekly pay period. Accrual is unlimited. Part-Time/Seasonal/Temporary employees accrue and use sick leave upon commencement of employment at the rate prescribed by Labor Code § 246. PST employees are entitled to no other leave benefits under this policy.

Sick leave with pay shall be granted to all EMPLOYEES covered by this Policy in accordance with this section. Sick leave shall not be considered as a right which an EMPLOYEE may use at his/her discretion, but shall be allowed only in case of necessity and actual personal sickness or disability or (2) to attend to an illness or injury, including time for scheduled doctor or dentist appointment, of a person who is in the relationships to the employee as described in the California Labor Code §233, which currently includes:

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE

~~January 1, 2024~~
June 12, 2021

PAGE
Page 17 of 21

Child	Parent	Spouse
Grand Child	Foster Child	Adopted Child
Step Child	Legal Ward	Child of Domestic Partner
Step Parent	Legal Guardian	Adoptive Parent
Foster Parent	Sibling	Parent-in-Law
Grand Parent	Registered Domestic Partner	Child of Person Standing in Loco Parentis

a. Sick Leave Conversion Privileges

Any EMPLOYEE who has taken 40 hours sick leave or less during the calendar year ending December 30 of each year shall be entitled to either convert up to 40 hours of unused sick leave to vacation or receive a cash payment for up to 24 hours, based upon the current compensation rate on an hour-for-hour basis.

In no event may an EMPLOYEE select a combination of two options or reduce the accumulated sick leave balance below 192 hours. No prorations shall be made for EMPLOYEES terminating on or before December 30 of the calendar year.

b. Unused Sick Leave at Retirement for Health Insurance

For employees hired before July 1, 2013, upon retirement from City employment within 120 days of separation, for service or disability, an employee may elect to use unused sick leave at its dollar value at retirement (hourly base rate plus any regularly recurring bi-weekly premium pay, i.e., differential pay for Master's Degrees) to pay health insurance premiums in retirement according to the following schedule:

10 through 14 years of service: 25% of the sick leave balance at retirement;

15 through 19 years of service: 50% of the sick leave balance at retirement;

20 + years of service: 75% of the sick leave balance at retirement.

This benefit will be in addition to the monthly contribution the City makes, as determined by PERS, to the Public Employees' Retirement System for retiree health insurance benefits. The supplemental benefits described above shall be used to pay health insurance premiums for the retiree and dependents, if applicable. However, if the

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees	POLICY A-29				
REFERENCE:	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center; padding: 5px;">EFFECTIVE</td> <td style="width: 50%; text-align: center; padding: 5px;">PAGE</td> </tr> <tr> <td style="text-align: center; padding: 5px;">January 1, 2024 June 12, 2021</td> <td style="text-align: center; padding: 5px;">Page 18 of 21</td> </tr> </table>	EFFECTIVE	PAGE	January 1, 2024 June 12, 2021	Page 18 of 21
EFFECTIVE	PAGE				
January 1, 2024 June 12, 2021	Page 18 of 21				

employee is deceased before the funds are exhausted, the supplemental benefits shall cease and the remaining funds shall be the City’s property.

The City elects to self-administer this plan at this time. The City will pay the annualized dollar equivalent of the Kaiser two-party health insurance premium once per year in January of each year.

This benefit may be used in combination with service credit for unused sick leave as described in Section C – Health and Welfare Benefits – Retirement Benefits.

5. Bereavement Leave

Up to twenty-four hours special leave with pay may be granted to Executive and Unrepresented Management and Confidential employees in order to discharge the customary obligations arising from the death of a relative who is a member of employee’s household or a parent, step-parent, grandparent, sibling or child of the employee or the employee’s spouse/domestic partner (not required to be a member of the household). Sixteen (16) additional hours to be charged to sick leave may be approved at the discretion of the City Manager.

6. Military Leave

Any employee who is or becomes a member of the Armed Services, Militia or Organized Reserves of California or the United States shall be entitled to the leaves of absence and employment rights and privileges provided by the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Military and Veterans Code of the State of California.

7. Jury and Witness Leave

All Executive, Unrepresented and Confidential employees are entitled to be absent from duty when called to serve as a trial juror or as a witness called by a subpoena before a court of law. Under such circumstances, the EMPLOYEE is paid the difference between full salary and any payment received by them, except travel pay, for such duty.

8. Stand-by Time

The Fire Chief and Fire Division Chief shall receive eight (8) hours of vacation leave for every

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE

~~January 1,
2024~~ June 12, 2021

PAGE
Page 19 of 21

week he/she is required to participate in the back-up duty chief rotation for Heartland Fire & Rescue. For each holiday occurring during the assigned week, (Saturdays and Sundays are not considered holidays), an additional four (4) hours of vacation will be credited.

D.C. UNIFORM AND EQUIPMENT ALLOWANCE

The Police Chief, Fire Chief and Fire Division Chief receive an annual uniform and equipment allowance of \$675. Yearly distribution will be issued the second paycheck in July.

Newly Hired Police Recruits: The annual uniform and equipment allowance for newly hired Police Recruits shall be \$775 per year. The uniform allowance shall be prorated over the twelve month period beginning from the actual hire date to the following July 1st. Yearly distribution will be issued the second paycheck in July.

E.D. TUITION AND BOOK REIMBURSEMENT

The City provides an allowance of \$750 per fiscal year for Executive, Unrepresented and Confidential employees to use to defray the cost of attendance at seminars, workshops, conferences and/or classes, which promote professional growth. Executive and Unrepresented Management employees may use this allowance for lodging, meals, and other travel expenses.

Executive and Unrepresented Management employees may also use the allowance to cover the costs of membership fees for job related professional associations.

F.E. OTHER CERTIFICATIONS AND SPECIAL COMPENSATION

1. Notary Public Pay

Positions designated by the department director shall receive Notary Public Pay in the amount of \$75/month if he/she is a Notary Public in the State of California. The City shall also pay the cost of bonding of this employee while he/she is serving as Notary Public for the benefit of the City. Employees in designated positions shall perform notary services only as directed by his/her supervisor.

2. Bilingual Pay

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE

January 1,
~~2021~~ June 12, 2021

PAGE
Page 20 of 21

Positions designated by the department director shall receive Bilingual Pay in the amount of \$120/month if he/she is certified by a language professional, designated by the City, as having suitable skills to provide translation service.

23. Automobile Allowance

Executive Management employees shall be provided a monthly automobile allowance of \$300 in exchange for making a vehicle available for his/her own use and for City-related business and/or functions during, before and after normal work hours. The Assistant City Manager shall be provided an additional \$100, to total a monthly automobile allowance of \$400.

34. Cellular Telephone Allowance

The Assistant City Manager shall receive as compensation the sum of \$120 per month for use as an allowance for his/her cellular telephone service.

45. Technology Allowance

The Assistant City Manager shall be provided with an amount not to exceed \$2,500 every two years, beginning with the year of his/her initial appointment, for use to purchase technology equipment such as a personal laptop computer, etc. The payment shall be made upon submission of receipts documenting the purchase(s). The equipment purchased shall become the property of the Assistant City Manager.

56. Non-PERSable Stipend

A non-PERSable stipend of \$6,000/Police Chief, \$6,000/Fire Chief, and \$4,200/Fire Division Chief. One-half of stipend payment to be issued on the second paycheck in July ~~2020~~ 2021 and one-half issued on the first paycheck in December ~~2020~~ 2021.

G. RELOCATION ALLOWANCE

The City Manager may authorize an allowance up to \$10,000 for relocation expenses to the San Diego area.

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE

PAGE
Page 21 of 21

~~January 1,
2024~~ June 12, 2021

Approved by City Council 06/23/2020

CITY OF EL CAJON
CITY COUNCIL POLICY

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE
June 12, 2021

PAGE
Page 1 of 16

PURPOSE

To outline in one document the salary and benefits of employees who work in positions not represented by a recognized bargaining group.

A. SALARY – Effective pay period beginning on June 12, 2021

REQUIRED EDUCATION FOR BASE HOURLY RATE:

1. Required education for Unrepresented Management pay ranges
Level II must possess one of the following:

- Master’s degree directly related to the position with the City, but not required by the classification specification applicable to position; or
- Current California registration certificate as a Professional Civil or Traffic Engineer which is directly related to the position, but not required by the classification specification applicable to the position; or
- Current California designation as a Certified Public Accountant which is directly related to the position, but not required by the classification specification applicable to the position.

2. Required education for Fire Division Chief pay ranges
Level II must possess the following:

- Bachelor’s degree in any related field.

EXECUTIVE MANAGEMENT CLASSIFICATION PAY RANGES ARE AS FOLLOWS:

<u>CLASSIFICATION</u>	<u>RANGE</u>	<u>SALARIED POSITIONS TO BE PAID AT EQUIVALENT HOURLY RATE</u>
Assistant City Manager	143.5	\$98.72 - \$120.27
City Clerk	121.2	\$56.91 - \$69.34
Director of Community Development	133.5	\$77.12 - \$93.96

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE
June 12, 2021

PAGE
Page 2 of 16

<u>CLASSIFICATION</u>	<u>RANGE</u>	<u>SALARIED POSITIONS TO BE PAID AT EQUIVALENT HOURLY RATE</u>
Director of Finance/City Treasurer	132.3	\$74.86 - \$91.21
Director of Human Resources	129.9	\$70.56 - \$85.98
Director of Information Technology	131.6	\$73.58 - \$89.65
Director of Parks and Recreation	129.8	\$70.39 - \$85.76
Director of Public Works	132.8	\$75.80 - \$92.36
Fire Chief	139.4	\$89.21 - \$108.69
Police Chief	146.8	\$107.10 - \$130.50

UNREPRESENTED MANAGEMENT CLASSIFICATION PAY RANGES ARE AS FOLLOWS:

<u>CLASSIFICATION</u>	<u>RANGE</u>	<u>SALARIED POSITIONS TO BE PAID AT EQUIVALENT HOURLY RATE</u>
Administrative Analyst I (City Manager and Human Resources)	89.4	\$25.96 - \$31.62
Administrative Analyst II (City Manager and Human Resources)	91.4	\$27.27 - \$33.23
Assistant to the City Manager I	113.0	\$46.48 - \$56.63
Assistant to the City Manager II	115.0	\$48.83 - \$59.50
Building Official I	119.5	\$54.58 - \$66.50
Building Official II	121.5	\$57.34 - \$69.86

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE
June 12, 2021

PAGE
Page 3 of 16

<u>CLASSIFICATION</u>	<u>RANGE</u>	<u>SALARIED POSITIONS TO BE PAID AT EQUIVALENT HOURLY RATE</u>
City Engineer/Deputy Director of Public Works I	124.5	\$61.75 - \$75.24
City Engineer/Deputy Director of Public Works II	126.5	\$64.88 - \$79.04
Deputy City Clerk I	95.5	\$30.18 - \$36.77
Deputy City Clerk II	97.5	\$31.70 - \$38.63
Deputy Director of Community Development I	119.7	\$54.85 - \$66.83
Deputy Director of Community Development II	121.7	\$57.63 - \$70.21
Deputy Director of Public Works I	120.6	\$56.08 - \$68.33
Deputy Director of Public Works II	122.6	\$58.92 - \$71.79
Deputy Director – Special Projects <i>(can only be used for six months)</i>	124.6	\$61.90 - \$75.42
Financial Operations Manager I	121.2	\$56.91 - \$69.34
Financial Operations Manager II	123.2	\$59.79 - \$72.85
Fire Division Chief I	126.5	\$64.88 - \$79.04
Fire Division Chief II	128.5	\$68.16 - \$83.05
Human Resources Analyst I	101.0	\$34.56 - \$42.11
Human Resources Analyst II	103.0	\$36.31 - \$44.24

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE
June 12, 2021

PAGE
Page 4 of 16

<u>CLASSIFICATION</u>	<u>RANGE</u>	<u>SALARIED POSITIONS TO BE PAID AT EQUIVALENT HOURLY RATE</u>
Information Technology Analyst I	99.4	\$33.23 - \$40.48
Information Technology Analyst II	101.4	\$34.91 - \$42.53
Management Analyst I (City Manager and Human Resources)	99.5	\$33.31 - \$40.58
Management Analyst II (City Manager and Human Resources)	101.5	\$34.99 - \$42.64
Network Administrator I	106.6	\$39.69 - \$48.36
Network Administrator II	108.6	\$41.70 - \$50.81
Parks and Recreation Manager I	112.9	\$46.37 - \$56.50
Parks and Recreation Manager II	114.9	\$48.72 - \$59.36
Planning Manager I	116.8	\$51.06 - \$62.21
Planning Manager II	118.8	\$53.64 - \$65.36
Senior Human Resources Analyst I	108.2	\$41.29 - \$50.31
Senior Human Resources Analyst II	110.2	\$43.38 - \$52.85
Senior Management Analyst I (City Manager and Finance)	108.2	\$41.29 - \$50.31
Senior Management Analyst II (City Manager and Finance)	110.2	\$43.38 - \$52.85
Senior Risk Management Analyst I	108.2	\$41.29 - \$50.31
Senior Risk Management Analyst II	110.2	\$43.38 - \$52.85

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE
June 12, 2021

PAGE
Page 5 of 16

CONFIDENTIAL CLASSIFICATION PAY RANGES ARE AS FOLLOWS:

<u>CLASSIFICATION</u>	<u>RANGE</u>	<u>HOURLY RATE</u>
Confidential Secretary (CM, HR and Police Chief Administration)	87.0	\$24.46 - \$29.80
Executive Assistant to the City Manager/City Attorney	97.1	\$31.39 - \$38.25
Executive Assistant to the Police Chief	91.9	\$27.61 - \$33.64
Information Technology Specialist	92.2	\$27.81 - \$33.89
Senior Accounting Technician	87.3	\$24.64 - \$30.03

UNREPRESENTED GENERAL CLASSIFICATION PAY RANGES ARE AS FOLLOWS:

<u>CLASSIFICATION</u>	<u>RANGE</u>	<u>HOURLY RATE</u>
Police Recruit	98.0	\$32.09 - \$39.10

PART-TIME / SEASONAL TEMPORARY (PST) CLASSIFICATIONS ARE AS FOLLOWS:

**PST classifications do not receive any benefits described in this policy with the exception of the City contribution to the appropriate retirement plan in lieu of CalPERS/Social Security and sick leave benefits required by Labor Code §233.*

All PST step increases are 2.5% unless noted otherwise.

<u>CLASSIFICATION</u>	<u>RANGE</u>	<u>HOURLY RATE</u>
Administrative Intern	72.9	\$17.27 - \$21.04
Public Safety Aide	63.4	\$13.66 - \$16.64

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE
June 12, 2021

PAGE
Page 6 of 16

<u>CLASSIFICATION</u>	<u>RANGE</u>	<u>HOURLY RATE</u>
Weed Abatement Inspector	90.3	\$26.54 - \$32.33

Effective January 1, 2021 (Recreation PSTs Only)

Increases are not automatic and reviewed on an annual basis.

Job Class	Range @ 2.5%	Step A	Step A'	Step B	Step B'	Step C	
RS I	64.4	\$ 14.00	\$ 14.35	\$ 14.71	\$ 15.08	\$ 15.45	
RS II	69.4	\$ 15.84	\$ 16.24	\$ 16.64	\$ 17.06	\$ 17.48	
RS III	74.4	\$ 17.92	\$ 18.37	\$ 18.83	\$ 19.30	\$ 20.08	71
RS IV	80	\$ 20.58	\$ 21.62	\$ 22.71	\$ 23.86	\$ 25.07	80
RS V	88.9	\$ 25.64	\$ 26.93	\$ 28.30	\$ 29.73	\$ 31.23	88.9
			Step B	Step C	Step D	Step E	Range

B. HEALTH AND WELFARE BENEFITS

1. Cafeteria Plan

The City's cafeteria plan allotment is for enrollment in any of the City's CalPERS' health plans or other eligible benefit programs (e.g., dental, vision, etc.). The cost of the premium for the City's health plan will be deducted from the employee's cafeteria plan allotment. If there is a difference, the employee will be responsible for the remainder of the premium amount to be paid through payroll deductions. Unused cafeteria plan allotment will be paid out as "cash in lieu", up to a maximum of \$1,150 per month (excludes Police Recruit). For Police Recruit the maximum "cash in lieu" is \$287.50 per month. Cash in lieu payments are taxable income and not PERSable.

Any employee who is not enrolled in a City CalPERS health insurance plan, and does not provide proof of enrollment in another group health insurance plan (e.g., coverage under a spouse's employer plan) within 30 days from the beginning of the new plan year will not be eligible to receive cash in lieu.

All benefitted employees must enroll in an available City health program unless they opt out. An employee may receive cash in lieu for opting out of the City's health program if he/she:

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE
June 12, 2021

PAGE
Page 7 of 16

- (1) Provides proof that the employee and all individuals for whom the employee intends to claim a personal exemption deduction for the taxable year or years that begin or end in or with the City's plan year to which the opt out applies ("tax family"), have or will have minimum essential coverage through another source (other than coverage in the individual market, whether or not obtained through Covered California) for the plan year to which the opt out arrangement applies ("opt out period"); and
- (2) Signs an attestation that the employee and his/her tax family have or will have such minimal essential coverage for the opt out period. An employee must provide the attestation every plan year at open enrollment or within 30 days after the start of the plan year. The opt out payment cannot be made and the City will not in fact make payment if the employer knows or has reason to know that the employee or tax family member doesn't have such alternative coverage, or if the conditions in this paragraph are not otherwise satisfied.

The City may modify health insurance benefits or cafeteria plan (including, as to both, but not limited to, plan benefits or structure, City or employee contributions and/or opt out amount or requirements) in order to avoid penalties or taxes under the ACA or other statutory scheme that may result from an interpretation of the ACA or other statutory scheme by the Internal Revenue Service or other federal agency (including, but not limited to, a revenue ruling, regulation or other guidance) or state agency, or a ruling by a court of competent jurisdiction.

From July 1, 2021 through December 31, 2021, the allotment for the cafeteria plan, excluding Police Recruit, shall be \$1,250 per month. Effective January 1, 2022, the amount will increase to \$1,300 per month. For Police Recruit, the cafeteria plan allotment shall be \$1,300 per month from July 1, 2021 through December 31, 2021, then will increase to \$1,350 per month effective January 1, 2022.

2. Medical Insurance

The City is continuing the CalPERS' Health Benefits program that was adopted on January 1, 1986. From the total cafeteria plan allotment, the City will pay to CalPERS the statutorily required minimum employer contribution per month toward the cost of any CalPERS' health plan that the employee chooses to enroll. The employee agrees to be liable for the difference between the total cost of the health plan chosen and the City's contribution if he/she elects to obtain coverage under the CalPERS' health program. This amount shall be included in the total amount of the City's contribution to the employee's Section 125 Cafeteria Plan.

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE
June 12, 2021

PAGE
Page 8 of 16

Employees who elect not to be covered under the City’s medical insurance plan must have on file with the City a signed waiver of medical benefits. Employees will be provided an opportunity to enroll in the City’s medical insurance plan during the designated open enrollment period.

3. Retirement Benefits

All Executive, Unrepresented, and Confidential employees are members of the California Public Employees’ Retirement System (CalPERS). Those employees who are “classic members” as defined under the Public Employees’ Pension Reform Act of 2013 (PEPRA) pay the employee’s share of the retirement cost (8% for Miscellaneous and 9% for Safety Employees), and receive the following contracted benefits:

Miscellaneous Employees <i>“Classic” Members</i>	Safety Employees <i>“Classic” Members Hired on or before March 10,</i>
A. 3% at 60 Benefit Formula (§21354.3)	A. 3% at 50 Benefit Formula (§21362.2)
B. Final Compensation: One Year (§20042)	B. Final Compensation: One Year (§20042)
C. Prior Service (§20055)	C. Prior Service (§20055)
D. [Reserved]	D. [Reserved]
E. Additional Service Credit 2 Years (§20903)	E. [Reserved]
F. Unused Sick Leave Credit (§20965)	F. Unused Sick Leave Credit (§20965)
G. Military Service Credit as Public Service (§21024)	G. Military Service Credit as Public Service (§21024)
H. 2% Annual Cost of Living Allowance Increase (§21329)	H. 2% Annual Cost of Living Allowance Increase (§21329)
I. Pre-Retirement Death Benefits to Continue After Remarriage of Survivor (§21551)	I. Pre-Retirement Death Benefits to Continue After Remarriage of Survivor (§21551)
J. 1959 Survivor Benefit Level Four (§21574)	J. 1959 Survivor Benefit Level Three (§21573)
K. \$5,000 Retired Death Benefit (§21623.5)	K. \$500 Retired Death Benefit (§21620)
L. [Reserved]	L. Post-Retirement Survivor Allowance (§21624/26/28)
M. [Reserved]	M. Post-Retirement Survivor Allowance to Continue After Remarriage (§21635)

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE
June 12, 2021

PAGE
Page 9 of 16

	Local Safety Employees <i>Hired on or after March 11, 2011</i>
	A. 3% at 55 Benefit Formula (§21362.2)
	B. Final Compensation: Three Years – Career Average (§20042)

Those employees who are “new members” as defined under the Public Employees’ Pension Reform Act of 2013 (PEPRA) pay the employee contributions equal to 50% of normal cost (currently 6.25% for Miscellaneous and 12.25% for Safety Employees), and receive the above listed benefits with the exception of the following:

Miscellaneous Employees <i>“New” Members Hired on or after January 1, 2013</i>	Safety Employees <i>“New” Members Hired on or after January 1, 2013</i>
A. 2% at 62 Benefit Formula (§7522.20)	A. 2.7% at 57 Benefit Formula (§7522.25(d))
B. Final Compensation: Three Years – Career Average (§20037)	B. Final Compensation: Three Years – Career Average (§20037)

PST Employees: In lieu of enrollment in the CalPERS’ retirement program, PST employees will be enrolled in an IRS §457 retirement plan. The City contributes 7.5% of the employee’s salary to the IRS §457 plan in lieu of CalPERS and Social Security. PST employees who qualify for membership will be enrolled in the CalPERS retirement program and City contributions to the IRS §457 plan will terminate.

4. Deferred Compensation

All Executive, Unrepresented and Confidential employees are eligible to participate in any of the City’s Internal Revenue Code Section 457 Deferred Compensation Plan(s). Participation is handled through payroll deductions.

The City shall contribute \$300 per month (\$3,600 per year) in deferred compensation on behalf of the Assistant City Manager to one of the City approved plans as selected by the Assistant City Manager. Amounts contributed by the City shall be to the benefit of the Assistant City Manager in accordance with the Deferred Compensation Plan participation agreement.

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE
June 12, 2021

PAGE
Page 10 of 16

5. Disability Insurance

The City provides Executive Management employees and Unrepresented Management employees with fully paid short-term and long-term disability plans.

Exclusion: Confidential employees, PST employees, and Police Recruit(s) participate in the State Disability Insurance (SDI) Program at their expense.

6. Life and Accidental Death & Dismemberment (AD&D) Insurance [Applies to City Attorney]

The City provides fully paid life insurance and AD&D to Executive and Unrepresented Management employees in the amount of one and one half times the employee's annual salary plus \$25,000.

The City provides fully paid life insurance and AD&D to Confidential and benefitted employees in the amount of \$25,000.

C. LEAVES

1. Vacation Accrual

All Executive, Unrepresented and Confidential employees shall accrue vacation in accordance with the following schedule:

- a. 3.07 hours of vacation accrued and credited bi-weekly from the date of hire until completion of the 36th month;
- b. 4.60 hours of vacation accrued and credited bi-weekly following completion of the 36th month through the 108th month;
- c. 5.52 hours of vacation accrued and credited bi-weekly following completion of the 108th month through the 156th month;
- d. 6.14 hours of vacation accrued and credited bi-weekly following completion of the 156th month.

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE
June 12, 2021

PAGE
Page 11 of 16

New hires in Executive and Unrepresented Management classifications may accrue vacation leave at a rate greater than the entry rate at the discretion of the City Manager. Vacation accrual shall be capped at 620 hours for all executive and unrepresented management employees, and 560 hours for all confidential employees. No employee shall accrue vacation beyond the established cap unless specifically authorized by the City Manager. Employees have the option of 100% cash reimbursement for unused paid vacation at any time provided that they have used at least 80 hours of vacation/administrative leave during the preceding year (26 pay periods).

2. Administrative Leave

Executive Management (excludes Police Chief, Fire Chief, and Fire Division Chief) employees receive eighty (80) hours administrative leave per year accrued as vacation leave. The Police Chief, Fire Chief and Fire Division receive one hundred forty (140) hours administrative leave per year accrued as vacation. Unrepresented Management employees receive sixty (60) hours administrative leave per year accrued as vacation leave.

3. Holidays

Executive and Unrepresented Management and Confidential employees (excluding the City Attorney) receive the following paid holidays:

New Years' Day	January 1
Martin Luther King's Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Admissions Day*	September 9 (floating holiday)
Columbus Day*	Second Monday in October (floating holiday)
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25
New Year's Eve	December 31

And every day proclaimed by the City Council as a public holiday.

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE
June 12, 2021

PAGE
Page 12 of 16

*Two (2) floating holidays in lieu of celebrating Columbus Day and Admissions Day. City facilities shall remain open on both days.

Vacation shall accrue and be credited bi-weekly to compensate for the two floating holidays based on regularly scheduled work shift (permanent shift):

5-8 Schedules: 0.62 hours; **9/80 Schedules:** 0.69 hours; **4/10 Schedules:** 0.77 hours

City Hall will be closed between the observed Christmas Eve holiday in 2021 and the observed New Years' Day holiday in 2022. Employee who take this time off must use paid leave for December 27, 28, 29, 30.

An EMPLOYEE whose day off falls on an observed City holiday (e.g., Friday holiday) will accrue their regularly scheduled hours of vacation leave.

4. Sick Leave

Executive, Unrepresented and Confidential employees accrue sick leave at the rate of 3.68 hours per bi-weekly pay period. Accrual is unlimited. Part-Time/Seasonal/Temporary employees accrue and use sick leave upon commencement of employment at the rate prescribed by Labor Code § 246. PST employees are entitled to no other leave benefits under this policy.

Sick leave with pay shall be granted to all EMPLOYEES covered by this Policy in accordance with this section. Sick leave shall not be considered as a right which an EMPLOYEE may use at his/her discretion, but shall be allowed only in case of necessity and actual personal sickness or disability or (2) to attend to an illness or injury, including time for scheduled doctor or dentist appointment, of a person who is in the relationships to the employee as described in the California Labor Code §233, which currently includes:

Child	Parent	Spouse
Grand Child	Foster Child	Adopted Child
Step Child	Legal Ward	Child of Domestic Partner
Step Parent	Legal Guardian	Adoptive Parent
Foster Parent	Sibling	Parent-in-Law
Grand Parent	Registered Domestic Partner	Child of Person Standing in Loco Parentis

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE
June 12, 2021

PAGE
Page 13 of 16

a. Sick Leave Conversion Privileges

Any EMPLOYEE who has taken 40 hours sick leave or less during the calendar year ending December 30 of each year shall be entitled to either convert up to 40 hours of unused sick leave to vacation or receive a cash payment for up to 24 hours, based upon the current compensation rate on an hour-for-hour basis.

In no event may an EMPLOYEE select a combination of two options or reduce the accumulated sick leave balance below 192 hours. No prorations shall be made for EMPLOYEES terminating on or before December 30 of the calendar year.

b. Unused Sick Leave at Retirement for Health Insurance

For employees hired before July 1, 2013, upon retirement from City employment within 120 days of separation, for service or disability, an employee may elect to use unused sick leave at its dollar value at retirement (hourly base rate plus any regularly recurring bi-weekly premium pay, i.e., differential pay for Master's Degrees) to pay health insurance premiums in retirement according to the following schedule:

10 through 14 years of service: 25% of the sick leave balance at retirement;

15 through 19 years of service: 50% of the sick leave balance at retirement;

20 + years of service: 75% of the sick leave balance at retirement.

This benefit will be in addition to the monthly contribution the City makes, as determined by PERS, to the Public Employees' Retirement System for retiree health insurance benefits. The supplemental benefits described above shall be used to pay health insurance premiums for the retiree and dependents, if applicable. However, if the employee is deceased before the funds are exhausted, the supplemental benefits shall cease and the remaining funds shall be the City's property.

The City elects to self-administer this plan at this time. The City will pay the annualized dollar equivalent of the Kaiser two-party health insurance premium once per year in January of each year.

This benefit may be used in combination with service credit for unused sick leave as described in Section C – Health and Welfare Benefits – Retirement Benefits.

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE
June 12, 2021

PAGE
Page 14 of 16

5. Bereavement Leave

Up to twenty-four hours special leave with pay may be granted to Executive and Unrepresented Management and Confidential employees in order to discharge the customary obligations arising from the death of a relative who is a member of employee's household or a parent, step-parent, grandparent, sibling or child of the employee or the employee's spouse/domestic partner (not required to be a member of the household). Sixteen (16) additional hours to be charged to sick leave may be approved at the discretion of the City Manager.

6. Military Leave

Any employee who is or becomes a member of the Armed Services, Militia or Organized Reserves of California or the United States shall be entitled to the leaves of absence and employment rights and privileges provided by the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Military and Veterans Code of the State of California.

7. Jury and Witness Leave

All Executive, Unrepresented and Confidential employees are entitled to be absent from duty when called to serve as a trial juror or as a witness called by a subpoena before a court of law. Under such circumstances, the EMPLOYEE is paid the difference between full salary and any payment received by them, except travel pay, for such duty.

8. Stand-by Time

The Fire Chief and Fire Division Chief shall receive eight (8) hours of vacation leave for every week he/she is required to participate in the back-up duty chief rotation for Heartland Fire & Rescue. For each holiday occurring during the assigned week, (Saturdays and Sundays are not considered holidays), an additional four (4) hours of vacation will be credited.

D. UNIFORM AND EQUIPMENT ALLOWANCE

The Police Chief, Fire Chief and Fire Division Chief receive an annual uniform and equipment allowance of \$675. Yearly distribution will be issued the second paycheck in July.

Newly Hired Police Recruits: The annual uniform and equipment allowance for newly hired

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE
June 12, 2021

PAGE
Page 15 of 16

Police Recruits shall be \$775 per year. The uniform allowance shall be prorated over the twelve month period beginning from the actual hire date to the following July 1st. Yearly distribution will be issued the second paycheck in July.

E. TUITION AND BOOK REIMBURSEMENT

The City provides an allowance of \$750 per fiscal year for Executive, Unrepresented and Confidential employees to use to defray the cost of attendance at seminars, workshops, conferences and/or classes, which promote professional growth. Executive and Unrepresented Management employees may use this allowance for lodging, meals, and other travel expenses.

Executive and Unrepresented Management employees may also use the allowance to cover the costs of membership fees for job related professional associations.

F. OTHER CERTIFICATIONS AND SPECIAL COMPENSATION

1. Notary Public Pay

Positions designated by the department director shall receive Notary Public Pay in the amount of \$75/month if he/she is a Notary Public in the State of California. The City shall also pay the cost of bonding of this employee while he/she is serving as Notary Public for the benefit of the City. Employees in designated positions shall perform notary services only as directed by his/her supervisor.

2. Bilingual Pay

Positions designated by the department director shall receive Bilingual Pay in the amount of \$120/month if he/she is certified by a language professional, designated by the City, as having suitable skills to provide translation service.

3. Automobile Allowance

Executive Management employees shall be provided a monthly automobile allowance of \$300 in exchange for making a vehicle available for his/her own use and for City-related business and/or functions during, before and after normal work hours. The Assistant City

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT: Compensation Plan for Executive and Unrepresented Employees

POLICY
A-29

REFERENCE:

EFFECTIVE
June 12, 2021

PAGE
Page 16 of 16

Manager shall be provided an additional \$100, to total a monthly automobile allowance of \$400.

4. Cellular Telephone Allowance

The Assistant City Manager shall receive as compensation the sum of \$120 per month for use as an allowance for his/her cellular telephone service.

5. Technology Allowance

The Assistant City Manager shall be provided with an amount not to exceed \$2,500 every two years, beginning with the year of his/her initial appointment, for use to purchase technology equipment such as a personal laptop computer, etc. The payment shall be made upon submission of receipts documenting the purchase(s). The equipment purchased shall become the property of the Assistant City Manager.

6. Non-PERSable Stipend

A non-PERSable stipend of \$6,000/Police Chief, \$6,000/Fire Chief, and \$4,200/Fire Division Chief. One-half of stipend payment to be issued on the second paycheck in July 2021 and one-half issued on the first paycheck in December 2021.

G. RELOCATION ALLOWANCE

The City Manager may authorize an allowance up to \$10,000 for relocation expenses to the San Diego area.

RESOLUTION NO. __-21

RESOLUTION APPROVING THIRD AMENDMENT TO
CITY MANAGER EMPLOYMENT AGREEMENT

WHEREAS, on April 24, 2018, the City of El Cajon (the "City") and the City Manager entered into that certain "City Manager Employment Agreement Between the City of El Cajon and Graham Mitchell" (the "Agreement"), which established the terms and conditions for employment as the City Manager for the City, and provides, among other things, benefits and compensation payable to the City Manager; and

WHEREAS, on January 14, 2020, the City Council approved the First Amendment to City Manager Employment Agreement (the "First Amendment") to more accurately describe the City Manager's Base Salary as part of his Compensation and Required Employer Costs in paragraph (1)(a) of subsection (A) of Section 4 of the Agreement, effective January 1, 2020; and

WHEREAS, on June 22, 2021, the City Council approved the Second Amendment to City Manager Employment Agreement (the "Second Amendment") to increase benefits and compensation to the City Manager consistent with the Compensation Plan for Executive Employees effective the pay period of June 13, 2020 through June 26, 2020; and

WHEREAS, the parties now desire to enter into a Third Amendment to City Manager Employment Agreement (the "Third Amendment") to increase benefits and compensation to the City Manager consistent with the Compensation Plan for Executive Employees that becomes effective the pay period of June 12, 2021 through June 25, 2021, and to extend the one-time benefit of moving expenses if the City Manager were to relocate his household within 15 miles of City Hall to April 24, 2026.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. The City Council hereby approves the execution of the Third Amendment substantially in the form as presented to the City Council in this meeting, with such changes as may be approved by the City Manager.

2. The Mayor and City Clerk are authorized and directed to execute said Third Amendment on behalf of the City of El Cajon.

**THIRD AMENDMENT TO
CITY MANAGER EMPLOYMENT AGREEMENT**

This THIRD AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT is made and entered into effective the _____ day of _____, 2021, by and between the City of El Cajon, California, a charter city and municipal corporation (the “City”) and Graham Mitchell, an individual (the “City Manager”).

RECITALS

1. City and City Manager entered into that certain “City Manager Employment Agreement Between the City of El Cajon, a charter city and municipal corporation and Graham Mitchell,” dated April 24, 2018 (the “Agreement”), by which the City and the City Manager established the terms and conditions for the employment of the City Manager as the City Manager for the City.

2. The terms of the Agreement provide, among other things, benefits and compensation payable to the City Manager.

3. The Agreement provides that it may amended at any time by mutual agreement of the City and the City Manager, with any amendments to be in writing, and adopted by the City Council following negotiations between the parties.

4. On January 1, 2020, the City and the City Manager instituted that certain “First Amendment to City Manager Employment Agreement” (the “First Amendment”) to more accurately describe the City Manager’s Base Salary as part of his Compensation and Required Employer Costs in paragraph (1) of subsection (A) of Section 4 of the Agreement.

5. On July 1, 2020, the City and the City Manager instituted that certain “Second Amendment to City Manager Employment Agreement” (the “Second Amendment”) to more accurately describe the City Manager’s Base Salary as part of his Compensation and Required Employer Costs in paragraph (1)(a) of subsection (A) of Section 4 of the Agreement.

6. This “Third Amendment to City Manager Employment Agreement” (the “Third Amendment”) is necessary to more accurately describe the City Manager’s Base Salary as part of his Compensation and Required Employer Costs in paragraph (1)(a) of subsection (A) of Section 4 of the Agreement, and to extend the term for relocation compensation as listed in paragraph (6) of subsection (B) of Section 4.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. Paragraph (1)(a) of subsection (A) of Section 4 of the Agreement is hereby amended to read as follows:

A. Compensation & Required Employer Costs

(1) Base Salary

- (a) The salary for the position of City Manager, effective the first pay period that compensates the City Manager by paycheck issued on or after July 1, 2021, shall be \$11,046.20 every two (2) weeks (i.e., bi-weekly).

Section 2. Paragraph (6) of subsection (B) of Section 4 of the Agreement is hereby amended to read as follows:

B. Basic Benefits

(6) One-Time Relocation Expenses

At any time during the term the first eight years of this Agreement if the City Manager elects to relocate his household from his current residence in San Diego County to a location within 15 miles of City Hall, the City Manager shall be provided a one-time relocation amount not to exceed the following: The City Manager shall obtain three (3) quotes for the relocation of his household furnishings and family property and provide those to the City's Director of Administrative Services or, if no Director of Administrative Services, to the City Attorney. The City Council shall then select one of the vendors from among the three (3) quotes, and the City shall reimburse the City Manager an amount not to exceed \$5,000 to cover costs associated with moving and relocation of his household to the new location.

Section 3. Except as otherwise amended by the First Amendment, the Second Amendment and this Third Amendment, all remaining terms and conditions of the Agreement not in conflict herewith remain in full force and effect.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment the day and year first above written.

City

City Manager

CITY OF EL CAJON, a charter city
and municipal corporation

By _____
Bill Wells, Mayor

By _____
Graham Mitchell

ATTEST:

By _____
Angela L. Cortez, CMC, City Clerk

APPROVED AS TO FORM:

By _____
Morgan L. Foley, City Attorney

RESOLUTION NO. __-21

RESOLUTION APPROVING SIXTH AMENDMENT TO
CITY ATTORNEY EMPLOYMENT AGREEMENT

WHEREAS, on June 15, 2000, the City Council approved the Agreement Between the City of El Cajon and the El Cajon Redevelopment Agency and McDougal, Love, Eckis, Smith & Boehmer (the "Agreement") for retention of attorneys as the office of the city attorney (the "City Attorney") and general legal counsel; and

WHEREAS, on June 28, 2005, the City Council approved the First Amendment to City Attorney Employment Agreement (the "First Amendment") to memorialize prior increases in compensation and benefits received by the City Attorney, and the hourly rate charged for services set forth in the Agreement; and

WHEREAS, on July 23, 2013, the City Council approved the Second Amendment to City Attorney Employment Agreement (the "Second Amendment") to increase benefits and compensation to the City Attorney consistent with the Compensation Plan for Executive Employees that became effective on July 1, 2013; and

WHEREAS, on June 24, 2014, the City Council approved the Third Amendment to City Attorney Employment Agreement (the "Third Amendment") to increase benefits and compensation to the City Attorney consistent with the Compensation Plan for Executive Employees that became effective on July 1, 2014; and

WHEREAS, on January 14, 2020, the City Council approved the Fourth Amendment to City Attorney Employment Agreement (the "Fourth Amendment") by and between the City of El Cajon and Morgan L. Foley to more accurately describe the City Attorney's salary as part of his compensation, effective January 1, 2020; and

WHEREAS, on June 23, 2020, the City Council approved the Fifth Amendment to City Attorney Employment Agreement (the "Fifth Amendment") by and between the City of El Cajon and Morgan L. Foley to increase benefits and compensation to the City Attorney consistent with the Compensation Plan for Executive Employees that became effective the pay period of June 13, 2020 through June 26, 2020; and

WHEREAS, the parties now desire to enter into a Sixth Amendment to City Attorney Employment Agreement (the "Sixth Amendment") to increase benefits and compensation to the City Attorney consistent with the Compensation Plan for Executive Employees that becomes effective the pay period of June 12, 2021 through June 25, 2021.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. The City Council hereby approves the execution of the Sixth Amendment substantially in the form as presented to the City Council in this meeting, with such changes as may be approved by the City Manager.

2. The Mayor and City Clerk are authorized and directed to execute said Sixth Amendment on behalf of the City of El Cajon.

06/22/21 CC Agenda

Reso – Approve 6th Amendment to CA Employment Agmt 061421

**SIXTH AMENDMENT TO
CITY ATTORNEY EMPLOYMENT AGREEMENT**

This SIXTH AMENDMENT TO CITY ATTORNEY EMPLOYMENT AGREEMENT is made and entered into effective the _____ day of _____, 2021, by and between McDougal, Love, Boehmer, Foley, Lyon & Mitchell, a professional corporation, and the undersigned individual attorney, sometimes collectively referred to as "Attorneys," and the City of El Cajon, California, a charter city and municipal corporation of the State of California (the "City"); the City of El Cajon as Successor Agency to the El Cajon Redevelopment Agency (the "Successor Agency"); and the El Cajon Housing Authority (the "Authority") (the City, the Successor Agency and the Authority, hereinafter collectively referred to as the "Client").

RECITALS

1. Attorneys and the Client entered into that certain "Agreement Between the City of El Cajon and the El Cajon Redevelopment Agency and McDougal, Love, Eckis, Smith & Boehmer," dated June 15, 2000 (the "Agreement"), by which the Client and the Attorneys established the terms and conditions for the retention of Attorneys as the office of city attorney and general legal counsel for the Client.

2. The terms of the Agreement provide, among other things, benefits and compensation payable to the Attorneys, and the employment of one of the Attorneys, Morgan L. Foley, as the City Attorney and General Counsel for the Client (the "City Attorney").

3. City's City Council has previously approved changes to the compensation payable to the City Attorney under the Agreement, as well as benefits received by the City Attorney.

4. On June 28, 2005, the Client and the Attorneys instituted the "First Amendment to City Attorney Employment Agreement" (the "First Amendment") to approve prior increases in compensation and benefits, and the hourly rate charged by the Attorneys to the Client for those services set forth in Exhibit "A" of the Agreement.

5. On July 26, 2013, the Client and the Attorneys instituted the "Second Amendment to City Attorney Employment Agreement" (the "Second Amendment") to approve an increase in compensation and benefits, and the hourly rate charged by the Attorneys to the Client for those services set forth in Exhibit "C" of the Agreement.

6. On July 1, 2014, the Client and the Attorneys instituted the "Third Amendment to City Attorney Employment Agreement" (the "Third Amendment") to increase the compensation to the City Attorney.

7. On January 1, 2020, the Client and the Attorneys instituted the "Fourth Amendment to City Attorney Employment Agreement" (the "Fourth Amendment") to increase the compensation to the City Attorney.

8. On July 1, 2020, the Client and the Attorneys instituted the "Fifth Amendment to City Attorney Employment Agreement" (the "Fifth Amendment") to increase the compensation to the City Attorney.

9. This "Sixth Amendment to City Attorney Employment Agreement" (the "Sixth Amendment") is necessary to more accurately describe the City Attorney's salary as part of his Compensation in Section V of the Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. The first paragraph of Section V of the Agreement is hereby amended to read as follows:

V. Compensation. City shall pay to the City Attorney, as salary, effective the first pay period that compensates the City Attorney by paycheck issued on or after July 1, 2021, the sum of \$6,428.99 every two (2) weeks (i.e., bi-weekly). Said sum shall fully compensate for those duties set forth in Paragraphs A.1 through A.6 of Exhibit "A" ("Attorney Services"). Said sum may be increased by agreement of the City Attorney and the City Council, from time to time, which increases shall be contained in a resolution adopted by the City Council. Said increases may be part of increases granted to all other Department Directors for the City.

Section 2. Except as otherwise amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, and this Sixth Amendment, all remaining terms and conditions of the Agreement not in conflict herewith remain in full force and effect.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Sixth Amendment the day and year first above written.

CITY OF EL CAJON, a charter city and municipal corporation

EL CAJON HOUSING AUTHORITY, a public body corporate and politic

By _____
Bill Wells, Mayor

By _____
Bill Wells, Chair

ATTEST:

ATTEST:

By _____
Angela L. Cortez, CMC, City Clerk

By _____
Angela L. Cortez, CMC, Secretary

CITY OF EL CAJON IN ITS CAPACITY AS SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY, a public body corporate and politic

By _____
Bill Wells, Chair

ATTEST:

By _____
Angela L. Cortez, CMC, Secretary

McDOUGAL, LOVE, BOEHMER, FOLEY, LYON & MITCHELL, a professional corporation

By _____
Steven E. Boehmer, President

Concurrence:

By _____
Morgan L. Foley



City Council
Agenda Report

Agenda Item 12.

DATE: June 22, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Frank Carson, Director of Parks & Recreation
SUBJECT: City of El Cajon Parks and Recreation Memorial Bench and Picnic Table Program

RECOMMENDATION:

That the City Council approves the City of El Cajon Parks and Recreation Memorial Bench and Picnic Table Program.

BACKGROUND:

The El Cajon Parks and Recreation Department has developed the Memorial Bench and Picnic Table Program as a way to commemorate individuals, families or organizations. Citizens can recognize their loved ones with a bench or picnic table in their name installed at an El Cajon park. The Parks and Recreation Department has selected a standardized bench and picnic table for this program.

After interested parties complete a standard application, staff will meet with the interested parties and will mutually agree on the location the commemorative item will be placed. Staff recommends a donation of \$2,000 for a bench and \$3,000 for a picnic table, as these amounts will cover all costs. The new bench or picnic table will include a 5" X 10" memorial plaque.

FISCAL IMPACT:

There will be no fiscal impact to the General Fund, as this will be a cost-recoverable established program with a reflected budget within Community Services.

Prepared By: Adam Tronerud

Reviewed By: Frank Carson, Director of Parks & Recreation

Approved By: Graham Mitchell, City Manager

Attachments

BenchMemorialProgram



City of El Cajon Parks and Recreation

Memorial Bench & Picnic Table Program



**APPLICATION
PACKAGE**

City of El Cajon Parks and Recreation Memorial Bench and Picnic Table Program Application

PURPOSE

The City of El Cajon Parks and Recreation Department has developed the Memorial Bench and Picnic Table Program as a way to commemorate individuals, families or organizations.

LOCATION AND PLACEMENT

The Parks and Recreation Department has standardized a bench or picnic table for placement in predetermined locations in City parks as part of the program. Upon request, the Parks and Recreation Department will send a representative to meet with interested parties and will mutually agree on the location the commemorative item will be placed. The Director of Parks and Recreation will consider special requests for locations other than those predetermined for placement of the commemorative items.

It may be determined by the Parks and Recreation Department that a park has an adequate amount of commemorative benches and picnic tables and is considered full.

DONATIONS

Costs for the donated items are:

- Bench : \$ 2,000.00
- Picnic Table: \$ 3,000.00

The donation covers the cost of purchasing the donated item and installation. For the bench and picnic table, the donation will include the installation of a 5" x 10" commemorative plaque. The plaque shall have standard wording limited to "In Memory of (NAME)" or "In Honor of (NAME)" and the month and year donated (e.g. October 2018).

APPLICATION PROCESS

A completed application is required to initiate this process. Interested parties can get an application on the City of El Cajon website or call (619) 441-1516 to obtain an application. The donor can request the wording on the plaque as part of the application. Once the donated item is ordered, the donor will be notified of the installation date.

CARE, REPAIR AND REPLACEMENT

The City of El Cajon will maintain the donated item for the useful life of the item, as determined by the City. The City of El Cajon will determine when the donated item is no longer reasonable to maintain.

Applicant

Name _____ Phone Number _____

Address _____

Email _____

Type of Memorial

- Park bench \$ 2,000.00
- Picnic Table \$ 3,000.00

Payment

Credit Card:

- Visa
- Mastercard

Exact Name on Card: _____

Card number: _____

V-Code: _____ Expiration Date: _____

- Check: Please make payable to the City of El Cajon

Memorial Plaque

In Memory of _____

Month and Year of Donation _____

In Honor of _____

Month and Year of Donation _____

Placement of Memorial Item

Name of Park Requested _____

I have read and understand the Memorial Bench and Picnic Table installation, care and replacement information.

Signature _____ Date _____

This section to be completed by the Parks and Recreation Department

Approved by _____ Payment Date _____

Date Installed _____



City Council
Agenda Report

Agenda Item 13.

DATE: June 22, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Graham Mitchell, City Manager
SUBJECT: COVID-19 Status Report

RECOMMENDATION:

No action required.

BACKGROUND:

The City Council asked to receive a status report on COVID-19 related information. Staff will present relevant COVID-19 related data and information and answer questions from the City Council.

Prepared By: Graham Mitchell, City Manager

Reviewed By: N/A

Approved By: N/A



City Council
Agenda Report

DATE: June 22, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Mayor Wells
SUBJECT: Council Activity Report

RECOMMENDATION:

That the City Council accepts and files the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

- May 26, 2021 – Senator Brian Jones Virtual Town Hall
- May 28, 2021 – SANDAG Board of Directors Meeting
- June 10, 2021 – Golden Corral Re-Opening
- June 10, 2021 – Interview with KUSI
- June 12, 2021 – Klaus Retirement – Home of Guiding Hands
- June 15, 2021 – Interview with KUSI
- June 15, 2021 – Filming for Foothills Church Future Quest
- June 22, 2021 – City Council Meeting(s)

I am available to answer questions.

Submitted By: Bill Wells, Mayor



City Council Agenda Report

Agenda Item 15.

DATE: June 22, 2021

TO: Honorable Mayor and City Councilmembers

FROM: Councilmember Goble

SUBJECT: COUNCILMEMBER STEVE GOBLE

MTS (Metropolitan Transit System Board); East County Advanced Water Purification Joint Powers Authority Board; Chamber of Commerce – Government Affairs Committee; SANDAG – Board of Directors – Alternate; SANDAG Public Safety Committee – Alternate; METRO Commission/Wastewater JPA – Alternate.

RECOMMENDATION:

That the City Council accepts and files the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

- June 7, 2021 - Call w/City Atty re: election verification
- June 7, 2021 - Meeting w/Dr. Zavaro general city update
- June 7, 2021 - Email Sup. Anderson re: use of COVID funds
- June 8, 2021 - Participate in Granite Hills High School graduation
- June 10, 2021 - Email to Joe B. @ SDGE re: traffic light repair
- June 12, 2021 - Attend Home of Guiding Hands gala
- June 14, 2021 - Email to Joe G. re: status of Anastasia Ct project
- June 15, 2021 - Email Estela D., Nedy V., Danielle re: social worker project
- June 16, 2021 - Attend Sharp Grossmont 30yr Anniversary event
- June 17, 2021 - Attend MTS Board Meeting
- June 17, 2021 - Attend Santee Lakes Anniversary event
- June 18, 2021 - Attend SANDAG Public Safety Committee meeting
- June 21, 2021 - Meeting with John Dadian
- June 21, 2021 - Meeting with City Manager re: agenda
- June 22, 2021 - Attend East County AWP dinner
- June 22, 2021 - City Council Meeting

I am available to answer questions.

Submitted By: Steve Goble, Councilmember



City Council
Agenda Report

DATE: June 22, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Mayor Pro Tem Kendrick
SUBJECT: MAYOR PRO TEM GARY KENDRICK
METRO Commission/Wastewater JPA; Heartland Communications;
Heartland Fire Training JPA.

RECOMMENDATION:

That the City Council accepts and files the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

June 22, 2021 – City Council Meeting(s)

I am available to answer questions.

Submitted By: Gary Kendrick, Mayor Pro Tem



City Council
Agenda Report

DATE: June 22, 2021

TO: Honorable Mayor and City Councilmembers

FROM: Councilmember Metschel

SUBJECT: COUNCILMEMBER MICHELLE METSCHEL

Harry Griffen Park Joint Steering Committee; Heartland Communications – Alternate; Heartland Fire Training JPA – Alternate.

RECOMMENDATION:

That the City Council accepts and files the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

June 12, 2021 – Attend Home of Guiding Hands Fundraiser

June 14, 2021 – Attended League of California Cities meeting – topic: State Budget and Revenue and Taxation

June 15, 2021 – Shared new vaccination event in El Cajon on Social Media in Arabic, Spanish, and English

June 16, 2021 – Attended and represented El Cajon at the 246th Birthday Celebration for the United States Army at Marine Corps Air Station Miramar

June 19, 2021 – Held a movie night for the children at East County Transitional Living Center

June 22, 2021 – City Council Meeting(s)

I am available to answer questions.

Submitted By: Michelle Metschel, Councilmember



City Council
Agenda Report

Agenda Item 18.

DATE: June 22, 2021

TO: Honorable Mayor and City Councilmembers

FROM: Councilmember Ortiz

SUBJECT: COUNCILMEMBER PHIL ORTIZ

League of California Cities, San Diego Division; East County Economic Development Council; MTS (Metropolitan Transit System Board) – Alternate; East County Advanced Water Purification Joint Powers Authority Board – Alternate; Chamber of Commerce – Government Affairs Committee – Alternate.

RECOMMENDATION:

That the City Council accepts and files the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

June 9, 2021 – Meeting with San Diego Strike Force Football about events in El Cajon
June 10, 2021 – Meeting with J. Allen and F. Carson regarding Veterans Memorial
June 14, 2021 – League of CA Cities Meeting
June 15, 2021 – EC Chamber of Commerce Candidate Endorsement Committee
June 6, 2021 – ECEDC Board Meeting
June 22, 2021 – City Council Meeting(s)

I am available to answer questions.

Submitted By: Phil Ortiz, Councilmember
