



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

Council Chamber
200 Civic Center Way
El Cajon, CA 92020

Agenda

SEPTEMBER 26, 2023, 3:00 p.m.

Bill Wells, Mayor

Steve Goble, Deputy Mayor

Gary Kendrick, 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 THE FLAG AND MOMENT OF SILENCE

POSTINGS: The City Clerk posted Orders of Adjournment of the September 12, 2023, Meeting and the Agenda of the September 26, 2023, Meeting in accordance to State Law and City Council/Housing Authority/Successor Agency to the Redevelopment Agency Policy.

PRESENTATIONS:

- Proclamation: German American Month

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 September 12, 2023, 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. Board of Supervisors Appointment to Gillespie Field Development Council

RECOMMENDATION:

That the City Council ratifies the Board of Supervisors appointment of James Sly to the Gillespie Field Development Council for a term to expire August 6, 2027.

5. El Cajon Housing Authority Annual Report (Fiscal Year 2022-2023)

RECOMMENDATION:

That the City Council, acting as the El Cajon Housing Authority:

1. Approves the attached 2022-2023 Annual Report; and
2. Authorizes the Executive Director or designee to transmit it, in the form substantially as presented, to the California Department of Housing and Community Development as required by State Law.

6. Youth League Utility Support Fiscal Year 2023/2024

RECOMMENDATION:

That the City Council approves the Recreation Council's recommendation to provide utility support, in the amount of \$2,100 per league, to eight Executive Member youth leagues.

7. Encroachment Agreement with Pacific Wyverd, LLC for Installation and Operation of Fiber Optic Network in the City's Right-of-Way

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, authorizing an Encroachment Agreement with Pacific Wyverd, LLC for the installation and operation of a fiber optic telecommunications network within the City's right-of-way.

8. Appropriate \$50,000 Additional TransNet (EL03) Funds to the Luke Lane Drainage Improvements Project (223748PWCP)

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, to appropriate \$50,000 of additional TransNet (EL03) funds for the purpose of increasing the Luke Lane Drainage Improvements CIP project (223748PWCP).

9. Award of Bid No. 015-24 – Alarm System Monitoring, Annual Inspections & Repairs

RECOMMENDATION:

That the City Council:

1. Determines that the project is exempt from the California Environmental Quality Act (CEQA) in accordance with section 15301 of the State CEQA Guidelines; and
2. Adopts the next Resolutions, in order, to:
 - a. Approve Plans and Specifications for Alarm System Monitoring, Annual Inspections & Repairs, Bid No. 015-24; and
 - b. Award the bid to the sole responsive, responsible bidder, Progressive Technology Security Systems, Inc. (PTSSI), in the amount of \$39,898.

10. Award of Bid No. 012-24 – Weed Abatement & Channel Clearing

RECOMMENDATION:

That the City Council:

1. Determines that the project is exempt from the California Environmental Quality Act (CEQA) in accordance with sections 15307 and 15308 of the State CEQA Guidelines; and
2. Adopts the next Resolutions, in order, to:
 - a. Approve Plans and Specifications for Weed Abatement & Channel Clearing, Bid No. 012-24; and
 - b. Award the bid to the lowest responsive, responsible bidder, Habitat Restoration Sciences, Inc., in the amount of \$199,546.50.

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:

ADMINISTRATIVE REPORTS:

11. Update on The Magnolia's Financial Performance

RECOMMENDATION:

That the City Council receives an update on The Magnolia's financial performance.

12. Operating Covenant with CarMax Auto Superstores, Inc.

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, approving an Operating Covenant with CarMax Auto Superstores, Inc. and authorizing the City Manager to execute the agreement with such minor changes as may be approved by the City Manager.

13. Permanent Local Housing Allocation Funding and Program Approval

RECOMMENDATION:

That the City Council:

1. Accepts staff recommendations for projects and programs funded by the Permanent Local Housing Allocation (PLHA) grant program;
2. Approves the Program Guidelines for the Accessory Dwelling Unit (ADU) Loan Program; and
3. Adopts the next Resolution, in order, to:
 - a. Approve and adopt the PLHA recommendations, and authorize the City Manager to enter into Agreements with three non-profit organizations;
 - b. Accept, appropriate, allocate, and expend an additional \$137,620 for a total of \$2,752,411 from the State of California Department of Housing and Community Development's (HCD) PLHA grant award (22-PLHA-17775); and
 - c. Approve the Accessory Dwelling Unit Loan Program as presented and authorize the City Manager or designee to make any necessary updates to the program guidelines and sign any necessary agreements with homeowners to secure the City's financial interest.

COMMISSION REPORTS:

ACTIVITIES REPORTS/COMMENTS OF MAYOR WELLS

SANDAG (San Diego Association of Governments) Board of Directors.

14. Council Activity Report

ACTIVITIES REPORTS/COMMENTS OF COUNCILMEMBERS:

15. **DEPUTY MAYOR 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.
16. **COUNCILMEMBER GARY KENDRICK**
METRO Commission/Wastewater JPA; Heartland Communications; Heartland Fire Training JPA.
17. **COUNCILMEMBER MICHELLE METSCHEL**
Harry Griffen Park Joint Steering Committee; METRO Commission/Wastewater JPA – Alternate; 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.

JOINT COUNCILMEMBER REPORTS:

19. Sheltering Pets of Homeless Individuals

RECOMMENDATION:

That the City Council direct City staff to prepare an analysis of a program that would offer free shelter for pets of homeless individuals while they are participating in a program, and its potential cost and funding source.

GENERAL INFORMATION ITEMS FOR DISCUSSION:

ORDINANCES: FIRST READING

ORDINANCES: SECOND READING AND ADOPTION

20. Approve Amendments to Section 10.20.130 of Chapter 10.20 of the El Cajon Municipal Code

RECOMMENDATION:

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

An Ordinance Amending Section 10.20.130 of Chapter 10.20 of the El Cajon Municipal Code to Establish a New Speed Limit on a Portion of Washington Avenue from El Cajon Boulevard to Granite Hills Drive.

The proposed speed limit will improve public safety and is therefore exempt from the provisions of the California Environmental Quality Act pursuant to CEQA Guidelines section 15301(c).

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 26th day of September 2023, is adjourned to Tuesday, October 10, 2023, at 3:00 p.m.



City Council
Agenda Report

Agenda Item 1.

DATE: September 26, 2023
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 September 12, 2023, Meeting of the El Cajon City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency.

Attachments

09-12-23DRAFTminutes - 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

September 12, 2023

A Regular Joint Meeting of the El Cajon City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency, held Tuesday, September 12, 2023, was called to order by Mayor/Chair Bill Wells at 3:00 p.m., in the Council Chambers, 200 Civic Center Way, El Cajon, California.

ROLL CALL

Council/Agencymembers present: Kendrick, Metschel, and Ortiz
Council/Agencymembers absent: None
Deputy Mayor/Vice Chair present: Goble
Mayor/Chair present: 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 THE FLAG led by Mayor Wells and MOMENT OF SILENCE.

AGENDA CHANGES:

Mayor Wells announced that the City Council would consider Closed Sessions; Items 24 and 25, after Consent Items, to accommodate special circumstances.

POSTINGS: The City Clerk posted Orders of Adjournment of the August 8, 2023, meeting and the Agenda of the September 12, 2023, meeting in accordance with State Law and El Cajon City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency Policy.

PRESENTATIONS:

- Presentation: Camp Run-a-Mutt: Dog Days of Summer
- Proclamation: National Preparedness Month

CONSENT ITEMS: (1 – 15)

MOTION BY WELLS, SECOND BY METSCHEL, to APPROVE Consent Items 1 to 15.

MOTION CARRIED BY UNANIMOUS VOTE.

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

Approve Minutes of the August 8, 2023, Meeting of the El Cajon City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency.

2. Warrants

Approve payment of Warrants as submitted by the Finance Department.

3. Approval of Reading Ordinances by Title Only

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

4. Award of SOQ No. 007-24 – On-Call Professional Services

1. Determine the list of qualified firms to provide professional services is exempt from the provisions of the California Environmental Quality Act in accordance with section 15378(b)(2) of the CEQA Guidelines; and
2. Adopt Resolution No. 073-23, to award a pre-qualified list of firms for SOQ No. 007-24 – On-Call Professional Services for a two-year term, with up to three additional one-year renewal options.

CONSENT ITEMS: (Continued)

5. Geographic Information Systems (GIS) Technician Classification Specification Update

Approve the updates to the education and experience sections of Geographic Information Systems (GIS) Technician classification specification.

6. Revised Classification Specification for Senior Management Analyst

Approve the revised classification specification for Senior Management Analyst.

7. Revised Classification Specification for Forensic Evidence Technician

Approve the proposed changes to the classification specification for Forensic Evidence Technician.

8. Revisions to the Principal Civil Engineer Classification Specification

Approve the proposed revisions to the Principal Civil Engineer classification specification.

9. Authorization to Apply for the FY2022-23 CalRecycle SB 1383 Grant.

1. Adopt Resolution No. 074-23 to Authorize the City Manager or designee to apply for, and if awarded, accept the FY 2022-23 CalRecycle SB 1383 Local Assistance Grant Program; and
2. Authorize the City Manager or designee to execute any documents and agreements necessary to apply for and receive the grant funds.

10. Subdivision Agreement for Public and Private Improvements for 300 El Cajon Boulevard, Engineering Job No. 3757

1. Authorize the City Manager to execute agreements and related documentation with the new owner, KB Home Coastal Inc.;
2. Authorize the City Clerk to accept bonds from KB Home Coastal Inc., which will be released after completion of improvements;
3. Authorize the City Manager to terminate agreements and related documentation with the original owner, City Ventures Homebuilding, LLC; and
4. Authorize the City Clerk to release bonds to City Ventures Homebuilding, LLC. after bonds from KB Home Coastal Inc. are secured.

CONSENT ITEMS: (Continued)

11. Award of Bid No. 010-24 – Asphalt Spot Repairs
 1. Determine that the project is categorically exempt in accordance with section 15301 of the State CEQA Guidelines; and
 2. Adopt Resolutions No. 075-23 to Approve Plans and Specifications for Asphalt Spot Repairs, Bid No. 010-24; and Adopt Resolutions No. 076-23 to Award the bid to the lowest responsive, responsible bidder, TC Construction Company, Inc., in the amount of \$548,375.

12. Award of Bid No. 008-24 – Stoney’s Neighborhood Park Fitness Equipment & Playground Resurfacing Re-Bid
 1. Determine that the project is categorically exempt pursuant to California Environmental Quality Act (CEQA) Guidelines sections 15301 and 15302; and
 2. Adopt Resolution No. 077-23 to Approve Plans and Specifications for Stoney’s Neighborhood Park Fitness Equipment & Playground Resurfacing Re-Bid, Bid No. 008-24; and Adopt Resolution No. 078-23 to Award the bid to the lowest responsive, responsible bidder, Western State Builders, Inc., in the amount of \$269,471.96.

13. Contract Amendment for Bid No. 010-20 – Street Striping & Removal Services
 1. Determine that the project is exempt from the California Environmental Quality Act (CEQA) in accordance with section 15301(c) of the CEQA Guidelines; and
 2. Adopt Resolution No. 079-23 to increase the Street Striping & Removal Services multi-year contract in the not-to-exceed amount of \$95,236.33.

14. Contract Amendment for Bid No. 004-22 – Broadway Creek Restoration Phase A
 1. Adopt Resolution No. 080-23 to Amend the scope of work and increase the compensation and working days for the Public Works Contract with Whillock Contracting, Inc. (WCI), for the restoration project in the not-to-exceed amount of \$300,000; and
 2. Appropriate \$300,000 of Wastewater Enterprise Fund equity to increase the Broadway Creek Restoration Phase A (173586PWCP) project budget.

CONSENT ITEMS: (Continued)

15. Subdivision Agreement for Public Improvements and Parcel Map for Tentative Parcel Map (TPM) No. 2021-0004; 1540 Mint Avenue; Engineering Job No. 3807
 1. Approve the Parcel Map and Subdivision Agreement for Public Improvements for Tentative Parcel Map (TPM) No. 2021-0004, 1540 Mint Avenue, Engineering Job No. 3807;
 2. Authorize the City Manager to execute the agreements and related documentation; and
 3. Authorize the City Clerk to release bonds after completion of improvements.

PER ACTION TAKEN UNDER AGENDA CHANGES, ITEMS 24 AND 25 WERE MOVED AND CONSIDERED OUT OF ORDER.

CLOSED SESSIONS:

RECOMMENDATION: That the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency adjourns to Closed Session as follows:

24. Closed Session - Conference with Legal Counsel - Anticipated Litigation - Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code section 54956.9: One (1) potential case
25. Closed Session - Conference with Legal Counsel - Anticipated Litigation - Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code section 54956.9: One (1) potential case - Truck and SUV Superstore, Inc. dba East County Pre-Owned Superstore has submitted a Claim for Damages alleging loss of profits and other damages due to construction on the El Cajon Boulevard Streetscape project, which abuts the claimant's business

MOTION BY WELLS, SECOND BY METSCHEL, to ADJOURN to Closed Session at 3:10 p.m.

MOTION CARRIED BY UNANIMOUS VOTE.

RECONVENED to Open Session at 3:21 p.m.

City Attorney Foley reported the following actions:

- Item 24: No Action Taken
- Item 25: No Action Taken

PUBLIC COMMENT:

Kenneth Kestner spoke about being prosecuted unjustly.

Rich Riel stated that he is running for the Board of Directors with the East County Chamber of Commerce.

Brenda Hammond spoke about being harassed by County programs that should be helping instead.

WRITTEN COMMUNICATIONS: None

PUBLIC HEARINGS: None

ADMINISTRATIVE REPORTS:

16. Proposed Veterans Memorial Location

RECOMMENDATION:

That the City Council identifies a location for a proposed Veterans Memorial.

DISCUSSION

Director of Parks & Recreation, Frank Carson, provided detailed information of the Item.

Discussion ensued among Council and Staff concerning the following:

- Pros and cons of the proposed sites for the Veterans Memorial; and
- Budget.

Star Bales, President of the El Cajon American Legion Auxiliary, Post 303, spoke in support of the proposed Memorial.

Jack Kane, representing the El Cajon American Legion Auxiliary, Post 303, spoke in support of the proposed Memorial.

Discussion continued among Council and Staff supporting placing the memorial in front of the Public Safety Center.

MOTION BY METSCHEL, was interrupted by a member of the public, with a request to speak.

Mike Valley, resident of La Mesa, suggested alternate sites for the Veterans Memorial.

ADMINISTRATIVE REPORTS: (Item 16 – Continued)

MOTION BY METSCHEL, SECOND BY ORTIZ, to PLACE the Veterans Memorial in front of the Public Safety Center.

MOTION CARRIED BY UNANIMOUS VOTE.

17. All-Way Stop Sign Request on Windmill View Road at Woodglen Way

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, to establish permanent all-way stop signs on Windmill View Road at the intersection of Woodglen Way in order to enhance pedestrian and traffic safety.

DISCUSSION

Deputy Director of Public Works, Mario Sanchez, provided detailed information of the Item.

No public comment received for the Item.

MOTION BY ORTIZ, SECOND BY METSCHEL, to ADOPT Resolution No. 081-23 to establish permanent all-way stop signs on Windmill View Road at the intersection of Woodglen Way in order to enhance pedestrian and traffic safety.

MOTION CARRIED BY UNANIMOUS VOTE.

COMMISSION REPORTS: None

ACTIVITIES REPORTS/COMMENTS OF MAYOR WELLS:

SANDAG (San Diego Association of Governments) Board of Directors.

18. Council Activities Report/Comments

Report as submitted.

ACTIVITIES REPORTS OF COUNCILMEMBERS:

- 19. DEPUTY MAYOR 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.

Council Activities Report/Comments.

Report as submitted.

- 20. COUNCILMEMBER GARY KENDRICK
METRO Commission/Wastewater JPA; Heartland Communications; Heartland Fire Training JPA.

Council Activities Report/Comments.

Report as submitted.

- 21. COUNCILMEMBER MICHELLE METSCHEL
Harry Griffen Park Joint Steering Committee; Heartland Communications – Alternate; Heartland Fire Training JPA – Alternate; METRO Commission/Wastewater JPA – Alternate.

Council Activities Report/Comments.

Report as submitted.

- 22. 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 submitted.

JOINT COUNCILMEMBER REPORTS: None

GENERAL INFORMATION ITEMS FOR DISCUSSION: None

ORDINANCES: FIRST READING

23. Posted Speed Limit Zone - Washington Avenue

RECOMMENDATION:

That the City Council approves the introduction of an Ordinance amending section 10.20.130 of Chapter 10.20 of the Municipal Code to include updating the existing speed limit for Washington Avenue from El Cajon Boulevard to Granite Hills Drive.

DISCUSSION

Deputy Director of Public Works, Mario Sanchez, provided a summary of the Item.

Discussion ensued among Council and Staff concerning the following:

- Proposed reduction to the speed limit;
- Traffic studies;
- Use of radar for speed limit enforcement; and
- Solar panels to display speed of vehicles.

Paul Garibay stated that more police enforcement is required on the streets of El Cajon.

MOTION BY ORTIZ, SECOND BY METSCHEL, to INTRODUCE the Ordinance.

MOTION CARRIED BY UNANIMOUS VOTE.

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

AN ORDINANCE AMENDING SECTION 10.20.130 OF
CHAPTER 10.20 OF THE EL CAJON MUNICIPAL CODE
TO ESTABLISH A NEW SPEED LIMIT ON A
PORTION OF WASHINGTON AVENUE FROM
EL CAJON BOULEVARD TO GRANITE HILLS DRIVE

ORDINANCES: SECOND READING AND ADOPTION - None

CLOSED SESSIONS:

RECOMMENDATION: That the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency adjourns to Closed Session as follows:

CLOSED SESSIONS: (Continued)

PER ACTION TAKEN UNDER AGENDA CHANGES, ITEMS 24 AND 25 WERE MOVED AND CONSIDERED EARLIER DURING THE MEETING.

26. Closed Session - Conference with Legal Counsel - Existing Litigation - pursuant to paragraph (1) of subdivision (d) of Government Code section 54956.9: Darren Ehlers v. City of El Cajon; WCAB Claim Nos. ELCN-0018 and ELCN-0042

27. Closed Session - Conference with Real Property Negotiators - pursuant to Government Code section 54956.8:

Property:
APN 487-331-22-00
425 W. Main Street

Negotiating Party:
Jala, Inc.
Hitesh C. Patel, CEO

City Negotiators:
City Manager
Assistant City Manager
City Attorney

Under Negotiation:
Price and terms of payment for acquisition

28. Closed Session - Conference with Real Property Negotiators - pursuant to Government Code section 54956.8:

Property:
APN 488-242-43-00
405 E. Lexington Avenue

Negotiating Party:
Centro de Salud de la Comunidad de San Ysidro, Inc.
Kevin Mattson, CEO

City Negotiators:
City Manager
Assistant City Manager
City Attorney

Under Negotiation:
Price and terms of payment for acquisition

CLOSED SESSIONS: (Continued)

29. Closed Session - Conference with Real Property Negotiators - pursuant to Government Code section 54956.8:

Property:

APN 488-242-43-00
405 E. Lexington Avenue

Negotiating Party:

San Diego Chaldean Community Council Dr.
Noori Barka

City Negotiators:

City Manager
Assistant City Manager City
Attorney

Under Negotiation:

Price and terms of payment for sale of property

MOTION BY WELLS, SECOND BY ORTIZ, to ADJOURN to Closed Session at 4:30 p.m.

MOTION CARRIED BY UNANIMOUS VOTE.

RECONVENED to Open Session at 5:09 p.m.

City Attorney Foley reported the following actions:

- Item 26: Direction given to Staff.
- Item 27: Direction given to City Negotiators.
- *Item 28: Direction given to City Negotiators.
- *Item 29: Direction given to City Negotiators.

*Mayor Wells recused himself from Items 28 and 29 because of a conflict of interest.

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 12th day of September, 2023, at 5:10 p.m., to Tuesday, September 26, 2023, at 3:00 p.m.

ANGELA L. CORTEZ, CMC
City Clerk/Secretary



City Council
Agenda Report

Agenda Item 4.

DATE: September 26, 2023
TO: Honorable Mayor and City Councilmembers
FROM: Angela Cortez, City Clerk
SUBJECT: Board of Supervisors Appointment to Gillespie Field Development Council

RECOMMENDATION:

That the City Council ratifies the Board of Supervisors appointment of James Sly to the Gillespie Field Development Council for a term to expire August 6, 2027.

BACKGROUND:

In accordance with the Joint Powers Agreement between the County of San Diego and the City of El Cajon, appointment of each member of the Gillespie Field Development Council shall be made by mutual agreement of both entities, and ratified by actions of both the Board of Supervisors and the City Council.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

The ratification of the County Board of Supervisors appointment is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378(b)(5).

FISCAL IMPACT:

None

Prepared By: Angela Cortez, City Clerk

Reviewed By: N/A

Approved By: Graham Mitchell, City Manager

Attachments

Re-appt Letter & Cert



County of San Diego

ANDREW POTTER, CCB
EXECUTIVE OFFICER/CLERK

CLERK OF THE BOARD OF SUPERVISORS
1600 PACIFIC HIGHWAY, ROOM 402, SAN DIEGO, CALIFORNIA 92101-2471
PHONE (619) 531-5600 FAX (619) 595-4616
www.sandlegocob.com

RYAN SHARP
ASSISTANT CLERK
ANN MOORE
CHIEF DEPUTY CLERK

September 11, 2023

James Sly
9302 W. Heaney Circle
Santee, CA 92071

Dear James Sly:

On August 29, 2023 (16), the Board of Supervisors re-appointed you as a member of the **GILLESPIE FIELD DEVELOPMENT COUNCIL, Seat 2**, for a term to expire August 6, 2027.

Enclosed is the following:

· Certificate of re-appointment.

If you have any questions regarding this re-appointment, please contact us at (619) 531-5600.

Sincerely,

Ann Moore
Chief Deputy Clerk of the Board of Supervisors

AM:ot
Enclosure (1)

cc: Supervisor Joel Anderson, A-500
Lorie Maniss, S-119

COUNTY OF SAN DIEGO

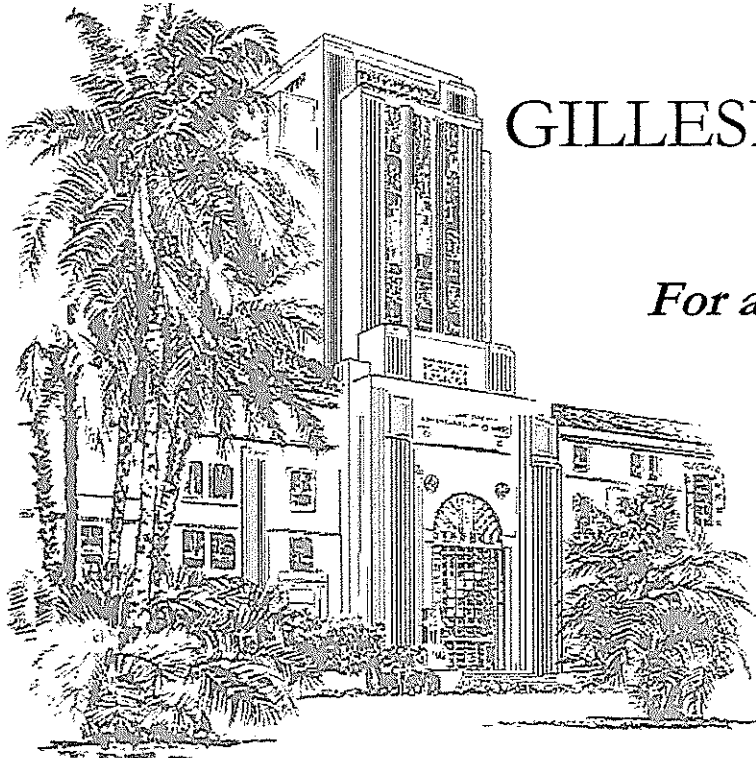
The Board of Supervisors of the
County of San Diego, State of California,
does hereby re-appoint

James Sly

to

GILLESPIE FIELD DEVELOPMENT
COUNCIL

For a term to expire August 6, 2027



Witness my hand and the seal of the Board of Supervisors
This 29th day of August, 2023

A handwritten signature in black ink, appearing to read "Norman R. Rios".

Clerk of the Board of Supervisors



City Council
Agenda Report

DATE: September 26, 2023
TO: Honorable Mayor and City Councilmembers
FROM: Jose Dorado, Housing Manager
SUBJECT: El Cajon Housing Authority Annual Report (Fiscal Year 2022-2023)

RECOMMENDATION:

That the City Council, acting as the El Cajon Housing Authority:

1. Approves the attached 2022-2023 Annual Report; and
2. Authorizes the Executive Director or designee to transmit it, in the form substantially as presented, to the California Department of Housing and Community Development as required by State Law.

BACKGROUND:

On March 9, 2011, the City Council adopted Resolution No. 32-11 establishing the El Cajon Housing Authority (Housing Authority). In accordance with Health and Safety Code sections 34328 and 34328.1, the Housing Authority must prepare a report of its activities during the previous fiscal year by October 1st of each year. The annual report must be filed with the City Clerk and the California Department of Housing and Community Development Department (HCD). The Annual Report provides information on the Housing Authority's formation, assets, budget, and activities from July 1, 2022 through June 30, 2023.

Over the past year, the Housing Authority has continued to focus on providing affordable housing for low-income households through the following activities:

- Provide Project Based Rental Assistance ("PBRA") to 40 of the units at Lexington Square in accordance with the terms of the fifteen-year agreement (2021-2036) with Lexington ECJ Housing, LP (Thomas Safron and Associates);
- Provide rapid re-housing programs and associated services relative to homelessness; and
- Continue to work with developers to identify resources and possible sites for construction and/or rehabilitation of affordable housing.

The Annual Report demonstrates compliance with the requirements of Health and Safety Code section 34312.3, which includes:

- Providing the minimum number of housing units affordable to lower income households in housing projects assisted by the Housing Authority;
- Establishing base rents pursuant to Federal Section 8 requirements for lower income households;

- Establishing maximum rental payments for lower income households pursuant to State and Federal requirements; and
- Report on activities related to the development or transaction of land for the purpose of increasing the supply of affordable housing for lower income households.

In addition to the objectives and items described above, Table 3 of the Annual Report includes the actual unaudited budget for 2022-23 and the Proposed Budget for 2023-24 that was approved by the City Council in June 2023, reflecting revenues and expenditures for various Housing Authority activities and projects.

The Annual Report also requires data on termination of tenancies and termination of housing choice (Section 8) vouchers because of domestic violence in housing authority units, and a brief summary of steps taken by the Housing Authority to address termination of tenancies resulting from domestic violence. Between July 1, 2022 and June 30, 2023, none of the properties were owned or operated by the Housing Authority.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

This action does not constitute a "Project" under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378(b)(5) because it is an administrative action that does not result in any change in the environment and is therefore exempt.

FISCAL IMPACT:

No impact to the General Fund. In accordance with Health and Safety Code section 34328.1(b), the Housing Authority may be required to reimburse HCD for the cost of processing the report. If this were to occur, the cost would be covered with Housing funds (290200).

Prepared By: Jose Dorado, Housing Manager

Reviewed By: Anthony Shute, Director of Community Development

Approved By: Graham Mitchell, City Manager

Attachments

ECHA Annual Report 2022-2023



El Cajon Housing Authority

Annual Report

FY 2022-23

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INTRODUCTION

Pursuant to California Health & Safety Code (“HSC”) section 34328, all housing authorities must annually file a report by October 1st of their activities for the preceding year (“Annual Report”) with their respective City or County Clerk and with the California Department of Housing and Community Development (“HCD”). This Annual Report covers all activities of the El Cajon Housing Authority that occurred during the Fiscal Year (“FY”) 2022-23, including housing unit compliance with affordability requirements, activities concerning existing debt obligations, as well as land transactions and development.

LEGAL AUTHORITY

The State legislature allows housing authorities to function as local entities with the primary responsibility of providing housing for very low- and low-income households. Housing authorities are distinct, autonomous, legal entities that derive their power from State legislature. Under HSC section 34200, the law provides the functioning of a local housing authority through a resolution of the local governing body.

AUTHORITY BACKGROUND

In the case of the City of El Cajon (“City”), the City Council adopted Resolution No. 32-11 on March 9, 2011, to establish the El Cajon Housing Authority (“Housing Authority”) by confirming and finding: (1) that unsanitary or unsafe inhabited dwellings exist in the City; or (2) that there is a shortage of safe and sanitary dwellings accommodations in the City available to persons of low income at affordable rents.

On January 24, 2012, the El Cajon Redevelopment Agency (“Agency”) adopted Resolution No. ECRA-427 to transfer title of the Agency’s housing real property assets and loans receivable before February 1, 2012, to the Housing Authority and transfer all remaining housing assets to same entity, including, but not limited to: recorded or unrecorded leases, Deeds of Trust, intangible assets, fixtures and equipment, agreements, contracts, promises to pay, receivables and any/all other unspecified assets. The Housing Authority then adopted Resolution No. ECHA-1 to appoint the officers of the Housing Authority; to accept the Agency’s housing real property assets and loans receivable before February 1, 2012; to accept transfer of all remaining housing assets, including, but not limited to: recorded or unrecorded leases, Deeds of Trust, intangible assets, fixtures and equipment, agreements, contracts, promises to pay, receivables and any/all other unspecified assets; and to authorize the Executive Director to pay enforceable obligations, and conduct day to day operations of the Housing Authority.

OBJECTIVES OF THE HOUSING AUTHORITY

Historically, the primary role of housing authorities has been to interact with the Department of Housing and Urban Development (“HUD”) on behalf of their communities, and to function as the administrator of “Section 8” funds, as defined by Section 8 of the United States Housing Act of 1937. A housing authority’s function under Section 8 entails determining applicants’ eligibility to receive Section 8 assistance, maintaining a waiting list of eligible participants, contracting with property owners, and ensuring that contracted rent prices are reasonable. The County of San Diego conducts this function on the behalf of the Housing Authority.

However, a housing authority also serves to meet the affordable housing needs of a wider range of residents than Section 8 alone. Unlike the former Agency, the Housing Authority can own and operate housing developments, subject to Article XXXIV of the California Constitution (“Article 34”) limitations, which alleviates the need to find prospective owners or operators for the units created. If political support permits, the Housing Authority can utilize eminent domain as a tool by which to assemble land for housing developments without the need to document blighting conditions.

The Housing Authority’s future goals and objectives are to:

- Increase, improve or preserve housing stock available to low and very low income residents;
- Rehabilitate multi-family properties that exhibit unsafe or unhealthy characteristics;
- Increase the affordability of housing for low and very low income residents;
- Reduce overcrowding conditions in multi-family units;
- Fulfill obligations to produce and maintain affordable housing units pursuant to HSC section 33000 *et. seq.*, with housing assets transferred from the Agency; and
- Generate ongoing revenues to achieve Housing Authority self-sustainability.

CONTENTS OF THE HOUSING AUTHORITY’S ANNUAL REPORT

This Annual Report has been developed to address the following requirements:

- Provide a complete report of activities during FY 2022-23, including any bond issuances, and loans or finance agreements that the Authority has entered into;
- Compliance with the requirements of HSC section 34312.3 such as providing the minimum amount of housing units affordable to lower income households in projects assisted by the Authority with bonds and documenting established base rents and/or maximum rental payments for lower income households; and
- Information on any tenancy or Housing Choice Voucher terminations of domestic violence victims required by HSC section 34328.1.

HOUSING AUTHORITY DEBT OBLIGATIONS

Pursuant to HSC section 34312.3, the Housing Authority must provide a complete report of its activities taken during the prior fiscal year, which includes bonds, loans, and financing agreements for multifamily rental projects.

The Housing Authority was activated on March 9, 2011, and has not issued any bonds. Any future financing for the acquisition, construction, rehabilitation, or development of multi-family housing through the issuance of bonds, construction loans, mortgage loans, and/or financing agreements will be documented and provided in subsequent Annual Reports.

LAND TRANSACTIONS AND DEVELOPMENT ACTIVITIES

HSC section 34312.3 requires that all prior year's activities be reported. Which include not only debt obligations, but activities related to the development, rehabilitation, or finance of housing projects. Additionally, including purchase, sale, lease, ownership, operation, or management of housing projects assisted by the Housing Authority; conveyance of surplus lands to a developer for permitted purposes; and establishment of a special trust fund or account funded with bond-loan issuance proceeds or developer fees. **Table 1-A** describes the Housing Authority's land transactions or development status.

El Cajon Housing Authority Land Transactions and Development				Table 1-A
Parcel #	Site Address	Type	Purpose	Status
488-212-21-00	250 E. Lexington	Commitment for Sale of the Leasehold Interest; Disposition and Development Agreement	The Housing Authority committed \$3.95 million (from the sale proceeds) to provide Project Based Rental Assistance ("PBRA") to 40 units at or below extremely low income over a period of 15 years. This commitment has given the Housing Authority to monitor the property on annual basis.	Completed

HOUSING AUTHORITY ASSETS

The Housing Authority assets include but are not limited to real property, recorded or unrecorded leases, Deeds of Trust, intangible assets, fixtures and equipment, agreements, contracts, promises to pay, receivables, transfers, and any/all other unspecified assets. All Real Property Assets owned and transferred to the Housing Authority are shown on **Table 1-B** and a summary of all Loans Receivable are shown on **Table 1-C**.

El Cajon Housing Authority Real Property Assets (Properties owned and transferred to the Housing Authority)			Table 1-B
Parcel #	Site Address	Date Acquired	Current Use
487-180-09-00	151 Chambers Street	07/26/2007	DDA – Solterra Sr. Residences
487-191-14-00	131 Chambers Street	07/25/2008	DDA – Solterra Sr. Residences
488-111-35-00	Lot Adjacent to 146 Ballantyne Street	08/24/1973	Vacant – property is in contract with HCD for disposition.
488-212-21-00	250 E. Lexington Avenue	07/01/1994	Lease – Lexington Senior Apartments
488-212-22-00	Prescott Promenade- Parking Lot	06/27/2014	Parking Lot-Lease to Lexington Apartments

El Cajon Housing Authority Loans Receivable (Loans transferred to the Housing Authority) ¹		Table 1-C
Loan Receivable Type	# Of Outstanding Loans	Value of 6/30/2023
Multi-Family Projects	3	\$ 7,641,965
Single Family Units	57	\$ 4,170,678 ²
Total	60	\$ 11,812,643³

1. The figures in Table 1-C are provided for information purposes only and are unaudited.
2. The City is performing year-end calculations and the figures above for Single Family Units do not include an estimated \$58,732.86 in partial loan repayments, with one loan payoff in the amount of \$23,025 and applicable shared equity.
3. The final audited figures will be made available as part of the City of El Cajon’s Annual Comprehensive Financial Reports posted here: <https://www.elcajon.gov/your-government/departments/finance/financial-reports>

HOUSING UNIT COMPLIANCE

As set forth by HSC sections 34328 and 34328.1, housing authorities are required to:

- Prove compliance with the requirements of HSC section 34312.3 such as the minimum number of housing units affordable to lower income households in projects assisted by the Housing Authority and establish base rents and/or maximum rental payments for lower income households;
- Lower-income households are defined as a household with income not greater than 80% of AMI established by HUD and
To document any domestic violence tenancy terminations or Section 8 voucher terminations as required by HSC section 34328.1.

The following subsections provide a summary of the Housing Authority’s progress toward the requirements listed above.

HOUSING UNIT AFFORDABILITY REQUIREMENT

Pursuant to HSC section 34312.3, not less than 20 percent of the units assisted by the Housing Authority, or 15 percent in targeted areas¹, as defined by section 103(b) (12) (A) of Title 26 of the United States Code, must be affordable to persons of low income. Of that percentage, not less than one-half must be available to persons of very-low income, if the housing development is financed by bonds². Nevertheless, the power to finance, own, build, and/or operate a housing development allows the Housing Authority to take on a more active role in the creation and maintenance of housing for low-income families.

Table 1-D provides a summary of the multi-family real estate assets owned or managed by the Housing Authority, and the breakdown of the current income levels that the units fall within, where known. **Table 1-D** shows how the current affordability mix of the Housing Authority's projects meet established requirements within HSC section 34312.3, or the requirements of the funding sources at the time the assistance was provided.

El Cajon Housing Authority Multi-Family Residential Real Estate Assets (Owned or managed by the Housing Authority)						Table 1-D
Project Name/Location	Project Type	VL	Low	Mod	Mkt Unit	Total No. Units
Solterra Sr. Residences 131 & 151 Chambers Street	Senior Rental Units (Ground Lease)	48	---	1	---	49
Cornerstone Place Apts. 230 S Sunshine Ave	Family and Veteran	---	69	---	---	69
Lexington Senior Apts. 250 E. Lexington Avenue	Senior Rental Units (Ground Lease)	100	---	---	---	100
El Cajon Senior Towers, L. P 180 Ballantyne Street	Senior Rental Units	13	---	---	---	13
Total		161	69	1	---	231

BASE & MAXIMUM RENTS

HSC section 34312.3 establishes a set of guidelines to determine the base and maximum rents that a housing authority can charge for units reserved for lower income households. According to HSC section 34312.3, "rental payments shall not exceed the amount derived by multiplying 30 percent times 50 percent of the median adjusted gross income for the area, adjusted for family size, as determined pursuant to Section 8 of the United States Housing Act of 1937 (42 U. S. C. Sec. 1437f)." The Housing Authority does not have an adopted schedule of base rental payments; however, the following table provides a calculation of the maximum rental payments that the Housing Authority can charge for affordable rental housing units. The Housing Authority monitors to ensure compliance of rental payments charged for its

¹ CA Health & Safety Code Section 34312.3 (e)(1)(A)

² CA Health & Safety Code Section 34312.3 (2)(A)

housing units and based on the last monitoring period all units across all three properties were found to be in compliance with their respective affordable housing agreement and the rents listed in **Table 2**.

As part of the monitoring process for the three properties, the Housing Authority compiles reports on each property's unit compliance in accordance with each property's affordable housing agreement, loan agreement, funding source, and/or covenant. The properties received funding that requires compliance with either HCD, HOME, or MTSP rent limits, or some combination thereof.

EL CAJON HOUSING AUTHORITY - 2022											
Affordable Rental Housing Limits											
San Diego County											
Area Median Income		\$106,900	Very Low Income			Low Income			Moderate Income		
Change from 2021		15.32%									
Median Income	Utility Allowance	HUD FMR ¹	Number of Persons Bedrooms		Qualifying Income Limit	Max Rent 30% X 50%*	Qualifying Income Limit	Max Rent 30% X 60%**	Qualifying Income Limit	Max Rent 30% X 110%***	
					H&S Code 50053(b)(2)		H&S Code 50053(b)(3)		H&S Code 50053(b)(4)		
\$74,850	\$88	\$1,506	1	Studio	\$45,550	\$936	\$72,900	\$1,123	\$89,800	\$2,058	
\$85,500	\$123	\$1,670	2	One	\$52,050	\$1,069	\$83,300	\$1,283	\$102,650	\$2,351	
\$96,200	\$141	\$2,314	3	Two	\$58,550	\$1,203	\$93,700	\$1,443	\$115,450	\$2,646	
\$106,900	\$195	\$3,110	4	Three	\$65,050	\$1,336	\$104,100	\$1,604	\$128,300	\$2,940	
\$115,450	\$247	\$3,638	5	Four	\$70,300	\$1,443	\$112,450	\$1,732	\$138,550	\$3,175	
\$124,000	\$282	N/A	6	Five	\$75,500	\$1,550	\$120,800	\$1,860	\$148,850	\$3,410	

¹Fair Market Rents

*Affordable Housing Cost for Very Low-Income Households is the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate to the unit. Health and Safety Code section 50053(b)(2).

**Affordable Housing Cost for Lower Income Households is the product of 30 percent times 60 percent of the area median income adjusted for family size appropriate to the unit. Health and Safety Code section 50053(b)(3).

***Affordable Housing Cost for Moderate Income Households is not more than the product of 30 percent times 110 percent of the area median income adjusted for family size appropriate to the unit. Health and Safety Code section 50053(b)(4).

Utility Allowance reflects the use of water service and natural gas for heating, cooking, and water heating in accordance with the County of San Diego Section 8 Rental Assistance Program, effective 12/1/2022.

DOMESTIC VIOLENCE

State law requires that a housing authority annually report data related to domestic violence incidents in units owned or operated by the housing authority. Specifically, the report must include data on the following:

- Data on termination of tenancy and/or Section 8 vouchers of victims of domestic violence in Housing Authority units.
- Summary of steps taken by the Housing Authority to address any termination of tenancies and/or Section 8 vouchers of victims of domestic violence.

The Housing Authority does not own or operate any multifamily projects. Hence, there is no reportable activity between July 1, 2022, and the end of the reporting year on June 30, 2023. The County of San Diego administers the Housing Choice Voucher Program (Section 8) rental assistance in the City of El Cajon, as the local Public Housing Agency. The County of San Diego reported no terminations of Section 8 vouchers of victims of domestic violence during this reporting period. Any information on any terminations of this kind are always limited to a

summary of the number(s) and may include non-specific information to protect the privacy of the parties involved.

FINANCIAL STATEMENT/BUDGET

Table 3 presents the revenues and expenditures within the Housing Authority’s actual budget for FY 2022-23 as well as the proposed budget for FY 2023-24.

Table 3		
City of El Cajon Housing Authority Schedule of Revenues, Expenditures and Fund Balance		
	Actual (Unaudited) 2022-23	Proposed Budget 2023-24
Beginning Fund Balance	\$17,594,541	\$ 17,074,283
Revenues/Sources:		
Investment Earnings	22,330	5,050
Sale of Property	-	-
Rental Income	5,050	1
Other Revenues	545	100
Loan Repayments	84,333	200,000
Transfers in -In-Lieu Funds	-	303,000
Total Revenues	112,258	508,151
Expenditure/Uses:		
Administration	173,122	258,885
Material, services, and supplies	459,394.00	474,000
Loan Disbursements	-	-
Total Expenditures	632,516	732,885
Excess (deficiency) of revenues over	(520,258)	(224,734)
Ending Fund Balance	\$17,074,283	\$16,849,549

Source: City of El Cajon Finance Department

FUTURE HOUSING AUTHORITY ACTIVITIES

Future Housing Authority activities to meet goals and objectives will be directed to undertaking activities that meet HSC and supplementary/leveraged funding regulatory requirements, maximize existing and new financial resources for the continued production of affordable housing for low-income households, generate ongoing revenues through affordable housing production to ensure Housing Authority self-sustainability, improve the quality of affordable housing stock in El Cajon, and eliminate conditions that lead to blight in affordable housing developments in El Cajon.

Specific activities that are anticipated or may be contemplated during 2023-2024 include:

- **On-going Compliance:** Continue to monitor existing affordable housing project as show in Table 1-D and collect residual receipts and monitoring fees, if applicable.
- **Production of Affordable Housing:** Continue to seek opportunities that increase the production of affordable units that is consistent with the requirements of HSC section 34176 and 34176.1.

Specific Obligations for 2023-2024 includes:

- **250 E. Lexington Avenue (Lexington Avenue Senior Apartments):** On March 5, 2020, as amended on December 14, 2022, the El Cajon Housing Authority committed \$3.95 million in rental assistance to the Lexington Avenue Senior Apartments for a term of no less than 15 years through a project-based housing assistance (PBA) Agreement between ECHA and Lexington ECJ Housing, LP. In the amount not to exceed \$3.95M. The Agreement provides PBA for 40 households at or below extremely low-income levels for a 15-year period. The annual contribution for 2023-24 is estimated at \$250,000 using LMIHAF.

Specific activities related to Homeless Prevention and Rapid Re-housing programs are:

- **El Cajon Housing Connections:** The Housing Authority is currently in an agreement with Home Start, Inc. for the provision of the El Cajon Homeless Outreach program and services in the City of El Cajon. This program continues to provide increased outreach and additional services for the City's chronically homeless population, along with assistance finding permanent housing. The Annual Performance Report for the Home Start's program shows that it served 681 people across an array of demographic groups in fiscal year 2022-2023. This program will continue in 2023-2024 using another funding source.
- **A Way Back Home:** In October 2017, the City partnered with The Salvation Army to fund the "A Way Back Home" program, reunites homeless individuals in the City with their families by providing assistance with transportation, food and if needed an overnight stay while en route. The original agreement was renewed in 2019 and expired once the funds were fully expended in March 2020. During the term of the original agreement, 84 individuals and 59 households were placed into permanent housing through this program. A total of \$19,899 was expended for this program, for an average of \$337 per household housed. Beginning in FY 2022-23, the A Way Back Home program

served a total of 19 persons and \$5,760.08 was funded by the LMIHAF. This program will continue in 2023-2024.

Conclusion:

Current revenue and asset limitations will be the greatest challenge for the Housing Authority's goal of increasing the production of affordable housing units and achieving self-sustainability. As federal, state, and local programs are being eliminated or reduced, there are fewer subsidies and financial resources available to make affordable projects economically feasible. This trend requires the Housing Authority to be strategic and deliberate in the types of projects for which it chooses to participate, or it must seek other viable alternatives to preserve or build housing that is affordable.



City Council Agenda Report

Agenda Item 6.

DATE: September 26, 2023
TO: Honorable Mayor and City Councilmembers
FROM: Frank Carson, Director of Parks & Recreation
SUBJECT: Youth League Utility Support Fiscal Year 2023/2024

RECOMMENDATION:

That the City Council approves the Recreation Council's recommendation to provide utility support, in the amount of \$2,100 per league, to eight Executive Member youth leagues.

BACKGROUND:

As per City Council Policy E-8, Youth Sport League Utility Support Program, youth leagues will receive financial support for their utility use in accordance with these established eligibility requirements:

- The league must be a non-profit organization and play on a field located within the City limits of El Cajon.
- The league must work in close cooperation with the El Cajon Recreation Council and be represented at 75% of the monthly Recreation Council meetings.
- Leagues must have an Executive Member status per the Recreation Council By-Laws.

At the Recreation Council meeting on August 17, 2023, the Recreation Council unanimously approved the following leagues for utility support for Fiscal Year 2023/2024.

East County ASA	American Youth Soccer Organization
Emerald Pony League	El Cajon Western Little League
Singing Hills Little League	El Cajon Youth Football
El Cajon National Little League	Fletcher Hills Little League

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

The proposed utility support is a governmental fiscal activity which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment, and is therefore exempt in accordance with the California Environmental Quality Act (CEQA) Guidelines section 15378(b)(4).

FISCAL IMPACT:

Funds to cover utility use by youth leagues are included in the Parks & Recreation Department budget for Fiscal Year 2023/2024.

Prepared By: Julie Alon, Parks & Recreation Manager

Reviewed By: Frank Carson, Director of Parks & Recreation

Approved By: Graham Mitchell, City Manager



City Council Agenda Report

Agenda Item 7.

DATE: September 26, 2023
TO: Honorable Mayor and City Councilmembers
FROM: Yazmin Arellano, Director of Public of Works
SUBJECT: Encroachment Agreement with Pacific Wyverd, LLC for Installation and Operation of Fiber Optic Network in the City's Right-of-Way

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, authorizing an Encroachment Agreement with Pacific Wyverd, LLC for the installation and operation of a fiber optic telecommunications network within the City's right-of-way.

BACKGROUND:

There is an increasing demand for advanced technology, necessitating new telecommunications infrastructure. Today, residents and businesses seek faster and more reliable services to support our mobile devices, home or office internet, and telephone needs. The 5G network requires more connection points and bandwidth than previous technologies. To support the new technology, new fiber optic lines are being installed.

Pacific Wyverd, LLC is a fiber-to-the-premise service provider offering affordable and reliable high-speed internet to residents, businesses, carriers, and community/government entities. They have requested an encroachment permit. The proposed encroachment agreement with Pacific Wyverd, LLC would allow new fiber optic lines to be installed in the City's right-of-way. The fiber optic network will be installed through new or existing underground conduits or using overhead utility poles. The agreement does not allow Pacific Wyverd, LLC to install wireless antennas or cell sites.

The initial term of the agreement is for five years with options for successive five-year renewal terms. In addition to this encroachment agreement, Pacific Wyverd, LLC. must apply for project-specific encroachment permits and pay all applicable fees. There are no fees associated directly with this encroachment agreement.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

The proposed Encroachment Agreement with Pacific Wyverd, LLC for the installation and operation of a fiber optic telecommunications network within the City's right-of-way is exempt from the California Environmental Quality Act (CEQA) pursuant to section 15301 of the CEQA Guidelines. Section 15301 provides an exemption for minor alterations to existing facilities.

FISCAL IMPACT:

There is no fiscal impact associated with this encroachment agreement.

Prepared By: Paul Romero, Associate Engineer

Reviewed By: Yazmin Arellano, Director of Public Works

Approved By: Graham Mitchell, City Manager

Attachments

Resolution

2355_Encroachment_Agreement

RESOLUTION NO. ____-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CAJON
APPROVING AN ENCROACHMENT AGREEMENT BETWEEN
THE CITY OF EL CAJON AND PACIFIC WYYERD LLC FOR THE
INSTALLATION, OPERATION AND MAINTENANCE OF
TELECOMMUNICATIONS NETWORK FACILITIES
WITHIN THE PUBLIC RIGHT-OF-WAY

WHEREAS, the increasing demand for advanced technology continues to necessitate new telecommunications infrastructure as residents and businesses in the City of El Cajon (the "City") seek faster and more reliable services to support mobile devices, home and office internet, and telephone needs; and

WHEREAS, the 5G network requires more connection points and bandwidth than previous technologies, and in order to support advancing technology, installation of new fiber optic lines is necessary; and

WHEREAS, Pacific Wyyerd, LLC ("Pacific Wyyerd") is a fiber-to-the-premise service provider offering affordable and reliable high-speed internet to residents, businesses, carriers, and community/government entities and, through its subsidiary (Media 3 Communications LLC), holds a statewide video franchise issued by the California Public Utilities Commission under the Digital Infrastructure and Video Competition Act of 2006 (California Public Utilities Code sections 5800 through 5970); and

WHEREAS, the proposed encroachment agreement with Pacific Wyyerd (the "Agreement") would allow new fiber optic lines to be installed in the City's public right-of-way through new or existing underground conduits or using overhead utility poles; and

WHEREAS, the Agreement does not allow Pacific Wyyerd to install wireless antennas or cell sites; and

WHEREAS, the initial term of the Agreement is for five (5) years, with the option to renew for successive five-year periods of time; and

WHEREAS, in addition to the Agreement, Pacific Wyyerd must apply for project-specific encroachment permits and pay all applicable fees required for such permits; and

WHEREAS, encroachment permit fees are established to reimburse the City for the reasonable costs associated with the issuance of such permits, therefore, there is no fiscal impact associated with the Agreement; and

WHEREAS, the Agreement is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15301 of the CEQA Guidelines, which provides an exemption for minor alterations to existing facilities; and

WHEREAS, the City Council believes it to be in the City's best interest to enter into the Agreement with Pacific Wyyerd as recommended by staff.

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 Agreement is exempt from CEQA pursuant to section 15301 of the CEQA Guidelines, which provides an exemption for minor alterations to existing facilities.
3. The City Council approves entering into the Agreement with Pacific Wyyerd for the installation, operation and maintenance of a fiber optic telecommunications network (the "Network") within the City's public right-of-way provided, however, that Pacific Wyyerd first obtains all necessary encroachment permits related to the Network at those locations where work is to be performed prior to any work in the City's right-of-way at any time, including during the term of the Agreement.
4. The City Council hereby authorizes the City Manager, or such person as is designated by the City Manager, to execute the Agreement, with any such changes and refinements as may be necessary and approved by the City Manager.
5. 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, or other documents necessary, as may be approved by the City Manager, on behalf of the City of El Cajon.

09/26/23 CC Agenda

Reso – Approve Encroachment Agmt w-Pacific Wyyerd (Telecom Network Facilities in ROW) 091123

**ENCROACHMENT AGREEMENT BETWEEN THE CITY OF EL CAJON
AND PACIFIC WYYERD LLC FOR
THE INSTALLATION, OPERATION AND MAINTENANCE OF
TELECOMMUNICATIONS NETWORK FACILITIES
WITHIN THE PUBLIC RIGHT-OF-WAY**

This Agreement ("Agreement") is dated for identification this _____ day of _____, 2023 by and between the City of El Cajon, a charter city and municipal corporation (herein termed "CITY"), and Pacific Wyyerd LLC, a Delaware corporation (herein termed "PERMITTEE").

RECITALS

WHEREAS, PERMITTEE desires to construct, install and maintain Telecommunications Network Facilities within the Public Right-of-Way and/or public utility or service easements within CITY and CITY is willing to allow such activity to be conducted, subject to compliance by PERMITTEE with all of the terms, conditions and requirements as set forth in this Agreement; and

WHEREAS, CITY has the authority to regulate the terms and conditions for the use of Public Right-of-Way for the construction, installation, and maintenance of Telecommunications Network Facilities by private telecommunications services providers; and

WHEREAS, PERMITTEE has obtained a Certificate of Public Convenience and Necessity from the Public Utilities Commission of the State of California and approved by D. 22-11-014 authorizing PERMITTEE to provide telecommunications services throughout the State of California.

NOW, THEREFORE, in consideration of the recitals and the mutual promises contained herein, CITY and PERMITTEE agree as follows:

"PERMITTEE" means Pacific Wyyerd LLC, and includes its lawful successors or assigns.

"CITY" means the City of El Cajon, a charter city and municipal corporation in the State of California, and includes the duly elected or appointed officers, agents, employees, and volunteers of the City of El Cajon, individually or collectively.

"Agency" means any local, county, state or federal governmental agency or quasi-governmental body other than the CITY, including, without limitation the Federal Communications Commission and the State of California Public Utilities Commission.

"Agreement" means this "ENCROACHMENT AGREEMENT BETWEEN THE CITY OF EL CAJON AND PACIFIC WYYERD LLC FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF TELECOMMUNICATIONS NETWORK FACILITIES WITHIN THE PUBLIC RIGHT-OF-WAY."

"Business Day" means any calendar day, except a Saturday, Sunday, and any Day observed as a legal holiday by CITY. For the purposes hereof, if the time in which an act is to be performed falls on a Saturday, Sunday, or any Day observed as an official holiday by CITY, the time for performance shall be extended to the following Business Day.

"City Manager" means the individual designated as the City Manager as that position is established under the CITY Municipal Code.

"Council" means those elected officials which are authorized to exercise the legislative powers granted to and vested in CITY under CITY's charter and Government Code section 37100 *et seq.*

"Day" means any calendar day, unless a Business Day is specified. For the purposes hereof, the time in which an act is to be performed shall be computed by excluding the first Day and including the last.

"Directors" means the individuals designated as the City Manager or his/her designee, and the Director of Public Works, or any combination of one or more of the named individuals holding such titles and performing such functions as charged under the CITY's Municipal Code.

"Director of Public Works" means the individual designated as the Director of Public Works by the City Manager, including any individual expressly designated to exercise functions with respect to the rights and obligations of the Director of Public Works under this Agreement, and any other individual, person, division, department, bureau, or agency as may exercise from time to time functions equivalent or similar to those now exercised by the Director of Public Works.

"Fee" means any assessment, license, charge, fee, imposition, tax (excluding any utility users tax), or levy lawfully imposed by any governmental body.

"Telecommunications Network Facilities" or "Facilities" means without limitation, any and all cables (including fiber optics infrastructure and technology), wires, lines, ducts conduits, converters, splice boxes, cabinets, hand-holes, manholes, vaults, equipment, drains, surface location markers, appurtenances and related facilities owned, leased or licensed by PERMITTEE, located or to be located in the Public Right-of-Way of CITY and used or useful for and in connection with the transmission of telecommunication messages, but does not include antennas or transmitters for providing wireless service.

"LATA" means "local access and transport area."

"Law" or "Laws" means any judicial or administrative decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, certificate, order, or other requirement of any municipal, county, state, federal, or other Agency having joint or several jurisdiction over the parties to this Agreement, in effect either at the time of execution of this Agreement or at any time during the location of the Facilities in the Public Right-of-Way. A reference to "Laws" shall include the Standard Drawings and Standard Specifications.

"Person" means an individual, a corporation, a partnership, a limited liability company, a sole proprietorship, a joint venture, a business trust, and any other form of business association.

"Provision" means any agreement, clause, condition, covenant, qualification, restriction, reservation, term, or other stipulation in this Agreement or under any Law that defines or otherwise controls, establishes, or limits the performance required or permitted by any party to this Agreement.

"Public Right-of-Way" means in, upon, along, across, under and over the public streets, roads, lanes, courts, ways, alleys, boulevards, and places, including, without limitation, all public utility easements and public service easements, as the same now or may hereafter exist that are owned, occupied, leased, or otherwise under the jurisdiction and control of CITY. This term shall not include any property owned by any Person or Agency other than CITY except as provided by applicable Laws or pursuant to an agreement between CITY and any Person or Agency.

"Standard Drawings and Standard Specifications" means the general terms and conditions, specifications, and requirements of CITY which govern the design, construction, installation, and maintenance of any improvement within the Public Right-of-Way. CalTrans Standard Plans and Specifications as periodically updated, shall be used unless CITY has other standards which shall then prevail. This term shall include any and all documents entitled "General Conditions" or words of similar import, now or hereafter existing, which directly pertain to all aspects of general construction work.

"Telecommunications Services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals by wire, cable, fiber-optic cables, or other wireline conveyances, which are permitted to be offered by PERMITTEE pursuant to PERMITTEE's Certificate of Public Convenience and Necessity from the Public Utilities Commission of the State of California, under the California Public Utilities Code and other applicable municipal, state, and federal Laws. Notwithstanding the foregoing, Telecommunications Services also means all those certain types of communications services and related services that are not presently regulated or otherwise unlawful.

TERM OF AGREEMENT

1. This Agreement shall be binding on the PERMITTEE on the date of its approval by the CITY ("Effective Date") and shall be for a term of five (5) years. The term shall be renewed for successive five-year periods of time, and unless PERMITTEE otherwise provides at least thirty (30) days prior written notice to the CITY of its intent not to renew the Agreement and its intent to remove or abandon the Telecommunications Facilities in accordance with Section 15 of this Agreement.

2. Failure on the part of the PERMITTEE to perform any material obligation imposed upon it shall constitute a default and a material breach of this Agreement. In such event, the CITY shall be entitled to exercise all rights and remedies hereby reserved

under this Agreement or made available under applicable Laws. For the purposes of this Agreement, a "material obligation" shall include, without limitation, any failure of the PERMITTEE to give any required notice to the CITY, and the failure to pay, collect or remit any lawful Fee or tax.

LIMITATIONS AND RESTRICTIONS

3. CITY hereby agrees to permit PERMITTEE, subject to reservations, covenants and conditions herein contained and the issuance by CITY and any other Agency or Person of all permits and approvals required for performance of the work, to construct, reconstruct, install, reinstall, maintain and operate, replace, relocate and remove Telecommunications Network Facilities used for Telecommunications Services within Public Right-of-Way that is located within the corporate limits of the CITY, subject to obtaining all required permits and approvals.

4. This Agreement is not a grant by CITY of any property interest but is made subject and subordinate to the prior and continuing right of CITY and its assigns to lawfully use any or all of the Public Right-of-Way for CITY-owned facilities in the performance of its duties, including but not limited to, public use as a street or sidewalk and for the purpose of laying, installing, maintaining, repairing, protecting, replacing and removing sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, electroliers, cable television and other utility and municipal uses together with appurtenances thereof and with right of ingress and egress, along, over, across and in said Public Right-of-Way. No use of any Public Right-of-Way or other interest or property under this Agreement shall create or vest in PERMITTEE, its successors, or any other public utility any ownership interest in the Public Right-of-Way, streets or other property or interest of CITY. Nothing in this Agreement shall be deemed to grant, convey, create, or vest a perpetual real property interest in land in PERMITTEE, including any fee or leasehold interest in land, easement, nor shall anything in this Agreement be deemed or construed to grant or create any franchise rights.

5. This Agreement is made subject to all easements, restrictions, conditions, covenants, encumbrances and claims of title which may affect the Public Right-of-Way, and it is understood that PERMITTEE, at its own cost and expense, shall obtain such permission as may be necessary, consistent with any other existing rights. Subject to the Provisions of this Agreement, CITY hereby licenses PERMITTEE to construct, install, maintain, locate, move, operate, place, protect, reconstruct, reinstall, relocate, remove, and replace the Facilities underground or on existing poles, to the extent PERMITTEE may gain access to these poles consistent with the rights of third parties under applicable Laws and all existing and future agreements, within the Public Right-of-Way for the purposes of providing Telecommunications Services to Persons located within the limits of the CITY. Any work performed pursuant to the rights granted to PERMITTEE under this Agreement shall be subject to the prior review and approval of the Directors.

6. Subject to the approval of CITY's Director of Public Works, the construction, installation, operation, maintenance and removal of said Telecommunications Network Facilities shall be accomplished without any cost or expense to CITY and in such a manner as not to endanger persons or property, or unreasonably obstruct travel on any

road, walk or other access thereon within said Public Right-of-Way, or interfere in or conflict with any manner with any existing or proposed public or private utilities or any facilities of CITY installed or to be installed therein.

COMPLIANCE WITH STANDARDS

7. PERMITTEE agrees to keep said Telecommunications Network Facilities in good and safe condition and free from any nuisance, to the reasonable satisfaction of CITY's Director of Public Works.

8. PERMITTEE shall construct, install, operate, and maintain all Telecommunications Network Facilities in accordance and in conformity with all applicable CITY, State, Federal and regulatory agency laws, ordinances, rules, and regulations.

SERVICE CHANGE

9. PERMITTEE provides Telecommunications Services in California pursuant to all laws, including federal law, state law its Certificates of Public Convenience and Necessity received from the California Public Utilities Commission, and regulations and rules promulgated by the California Public Utilities Commission. PERMITTEE represents that the Facilities will be used for the sole purpose of rendering Telecommunication Services consistent with the Certificate of Public Convenience and Necessity issued to PERMITTEE by the PUC and other Telecommunications Services not regulated by the PUC. The type of service PERMITTEE offers to its customers through the Telecommunications Network Facilities in Public Right-of-Way consists of business and residential Telecommunications Services which are presently permitted by law as well as provision of Telecommunications Services to cell sites. If the nature or character of PERMITTEE's service changes to include additional or alternative services that directly affects the regulatory authority of CITY, including but not limited to, community antenna television systems or cable service (as such term is defined in 47 U.S.C. § 522), PERMITTEE shall give CITY at least six (6) months written notice, and comply with the CITY's lawful fee and/or franchise requirements, if any. Notwithstanding the foregoing, PERMITTEE may lease any or all of the capacity and/or bandwidth carried by its Facilities constructed hereunder, to an affiliate or third party organization so long as the Permittee continues to maintain and own said facilities and PERMITTEE remains fully bound by this Agreement and the obligations hereunder, and no access rights are granted or provided to said affiliate or third party organization within the CITY unless such affiliate or third party has obtained permission from the CITY to access such Facilities as required by applicable law. PERMITTEE acknowledges that any expansion or change in the character or nature of the regulated Telecommunications Services may increase CITY's regulatory authority over such services, and this may require PERMITTEE to enter into a new Agreement consistent with the requirements of a hereinafter-enacted CITY ordinance regulating such services or the expansion or change in services, if such service changes fall under the lawful regulation, jurisdiction or authority of CITY.

NO FRANCHISE RIGHTS CREATED

10. Nothing in this Agreement shall be construed as granting or creating any franchise rights.

RESERVATION OF RIGHTS

11. The CITY is uncertain as to its legal ability to regulate and to impose taxes, charges and fees on the provision or use of fiber optics infrastructure and technology and related activities and services that may be provided pursuant to the installation subject to this Agreement. Therefore, CITY reserves any and all rights it may have now or in the future to legally regulate, impose taxes, charges and fees or otherwise condition the use of the fiber optics infrastructure and technology and related activities and services to be provided pursuant to the installation subject to this Agreement.

CITY's agreement hereto is not a waiver of and is without prejudice to any right CITY may have under law to regulate, tax, or impose fees or charges on PERMITTEE or any right PERMITTEE may have under the law to provide services through the fiber optic infrastructure pursuant to state or federal laws, rules, or regulations. PERMITTEE shall be subject to any future taxes, fees, or charges that the CITY lawfully imposes on the fiber optics infrastructure and fiber optic services in the future, including, but not limited to a rental or other charge for use of the public right of way and/or a utility user tax. Nothing herein shall affect in any way CITY's power or right to impose or collect any tax or fee on users or providers of the services to be provided by PERMITTEE. Nothing herein is intended to impose regulations or conditions on PERMITTEE that CITY is preempted from imposing by state or federal laws.

REMOVAL AND RELOCATION

12. PERMITTEE shall remove or relocate, without cost or expense to CITY, any of its Telecommunications Network Facilities installed, used, and maintained under this Agreement if and when made necessary by any change of grade, alignment or width of any street, sidewalk or other public facility, including the construction, maintenance or operation of any underground or aboveground facilities by CITY. In the event all or any portion of said Public Right-of-Way occupied by said Telecommunications Network Facilities shall be needed by CITY, or in the event the existence of said Telecommunications Network Facilities shall be considered detrimental to governmental activities, including but not limited to, interference with CITY construction projects, or is in conflict vertically and/or horizontally with any proposed CITY installation, PERMITTEE shall remove and relocate said Telecommunications Network Facilities to such other location or locations on said Public Right-of-Way as may be designated by CITY. Said removal or relocation shall be completed within one hundred twenty (120) days of notification by CITY unless exigencies dictate a shorter period for removal or relocation. In the event said Telecommunications Network Facilities are not removed or relocated within said period of time, and provided PERMITTEE has not been subject to a force majeure or other event beyond its control that delays or prohibits the removal, CITY may cause the same to be done at the expense of PERMITTEE and PERMITTEE shall reimburse the CITY any and all expenses, including administrative overhead. In the event

of a force majeure or other event delaying or prohibiting the removal within the required 120 days, PERMITTEE shall remove the Facilities as soon as possible, given the circumstances caused by the event, and in the event PERMITTEE fails to effect such removal it shall be subject to the CITY causing the same to be done at the PERMITTEE's expense as set forth above. If PERMITTEE shall fail to vacate or otherwise remove the Facilities as required by CITY, CITY shall be entitled to vacate or otherwise remove the Facilities at PERMITTEE's sole cost and expense. CITY shall not be required to salvage, store, or return to PERMITTEE any Facilities, or parts thereof, that it vacates or otherwise removes pursuant to this paragraph. As used in this paragraph only "CITY" shall include any Agency having a permit or jurisdiction to place Facilities within the Public Right-of-Way. In case of conflict, approval from CITY to proceed shall be mandatory.

13. Should CITY intend to authorize or permit installations of a third party (not including any CITY-owned installations) to Public Right-of-Way jointly used under this Agreement and should the proposed installation of such third party require the rearrangement of any PERMITTEE Telecommunications Network Facilities, CITY shall condition third party installations to provide such third party pay the reasonable cost of rearranging the Telecommunications Network Facilities before authorizing or permitting the third party installations. Such third party shall be required to ensure that PERMITTEE Telecommunications Facilities are not interrupted during the installation of their Facilities.

14. PERMITTEE shall, at its sole cost and expense, replace aerial and/or aboveground Telecommunications Network Facilities, if any, with underground facilities in accordance with the same rules promulgated by the California Public Utilities Commission that are applicable to Pacific Bell, San Diego Gas and Electric Company, cable service providers, and other telecommunications or dark fiber providers as now existing or hereinafter amended.

15. If any portions of the Telecommunications Network Facilities covered under this Agreement are no longer used by PERMITTEE, or are abandoned for a continuous period in excess of six (6) months, PERMITTEE shall notify CITY and shall either promptly vacate and remove the Facilities at its own expense or, at CITY's discretion, may be allowed to abandon some or all of the Facilities in place. If PERMITTEE is permitted by CITY to abandon its Facilities in place, any such abandoned Facilities shall be deemed conveyed to CITY and PERMITTEE shall have no further obligation to remove, relocate or maintain said Facilities; *provided, however*, that nothing herein shall affect PERMITTEE's obligation to perform any repairs required under Sections 7 and 8 of this Agreement. Unless specifically permitted in writing by CITY to remain in place, which permission shall be at the CITY's sole and unrestricted discretion, all boxes or other Facilities exposed to the surface will be required to be removed and the surface restored.

16. When removal or relocation is required under this Agreement, PERMITTEE shall, after the removal or relocation of the Telecommunications Network Facilities, at its own cost, repair and return the Public Right-of-Way on which the Facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by CITY according to its standard practice. Should PERMITTEE remove the Telecommunications Network Facilities from the Public Right-of-Way, PERMITTEE shall, not less than ten (10) days before such removal, give notice

thereof to CITY specifying the right-of-way affected and the location thereof, as well as the preferred date of removal. Before proceeding with removal or relocation work, PERMITTEE shall obtain an Encroachment Permit from the CITY. If PERMITTEE does not return the affected site to a safe and satisfactory condition, then CITY shall have the option to perform or cause to be performed such reasonable and necessary work on behalf of PERMITTEE and charge the actual costs incurred to PERMITTEE. Upon the receipt of a demand for payment by CITY, PERMITTEE shall reimburse CITY for such costs.

ENCROACHMENT PERMIT AND FEES

17. PERMITTEE shall apply for a project specific Encroachment Permit for all work within the Public Right-of-Way and any other regulatory permits. PERMITTEE shall furnish detailed plans of the work prepared by a registered professional engineer licensed in the State of California and other such information as required by the Director of Public Works, including a detailed map showing the layout of the proposed Facilities and all existing facilities located in or immediately adjacent to the area subject to the Encroachment Permit. Prior to issuance of the permit, PERMITTEE shall pay or deposit with CITY all applicable costs such as processing fees, field marking, plan review, engineering and inspection fees related to the proposed work, and CITY's actual legal fees in accordance with the rates in effect at the time. All work within the Public Right-of-Way shall be performed by PERMITTEE in accordance with the plans and specifications approved by the CITY Engineer, and in compliance with all general and specific conditions set forth in the Encroachment Permit and all conditions and requirements contained in this Agreement.

18. The Encroachment Permit shall set forth the description of the Telecommunications Network Facilities to be installed and the Public Right-of-Way in which such Facilities are to be located. In addition to the CITY's street opening permit general conditions, CITY shall establish reasonable construction-related conditions and specifications, and these shall also be set forth in the Encroachment Permit. PERMITTEE shall utilize contractors licensed in the State of California to accomplish any work. PERMITTEE and any of its agents working in the CITY shall obtain a current CITY business license. Upon the completion of construction work, PERMITTEE promptly shall furnish to CITY accurate "as-built" plans and record drawings prepared and certified by a registered professional engineer licensed in the State of California showing in detail, to the reasonable satisfaction of the Director of Public Works, the exact location, depth, and size of the Facilities in the Public Right-of-Way, including, without limitation, the profiles of all street crossings. These plans and drawings shall be incorporated in one (1) set of 11x17 PDF good quality drawings. PERMITTEE shall furnish to CITY electronic disk or thumb drive which utilize AutoCAD or Geographic Data Systems software containing the full set of plans and record drawings. To the extent directional boring or other similar methods are used to construct or install the Facilities, PERMITTEE also shall pothole all CITY mains and customer services lines prior to crossing over, under, or between such Underground Facilities. PERMITTEE shall identify the Telecommunications Network Facilities installed in each Public Right-of-Way by means of an identification method mutually agreed upon by CITY and PERMITTEE, but consistent with applicable law. Such identification shall be detectable from ground level without opening the street.

PERFORMANCE BOND

19. Prior to the issuance of an Encroachment Permit, PERMITTEE shall provide CITY with a performance bond naming CITY as obligee in the amount equal to one hundred percent (100%) of the cost of the work to be performed by or on behalf of PERMITTEE within and affecting the Public Right-of-Way to guarantee and assure the faithful performance of PERMITTEE's obligations under this Agreement. The performance bond shall be governed under the laws of the State of California and shall be issued by a surety registered and qualified to do business in California. CITY shall have the right to draw against the surety bond in the event of a default by PERMITTEE or in the event that PERMITTEE fails to meet and fully perform any of its obligations under this Agreement; provided that PERMITTEE is first given thirty (30) days written notice of any intent to draw against the bond and an opportunity to cure. Following completion of the work by PERMITTEE, and its inspection and acceptance by the Public Works Director, the performance bond shall remain in effect to the extent of ten percent (10%) of the cost of the work to guarantee and assure the faithful performance of PERMITTEE's obligations under this Agreement for a period of one (1) year from the CITY's acceptance of the work. CITY shall have the right to draw against the bond in the event of a default by PERMITTEE or in the event that PERMITTEE fails to meet and fully perform any of its obligations. The form and content of the performance bond, and the surety issuing such bond, shall be subject to approval by CITY.

DAMAGE TO FACILITIES IN PUBLIC RIGHT-OF-WAY OR ON PRIVATE PROPERTY

20. PERMITTEE shall be responsible for any damage to CITY street pavements, existing utilities, curbs, gutters, sidewalks or to any private property or improvements to the extent attributable to its installation, maintenance, repair or removal of its Telecommunications Network Facilities in Public Right-of-Way and shall repair, replace and restore in kind any such damaged facilities at its sole expense and to the approval of CITY.

Any premature deterioration of the surface or subsurface improvements, as determined by CITY, shall be the responsibility of PERMITTEE to the extent attributable to PERMITTEE's activities. This responsibility shall survive this Agreement or any abandonment of the Facilities for a period of two (2) years from the date of PERMITTEE's most recent installation of or improvements on the Facilities. PERMITTEE shall commence the performance of all necessary repairs immediately upon receipt of written notice from the CITY to do so and shall cause the same to be completed within a reasonable period of time; however, under no circumstances may such period of time exceed thirty (30) days. In the event the repairs are not made in the manner and within the time prescribed herein, the CITY may elect to perform the repair work and charge all costs incurred by CITY in connection therewith to PERMITTEE.

21. If the Public Right-of-Way to be used by PERMITTEE has preexisting installation(s), PERMITTEE shall assume the responsibility to verify the location of the preexisting installation and notify CITY and any third party of PERMITTEE's proposed installation. The cost of any work required of such third party or CITY to provide adequate

space or required clearance to accommodate PERMITTEE's installation shall be borne solely by PERMITTEE.

PARTICIPATION WITH OTHER UTILITIES

22. PERMITTEE agrees to cooperate in the planning, locating and constructing of its Telecommunications Network Facilities in joint utility trenches or common duct banks with other similar utilities and to participate in cost-sharing for the joint trench and ducts, when such joint utility installations are being planned for or such opportunities exist in any area; provided that such activities do not impair or disrupt Telecommunications Services of PERMITTEE.

RECORDS AND FIELD LOCATIONS

23. PERMITTEE shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark, at its sole expense, the locations of its underground Telecommunications Network Facilities upon notification in accordance with the requirements of section 4216 of the California Government Code, as it now reads or may hereinafter be amended.

24. PERMITTEE shall maintain accurate maps and improvement plans of said Telecommunications Network Facilities located within the CITY. The maps and plans are to accurately show in detail the location, size, depth, and description of all facilities as constructed. Prior to CITY acceptance of the work, PERMITTEE shall deliver to the office of the Public Works Department free of charge, and at any subsequent time, upon reasonable request, to other third parties interested in performing work within Public Right-of-Way for a reasonable charge upon request and within thirty (30) days after such request, such maps and plans of all Telecommunications Network Facilities installed within said Public Right-of-Way. When required by the CITY for the purpose of confirming the location of Facilities to accomplish the design or construction of public facilities, PERMITTEE shall, at its sole cost and expense, expose by potholing to a depth of one (1) foot below the bottom of its subsurface Telecommunications Network Facilities, within thirty (30) days of receipt of a written request from CITY to do so.

LOCATOR WIRE

25. PERMITTEE shall install a locator wire in conjunction with its construction of the Telecommunications Network Facilities pursuant to this Agreement.

HOLD HARMLESS AND INDEMNIFICATION

26. PERMITTEE, for itself, its successors, agents, contractors and employees, hereby agrees to hold harmless, defend (with counsel reasonably satisfactory to CITY) and indemnify CITY, and its elected and appointed officers, officials, volunteers, employees and agents (all of the above hereinafter collectively, known as "Indemnitees"), from and against all claims, cause of actions, proceedings, losses, damages, liability, cost, and expense (including, without limit, any fines, penalties, judgments, litigation costs, attorney's fees and consulting, engineering and construction costs) for actual loss

of or damage to property and for injuries to or death of any person (including, but not limited to, the property and employees of each party) ("Liability") when caused by, arising out of or related to the activities or Facilities described in this Agreement. The duty of PERMITTEE to indemnify and save harmless includes the duties to defend as set forth in section 2778 of the Civil Code. It is the express intent of the parties that PERMITTEE will indemnify and hold harmless Indemnitees from any and all claims, suits or actions arising from any cause whatsoever as set forth above regardless of the existence or degree of fault or negligence on the part of CITY, PERMITTEE or any subcontractor or employee of any of these, except to the extent the Liability was the result of the negligence, willful misconduct or criminal acts of the CITY, its directors, officers, officials, employees and agents.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Public Right-of-Way attributable to PERMITTEE's use or occupancy, PERMITTEE at its expense, shall clean all affected property to the reasonable satisfaction of CITY and any governmental body having jurisdiction. Removal and disposal of all excavation materials, hazardous, toxic, or not, shall be the sole responsibility of PERMITTEE.

PERMITTEE shall indemnify, hold harmless and defend Indemnitees (with counsel reasonably satisfactory to CITY) against all claims, courts or administrative proceedings seeking to impose liability on CITY as a result of PERMITTEE's breach of this section or as a result of any such discharge, leakage, spillage, emission or pollution, regardless of whether such Liability, cost or expense arises during or after the term of this Agreement.

The obligations of PERMITTEE under this Section 26 to indemnify and hold harmless shall survive termination of this Agreement.

27. Except to the extent of CITY's gross negligence, willful misconduct or criminal acts, under no circumstances shall the CITY be liable or otherwise responsible to PERMITTEE or its customers for any loss of service, downtime, lost revenue or profits, third-party damages, or any other damage, loss or liability of any kind occurring by reason of anything done or omitted to be done by CITY or by any third party, including, without limitation, damages, losses, or liability arising from the issuance or approval by CITY of a permit to any third party or any interruption in Telecommunications Services.

INSURANCE

28. Any person, firm or corporation PERMITTEE authorizes to work upon the Public Right-of-Way, shall be deemed to be PERMITTEE's agent and shall be subject to all the applicable terms of this Agreement and the Encroachment Permit issued pursuant hereto. Prior to entry upon the Public Right-of-Way, PERMITTEE shall provide CITY with satisfactory evidence that it is insured (e.g., in the form of a Certificate of Insurance), in accordance with the following, which insurance shall remain in effect throughout the term of this Agreement and shall be at the sole cost and expense of PERMITTEE (or its agents). PERMITTEE's contractors and subcontractors shall provide a certificate of insurance evidencing substantially the same coverage as required by this Agreement.

Prior to the start of the work or entry onto the Public Right-of-Way, PERMITTEE agrees to procure and maintain, and to require its contractor(s) to procure and maintain, at its sole cost and expense (and to prove to CITY's reasonable satisfaction that it remains in effect throughout the work), the kinds of insurance described below:

a. Workers' Compensation and Employers' Liability Insurance.

PERMITTEE shall secure Workers' Compensation coverage in accordance with the provisions of section 3700 of the California Labor Code (and any amendments thereto or successor acts or statutes) and PERMITTEE shall furnish CITY with a certificate evidencing such coverage together with a verification thereon as follows:

"I am aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against a liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of work under this Agreement."

The PERMITTEE shall also maintain Employer's Liability coverage with minimum limits of \$2,000,000.

Whether FELA or Workers' Compensation applies, PERMITTEE shall furnish the CITY with the Certificate(s) of Insurance required hereunder prior to the commencement of work. Permittee agrees to provide CITY thirty (30) days prior written notice prior to the policy policies referenced in the Certificate(s) being canceled or having their coverage reduced.

b. Commercial General Liability Insurance.

PERMITTEE shall, at its own cost and expense, also procure and maintain Commercial General Liability insurance which shall include as additional insureds the CITY, and its elected and appointed councilmembers, directors, officers, officials, employees and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally. PERMITTEE shall give written notice to the CITY of any material alteration, or reduction in aggregate limits, if such limits apply, and provide at least thirty (30) days' notice of cancellation of the coverage or policy.

Insurance shall provide bodily injury and property damage coverage with a combined single limit of at least \$2,000,000 each occurrence or claim and a general aggregate limit of at least \$2,000,000. This insurance shall include but not be limited to premises and operations; contractual liability covering the indemnity provisions contained in this Agreement; personal injury; explosion, collapse, and underground coverage, products and completed operations, and broad form property damage.

Prior to commencing work or entering onto the Property, PERMITTEE shall file an endorsement and Certificate(s) of Insurance with the CITY evidencing coverage, and upon request, provide a certified duplicate original of the policy at PERMITTEE's local office in the CITY's jurisdiction or PERMITTEE's nearest office to the City located within San Diego County. Each Certificate shall indicate that the insurance policy provides or has been endorsed to provide:

(1) That the policy is Primary Insurance and the insurance company providing such policy shall be liable thereunder for the full amount of any loss or claim which PERMITTEE is liable for under this Section, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the CITY; and

(2) The policy shall also stipulate: Inclusion of the CITY as an additional insured shall not in any way affect its rights either as respects any claim, demand, suit, or judgment made, brought, or recovered against PERMITTEE. Said policy shall protect PERMITTEE and the CITY in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

c. Automobile Liability Insurance.

PERMITTEE shall, at its own cost and expense, procure and maintain Automobile Liability insurance providing bodily injury and property damage with a combined single limit of at least \$2,000,000 per occurrence for all owned, non-owned and hired automobiles. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance. Such insurance shall include as an additional insured the CITY, and its elected and appointed officers, officials, employees, and agents while acting in such capacity, and their successors or assignees, as they now or as they may hereafter be constituted, singly, jointly, or severally.

d. Property Insurance.

PERMITTEE shall, at its own cost and expense, procure and maintain property insurance to protect its interest in the equipment to be used in performance of this Agreement and the CITY's interest in materials or property to be installed, covering all risks of physical loss or damage to such equipment. The coverage under such policy shall have limits of liability adequate to protect the value of the equipment and property to be installed. If desired, PERMITTEE may choose to self-insure this exposure, but in no instance shall the CITY be responsible for such loss or damage, unless caused by its sole active negligence.

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of PERMITTEE's personnel and equipment have been removed from the Public Right-of-Way, and the work has been formally accepted

by the CITY. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

If any insurance specified above shall be provided on a claims-made basis, then in addition to coverage requirements above, such policy(ies) shall provide that:

(1) Policy retroactive date coincides with or precedes PERMITTEE's start of work (including subsequent policies purchased as renewals or replacements).

(2) PERMITTEE will make every effort to maintain similar insurance during the term of the Agreement following project completion, including the requirement of adding all additional insureds.

(3) If insurance is terminated for any reason, PERMITTEE agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from work performed in connection with this Agreement.

(4) Policy allows for reporting of circumstances or incidents that might give rise to future claims.

In addition to the requirements described above, PERMITTEE shall comply with any additional coverages required by federal, state, or local laws, rules, and regulations. PERMITTEE and/or its contractors shall obtain all permits, and other forms or documentation which are required and forward them to the CITY with the required evidence of insurance.

All policies will be issued by insurers acceptable to the CITY as set forth in Section 29 below. Upon evidence of financial capacity satisfactory to CITY, PERMITTEE's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.

29. Insurance Companies: Insurance companies must be admitted in California, be in good standing with the California Department of Insurance and have an A.M. Best's rating of at least A:VI (or equivalent).

30. Deductible and Self-Insured Retentions and Proof of Insurance: Prior to the commencement of work under this Agreement, any deductibles or self-insured retentions must be stated on Certificate(s) of Insurance, and the Certificate(s) of Insurance must be sent to and approved by CITY.

NOTIFICATIONS

31. PERMITTEE shall, prior to the issuance of an Encroachment Permit or consistent with other provisions of the Encroachment Permit, certify to CITY that it has provided or will provide written notification of its intent to perform work to the property owners, residents and business operators of all properties adjacent to streets and/or right(s)-of-way where PERMITTEE will be excavating. Unless otherwise agreed by CITY,

said notice, shall be mailed to the property owner as listed on the most recent assessor's tax roll at least seven (7) days prior to the issuance of an Encroachment Permit, and delivered to the residents and business operators, or PERMITTEE may utilize door hangers to provide written notification.

ASSIGNMENT

32. This Agreement shall not be assignable by PERMITTEE without the explicit written approval of CITY, which approval shall not be unreasonably withheld, provided, however, that PERMITTEE may assign the rights granted herein to a parent, successor, subsidiary, or affiliate of PERMITTEE now or hereinafter existing, by only providing notice to CITY of such assignment. However, this Agreement shall be binding on successors and assigns and shall be disclosed to assignee. Assignee shall unconditionally acknowledge Agreement in writing within ninety (90) days of assignment or it terminates without further action.

ENTIRE AGREEMENT

33. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreement, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement may not be amended except pursuant to a written instrument signed by all parties.

SEVERABILITY

34. If any one or more of the covenants or agreements or portions thereof provided in this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such covenant or covenants, such agreement or agreements, or such portions thereof shall be null and void and shall be deemed separable from the remaining covenants or agreements or portions thereof and shall in no way affect the validity or enforceability of the remaining portions of this Agreement, and the parties shall negotiate in good faith to replace any such covenant, agreement or portion found to be null and void.

THIRD-PARTY MODIFICATIONS

35. This Agreement shall be subject to such changes or modifications as may be required or authorized by any regulatory body or commission in the exercise of its lawful jurisdiction and any modification, revision, renewal, or extension of this Agreement shall so state.

TERMINATION

36. This Agreement may be terminated by CITY for failure, neglect or refusal by PERMITTEE to fully and promptly comply with any and all of the covenants and conditions of this Agreement, or for nonuse of the Facilities, upon thirty (30) days written notice, unless PERMITTEE confirms within thirty (30) days of receipt of the notice that

the cited covenant or condition has been performed or has ceased, been corrected or, subject to CITY's agreement, is diligently being pursued by PERMITTEE.

37. This Agreement may be terminated by CITY upon thirty (30) days written notice to PERMITTEE if CITY determines that the provisions herein interfere with the use or disposal of said Public Right-of-Way or any part thereof by CITY. Where only a portion of PERMITTEE's Telecommunications Network Facilities interferes with the use or disposal of said Public Right-of-Way, CITY, at its sole discretion, may elect to require PERMITTEE to relocate the said portion in accordance with this Agreement.

38. Upon termination of this Agreement, and upon written request by CITY, PERMITTEE, at its own cost and expense, agrees to remove or, at CITY's discretion, abandon in place some or all of its Telecommunications Network Facilities from the Public Right-of-Way and restore the Public Right-of-Way as set forth in the Removal and Relocation provisions of this Agreement. Should PERMITTEE in such event fail, neglect or refuse to make such removals or restoration within ninety (90) days of CITY's written request, at the sole option of CITY, such removal and restoration may be performed by CITY at the expense of PERMITTEE, which expense PERMITTEE agrees to pay to CITY upon demand.

NOTICE

39. PERMITTEE's Network Operations Control Center shall be available to CITY staff 24 hours a day, 7 days a week, regarding problems or complaints resulting from the facilities installed pursuant to this Agreement and may be contacted by telephone at:

1-619-732-6100

regarding such problems or complaints.

PERMITTEE shall designate a person in California who is authorized to accept service of process on behalf of PERMITTEE as follows:

Wyverd Fiber
Attention: Bill Mullen, Director of Market Development and Planning – CA
401 Mile of Cars Way, Suite 100A
National City, CA 95901

40. All notices given or which may be given pursuant to this Agreement shall be in writing and transmitted by United States mail, or by private delivery systems, or by facsimile if followed by United States mail, or by private delivery systems as follows:

To CITY at: City of El Cajon
 Attention: Public Works Director
 200 Civic Center Way, 4th Floor
 El Cajon, CA 92020
 Fax: (619) 441-5254

To PERMITTEE at: Pacific Wyverd, LLC
Attn: Chief Legal Officer
Address: 1601 29th St., Ste 1292 (PMB 1042)
Boulder, CO 80301
Phone: (303) 725-8815

With a Copy To:

Pacific Wyverd
Address: 1601 29th St., Ste 1292 (PMB 1042)
Boulder, CO 80301
Attn: SVP Finance & Treasurer
Phone: (303) 263-7299

41. Either Party to this Agreement may designate a different recipient(s) for notices and/or update contact information listed herein by giving at least thirty (30) days' notice of the change to the other Party.

ATTORNEY'S FEES AND LITIGATION

42. In the event of litigation between the Parties hereto, the prevailing party shall be entitled to reasonable attorney's fees and costs.

43. All actions involving this Agreement shall be brought and pursued in the Superior Court of California in and for the County of San Diego or the United States District Court serving the County of San Diego. Each party hereto agrees to stipulate and execute such documents as may be necessary to carry out the provisions of this Section.

PERMITTEE hereby waives any right to remove any such action from San Diego County as is otherwise permitted by California Code of Civil Procedure section 394.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

CITY

**City of El Cajon,
a California charter city
and municipal corporation**

**By: _____
Title: Graham Mitchell, City Manager**

ATTEST:

**_____
Angela L. Cortez, CMC, City Clerk**

APPROVED AS TO FORM:

**_____
Morgan L. Foley, City Attorney**

PERMITTEE

**Pacific Wyyerd LLC,
a Delaware limited liability company**

By: Wyyerd Group LLC

**a Delaware limited liability company,
Manager**

**By: _____
Title: Tim Gentry, VP Finance**



City Council
Agenda Report

Agenda Item 8.

DATE: September 26, 2023
TO: Honorable Mayor and City Councilmembers
FROM: Yazmin Arellano, Director of Public of Works
SUBJECT: Appropriate \$50,000 Additional TransNet (EL03) Funds to the Luke Lane Drainage Improvements Project (223748PWCP)

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, to appropriate \$50,000 of additional TransNet (EL03) funds for the purpose of increasing the Luke Lane Drainage Improvements CIP project (223748PWCP).

BACKGROUND:

On April 11, 2023, the City Council awarded the contract for Luke Lane Drainage Improvements (223748PWCP) to the lowest responsive, responsible bidder, Portillo Concrete, Inc. (PCI), for the amount of \$453,400. TransNet (EL03) funding in the amount of \$50,000 is being requested due to additional asphalt paving work that was not anticipated in the project's initial design.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

The proposed action to increase funds for asphalt paving for this existing project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15301 Class 1(c), because the project includes maintenance of existing facilities and new street improvements within existing rights-of-way.

FISCAL IMPACT:

Approval of the action will increase TransNet (512580) appropriations by \$50,000, and increase the Luke Lane Drainage Improvements (223748PWCP) project budget by the same amount, to \$610,500.

Prepared By: Christine Jaboro, Assistant Engineer
Reviewed By: Yazmin Arellano, Director of Public Works
Approved By: Graham Mitchell, City Manager

Attachments

Resolution
CIP Budget

RESOLUTION NO. __-23

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CAJON
APPROVING AN APPROPRIATION OF TRANSNET (EL03) FUNDS
FOR THE LUKE LANE DRAINAGE IMPROVEMENTS PROJECT
(Bid No. 016-23)

WHEREAS, on April 11, 2023, the City Council awarded Bid No. 016-23 for Luke Lane Drainage Improvements (the "Project") to the lowest responsive, responsible bidder, Portillo Concrete, Inc., for the not-to-exceed amount of \$453,400.00 (the "Contract"); and

WHEREAS, additional asphalt paving work that was not anticipated in the initial design of the Project is now necessary; and

WHEREAS, City of El Cajon staff has requested that City Council approve the appropriation of TransNet (EL03) funding in the amount of \$50,000.00 for the Project be appropriated for the Project, for a total cumulative Contract amount of \$610,500.00; and

WHEREAS, the proposed action to increase funds for the Project is categorically exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15301 Class 1(c), which provides an exemption for projects that include maintenance of existing facilities and new street improvements within existing rights-of-way; and

WHEREAS, the City Council believes it to be in the best interests of the City to approve the requested appropriation of \$50,000.00 to fund the additional repairs needed for the Project, for a total cumulative not-to-exceed Contract amount of \$610,500.00.

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 requested appropriation increase of TransNet (EL03) funding in the sum of \$50,000.00 to fund the additional repairs needed for the Project, for a total cumulative not-to-exceed Contract amount of \$610,500.00.
3. The City Council hereby authorizes the City Manager, or such person as is designated by the City Manager, to execute an amendment to the Contract, with any such changes as may be necessary and approved by the City Manager.

CAPITAL IMPROVEMENT PROJECT

FISCAL YEAR 2023-2024

PROJECT NAME: LUKE LANE DRAINAGE IMPROVEMENTS

ACTIVITY: 550590

PROJECT NO: 223748PWCP

Description:

Replacement of an existing roadside drainage ditch with underground 18" reinforced concrete pipe along the entire length of Luke Lane from N. 3rd Street to the cul-de-sac. The project includes road widening, concrete curb, asphalt dike, asphalt pavement on the north side of Luke Lane, and pavement rehabilitation for the remainder of the road.

Justification:

The existing shallow, natural ditch does not convey storm water properly and the lack of standard curb and gutter on Luke Lane does not contain storm water on the street. In addition to the Luke Lane drainage basin, the roadway also receives storm water from upper Gorsline Drive. The installation of an 18" reinforced concrete pipe and various flatwork will improve roadway drainage overall, reduce surface flows, and mitigate flooding and sediment build-up during heavy rain events.

Scheduling:

Design and construction are anticipated to be completed by 2023.

Operating Budget Impact:

As repairs are made, a need for intense maintenance will decrease.

	Original Project Budget	Current Project Budget	Proposed Project Amendment	Proposed Project Budget
Architectural Services (8315)	-	-		-
Consulting Services (8325)	-	-		-
Engineering Services (8335)	-	-		-
Engineering Services-Internal (8336)	-	25,000		25,000
Inspection Services-Internal (8337)	-	25,000		25,000
Legal Services (8345)	-	-		-
Other Prof/Tech Services (8395)	-	-		-
Advertising (8522)	-	250		250
Janitorial (8544)	-	-		-
Permits & Fees (8560)	-	250		250
Printing & Binding (8570)	-	-		-
Furniture, Machinery & Equipment (9035)	-	-		-
Land Improvements / Abatement & Demo (9055)	-	-		-
Construction-Buildings (9060)	-	-		-
Infrastructure (9065)	-	510,000	50,000	560,000
Contingency (9060)	-	-		-
PROJECT COST TOTAL:	-	560,500	50,000	610,500

Source(s) of Funds:				
Wastewater Enterprise Fund	-	460,500		460,500
TransNet EL03	-	100,000	50,000	150,000
Specific Street Obligations	400,000			
FUNDING TOTAL:	400,000	560,500	50,000	610,500



City Council
Agenda Report

DATE: September 26, 2023
TO: Honorable Mayor and City Councilmembers
FROM: Mara Romano, Purchasing Agent
SUBJECT: Award of Bid No. 015-24 – Alarm System Monitoring, Annual Inspections & Repairs

RECOMMENDATION:

That the City Council:

1. Determines that the project is exempt from the California Environmental Quality Act (CEQA) in accordance with section 15301 of the State CEQA Guidelines; and
2. Adopts the next Resolutions, in order, to:
 - a. Approve Plans and Specifications for Alarm System Monitoring, Annual Inspections & Repairs, Bid No. 015-24; and
 - b. Award the bid to the sole responsive, responsible bidder, Progressive Technology Security Systems, Inc. (PTSSI), in the amount of \$39,898.

BACKGROUND:

The City is in need of alarm system monitoring, inspections, and repairs through a contractor. An Alarm System Monitoring, Annual Inspections & Repairs bid was advertised on July 20, 2023 and included monitoring, yearly inspections, and as-needed repair services of the fire and security alarm systems at City facilities. Additionally, an option to renew the contract for four additional one-year terms was integrated in the bid. Funds for the renewal terms will be in accordance with the approved budget for each fiscal year. From the solicitation, one response was received and evaluated on July 24, 2023.

PlanetBids, the City's online bidding system, requires two attachments - Bid Bond and General Attachments for this solicitation. PTSSI selected the "Submit Cashier's Check" checkbox in lieu of uploading a bid bond, which fulfilled the Bid Bond requirement, and uploaded a copy of their cashier's check for the General Attachments requirement. PTSSI received an email substantiating their bid submittal which they interpreted as proof of their bid submission. The City requested PTSSI's bid documents and received their proposal the first business day after the bid due date. City staff reviewed the submission and considers this a minor irregularity since the bid documents provided no advantage to the sole bidder and the cashier's check is consistent with the bid pricing.

Staff recommends the City Council determines that the project is exempt from CEQA in accordance with CEQA Guidelines section 15301 and adopts resolutions to (1) approve the plans and specifications for the project, and (2) award the bid to the sole responsive,

responsible bidder, Progressive Technology Security Systems, Inc., in the amount of \$39,898. The summary of bids is attached, and complete proposals are on file in the Purchasing Division.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

The proposed Alarm System Monitoring, Annual Inspections & Repairs project is exempt from CEQA in accordance with CEQA Guidelines section 15301 because this project monitors, inspects and repairs existing public facilities.

FISCAL IMPACT:

The fiscal impact for the initial one-year term is \$39,898. Sufficient funds are available for this service in Fiscal Year 2023-24 Annual Budget Street Maintenance – Gas Tax 2103 (211500) and the Fiscal Year 2023-24 Annual Security Budget: Public Works Parks (101530); Facilities (101550); The Magnolia (241600); Vehicle Maintenance (601595); and Wastewater Maintenance (650720). Subsequent 4-year costs are estimated to total \$171,925.90.

Prepared By: Mara Romano, Purchasing Agent

Reviewed By: Yazmin Arellano, Director of Public Works

Approved By: Graham Mitchell, City Manager

Attachments

015-24 Plans & Specs

Reso 015-24

Bid Summary - 015-24

RESOLUTION NO. __ -23

RESOLUTION APPROVING PLANS AND SPECIFICATIONS FOR
ALARM SYSTEM MONITORING, ANNUAL INSPECTIONS & REPAIRS
(Bid No. 015-24)

WHEREAS, the Director of Public Works has submitted plans and specifications for the monitoring, yearly inspections, and as-needed repair services of the at City facilities project (the "Project"); and

WHEREAS, it appears to be in the best interests of the City of El Cajon that the plans and specifications for the Project should be approved.

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

1. That the plans and specifications for the Project submitted by the Director of Public Works are hereby approved and adopted as the official plans and specifications for said Project.

2. Said plans and specifications are directed to be filed in the office of the Director of Public Works of the City of El Cajon.

RESOLUTION NO. -23

RESOLUTION AWARDDING BID FOR
ALARM SYSTEM MONITORING, ANNUAL INSPECTIONS & REPAIRS
(Bid No. 015-24)

WHEREAS, City of El Cajon ("City") fire and security alarm systems require monitoring, yearly inspections, and as-needed repair services of the at City facilities (the "Project"); and

WHEREAS, this bid was advertised on July 20, 2023, and on July 24, 2023, the City received one (1) bid from Progressive Technology Security Systems, Inc. ("PTSSI"); and

WHEREAS, upon review of the bid of PTSSI City staff discovered an error when the bidder inadvertently failed to upload a bid bond as it had selected the option of providing a cashier's check as its bid security, and submittal instructions were not clear in how to submit the bid using a cashier's check as its bid surety; and

WHEREAS, the City finds that PTSSI should be excused from this minor irregularity since the bid documents provide no advantage to the sole bidder and the cashier's check (ultimately received) is consistent with the bid pricing; and

WHEREAS, the initial term of the agreement is for one (1) year with the option to renew for four (4) additional one-year periods; and

WHEREAS, the City Council believes it is in the best interests of the City to award the bid to the lowest responsive, responsible bidder, Progressive Technology Security Systems, Inc., in the not to exceed amount of \$39,898; and

WHEREAS, the Project is exempt from the California Environmental Quality ("CEQA") pursuant to CEQA Guidelines section 15301 because it monitors, inspects, and repairs existing public facilities.

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 awards the bid for the Project to the lowest responsive, responsible bidder:

Progressive Technology Security Systems, Inc.

in an amount not to exceed \$39,898.

3. The City Manager and City Clerk are authorized and directed to execute a contract for the Project on behalf of the City of El Cajon, with such changes or amendments as maybe approved by the City Manager.

09/26/23 CC Agenda
Reso – Bid 015-24 – PTSSI (Alarm Systems Monitoring) – Awd 091923



City of El Cajon – Purchasing Division

BID EVALUATION

(To be included as an attachment to the agenda report.)

Bid No. 015-24	Bid Name: Alarm System Monitoring, Annual Inspections & Repairs
Solicitation Due Date/Time: August 31, 2023/ 2:00 p.m.	Initial Date of Advertisement: July 20, 2023
Number of Responses Received: 1	Bid Estimate: \$42,700

SUMMARY OF BIDS (INCLUDE ANY ADD. ALTS.):

Vendor	Vendor Type	Bid Amount	Format	Submit Date	Status
Progressive Technology Security Sys		\$39,898.00	Electronic	07/24/2023 2:32:07 PM	Submitted

BID EVALUATION (TOP THREE LOWEST RESPONSES):

Bidder	Bid Responsiveness	Notes
Progressive Technology Security Systems, Inc.	Yes	Misinterpretation on whether bid documents were uploaded. This is a minor irregularity since the submitted cashier's check is consistent with the bid pricing and there are no other bid submittals that would be displaced.

LEGAL REVIEW REQUIRED: YES NO **IF YES, DATE LEGAL REVIEW COMPLETED:** **September 5, 2023**

RENEWAL OPTIONS: YES NO **IF YES, SPECIFY TERM W/RENEWAL OPTIONS:** INITIAL ONE YEAR TERM WITH THE OPTION TO RENEW FOR FOUR ADDITIONAL ONE YEAR PERIODS

LOWEST, RESPONSIVE, RESPONSIBLE BIDDER NAME AND AMOUNT: PROGRESSIVE TECHNOLOGY SECURITY SYSTEMS, INC., \$39,898.

PURCHASING DIVISION:

Review Completed By: Mara Romano

Date: September 6, 2023



City Council Agenda Report

Agenda Item 10.

DATE: September 26, 2023
TO: Honorable Mayor and City Councilmembers
FROM: Mara Romano, Purchasing Agent
SUBJECT: Award of Bid No. 012-24 – Weed Abatement & Channel Clearing

RECOMMENDATION:

That the City Council:

1. Determines that the project is exempt from the California Environmental Quality Act (CEQA) in accordance with sections 15307 and 15308 of the State CEQA Guidelines; and
2. Adopts the next Resolutions, in order, to:
 - a. Approve Plans and Specifications for Weed Abatement & Channel Clearing, Bid No. 012-24; and
 - b. Award the bid to the lowest responsive, responsible bidder, Habitat Restoration Sciences, Inc., in the amount of \$199,546.50.

BACKGROUND:

The City requires contracted services from a company that can provide weed abatement and channel clearing. A Weed Abatement & Channel Clearing services bid was advertised on July 20, 2023 and included abatement of trash, rubbish, debris, and/or combustible material from fuel modification zones within City-owned open space and vegetation clearing from select drainage channel management zones. Additionally, the option to renew the contract for four additional one-year terms was integrated into the bid. Funds for the renewal terms will be in accordance with the approved budget for each fiscal year. Through the bid process, two responses were received and evaluated on August 28, 2023.

Staff determined the lowest responsible bidder to be Habitat Restoration Sciences, Inc. with a bid amount of \$199,546.50. The second bidder's indicated amount was \$367,749.80.

Staff recommends the City Council determines that the project is exempt from CEQA in accordance with CEQA Guidelines sections 15307 and 15308 and adopts resolutions to (1) approve the plans and specifications for the project, and (2) award the bid to the lowest responsive, responsible bidder, Habitat Restoration Sciences, Inc., in the amount of \$199,546.50. The summary of bids is attached, and complete proposals are on file in the Purchasing Division.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

The proposed Weed Abatement & Channel Clearing project is exempt from CEQA Guidelines sections 15307 and 15308 as this action takes to assure the maintenance, restoration, enhancement, or protection of the environment.

FISCAL IMPACT:

The fiscal impact for the initial one-year term is \$199,546.50. Sufficient funds are available for this service in Fiscal Year 2023-24 Annual Budget: Public Works Parks (101530) and Wastewater Maintenance (650720). Subsequent 4-year costs are estimated to total \$903,137.

Prepared By: Mara Romano, Purchasing Agent

Reviewed By: Yazmin Arellano, Director of Public Works

Approved By: Graham Mitchell, City Manager

Attachments

Resolution - Approve Plans & Specs

Resolution - Award of Bid

Bid Summary - 012-24

RESOLUTION NO. __ -23

RESOLUTION APPROVING PLANS AND SPECIFICATIONS FOR
WEED ABATEMENT AND CHANNEL CLEARING
(Bid No. 012-24)

WHEREAS, the Director of Public Works has submitted plans and specifications for the Weed Abatement and Channel Clearing project (the "Project"); and

WHEREAS, it appears to be in the best interests of the City of El Cajon that the plans and specifications for the Project should be approved.

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

1. That the plans and specifications for the Project submitted by the Director of Public Works are hereby approved and adopted as the official plans and specifications for said Project.

2. Said plans and specifications are directed to be filed in the office of the Director of Public Works of the City of El Cajon.

RESOLUTION NO. __-23

RESOLUTION AWARDING BID FOR
WEED ABATEMENT AND CHANNEL CLEARING
(Bid No. 012-24)

WHEREAS, the Weed Abatement and Channel Clearing project (the "Project") includes abatement of trash, rubbish, debris, and/or combustible material from fuel modification zones within open spaces owned by the City of El Cajon (the "City"), and vegetation clearing from select drainage channel management zones; and

WHEREAS, Bid No. 012-24 was advertised on July 20, 2023, and two (2) responses were received and evaluated on August 28, 2023; and

WHEREAS, after evaluation of the bids, staff recommends the City Council awards the bid to the lowest responsive, responsible bidder, Habitat Restoration Sciences, Inc. ("Habitat Restoration"), in the amount of \$199,546.50 for an initial one-year term, with the option to renew for the contract for four (4) additional one-year periods; and

WHEREAS, sufficient funds for the Project are included in the Fiscal Year 2023-2024 Annual Budget: Public Works Parks and Wastewater Maintenance, and costs for the four (4) one-year renewal periods, estimated to total \$903,137.00, will be available in accordance with the approved budget for each fiscal year; and

WHEREAS, the Project is exempt from the California Environmental Quality Act ("CEQA") in accordance with sections 15307 and 15308 of the State CEQA Guidelines as it will assure the maintenance, restoration, enhancement, or protection of the environment; and

WHEREAS, the City Council believes it to be in the best interests of the City to award the bid to Habitat Restoration as the lowest responsive, responsible bidder, in the amount of \$199,546.50.

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 awards the bid for the Project to the lowest responsive, responsible bidder:

Habitat Restoration Sciences, Inc.

in an amount not to exceed \$199,546.50 for the initial one-year term.

3. The City Manager and City Clerk are authorized and directed to execute a contract for the Project on behalf of the City of El Cajon, with such changes or amendments as maybe approved by the City Manager.



City of El Cajon – Purchasing Division

BID EVALUATION

(To be included as an attachment to the agenda report.)

Bid No. 012-24	Bid Name: Weed Abatement & Channel Clearing
Solicitation Due Date/Time: August 28, 2023/ 2:00 p.m.	Initial Date of Advertisement: July 20, 2023
Number of Responses Received: 2	Bid Estimate: \$500,000

SUMMARY OF BIDS (INCLUDE ANY ADD. ALTS.):

Vendor	Vendor Type	Bid Amount	Format	Submit Date	Status
Habitat Restoration Sciences, Inc.	CADIR	\$199,546.50	Electronic	08/24/2023 11:25:24 AM	Submitted
Natures Image Inc	CADIR, WBE	\$367,749.80	Electronic	08/28/2023 12:34:21 PM	Submitted

BID EVALUATION (TOP THREE LOWEST RESPONSES):

Bidder	Bid Responsiveness	Notes
Habitat Restoration Sciences, Inc.	Yes	
Nature's Image, Inc.	Yes	

LEGAL REVIEW REQUIRED: YES NO **IF YES, DATE LEGAL REVIEW COMPLETED:**

RENEWAL OPTIONS: YES NO **IF YES, SPECIFY TERM W/RENEWAL OPTIONS:** INITIAL ONE YEAR TERM WITH THE OPTION TO RENEW FOR FOUR ADDITIONAL ONE YEAR PERIODS

LOWEST, RESPONSIVE, RESPONSIBLE BIDDER NAME AND AMOUNT: HABITAT RESTORATION SCIENCES, INC., \$199,546.50

PURCHASING DIVISION:

Review Completed By: Mara Romano

Date: August 31, 2023



City Council
Agenda Report

DATE: September 26, 2023
TO: Honorable Mayor and City Councilmembers
FROM: Dave Richards, Assistant to the City Manager
SUBJECT: Update on The Magnolia's Financial Performance

RECOMMENDATION:

That the City Council receives an update on The Magnolia's financial performance.

BACKGROUND:

The purpose of this agenda item is to provide a brief update on The Magnolia's financial performance since its opening in September 2019. As a reminder, The Magnolia (previously named the East County Performing Arts Center or ECPAC) closed its doors in 2009 due to the Great Recession and cost to operate the facility. Prior to closure, ECPAC had operated under several management models. Just prior to closing, ECPAC cost the City approximately \$600,000 annually to operate.

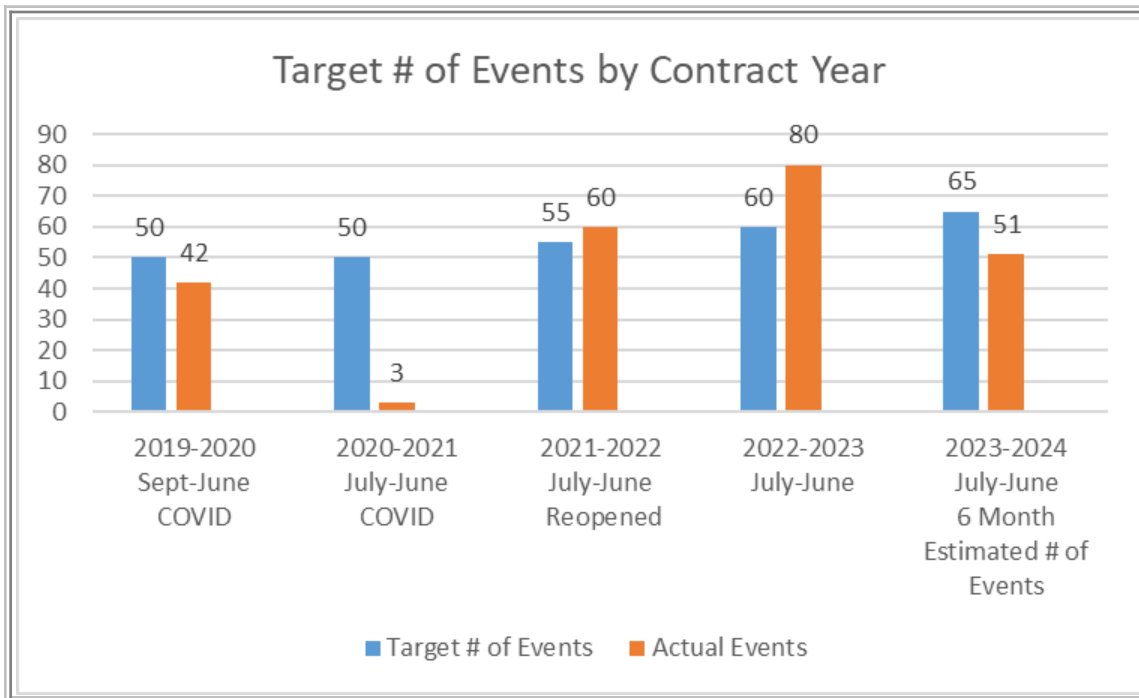
In 2017, the City began negotiating a management agreement with Live Nation to operate the venue. In February 2019, the management agreement was signed, and with Live Nation's collaboration and guidance, significant renovations to the building commenced. Under the agreement, it was anticipated that the venue would operate with a negative cash flow for the first five years.

Rebranded The Magnolia, the facility hosted its first event after a decade of being closed in September 2019. During the first six months, The Magnolia hosted 42 events. In March 2020, State and County COVID regulations abruptly forced Live Nation to cancel all of The Magnolia's shows and close its doors to the public. In September 2021, after nineteen consecutive months of sitting dark, The Magnolia reopened under the State's safe reopening guidelines.

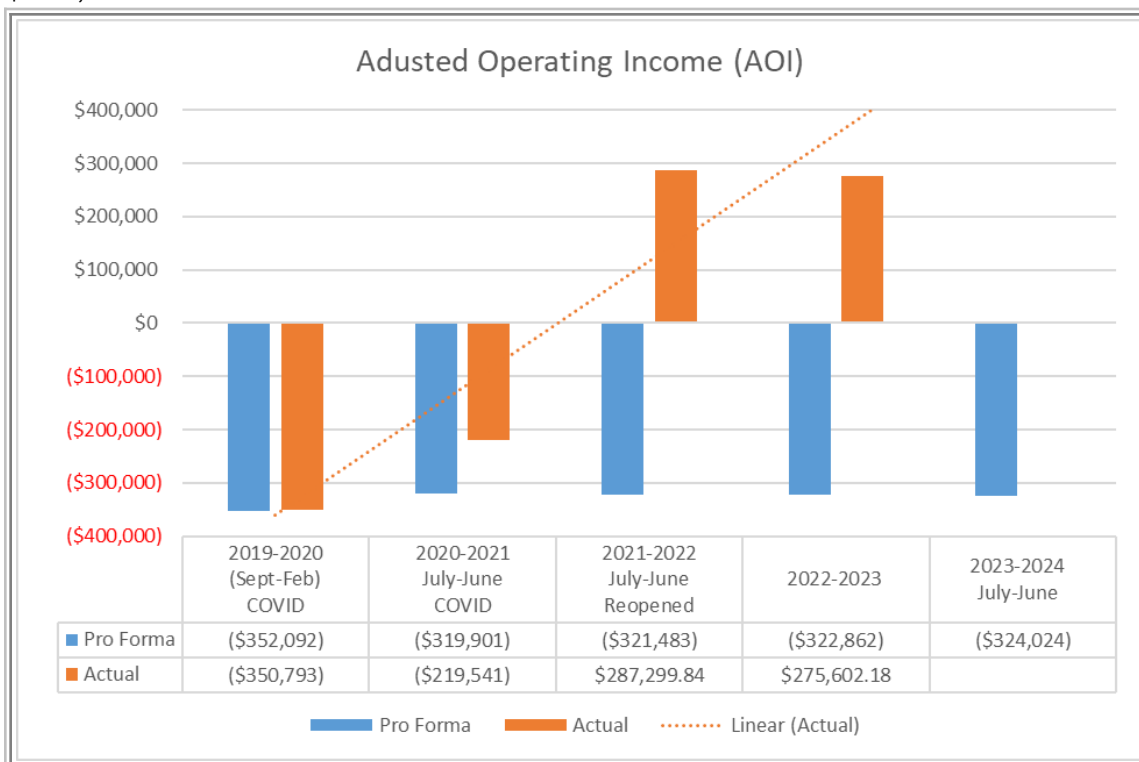
To reflect the nearly two-year shutdown of The Magnolia during the height of COVID restrictions, the City and Live Nation negotiated a two-year contract extension, extending the management agreement set to expire in August of 2024, to August of 2026. In March 2023, the City Council approved the proposed contract extension.

The management agreement with Live Nation includes performance goals for the number of events hosted and the Adjusted Operating Income (show revenue - show costs and fixed expenses = AOI) at The Magnolia. Live Nation exceeded both of these targets in Fiscal Year 2022-23 (FY 22-23).

This graph shows the actual and target number of events by contract year at The Magnolia. The 5th year shows the estimated number of shows for the first six months of FY 23-24 but estimates are not available for the second half.

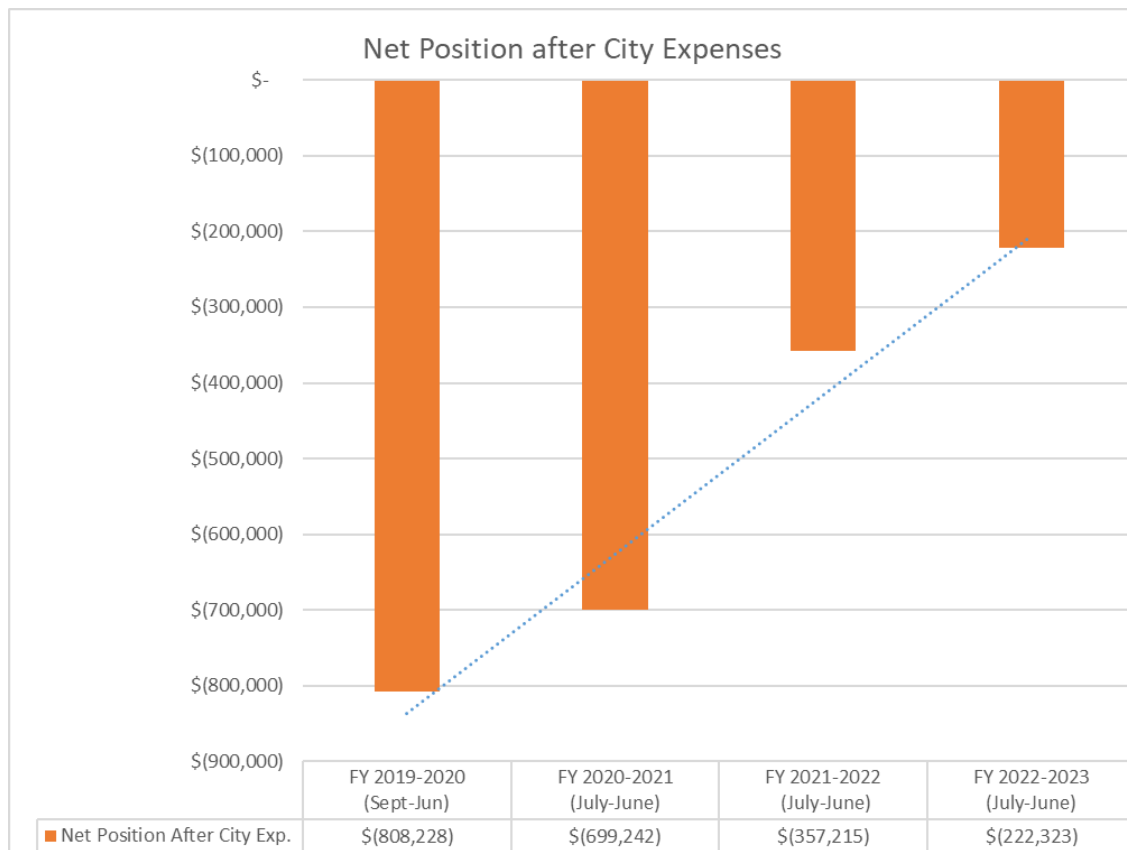


When the management contract with Live Nation was negotiated, the venue was expected to operate with a negative AOI for the first five years. Since its second reopening in September 2021, The Magnolia has outperformed the contract pro forma each year. For the past two years, the facility operated in the green with a positive AOI of nearly \$300,000 annually, almost \$600,000 better than the contracted AOI.



As part of the management agreement, the City pays an annual management fee of \$375,000. The City has also historically paid roughly \$250,000 a year in utilities and facility maintenance expenses. Over the past year, the City transferred utility bills for the facility to Live Nation. Accounting for utility bills accurately as a facility operating expense is important as the facility nears profitability and profit-sharing thresholds defined in the agreement.

When City expenses are added to The Magnolia’s AOI, the City’s net expense for The Magnolia in FY 22-23 is just over \$200,000, an improvement of \$150,000 over FY 21-22. The following chart shows the City’s net position.



This net operating expense is significantly lower than initial projections. Furthermore, overall attendance and the number of shows hosted far exceeds numbers seen under prior operating models. In FY 22-23, The Magnolia attracted 46,162 guests to the heart of El Cajon, not including non-ticketed special events, pumping economic vitality into the downtown area. Since its opening, staff estimates that The Magnolia has hosted 111,379 visitors. Based on a heat map of attendees (which will be shared during the presentation), the venue is truly a regional entertainment hub. In summary, The Magnolia has exceeded all financial and performance expectations to date.

The presentation will also introduce a new local business partnership, recent and upcoming shows/events, facility improvements, and use of sponsorship funds.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

The Magnolia's Financial Performance is an administrative activity of the government exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378(b).

FISCAL IMPACT:

There is no fiscal impact associated with this report.

Prepared By: David Richards, Assistant to the City Manager

Reviewed By: Vince DiMaggio, Assistant City Manager

Approved By: Graham Mitchell, City Manager



City Council
Agenda Report

DATE: September 26, 2023
TO: Honorable Mayor and City Councilmembers
FROM: Graham Mitchell, City Manager
SUBJECT: Operating Covenant with CarMax Auto Superstores, Inc.

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, approving an Operating Covenant with CarMax Auto Superstores, Inc. and authorizing the City Manager to execute the agreement with such minor changes as may be approved by the City Manager.

BACKGROUND:

The property at 1100 Wagner Drive has been vacant for near six years after Case Construction left the site to make room for another dealership that did not come to fruition. The abandoned buildings and property constitute a blighting condition in the neighborhood and generates limited property tax revenue for the City. CarMax Auto Superstores, Inc. (CarMax) recently secured zoning entitlements to operate an auto dealership at the site. The project includes nearly \$12 million in new construction, an 8-foot wall to protect the abutting residential neighborhood, and other miscellaneous public improvements. The size of the proposed CarMax is estimated to generate nearly \$7 million in sales tax revenue over the next decade. The City will also receive a nominal increase in property tax due to the private investment in the site.

In preparing for the site to be developed, CarMax has encountered several significant extraordinary costs including asbestos abatement during the demolition of the existing building, relocation of overhead power, undergrounding utilities, installation of a vapor system for the new building, hauling and disposing of contaminated soil, and a stormwater detention system. CarMax has indicated that these unexpected costs threaten the development of the dealership. As such, CarMax has requested that the City consider a sales tax sharing agreement as the City has with other dealerships that have relocated or expanded in the City. Staff has considered past agreements, analyzed CarMax's funding gap, and ensured the City's interests were protected while discussing a possible tax sharing agreement. Through a series of discussions with CarMax, the attached Operating Covenant has been prepared for City Council consideration.

The Operating Covenant requires CarMax to develop an auto dealership site by March 31, 2027 and remain operational during the covenant's term. The term is for eight years or until \$2 million in sales tax revenue has been shared. The agreement also requires that the dealership achieve a base of \$350,000 in annual sales tax to the City before any sharing occurs. Once the \$350,000 threshold is reached, the Operating Covenant would have the City share any amount exceeding the threshold as follows:

Year	% Shared Over \$350,000
1	75%
2	70%
3	65%
4	60%
5	55%
6	50%
7	50%
8	50%

This Operating Covenant ensures that the City is guaranteed that it will receive 100% of the sales tax up to \$350,000. Also, over time, the City will receive a greater share of the tax revenue as sales revenues increase. Also, the cap of \$2 million over the course of the agreement ensures that there is a limit on the amount of tax revenue being shared.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

The CarMax dealership was approved on April 3, 2023 in accordance with approved Specific Plan No. 529, and was determined to be categorically exempt from the California Environmental Quality Act (CEQA) according to CEQA Guidelines section 15332 (In-fill Development) as described in City Council Resolution No. 17-17 for the Specific Plan. Furthermore, the proposed Operating Covenant is a government fiscal activity and is exempt from CEQA in accordance with CEQA Guidelines section 15378(b)(4).

FISCAL IMPACT:

Staff anticipates that the Operating Covenant will facilitate a development project that will net as much as \$3.8 million in General Fund revenue over the term of the Operating Covenant.

Prepared By: Graham Mitchell, City Manager

Reviewed By: N/A

Approved By: Graham Mitchell, City Manager

Attachments

Resolution

Operating Covenant

RESOLUTION NO. ___-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CAJON
APPROVING AN OPERATING COVENANT WITH
CARMAX AUTO SUPERSTORES, INC. FOR A
SALES TAX SHARING AGREEMENT WITH THE CITY OF EL CAJON
AND AUTHORIZING THE EXECUTION OF AN OPERATING COVENANT

WHEREAS, the City of El Cajon (the "City") has negotiated an Operating Covenant with CarMax Auto Superstores, Inc. ("CarMax") to implement a sales tax sharing agreement to defray significant unexpected costs CarMax has encountered in the course of developing and remediating the property located at 1100 Wagner Drive; and

WHEREAS, in preparing for the site to be developed, some of the extraordinary costs CarMax encountered include asbestos abatement during the demolition of the existing building, relocation of overhead power, undergrounding utilities, installation of a vapor system for the new building, hauling and disposing of contaminated soil, and a stormwater detention system; and

WHEREAS, CarMax has indicated that such extraordinary costs threaten the development of the dealership and requested that the City consider a sales tax sharing agreement as the City has with other dealerships that have relocated or expanded in the City; and

WHEREAS, staff has considered past agreements, analyzed CarMax's funding gap, and ensured the City's interests were protected while discussing a possible tax sharing agreement; and

WHEREAS, staff, following negotiations with CarMax, has prepared an Operating Covenant for the City Council's consideration that guarantees that the City will receive 100% of the sales taxes generated from the site, up to \$350,000 each one-year period, and share the balance of sales taxes generated in excess of \$350,000 with CarMax on a declining percentage basis over eight (8) years or until \$2 million in total sales tax revenue has been shared with CarMax, providing the City with a greater share of tax revenues as sales revenues increase over time; and

WHEREAS, staff recommends that the City Council authorize the City Manager or designee to execute the Operating Covenant with such minor changes as may be approved by the City Manager; and

WHEREAS, the Project is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15332 (In-fill Development) as described in City Council Resolution No. 017-17 for the Specific Plan, and furthermore, the proposed Operating Covenant is a government fiscal activity and is exempt from CEQA in accordance with CEQA Guidelines section 15378(b)(4); and

WHEREAS, staff anticipates that the Operating Covenant will facilitate a development project that will net as much as \$3.8 million in General Fund revenue over the term of the Operating Covenant; and

WHEREAS, the City Council believes it to be in the City's best interest to enter into the Operating Covenant with CarMax.

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 Project is categorically exempt from CEQA pursuant to CEQA Guidelines section 15332 (In-fill Development) as described in City Council Resolution No. 017-17 for the Specific Plan, and , as a government fiscal activity, the Operating Covenant is exempt from CEQA in accordance with CEQA Guidelines section 15378(b)(4).

3. The City Council hereby authorizes the City Manager, or such person as is designated by the City Manager, to execute the Operating Covenant for sales tax sharing in the form as presented to this meeting, 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, or other documents necessary, as may be approved by the City Manager, on behalf of the City of El Cajon.

09/26/23 CC Agenda

Reso – Approve Operating Covenant for Sales Tax Sharing (CarMax, Inc.)(CEQA exempt) 092123

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of El Cajon
200 Civic Center Way
El Cajon, California 92020
Attn: City Manager

This document is exempt from the payment of a recording
fee pursuant to Government Code section 27383

OPERATING COVENANT

THIS OPERATING COVENANT (“Operating Covenant”) is made this ____ day of _____, 2023 (the “Effective Date”), by and between the **CITY OF EL CAJON**, a charter city and municipal corporation (the “City”), and **CARMAX AUTO SUPERSTORES, INC.**, a Virginia corporation (the “Operator” or “CarMax”), with reference to the following:

A. 1100 Wagner Drive, LLC, a California limited liability company and Operator are, respectively, the landlord and tenant of that certain Ground Lease, dated as of October 6, 2017 (“Original Lease”), which Original Lease has been amended by a First Amendment to Ground Lease, dated as of December 4, 2017 (“First Amendment”), and by a Second Amendment to Ground Lease, dated as of May 31, 2020 (“Second Amendment”), and by a Consent to Assignment, Estoppel, and Amendment of Lease dated September 21, 2022 (the “Consent to Assignment and Amendment”). The Original Lease, the First Amendment, the Second Amendment, and the Consent to Assignment and Amendment, will be collectively referred to in this Agreement as the “Lease”. By means of the Lease, Landlord currently leases to the Operator, and the Operator currently leases from Landlord, the real property located in San Diego County, California, more particularly described in the Lease (the “Property”). The Property includes, among other things, an easement over a strip of land owned by the City of San Diego (such city, the “City,” and such strip of land, the “SD Property”). Operator represents and warrants to the City that Operator’s leasehold interest under the Lease is in effect as of the date of this Agreement, and expires September 30, 2052.

B. The Operator is the applicant and permittee of a first-class CarMax automobile dealership on the Property (the “CarMax Dealership”), said construction conducted at the sole cost and expense of Operator with no financial or other assistance from the City, and the City has agreed to provide the Operator with certain financial incentives in consideration of Operator agreeing to use and operate the Property and the CarMax Dealership, all in accordance with this Operating Covenant.

C. The Operating Covenant shall be recorded against the Property to memorialize certain covenants, conditions and restrictions regarding the use and operation of the Property by the Operator and the Operator’s successors and assigns as tenant under the Lease.

D. The City has a fee interest in parks, City Hall, and in various streets, sidewalks, and other property within the City, more particularly described in Exhibit B (collectively, the “Benefited Public Property”), and is responsible for planning of land uses within the City in such a manner as to provide for the health, safety and welfare of the residents of the City.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein as if fully set forth, and for other good and valuable consideration, Operator hereby covenants, agrees and declares by and for itself and its successors and assigns that the Property shall be held, assigned, subleased, hypothecated, encumbered, used, occupied, and improved subject to the following covenants, conditions and restrictions (sometimes collectively referred to hereinafter as the “Covenants”). These Covenants shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of the City and its successors and assigns regardless of whether the City holds any interest in any real property benefited thereby.

1. Covenant Regarding Specific Uses.

(a) Operation of the CarMax Dealership. For a term (the “Term”) commencing upon the date of the City’s issuance of a certificate of occupancy (the “Occupancy Permit”) allowing the commencement of operations of the CarMax Dealership, which shall commence no later than March 31, 2027, provided that the City has issued the Occupancy Permit for the CarMax Dealership, and continuing until the earlier of (x) the conclusion of the eighth (8th) Operating Year (as defined in Exhibit C attached hereto), (y) the date of expiration or earlier termination of the Lease (as applicable, the “Operating Covenant Termination Date”), or (z) redistribution to CarMax exceeds Two Million Dollars (\$2,000,000.00), the Operator hereby covenants and agrees to devote the Property for the exclusive purpose, use and operation of the CarMax Dealership, and will comply with other obligations contained herein. Notwithstanding anything herein to the contrary, the nondiscrimination covenants contained in subdivision (a) of Section 3 hereof shall run with the Property throughout the term of the Lease, and shall not terminate on the Operating Covenant Termination Date. Except as provided below, or with the prior written consent of the City for each instance, which shall not be unreasonably withheld, conditioned or denied, the failure of the Operator (or its subtenant or assignee) to operate any portion of the CarMax Dealership on the Property as required herein for thirty (30) or more days in any forty-five (45) day period shall, at the City’s option, constitute default hereunder; provided, however, that the Operator shall for purposes of this Section 1 be deemed to be operating such portion of the CarMax Dealership during any period that the Operator is prevented from operating such portion due to: (i) required or necessary rehabilitation of such portion CarMax Dealership (provided that the period during which such portion of the CarMax Dealership is not operated as a result of the rehabilitation shall in no event exceed sixty (60) days), unless the rehabilitation cannot reasonably be completed within such sixty-day period, in which case the period may extend as necessary for completion, provided such rehabilitation was commenced within the 60-day period and is diligently pursued to completion, but in no event shall rehabilitation efforts exceed 180 days; or (ii) war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of public enemy; epidemics; quarantine restrictions; freight embargos; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; or acts or failures of the City or other public or governmental entity. Notwithstanding anything to the contrary herein, (a) an extension of time for any cause listed in romanette (ii) above shall be for the period of the enforced delay and shall commence to run (A) from the time of the commencement of the cause, if notice (“Force Majeure Notice”) by Operator is sent to the City within fifteen (15) days of the commencement of the cause, or (B) from the time Operator gives the Force Majeure Notice, if Force Majeure Notice is not given by Operator to City within fifteen (15) days of the commencement of the cause, and (b) Operator is not entitled,

pursuant to this Section 1, to an extension of time to perform because of the past, present or future difficulty in obtaining financing necessary to operate the CarMax Dealership because of economic or market conditions.

(b) Subject to Section 1(a), in operating the CarMax Dealership during the Term, Operator:

(1) Shall operate in accordance with all requirements of CarMax (or another dealer approved by City), which shall include operating in the dealership as a first-class motor vehicle dealership in compliance with all facility and image requirements of CarMax;

(2) Shall use all chemicals, unhealthful substances, and pesticides in strict accordance with all governing regulations, and shall employ precautionary measures recognizing that areas are open to public access;

(3) Shall keep all sidewalks, paths and other paved areas of the CarMax Dealership in a clean and reasonably weed-free condition, free of excess dirt and mud, trash, debris or other matter which is unsafe or unsightly; remove all trash, litter and other debris from improvements and landscaping of the CarMax Dealership prior to mowing; ensure that all cuttings, weeds, leaves, and other debris at the of the CarMax Dealership are properly disposed of; and

(4) Shall, in performing the foregoing, conform to all applicable federal and state Occupational Safety and Health Act standards and regulations for the performance of the same.

2. Failure to Operate Property.

(a) In the event the Operator does not operate the Property in the manner set forth herein and in accordance with Section 1(a) above (the "Operation Standards"), the City shall notify the Operator in writing if the operation of the CarMax Dealership or Property does not meet with the Operation Standards ("Deficiency"). City's notice of Deficiency must specify the deficiencies and the actions required to be taken by the Operator to cure deficiencies. Upon notification of any operation deficiency, the Operator shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety of the City, the Operator shall have seventy-two (72) hours to rectify the problem.

(b) In the event the Operator fails to correct, remedy or cure (or for deficiencies which cannot reasonably be corrected, remedied or cured with thirty (30) days has failed to commence correcting, remedying or curing such operation deficiency and diligently pursue such correction, remedy or cure to completion) after notification and after the period of correction has lapsed, then the parties agree that the Operator shall be required to reimburse any portion of sales taxes generated from the Property (as set forth in Section 6 below and Exhibit C hereof) during the period of the Operator's default in its covenant to comply with the Operation Standards and any subsequent calculation for reimbursement shall treat any such sales as having not occurred.

(c) In the event the Operator closes the CarMax Dealership for business and does not intend to re-open the CarMax Dealership during the Term of this Operating Covenant,

the Operator shall so notify the City (“Closing Notice”). Upon the giving of Closing Notice (i) the Operator will repay the City for any sales tax reimbursements received by the Operator during the Operating Year (as defined in Exhibit C) that resulted in the greatest reimbursement from the City (the “Store Closing Fee”), and (ii) notwithstanding the provisions of Section 8, the City will have no right to initiate an action to force the Operator to operate the CarMax Dealership, the collection of the Store Closing Fee being the City’s exclusive remedy for the closure of the CarMax Dealership.

3. Compliance with Law. The Operator shall comply with all local, state and federal laws relating to the uses of or condition of the Property and the CarMax Dealership. The operation of the CarMax Dealership shall be in compliance with the requirements of any entitlements issued by the City for the CarMax Dealership, including, as applicable, a site development plan and specific plan.

(a) Nondiscrimination Covenants. The Operator covenants, by and for itself, and any successor-in-interest to all or any portion of the Property, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in (1) its recruiting, hiring, and retention of employees, contractors, and consultants; (2) its commercial operations in dealing with the public; and (3) the assignment, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Operator, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, assignees, subtenants or vendors of the Property. The foregoing covenants run with the Property.

The Operator shall refrain from restricting employment opportunities, commercial transactions with public, as well as the assignment of the Property or the sublease of the Property, or any portion thereof, on the basis of race, color, religion, sex, sexual preference, marital status, ancestry or national origin of any person. All such assignments, subleases, or instruments for the transfer of any interest in the Property entered into after the Effective Date shall contain or be subject to the following nondiscrimination clauses:

(1) In assignments: “The assignee herein covenants, by and for itself, and any heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in (1) its recruiting, hiring, and retention of employees, contractors, and consultants; (2) its commercial operations in dealing with the public; and (3) the assignment, sublease, transfer, use, occupancy, tenure or enjoyment of the Property herein assigned, nor shall the assignee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of assignees, subtenants, sublessees or licensees of the Property. The foregoing covenants shall run with the Property.”

(2) In subleases: “The sublessee herein covenants, by and for itself, and any heirs, executors, administrators and assigns, and all persons claiming under or through them, and this sublease is made and accepted upon and subject to the condition that there shall be no

discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in (1) its recruiting, hiring, and retention of employees, contractors, and consultants; (2) its commercial operations in dealing with the public; and (3) the assignment, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of assignees, subtenants, sublessees or licensees of the premises herein leased.”

(3) In licenses: “There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the use, occupancy, tenure or enjoyment of the Property, nor shall the licensee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to (1) its recruiting, hiring, and retention of employees, contractors, and consultants; (2) its commercial operations in dealing with the public; and (3) the selection, location, number, use, or occupancy of the Property. The foregoing covenants shall run with the Property.”

(b) No Violations of Statutes Relating to Direct Assistance by City. The Operator represents and warrants that it is using the City financial assistance for the sole and exclusive purpose of operation costs and the stabilization of operational costs of the CarMax Dealership, and for no other purpose. The Operator further agrees to indemnify, defend and hold harmless the City from and against any claims, proceedings, losses, costs or expenses incurred as a result of any third-party claims or proceedings resulting from such violation arising out of actions by the Operator related to the provision of the financial assistance.

4. Sales and Use Tax Covenant. From the date of this Operating Covenant is recorded against the Property until the Operating Covenant Termination Date, to the extent allowed by applicable law, the Operator shall designate the Property as the point of sale for sales tax purposes for all goods and services sold or leased on the Property, or whose sales and leases originate from, or relate back to the CarMax Dealership on, the Property.

5. Covenant to Pay Taxes and Assessments. From the date this Operating Agreement is recorded against the Property until the Operating Covenant Termination Date, the Operator shall pay or cause to be paid, prior to delinquency, all ad valorem real estate taxes (including possessory interest taxes), special taxes, and assessments levied against the Property and any improvements thereon, subject to the Operator’s right to contest any such tax or assessment in good faith. During such period, the Operator shall remove or have removed, any levy or attachment made on the Property or any part thereof or assures the satisfaction thereof within a reasonable time and prior to the sale of the Property.

6. City Reimbursement of Portion of Sales Taxes Generated. In consideration of the use and operation of the CarMax Dealership as set forth in this Operating Covenant, and in recognition of the significant commitment of capital and other resources by the Operator for the CarMax Dealership, City hereby agrees to provide, as an incentive, the reimbursement of a portion of sales taxes generated from the Property for a limited period of time. The precise calculation of

reimbursement by the City, to Operator, is set forth in the City Reimbursement Schedule, attached to this Operating Covenant as Exhibit C and incorporated herein by reference.

7. Defaults.

(a) Failure or delay by either party to perform any term or provision of this Operating Covenant, subject to applicable cure periods, constitutes a default under this Operating Covenant. A party claiming a default shall give written notice of default to the other party, specifying the default complained of and the actions required to correct such default.

(b) Unless otherwise provided by this Operating Covenant, the claimant shall not institute proceedings against the other party if the other party, within thirty (30) days from the receipt of such notice, immediately and with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy as soon as reasonably practicable after receipt of such notice, but in no event shall the cure, correction or remedy occur more than 180 days after notice.

8. Legal Actions.

(a) In addition to any other rights or remedies, and subject to notice and cure provisions in Section 1(a) and Section 7 above, and subject to the provisions of Section 2(c) any party may institute legal action to seek specific performance of the terms of this Operating Covenant, or to cure, correct or remedy any default, or to obtain any other legal equitable remedy consistent with the purpose of this Operating Covenant. The parties shall also have the right to pursue damages for the other party's defaults, but in no event shall the City or Operator be entitled to special damages of any kind from the other party, including, without limitation, damages for economic loss, lost profits, or any other economic or consequential damages of any kind. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California or in the Federal District Court in the Southern District of California located in San Diego. In the event of any litigation between the parties hereto, the prevailing party shall be entitled to receive, in addition to the relief granted, its reasonable attorneys' fees and costs and such other reasonable costs incurred in investigating the action and prosecuting the same, the including costs for expert witnesses, costs on appeal, and for discovery. CarMax hereby waives any right to remove any such action from San Diego County as is otherwise permitted by California Code of Civil Procedures section 394.

(b) The internal laws of the State of California shall govern the interpretation and enforcement of this Operating Covenant, without regard to conflict of laws.

(c) In the event that any legal action is commenced by the Operator against the City in connection with this Operating Covenant, service of process on the City shall be made by personal service upon the City Clerk of the City in addition to such other manner as may be provided by law.

(d) In the event that any legal action is commenced by the City against the Operator, service of process on the Operator shall be made by personal service upon any officer or director of the Operator, whether made within or outside the State of California, or in such other manner as may be provided by law.

(e) Except as otherwise expressly stated in the Operating Covenant, the rights and remedies of the parties are cumulative, and the exercise by either party of the one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

(f) Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

9. Effect of Violation of the Terms and Provisions of this Operating Covenant.

The covenants established in this Operating Covenant shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, and its successors and assigns, as to those covenants which are for its benefit. The covenants contained in this Operating Covenant shall remain in effect for the periods of time specified therein. The City is deemed the beneficiary of the terms and provisions of this Operating Covenant and of the covenants running with the Property, for and in their own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Operating Covenant and the covenants running with the land have been provided. Subject to the provisions of Section 2I, the City shall have the right, if the Operating Covenant or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which they or any other beneficiaries of this Operating Covenant and covenants may be entitled. Pursuant to applicable law, including, but not limited to, California Civil Code sections 1462, 1465 and 1468, all provisions of this Operating Covenant shall run with the Property and be binding upon and inure to the benefit of the Benefited Public Property and the Property and each and every portion thereof or interest therein, and all parties having or acquiring any right, title or interest in the Property or any portion thereof, and their successors and assigns.

10. Transfer Restrictions.

(a) The qualifications and identity of the Operator are of particular concern to the City. It is because of these qualifications and identity that the City has entered into this Operating Covenant with the Operator. Accordingly, commencing on the Effective Date and continuing throughout the Term: (i) no voluntary or involuntary successor-in-interest of the Operator shall acquire any rights or powers under this Operating Covenant; (ii) the Operator shall not make any total or partial transfer, assignment, sublease (except subleases to subtenants who will operate a portion of the CarMax Dealership while Operator continues to be the primary operator of the CarMax Dealership), further encumbrance, or refinancing of the whole or any part of the Property or the CarMax Dealership; and (iii) no changes shall occur with respect to the majority ownership and/or control of the Operator, including, without limitation, stock transfers, sales of issuances, or transfers, sales of membership or ownership interests, or statutory conversions (with each of the actions in clauses in (i), (ii) and (iii) above to herein as a "Transfer"), without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed. Any purported Transfer, voluntarily or by operation of law, except with the prior written consent of the City, shall be null and void and shall confer no rights whatsoever upon any purported assignee or transferee. Notwithstanding the other provisions of this Section 10(a), for

so long as Operator is a publicly traded corporation, transfers of Operator's stock will not be deemed Transfers under this Section 10(a).

(b) Notwithstanding any other provision of this Operating Covenant to the contrary, the City's approval of a Transfer shall not be required in connection with any of the following:

(1) Any Transfer by the Operator to a Related Person or Entity (as defined below).

(2) A Transfer consisting of the conveyance or dedication of any portion of the Property to the City or other appropriate governmental agency, including public utilities, where the granting of such permits or facilitates the development of the Property and the CarMax Dealership.

(3) Any Transfer for (i) financing purposes to the holder of a mortgage or (ii) any refinancing or permanent financing of the mortgage.

(4) Any Transfer to any person or entity pursuant to foreclosure, or deed in lieu of foreclosure of any such mortgage referred to Section 10(b)(3), and any Transfer to Landlord arising from the exercise of Landlord's remedies under the Lease.

In the event of a Transfer by Operator not requiring the City's prior approval, Operator nevertheless agrees that promptly after such Transfer, Operator shall give written notice to the City of such Transfer. In the case of a Transfer pursuant to Section 10(b)(1), Operator agrees that at least thirty (30) days prior to such Transfer it shall provide satisfactory evidence that the transferee has assumed or, upon the effective date of the transfer, will assume, in writing through an assignment and assumption agreement, in a form reasonably acceptable to the City, all of the obligations of the Operator under this Operating Covenant which remain unperformed as of such Transfer or which arise from and after the date of the Transfer.

As used in this Operating Covenant, a "Related Person or Entity" shall mean an entity in which Operator, or an entity in which Operator or any of Operator's corporate parents, own a greater than fifty percent (50%) ownership and management interest; provided, however, that such Related Person or Entity shall demonstrate that such person or entity has been approved in writing by Operator to operate the CarMax Dealership thereon.

(c) If the Operator desires to cause a Transfer of any of its interests in this Operating Covenant or the Property, and such Transfer requires the City's approval under Section 10(a), Operator shall submit a written request to the City that it consent to the Transfer, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding any other provision set forth in this Operating Covenant, a transfer which satisfies the following conditions shall automatically be deemed approved by the City if: (i) the proposed assignee expressly assumes, in writing, the unexecuted obligations hereunder of the transferor/assignor, as applicable, as to times following the effective dates of the assignment; and (ii) the proposed assignee demonstrates to the reasonable satisfaction of the City that such person or entity has adequate financial capacity to operate the CarMax Dealership on the Property and that such person or entity has been approved in writing by Operator to operate the CarMax Dealership thereon.

Notwithstanding any other provision set forth in this Operating Covenant to the contrary, upon the effective date of a permitted or approved Transfer, and provided that the transferor/assignor shall be delivered to the City an executed assignment and assumption agreement in a form reasonably acceptable to City's legal counsel, the transferor/assignor shall be released from all further liabilities and obligations hereunder and the Operating Covenant that have been so transferred and assigned.

(d) All of the terms, covenants and conditions of this Operating Covenant shall run with the Property and be binding upon the Operator and the City and their permitted successors and assigns. Whenever the term "Operator" or "City" is used in this Operating Covenant, such term shall include any other permitted successor and assigns.

11. Miscellaneous Provisions.

(a) If any provision of this Operating Covenant or portion thereof, or the application to any person or circumstance, shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Operating Covenant, or the application of such provision or portion thereof to any such invalid provision affects all the consideration of this Operating Covenant; and each provision of this Operating Covenant shall be valid and enforceable to the fullest extent permitted by law.

(b) This Operating Covenant shall be construed in accordance with the internal laws of the State of California without regard to conflict of law principles.

(c) This Operating Covenant shall be binding upon and inure to the benefit of the successors and assigns of the Operator as tenant under the Lease, but any Transfer shall be subject to the requirements and provisions of Section 10 of this Operating Covenant.

(d) The Operator recognizes that the City is a party to this Operating Covenant solely for the purpose of providing the Operator incentives that will foster economic development in its community with the intent that it has a positive impact on the Benefited Public Property, which will (in turn) improve the public health, safety, and welfare of its residents. The Operator further recognizes, however, that the City is responsible for developing sound land use regulations applicable throughout the community, such that nothing in this Operating Covenant shall be interpreted as a contract that requires the City's legislative body and planning agency to approve the location, design, or permission of the intended CarMax Dealership and the City retains all discretion in any approvals or conditions of approvals related to the CarMax Dealership, this Operating Covenant notwithstanding.

12. Notices. All notices under this Operating Covenant shall be effective: (i) upon personal delivery; (ii) upon delivery by reputable overnight courier that provides a receipt with the date and time of delivery; or (iii) via facsimile or electronic mail, so long as the sender receives confirmation of successful transmission from the sending machine or computer; provided that a copy of the notice is also concurrently sent by first class mail, and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing:

To City: City of El Cajon
200 Civic Center Way
El Cajon, California 92020
Attn: City Manager
Telephone: 619.441.1716
Email: gmitchell@elcajon.gov

With a copy to: El Cajon City Attorney
200 Civic Center Way
El Cajon, California 92020
Attn: Morgan L. Foley
Telephone: 619.441.1798
Email: mfoley@elcajon.gov

To Operator: CarMax Auto Superstores, Inc.
12800 Tuckahoe Creek Parkway
Richmond, Virginia 23238
Attn: K. Douglass Moyers
Telephone: 804-747-0422
Email: douglass_moyers@carmax.com

With a copy to: Sheppard, Mullin, Richter & Hampton LLP
501 W. Broadway, 19th Floor
San Diego, California 92101
Attn: Whitney Hodges, Esq.
Telephone: 619.338.6542
Email: whodges@sheppardmullin.com

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto has executed this Operating Covenant as of the Effective Date as first hereinabove identified.

OPERATOR

Date: _____

CARMAX AUTO SUPERSTORE, INC.,
a Virginia corporation

By: _____
K. Douglass Moyers
Vice President of Real Estate

CITY

Date: _____

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

By: _____
Graham Mitchell
Its: City Manager

ATTEST:

Angela L. Cortez, CMC, City Clerk

APPROVED AS TO FORM:

Morgan L. Foley, City Attorney

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.

Commonwealth of Virginia)
City/County of)

On _____, before me, _____, a Notary Public, personally appeared K. Douglass Moyers, 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 _____

My commission expires: _____

Registration No: _____

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

State of California)
County of San Diego)

On _____, 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.

WITNESS my hand and official seal.

Signature _____

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Real property in the City of El Cajon, County of San Diego, State of California, described as follows:

PARCEL A:

ALL OF LOTS 8 AND 9 IN BLOCK 28 OF FLETCHER HILLS, UNIT NO. 2, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 2122, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 31, 1928.

EXCEPTING FROM SAID LOTS 8 AND 9, THE WESTERLY 100 FEET THEREOF.

ALSO EXCEPTING FROM SAID LOT 8, THAT PORTION LYING NORTH OF THE WESTERLY PROLONGATION OF THE SOUTHERLY LINE OF BLOCK 29 OF SAID FLETCHER HILLS, UNIT NO. 2.

ALSO EXCEPTING THEREFROM, THE SOUTHERLY 27.49 FEET OF SAID LOT 9.

ALSO EXCEPTING FROM SAID LOTS, THOSE PORTIONS LYING WITHIN A DEED TO THE CITY OF SAN DIEGO DATED MAY 21, 1946, RECORDED IN THE OFFICE OF THE COUNTY RECORDER, SAN DIEGO COUNTY, AUGUST 19, 1946 IN BOOK 2214, PAGE 182 OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL THAT PORTION OF SAID LOTS 8 AND 9 LYING NORTHEASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE CENTERLINE INTERSECTION OF MARSHALL AVENUE AND ARNELE AVENUE AS SHOWN ON MAP 5484, FILED AT THE OFFICE OF SAID COUNTY RECORDER, THENCE WESTERLY ALONG THE CENTERLINE OF SAID ARNELE AVENUE NORTH 89° 36' 56" WEST (BEARINGS ARE BASED ON NAD 27 CALIFORNIA STATE PLANE COORDINATE SYSTEM) (SOUTH 89° 59' 20" WEST PER RECORD) 30.00 FEET TO A POINT ALSO BEING THE NORTHEAST CORNER AS DESCRIBED IN A GRANT DEED RECORDED JULY 13, 1953 PER BOOK: 4918, PAGE: 347, OF OFFICIAL RECORDS;

THENCE ALONG THE EASTERLY BOUNDARY LINE OF SAID GRANT DEED SOUTH 0° 19' 18" WEST 547.69 FEET TO THE BEGINNING OF A 20.00 FEET RADIUS CURVE CONCAVED NORTHWESTERLY; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00' 00", DISTANCE OF 31.42 FEET;

THENCE NORTH 89° 40' 42" WEST 15.00 FEET; TO THE TRUE POINT OF BEGINNING,

THENCE NORTH 0° 19' 18" EAST 238.12 FEET;

THENCE NORTH 16° 22' 40" WEST 10.44 FEET;

THENCE NORTH 0° 19' 18" EAST 20.00 FEET;

THENCE NORTH 17° 01' 15" EAST 10.44 FEET;

THENCE NORTH 0° 19' 18" EAST 239.61 FEET;

THENCE NORTH 89° 36' 56" WEST 7.00 FEET;

THENCE NORTH 0° 19' 18" EAST 50.00 FEET TO A POINT ON THE NORTHERLY BOUNDARY LINE OF SAID GRANT DEED, SAID POINT ALSO BEING DESCRIBED HEREIN AS POINT "A"; THENCE ALONG SAID NORTHERLY BOUNDARY LINE SOUTH 89° 36' 56" EAST 42.00 FEET TO THE POINT OF COMMENCEMENT.

EXCEPTING THEREFROM ALL PERCOLATING AND SUBTERRANEAN WATERS LYING BENEATH THE SURFACE OF THE LAND CONVEYED HEREBY TOGETHER WITH THE SOLE AND EXCLUSIVE RIGHT TO REMOVE SAME BY CUSTOMARY MEANS, BUT EXCLUDING ANY RIGHT TO ENTER UPON THE SURFACE OF SAID LANDS FOR SUCH PURPOSE, AS RESERVED BY THE ED FLETCHER CO. BY DEED RECORDED JULY 13, 1953 IN BOOK 4918, PAGE 347 OF OFFICIAL RECORDS.

PARCEL B:

THE RESERVED RIGHT AT THEIR OWN RISK TO USE THE SURFACE OF THE PROPERTY CONVEYED BY GRANT DEED RECORDED AUGUST 19, 1946 IN BOOK 2214 PAGE 182 OF OFFICIAL RECORDS, FOR AGRICULTURAL USES EXCEPT FOR THE PLANTING AND GROWING OF TREES, SHRUBS AND BUSHES: THE RIGHT TO FENCE WITH GATES SO AS NOT TO RESTRICT ENTRY BY THE CITY, AND THE RIGHT TO CROSS OR MAKE USE OF THE SURFACE IN A MANNER NOT DETRIMENTAL TO THE INSTALLATION, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE AND REPLACEMENT OF A PIPE LINE OR PIPE LINES, OR TO ANY OTHER PURPOSES AND USES AS ARE OR MAY BE NECESSARY OR INCIDENTAL TO THE CONSTRUCTION, MAINTENANCE AND OPERATION OF THE CITY'S PROPOSED PIPE LINE OR PIPE LINES.

APN: 482-190-45-00

EXHIBIT B
DESCRIPTION OF BENEFITTED PUBLIC PROPERTIES IN EL CAJON

City Hall, 200 Civic Center Way
APN: 488-111-30

El Cajon Public Safety Building, 100 Civic Center Way
APN: 488-072-42

Fire Station No. 6, 100 East Lexington Ave.
APN: 488-192-09

Heartland Fire Training Facility, 1301 North Marshall Ave.
APN: 482-131-16

Fletcher Hills Center and Pool, 2345 Center Place
APN: 481-430-47 & 481-430-44

Hillside Center and Park, 840 Buena Terrace
APN: 481-521-01 & 481-520-12

Judson Park, NW corner of Magnolia and Park Avenues
APN: 487-172-67

Kennedy Center and Park, 1675 East Madison Avenue
APN: 511-210-13

Renette Center and Park, 935 South Emerald Avenue
APN: 492-320-01 & 492-320-02

Wells Center and Park, 1153 East Madison Avenue
APN: 489-140-63

EXHIBIT C
CITY REIMBURSEMENT SCHEDULE

1. Reimbursement Payments. Starting in the first Operating Year (as defined below), following issuance of the Occupancy Permit as defined in the Operating Covenant, and each Operating Year thereafter for the Term of the Operating Covenant, the City shall reimburse the Operator each year of the Operating Year in the amount equal to:

Seventy-five percent (75%) of the “Net Sales Taxes from the Property” generated on the Property during Operating Year 1, inclusive; and

Seventy percent (70%) of the “Net Sales Taxes from the Property” generated on the Property during Operating Year 2, inclusive; and

Sixty-five percent (65%) of the “Net Sales Taxes from the Property” generated on the Property during Operating Year 3, inclusive; and

Sixty percent (60%) of the “Net Sales Taxes from the Property” generated on the Property during Operating Year 4, inclusive; and

Fifty-five percent (55%) of the “Net Sales Taxes from the Property” generated on the Property during Operating Year 5, inclusive; and

Fifty percent (50%) of the “Net Sales Taxes from the Property” generated on the Property during Operating Years 6 through 8, inclusive

Such payments shall be made to Operator no later than thirty (30) days following the quarter disbursement from the California Department of Tax and Fee Administration to the City for its local sales and use tax for that Operating Year.

a. As used herein, the term “Net Sales Taxes from the Property” shall mean the “Sales Taxes from the Property” in excess of Three Hundred and Fifty Thousand Dollars (\$350,000.00) in each Operating Year (the anticipated current annual sales level), as defined below.

b. Operating Year shall, for Operating Year 1, shall mean the twelve (12) full months following the issuance of the Occupancy Permit. Operating Year for each subsequent year following Operating Year 1 shall mean each twelve (12) full months following the anniversary of the issuance of the Occupancy Permit. Calendar quarters shall be calculated by the State Board Equalizer.

c. As used herein, the term “Sales Taxes from the Property” means the amount equal to the sales and use taxes that are generated from sales occurring on the Property on which sales or use taxes are imposed pursuant to applicable California law in each Operating Year, which are actually received by the City from the State Board of Equalization. In connection therewith:

i. The Operator shall timely report, and shall cause its tenants (if any) to report all sales and use taxes from the Property to the State Board of Equalization in accordance with the laws, rules and regulations applicable to such reporting.

ii. Sales Taxes from the Property shall be deemed to have been paid by the State Board of Equalization to the City if and to the extent the State Board of Equalization elects to offset the payment of any such Sales Taxes from the Property against any other obligations of the City.

iii. The Operator acknowledges that the State Board of Equalization makes payments to the City based on both actual and anticipated sales and use tax revenues and that the State Board of Equalization makes periodic reconciliations. The determination of Sales Taxes from the Property for any annual, quarterly or other period shall be subject to the timing and reconciliation process related to the processing by the State Board of Equalization of payments of such Sales Taxes from the Property to the City. Any adjustments resulting from any interim or estimated determination of Sales Taxes from the Property for any annual, quarterly or other period shall be reconciled by the parties as soon as practicable without inclusion of, or any obligation to pay, interest.

iv. Sales Tax from the Property shall be determined based on actual amounts received by the City based only on the City's share of the States sales and use tax applicable to the Property (which, as of the Effective Date, is one percent [1%] of the taxable amount) within each Operating Year. Sales Taxes from the Property shall not include amounts paid to the City by the State Board of Equalization derived from any sales tax overrides or special tax amount received by the City, nor shall include any administrative fees or charges imposed by the State Board of Equalization that will reduce the actual amounts of sales and use taxes received by the City.

v. The Operator shall, and shall cause its tenants (if any) to, keep full and accurate books of account, records and other pertinent data showing all gross income earned upon the Property that is reportable for California sales and tax purposes, including all documents required to be maintained by the State of California for sales and use tax purposes.

2. **Reimbursement Prepayment.** The City shall have the right to prepay all or any portion of its obligations for reimbursement at any time without penalty.



City Council Agenda Report

Agenda Item 13.

DATE: September 26, 2023
TO: Honorable Mayor and City Councilmembers
FROM: Jose Dorado, Housing Manager
SUBJECT: Permanent Local Housing Allocation Funding and Program Approval

RECOMMENDATION:

That the City Council:

1. Accepts staff recommendations for projects and programs funded by the Permanent Local Housing Allocation (PLHA) grant program;
2. Approves the Program Guidelines for the Accessory Dwelling Unit (ADU) Loan Program; and
3. Adopts the next Resolution, in order, to:
 - a. Approve and adopt the PLHA recommendations, and authorize the City Manager to enter into Agreements with three non-profit organizations;
 - b. Accept, appropriate, allocate, and expend an additional \$137,620 for a total of \$2,752,411 from the State of California Department of Housing and Community Development's (HCD) PLHA grant award (22-PLHA-17775); and
 - c. Approve the Accessory Dwelling Unit Loan Program as presented and authorize the City Manager or designee to make any necessary updates to the program guidelines and sign any necessary agreements with homeowners to secure the City's financial interest.

BACKGROUND:

In 2017, the California Legislature passed Senate Bill 2 Planning Grants Program (SB 2), which established a permanent source of funding intended to increase the affordable housing stock and address homelessness in California. The program is funded by a \$75 fee levied on certain real estate transactions and is expected to generate between \$250 and \$300 million annually to be distributed among local jurisdictions throughout the state. On August 17, 2022, HCD released a Notice of Funding Availability (NOFA).

On October 25, 2022, the City Council approved a PLHA spending plan and authorized the City Manager to submit an application to HCD to receive its PLHA grant. The PLHA application was submitted to HCD on October 31, 2022, and on May 30, 2023, the City was notified that the application was successful and received an initial award of \$2,752,411, of which, approximately \$137,620 will be available for planning and administrative activities.

On June 7, 2023, HCD provided the City with an executed agreement and staff subsequently issued a NOFA inviting eligible homeless service providers to submit proposed programs.

Through the published NOFA application process, the City received requests from three eligible homeless service providers. The recommendations for the various categories of funding are listed below, and are also summarized in an attachment to this report.

Homeless Services – A maximum of \$1,982,682 is available to fund various homeless service programs that cover a three-year period with options to extend in accordance with HCD's imposed expenditure deadlines. The proposed programs are as follows:

- East County Transitional Living Center (ECTLC)
 - Emergency Shelter Services – The program proposes to serve homeless persons with emergency shelter beds (up to 60 days), as well as providing food and case management. This program has received operational support from the City since 2005. Staff recommends funding this activity in the amount of \$307,510. The funding will be used over the next three years (fiscal years 2023-2024, 2024-2025, and 2025-2026 at approximately \$100,000 each year). This funding will ensure continuing shelter availability for El Cajon homeless and will be used to supplement the existing CDBG allocation of \$100,000 approved by City Council on April 25, 2023.
 - Homeless Outreach Services – ECTLC teams propose pop-up events throughout the City showcasing the various programs offered by ECTLC. Staff recommends funding this activity in the amount of \$90,000. The funding will be used over the next three years (fiscal years 2023-2024, 2024-2025, and 2025-2026 at approximately \$30,000 each year). This funding will ensure that the unsheltered are made aware of the available resources offered by ECTLC.
- Home Start, Inc.
 - Rental Assistance and Rapid Re-Housing Services – These services are for homeless individuals or families earning less than 30 percent of the area median income (AMI). Rental assistance can be used to provide a minimum of six months of assistance to eligible households. Rapid re-housing can be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance, as necessary, to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability. Staff recommends funding this activity in the amount of \$752,641. The funding will be used over the next three years (fiscal years 2023-2024, 2024-2025, and 2025-2026 at approximately \$250,000 each year). This funding will be another resource, allowing homeless individuals or families to move as quickly as possible into permanent housing and achieve housing stability.
 - Case Management Services – This service delivers case management to El Cajon homeless, including rental assistance and rapid re-housing. Staff recommends funding this activity in the amount of \$292,510. This funding will be used over the next three years (fiscal years 2023-2024, 2024-2025, and 2025-2026 at approximately \$97,503 each year).
 - Homeless Outreach Services – This proposal will fund the current street outreach team in collaboration with the El Cajon homeless outreach team (HOT). Street outreach includes wraparound services for clients for self-sufficiency, access to mental health and substance abuse programs, childcare referrals, and employment training. In the past, Home Start, Inc. received \$200,000 (annually) from the El Cajon Housing Authority for outreach services. PLHA funding is now being recommended to fund this service at \$500,021 to be used over a three-year period.

- Crisis House
 - Homeless Outreach and Case Management Services – Staff recommends funding this activity in the amount of \$25,000 and \$15,000 respectively, for a total of \$40,000. The funding is expected to be used in the first year.

Accessory Dwelling Unit Loan Program – Funding will be made available to El Cajon homeowners on a first come first served basis subject to a recordation of covenants on their property. Loan terms are a minimum of 5 to a maximum of 30 years to provide the Accessory Dwelling Unit (ADU) as affordable to and occupied by households at or below 150% of AMI. The loan term can vary depending on the length of time it takes to repay the City loan and the AMI served. Borrowers who wish to serve lower AMI households can receive a longer loan term (20 to 30 years) and a lower deferred interest rate. Loan proceeds will be released directly to the approved homeowner’s contractor to be used for eligible ADU construction expenses including: site preparation, plans, permits, soil tests, property survey, energy reports, and construction costs including labor and materials.

The City and homeowner will enter into a Loan Agreement secured by a Deed of Trust and accompanied by a detailed Declaration of Covenants, Conditions and Restrictions (e.g. Regulatory Agreement) to be recorded on title of the property and running with the land for the duration of the term. The City will assist homeowners as needed with identification of qualified renters and provide technical assistance. City staff will oversee the annual covenant monitoring process. It is anticipated that six loans can be funded in an amount not to exceed \$100,000 for each eligible homeowner.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

The proposed adoption of the PLHA allocations is exempt from the provisions of CEQA, pursuant to CEQA Guidelines sections 15060(c)(3) and 15378, because it is not defined as a project under CEQA and does not have the potential to cause a significant effect on the environment. Each homeless services program is exempt from the provisions of CEQA, pursuant to CEQA Guidelines sections 15060(c)(3) and 15378, because it is not defined as a project under CEQA and does not have a potential to cause a significant effect on the environment.

FISCAL IMPACT:

The PLHA grant award (22-PLHA-17775) will be used to fund project and program costs pursuant to State law. There is no impact to the General Fund. This action also accepts, appropriates, allocates, and expends an additional \$137,620 for a total of \$2,752,411 in PLHA funds as described below:

Project Number	Program/Project Name	Allocation
PLHA-17775: TASK 1	Homeless Services	\$1,982,682
PLHA-17775: TASK 2	Accessory Dwelling Unit Loan Program	\$632,109
PLHA-17775: TASK 3	Administrative Costs	\$137,620
	Total	\$2,752,411

*rounded to the nearest whole dollar

Prepared By: Jose Dorado, Housing Manager

Reviewed By: Anthony Shute, Director of Community Development

Approved By: Graham Mitchell, City Manager

Attachments

Resolution

PLHA Funding Allocations

ADU Loan Program

RESOLUTION NO. ___-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CAJON
ACCEPTING, APPROPRIATING AND EXPENDING
PLHA FUNDS FOR FY 2023-2024

WHEREAS, City Council adopted Resolution No. 105-22 that authorized the submittal of a Permanent Local Housing Allocation ("PLHA") application to the State of California Department of Housing and Community Development ("HCD") on October 25, 2022; and

WHEREAS, the City of El Cajon (the "City") received a PLHA award from HCD in the amount of \$2,752,411 to be used for eligible programs that were described in the City's PLHA Plan; and

WHEREAS, after having released a Notice of Funding Availability ("Notice") seeking eligible homeless service providers the City recommends funding three homeless service providers responding to the Notice for various homeless service programs in conformance with PLHA program requirements and City guidelines; and

WHEREAS, the programs recommended for funding are consistent with the City Council's approval of the PLHA Plan.

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

1. The City Council of the City of El Cajon does hereby accept and appropriate an additional \$137,620 and expend and allocate a total of \$2,752,411 in PLHA funds for FY 2023-2024, to be applied to the Projects and Programs using HCD allocations from 2019, 2020, and 2021, as follows:

PLHA FUNDS-Administration and Homeless Services (HCD Activity #6)			
City Project No.	Agency	Project/Program	2023-2024 ALLOCATION
PLHA-17775.ADMIN	City - Housing	PLHA Administration 2019 PLHA Allocation \$16,135 2020 PLHA Allocation \$25,078 2021 PLHA Allocation \$27,598	\$68,811
TBD	Crisis House	Housing Navigation-Outreach 2019 PLHA Allocation \$25,000	\$25,000
TBD	Crisis House	Case Management Services 2019 PLHA Allocation \$15,000	\$15,000
TBD	East County Transitional Living Center	Housing Navigation-Outreach 2019 PLHA Allocation \$30,000 2020 PLHA Allocation \$30,000 2021 PLHA Allocation \$30,000	\$90,000
TBD	East County Transitional Living Center	Operation of an Emergency Shelter 2019 PLHA Allocation \$96,807 2020 PLHA Allocation \$110,312 2021 PLHA Allocation \$100,391	\$307,510

<u>PLHA FUNDS-Administration and Homeless Services (HCD Activity #6)</u>			
City Project No.	Agency	Project/Program	2023-2024 ALLOCATION
TBD	Home Start, Inc.	Case Management 2019 PLHA Allocation \$81,807 2020 PLHA Allocation \$100,312 2021 PLHA Allocation \$110,391	\$292,510
TBD	Home Start, Inc.	Homeless Navigation-Outreach 2019 PLHA Allocation \$138,615 2020 PLHA Allocation \$170,625 2021 PLHA Allocation \$190,781	\$500,021
TBD	Home Start, Inc.	Rental Assistance/Rapid Re-Housing 2019 PLHA Allocation \$225,884 2020 PLHA Allocation \$250,781 2021 PLHA Allocation \$275,976	\$752,641
PLHA-17775.ADMIN	Home Start, Inc.	Rental Assistance Administration 2019 PLHA Allocation \$16,134 2020 PLHA Allocation \$25,078 2021 PLHA Allocation \$27,597	\$68,809
TOTAL PLHA ADMINISTRATION AND HOMELESS SERVICES ALLOCATION:			\$2,120,302

<u>PLHA ACCESSORY DWELLING UNIT LOAN PROGRAM (HCD Activity #2)</u>			
City Project No.	Agency	Project/Program	2023-2024 ALLOCATION
PLHA-17775.TASK2	City - Housing Division	Accessory Dwelling Unit Loan Program 2020 PLHA Allocation \$300,937 2021 PLHA Allocation \$331,172	\$632,109
TOTAL ADU LOAN PROGRAM ALLOCATION:			\$632,109
TOTAL PLHA ADU ALLOCATION:			\$2,752,411

2. The PLHA Administration budgets for HCD Activities #2 and #6 are authorized to receive the maximum percentages of allowed under this category provided that together such budgets shall not exceed 5% of total annual award.

3. The Accessory Dwelling Unit Loan Program and Guidelines is hereby approved, and the City Manager or designee is authorized to make any necessary updates to the program guidelines and sign any necessary agreements with the homeowners to secure the City's financial interests.

4. The City Council hereby adopts the PLHA funding recommendations and allocations as presented above, and authorizes the City Manager or designee to take the following actions:

- a. Make any necessary or needed corrections or adjustments required by HCD to the allocations as outlined above;
- b. Make any necessary adjustments to the line items above as necessary to expended the PLHA among homeless services (HCD activity #6),

ADU Loan Program (HCD activity #2), and administration budgets in order to meet the expenditure deadlines set by HCD;

- c. Process any needed amendments to activities when there is change of ten percent or less to funding allocations; and
- d. Execute and amend all affiliated documents and amendments including loan documents and service provider agreements.

09/26/23 CC Agenda
Reso – Permanent Local Housing Allocation (PLHA) Funds FY 23-24 092023

FY 2023-24 PLHA ALLOCATIONS WORKSHEET

ATTACHMENT "1"

PLHA Allocations	
PLHA AWARD	\$ 2,752,411
Less 5% (MAX) of Grant Allocation for ADMIN:	\$ 137,621
Homeless Services:	\$ 1,982,682
Remaining Funds for ADU Program:	\$ 632,109

ADMINISTRATION - 5% CAP \$137,621				
Agency	Project/Program	Grant	Type	FINAL AWARD APPROVED BY CITY COUNCIL 09/26/2023
City - Comm Dev	PLHA Administration*	PLHA	Admin	\$ 68,811
Home Start, Inc.	Rental Assistance Administration	PLHA	Admin	\$ 68,809
*PLHA Administration budget is being shared with Home Start, Inc. since Rental Assistance Administration comes out of the 5% of the PLHA Grant Allocation (that is reserved for Adm Costs).			(A) Total for Admin:	\$ 137,620

Homeless Services \$1,982,682				
Agency	Project/Program	Grant	Type	FINAL AWARD APPROVED BY CITY COUNCIL 09/26/2023
Home Start Inc.	Housing Navigation-Outreach	PLHA	Activity #6	\$ 500,021
Home Start Inc.	Case Management Services	PLHA	Activity #6	\$ 292,510
Home Start Inc.	Rental Assistance/Rapid Re-Housing	PLHA	Activity #6	\$ 752,641
East County Transitional Living Center	Housing Navigation-Outreach	PLHA	Activity #6	\$ 90,000

FY 2023-24 PLHA ALLOCATIONS WORKSHEET

ATTACHMENT "1"

East County Transitional Living Center	Operation of an Emergency Shelter	PLHA	Activity #6	\$ 307,510
Crisis House	Housing Navigation-Outreach	PLHA	Activity #6	\$ 25,000
Crisis House	Case Management Services	PLHA	Activity #6	\$ 15,000
			(B) Total for Homeless Services:	\$ 1,982,682

Accessory Dwelling Unit Loan Program (\$632,109)				
Agency	Project/Program	Grant	Type	FINAL AWARD APPROVED BY CITY COUNCIL 09/26/2023
City - Comm Dev	ADU Loan Program	PLHA	Activity #2 (PLHA)	\$ 632,109
			(C) Total for ADU Loan Program:	\$ 632,109
Grand Totals (A+B+C):				\$ 2,752,411

ADU Loan Program Guidelines



**Community Development Department
Housing Division**

200 Civic Center Way

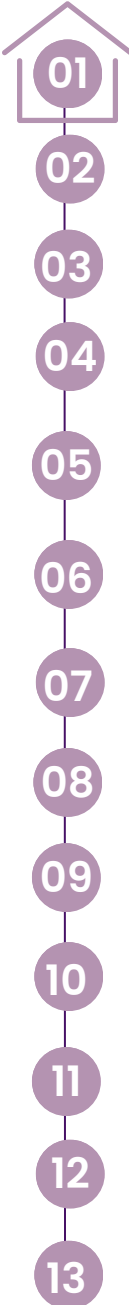
El Cajon, CA 92020

(619)441-1710

www.elcajon.gov/housing

ADDITIONAL DWELLING UNIT (ADU) LOAN PROGRAM GUIDELINES

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I. Purpose and Objectives

The purpose of the Accessory Dwelling Unit Loan Program is to accelerate housing unit production in the City of El Cajon by means of making accessory dwelling unit construction and providing an affordable rental unit.

II. Program Overview

The Accessory Dwelling Unit Loan Program, is administered by the City of El Cajon Community Development Department Housing Division and is designed to make funds available to help owner-occupied homeowners with a low interest loan to construct an accessory dwelling unit (ADU) within City Limits. The City assistance is in the form of a loan and not a grant. Eligible costs include planning and construction costs using funding from the State of California's Permanent Local Housing Allocation Program (PLHA).

ADU Loans will only be awarded to credit-qualified candidates for eligible projects. Each borrower/homeowner can receive no more than one loan up to \$100,000. The final loan amount will be determined by the Program Administrator and determined on an individual basis.

In exchange for the ADU loan, borrower/homeowner will sign a Deed of Trust in favor of the City for the amount of the loan, a Promissory Note and a Regulatory Agreement that requires the homeowner to maintain their ownership and occupancy of the primary residence on the property and rent the ADU at an affordable rent to an income qualified household. Property Owner/Borrower shall follow local, state, and federal laws when managing the ADU rental unit. ADUs shall be available for occupancy for a term of no less than 30 days and shall not be used as a short term vacation rental.

Priority assistance will be given to borrowers who reside in the City's Environmental Justice Areas or located in a Racially and Ethnically Concentrated Areas of Poverty (RECAPs). The ADU must be rented to income eligible households and must not have a total gross household income that exceeds 150% of the Area Median Income (AMI) published by the State of California Department of Housing and Community Development (HCD) to qualify for loan assistance. Also, the rent limit is capped at limits set by HCD (depending on the unit size). Assistance will not be provided more than once to any applicant or property.

Loan proceeds will be released directly to the approved homeowner's contractor to be used for eligible ADU constructions expenses including:

- Site preparation
- Architectural designs
- Permits
- Soil tests
- Property survey
- Energy reports
- Construction Labor and Material Costs

Ineligible items include:

- Interior furnishing
- Moving expenses

- Landscaping
- Luxury Items

III. Loan Terms

As mentioned above, the borrower would be required to sign a promissory note secured by a Deed of Trust that is recorded against the property creating a lien for the City’s loan. In addition, the property owner(s) will be required to execute a Regulatory Agreement. The Regulatory Agreement stipulates the terms and conditions that will be placed on the homeowner requiring the renting of the ADU to an eligible household at an affordable rent.

Prepayment of the loan shall be permitted without penalty. However, a transfer may accelerate the loan term unless the new owner assumes the existing loan term and restrictions.

The loan terms are described below. Simple interest accrues at a rate of up to 5% simple interest, deferred for up to 5 to 30 years in accordance with the terms of the Regulatory Agreement. The ADU must remain affordable during this term (at a minimum) unless the loan is repaid in full including any accrued interest.

Affordability Level (Rent and Income Limits of Renter)*	Term	Affordability Period	Interest Rate
<50% AMI (Very-Low Income)	30 Years	30 Years	0% deferred
51% AMI to 80% AMI (Low Income)	15 Years	15 Years	0% deferred
81% to 120% AMI (middle-income)	10 Years	10 Years	3% deferred
121% AMI to 150% AMI (high cost area)	5 Years	5 Years	5% deferred

***Please refer to Tenant Requirements Rent and Income Limits**

Borrowers may opt out of the Regulatory Agreement by repaying the loan in full (principal plus accrued interest) when they wish to opt out. The principal and all accrued interest will be due in full upon the earlier of:

- Borrower choosing to opt out of deed restriction after the minimum 5 year affordability period.
- Primary Residence is no longer owner occupied.
- Sale or transfer of title of primary residence.
- Uncured default by borrower on the 1st Trust Deed Note.
- Uncured default by borrower on the City’s Regulatory Agreement and related Loan Documents.
- Discovery of any misrepresentation or fraud in connection with any aspect of the ADU Loan Program.
- Refer to the Regulatory Agreement for all terms and conditions.

IV. Borrower Eligibility and Underwriting Guidelines

Credit:

Must complete an application

- Borrower must have a minimum credit score of 640.
- A credit report for all household income earners is required. All debt of all income earners will be used in the debt-to-income ratio calculations.
- All collections and judgments must be paid in full; no exceptions.
- Bankruptcy and Foreclosures within the last five years will result in a denial of assistance. The five-year period begins after the final determination, not the time of the initial discharge.
- Child Support and Alimony payments must be current and with no arrears.
- Borrower must have sufficient equity in the property to obtain the City Loan.
- Primary residence must not have any outstanding code enforcement issues.
- Maximum combined loan-to-value ratio of 75% or less;
- Every individual on the note and title must have a social security number; and
- The borrower must be either a U.S. citizen or a permanent resident alien; the borrower must show proof of legal residency.

V. Eligibility of Tenant Household Income and Rent Calculation

Pursuant to the terms of the Regulatory Agreement, the Program Administrator will verify household income of each tenant and the rent amount that is being charged to the tenant prior to initial occupancy and annually during the term of the loan.

Tenant Income Limit (depending on selected loan term)

Household Size	1	2	3	4	5
50% of AMI* MHP	\$48,250	\$55,150	\$62,050	\$68,900	\$74,450
80% of AMI* MHP	\$77,200	\$88,200	\$99,250	\$110,250	\$119,100
Moderate Income (120% AMI)** HCD	\$98,100	\$112,100	\$126,150	\$140,150	\$151,350
150% of AMI** HCD	\$147,150	\$168,200	\$189,200	\$210,250	\$227,050

*Effective May 15, 2023 for MHP Limits and **Effective June 6, 2023 for HCD Moderate Income Limits.

Income

Gross income of the tenant includes all sources of taxable and non-taxable income, derived from: salary, base pay, overtime and/or double-time compensation, part-time earnings, bonuses, commissions, dividends, interest, royalties, pensions, veterans administration compensation, alimony, child support, survivor benefits, foster care support, adoption care support, public assistance, social security benefits, unemployment compensation, income received from a trust, income received from business activities, bank accounts, investments, recurring contributions or gifts regularly received from entities or persons not residing in the dwelling, and any other source of income not listed above. Gross income is income before taxes, withholdings or deductions.

The eligibility calculation represents income of all adult household members regardless of the length of employment. The underwriting calculation represents income for all borrowers who will be on title and have minimum two years' work history.

The Program Administrator will do a full underwrite of the file and use its own income calculation independent of the borrower's income calculation.

Documentation regarding income must cover a minimum of two months and must be current within the most recent 30-day period preceding the loan closing. See each income type section below for required documentation.

Non-disclosure of any material fact or misrepresentation of information will result in permanent disqualification of the borrower and/or loan officer.

The Program Administrator, at its sole discretion, reserves the right to request any supporting documentation necessary to accurately calculate the household income and may use alternative methods for calculating income based on information and documentation available.

Rent and Utility Allowance

The maximum rent that can be charged to a household that is occupying an ADU is described below (by affordability limit). The ADU must remain affordable during this term (at a minimum) unless the loan is repayment in full including any accrued interest. The City must use HCD's Multifamily Housing Program (MHP) Income and Rent Limits for Very-Low and Low-Income Households and HCD's Official State Income Limits for Moderate Income Households, as described below.

Low Income Renters (Below 80% AMI)

MHP limits can be found at the following link;

HCD makes available the MHP Income and Rent Limit Calculator.

Moderate Income Renters (Above 80.1-120% AMI)

Tenants must be households making below 150% of area median income (AMI), and the maximum monthly rent charged must be an "affordable rent," including a reasonable utility allowance, as set forth in Health and Safety Code section 50053(b), and shall not exceed:

- For very low income households, 1/12th of the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.
- For low- income households, 1/12th of the product of 30 percent times 60 percent of the area median income adjusted for family size appropriate for the unit.
- For moderate-income households, 1/12th of the product of 30 percent times 110 percent of the area median income adjusted for family size appropriate for the unit.
- For higher costs area income households, 1/12th of the product of 30 percent times 140 percent of the area median income adjusted for family size appropriate for the unit.

The HCD method is calculated as follows: 1/12th of 30% of the AMI's income limit using the following assumed household size 1 person per Studio, 2 people per 1 BR, 3 people for 2 BR, 4 people per 3 BR, 5 people per 4 BR.

Affordability Level (Rent and Income Limits of Renter)*	Rent Maximum Gross Rent (A)	Minus Utility Allowance (B)	Net Maximum Rent*
<50% AMI (Very-Low Income) MHP	Studio: \$1,206 1 bedroom: \$1,292	Refer to County Utility Allowance Schedule	A-B
51% AMI to 80% AMI (Low Income) (per HCD, rent at 60%) MHP	Studio: \$1,930 1 bedroom \$2,068	Refer to County Utility Allowance Schedule	A-B
81% to 120% AMI (Moderate Income) (per HCD rent at 110%) HCD	Studio: \$2,248 1 bedroom \$2,570	Refer to County Utility Allowance Schedule	A-B
121% AMI to 150% AMI (high cost area) HCD	Studio: \$2,862 1 bedroom \$3,270	Refer to County Utility Allowance Schedule	A-B

*Note that rents are based on HCD formulas. Actual rents may be lower based on market conditions.

The moderate income affordable rents are calculated using the Official State Income Limits found at the following link:

<https://www.hcd.ca.gov/grants-and-funding/income-limits/state-and-federal-income-rent-and-loan-value-limits>

The City will post the official City ADU program limits in its website at www.elcajon.gov/housing

Cooling Off Period for Declined Applications

If an application is declined for not meeting the program requirements, there will be a 12-month cooling off period before a new application will be accepted.

The Program Administrator, at its sole discretion, reserves the right to refer to the original application to confirm consistency and may deny the application based on the previous application.

VI. Waiting List

Based on funds budgeted for the program, the Program Administrator may establish a priority waiting list system to ensure ADU Loan Program funds are used in areas of the city with the greatest priority need. The Administrator therefore may at its discretion utilize the following priority point system:

- 1 point - Households consisting of senior and/or disabled persons
- 4 points - Household income below 50% AMI
- 3 point - Household income between 50%-80 AMI
- 2 point- Household income between 81%-120% AMI
- 1 point- Household income between 120% AMI to 150% AMI
- 1 point - Located in an Environmental Justice Area or RECAP area within the City

On a case-by-case basis the Program Administrator may also utilize factors such as proximity to transportation and total construction cost of the ADU.

VII. Subordination Procedure

Staff will only consider subordinating the City lien to refinancing of first liens that are being proposed for purpose of obtaining a fixed rate loan and/or lower payments. All subordination fees shall be paid by the property owner.

Requests that are for the following purposes will be denied: Cash out: Removing equity from the property

for cash; Debt consolidation: Removing equity from the property for money to be paid directly to creditors to pay off debt; or obtain an adjustable-rate mortgage: Any loan product that is not fixed for the entire life of the loan.

VIII. ADU Standards

ADU projects financed through ADU Program Loans must meet the requirements and regulations in the El Cajon Municipal Code (ECMC 17.140.180) and all other applicable laws.

IX. ADU Loan Program Process

Deed Restriction

Homeowners who construct ADUs using ADU Loan Program will sign a Regulatory Agreement (deed restriction) that requires them to rent the ADU at an affordable rent to income qualified households. ADUs will only be rented to households with a gross income that does not exceed 150% AMI using California Tax Credit Allocation Committee guidelines and rent will be capped at the affordable rent set forth in Health and Safety Code §50053(b).

Staff must receive a complete application packet, which will include the following completed and signed forms:

- City's Loan Application
- Sign all Loan Disclosures
- Demonstrate the financial ability to construct the ADU with City assistance (note City assistance does not cover 100% of the construction and related costs)

The following documents pertaining to the existing mortgage on the primary residence will also be required:

- Copy of Form Deed of Trust
- Copy of Form Promissory Note
- Proof of Fire Insurance and Homeowners Insurance
- Copy of most recent Property Tax Bill
- Most recent Mortgage Statement

Program Administrator shall make the initial assessment as to whether the individual would qualify for an ADU Loan, based upon the underwriting guidelines and borrower eligibility. All findings shall be noted in the applicant's file.

Upon completion of the application review, staff shall send a letter to the applicant notifying them of their status. The letter shall include a phone number and contact person. This letter shall also provide details regarding the processing time and procedures.

X. ADU Contractor Eligibility Process

Applicants must receive three bids for construction of ADUs on their property.

The selected contractor must be approved by the City by providing the following documents:

- State Contractor's License
- El Cajon Business License

Insurance, including:

- General Liability insurance in the amount of \$2 Million dollars (Additional Insured Endorsement designating "City of El Cajon, its elected officials, employees and volunteers");
- Proof of Commercial Auto Liability insurance (any auto) in the amount of \$1 Million dollars; and
- Proof of Worker's Compensation insurance.

Contractors will also be required to sign a Notice to Proceed regarding the scope of work and policies for reimbursement.

All applications submitted before the deadline will be reviewed upon submission. The number of project applications awarded will be determined by the amount of available funding and financing need.

Notification of Award

Once the Program Administrator has made the final determination, staff will provide written notice of the results to each applicant. For applicants that have been approved, an Affidavit of Responsibility, Deed of Trust, Promissory Note, and Regulatory Agreement shall be included in the correspondence. The Loan documents shall be on forms previously approved by the City Attorney's Office. All documents must be signed and returned before a loan is made and any work may begin.

Affidavit of Responsibility

The Affidavit of Responsibility requires that the ADU Loan recipient indemnify, hold harmless and release the City from any claims or losses for any disputes that might arise from the work funded by the loan or the City's making of the loan. This includes any dispute between the borrower and a contractor regarding the quality of work and materials. Each recipient must indicate which contractor they have chosen to conduct work and to sign and date the Affidavit of Responsibility.

Once staff has received the signed documents, a letter will be sent to the licensed contractor indicating work may begin after building permits have been issued, and shall indicate the name of the borrower, address, loan amount, and the process for payment.

Once all permitted work has been completed and approved by the City, the loan will be available to close and the Deed of Trust and Regulatory Agreement will then be recorded through the County Recorder's Office. A copy will be given to the borrower and appropriate Finance Department Staff, and a copy will be placed in the file.

Loan Disbursements to Contractors

Upon completion of all ADU construction, as appropriate, the licensed contractor must have the borrower sign and staff review the payment invoice and Request for Payment. The licensed contractor must then submit the Request for Payment invoice to the Program Administrator. All required inspections during the construction period will be conducted in accordance with the City's building permit requirements. Upon completion of all work, a Final Inspection will be conducted prior to payment. Housing Staff will approve contractor payment after the Final inspection and place inspection documentation in the applicant's file.

Staff will submit all invoices and prepare a request for payment to the City Finance Department in accordance with the City's standard payment process and schedule. All current insurance and license information must be on file with the City in order to process payment.

The following typical Payment Schedule should be followed for disbursement requests, unless more frequent disbursements are authorized by the Building Inspector:

- Advance of 10% of construction work pursuant to the Construction Agreement

- Progress at 35% of completion
- Progress at 60% of completion
- Progress at 90% of completion
- Retention/Final Payment

Affordable Rents & Annual Monitoring

ADUs constructed with funding from the ADU Loan Program will subject to rental affordability requirements set forth in a signed and recorded regulatory agreement. Tenants must be households making below 150% of area median income (AMI), and the maximum monthly rent charged must be at an “affordable rent” as described above and further detailed in the Regulatory Agreement.

Upon ADU completion and annually each year during of the term of the loan, the Borrower shall certify to the City their occupancy of the main residence and the affordability of the rented ADU. The Borrower shall submit such documentary proof as requested by the City regarding their occupancy and the renter’s gross household income at least annually.

XI. Loan Servicing

The City of El Cajon’s Community Development Department Housing Division will service the portfolio of ADU loans in-house, and will be responsible for the following:

- Fund Disbursement Services;
- Loan Servicing and Portfolio Management; and
- Delinquency and Default Management.

The Housing Division reserves the right to contract with a third party for loan servicing or loss mitigation services.

Loan Default Procedures

Should staff receive notification that non-payment of the first trust deed or a default on the City of El Cajon’s second trust deed has occurred, the City Attorney’s Office will be notified, and the following process will be followed:

- A letter will be sent to the Borrower requesting documentation showing proof of payment or an explanation of non-payment; Notice of Default will be sent if no response is received and if Borrower remains in non- payment status; and
- Notice of Sale will be published and normal sale procedures will be followed.

Assignment of Rents

Assignment of Rents shall be set forth in the signed Deed of Trust.

Loan Payoff

Staff must review all requests for payoff demands. A letter will be generated, in the form of a payoff demand, indicating the borrower’s name and address, payoff amount, and procedures for payoff. Upon full repayment of a loan, the Program Administrator will execute and record a Reconveyance to the Deed and Release of the Regulatory Agreement. Originals of the Promissory Note will only be relinquished upon full payment of the loan. An administrative fee will be charged for each transaction, equal to the cost of recording and staff time in processing the payoff demands.

EXHIBITS

APPENDICES



City Council
Agenda Report

DATE: September 26, 2023
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. This City Administrative Activity is not a project and therefore not subject to CEQA.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

September 5, 2023 – Interview with Fox 5
September 14, 2023 – Interview with One America News
September 14, 2023 – Fire Department Coverage Study Meeting
September 15-16, 2023 – Council for National Policy Conference
September 18, 2023 – San Diego Rescue Mission Homeless Workshop
September 19, 2023 – Interview with Fox Business
September 19, 2023 – Interview with KUSI
September 19, 2023 – Interview with Mark Larson
September 19, 2023 – Interview with News Max
September 20, 2023 – Interview with One America News
September 20, 2023 – Meeting with Patrick Batten
September 20, 2023 – Interview with USA Today
September 20, 2023 – Meeting with Randy Amerine, Center for Immigration Studies
September 21, 2023 – Interview with CA Insider (TV)
September 22, 2023 – SANDAG Board of Directors Meeting
September 22, 2023 – Meeting with Afghan Community Culture Center
September 26, 2023 – City Council Meeting(s)

I am available to answer questions.

Submitted By: Bill Wells, Mayor



City Council
Agenda Report

Agenda Item 15.

DATE: September 26, 2023

TO: Honorable Mayor and City Councilmembers

FROM: Deputy Mayor Goble

SUBJECT: DEPUTY MAYOR 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.

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. This City Administrative Activity is not a project and therefore not subject to CEQA.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

September 11, 2023 - Meeting with City Manager
September 12, 2023 - Phone Call from Cindy G re: patio covering at business
September 13, 2023 - MTS Budget Committee Meeting
September 13, 2023 - Phone Call with Tori @ Sup Anderson's office re: grant
September 14, 2023 - MTS Board of Directors Meeting
September 14, 2023 - Fire Dept Consultant Mtg
September 16, 2023 - San Diego County Gun Owners Gala
September 17, 2023 - Chaldean Festival
September 18, 2023 - Lunch with former Sup Jacob
September 18, 2023 - Emails with Diana T re: Chamber Foundation
September 18, 2023 - Emails with Jeff M re: Veterans Wall Exhibit
September 18, 2023 - Emails with City Mgr re: MTS housing projects
September 19, 2023 - East County Chamber Gov't Affairs Committee Mtg
September 19, 2023 - Phone Call with Vickie B re: street work
September 20, 2023 - MTS Fare Enforcement Test
September 20, 2023 - SANDAG Community Meeting/Workshop

September 25, 2023 - Meeting with City Mgr
September 26, 2023 - City Council Meeting(s)

I am available to answer questions.

Submitted By: Steve Goble, Deputy Mayor



City Council
Agenda Report

Agenda Item 16.

DATE: September 26, 2023
TO: Honorable Mayor and City Councilmembers
FROM: Councilmember Kendrick
SUBJECT: COUNCILMEMBER 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. This City Administrative Activity is not a project and therefore not subject to CEQA.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

September 13, 2023 – Metro Wastewater JPA Meeting
September 14, 2023 – Fire Department Coverage Study Meeting
September 14, 2023 – License Plate Reader Demonstration with Police Department
September 26, 2023 – City Council Meeting(s)

I am available to answer questions.

Submitted By: Gary Kendrick, Councilmember



City Council
Agenda Report

DATE: September 26, 2023

TO: Honorable Mayor and City Councilmembers

FROM: Councilmember Metschel

SUBJECT: COUNCILMEMBER MICHELLE METSCHEL

Harry Griffen Park Joint Steering Committee; METRO
Commission/Wastewater JPA – Alternate; 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. This City Administrative Activity is not a project and therefore not subject to CEQA.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

September 13, 2023 – Meeting with San Diego Rescue Mission
September 14, 2023 – Fire Department Coverage Study Meeting
September 14, 2023 – License Plate Reader Demonstration with Police Department
September 19, 2023 – PBID Stakeholders Meeting
September 21, 2023 – Kidinnu Academy Grand Opening
September 26, 2023 – City Council Meeting(s)

I am available to answer questions.

Submitted By: Michelle Metschel, Councilmember



City Council
Agenda Report

Agenda Item 18.

DATE: September 26, 2023

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. This City Administrative Activity is not a project and therefore not subject to CEQA.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

September 14, 2023 – Fire Department Coverage Study Meeting

September 14, 2023 – License Plate Reader Demonstration with Police Department

September 26, 2023 – City Council Meeting(s)

I am available to answer questions.

Submitted By: Phil Ortiz, Councilmember



City Council Agenda Report

Agenda Item 19.

DATE: September 26, 2023
TO: Honorable Mayor and City Councilmembers
FROM: Councilmembers Gary Kendrick and Michelle Metschel
SUBJECT: Sheltering Pets of Homeless Individuals

RECOMMENDATION:

That the City Council direct City staff to prepare an analysis of a program that would offer free shelter for pets of homeless individuals while they are participating in a program, and its potential cost and funding source.

BACKGROUND:

There are many experiencing homelessness that rely on their pets. These animals become companions and sources of comfort for those individuals. We know that the fear of leaving and losing a pet in order to obtain services can be a barrier to receive those services. At one point, the City was working on a way for its animal shelter to temporarily house the pets of homeless individuals while they seek services. It is our understanding that no such formal program currently exists.

We recommend that the City Council direct City staff to prepare an analysis of whether this type of program is possible and the associated costs for offering a program.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

Discussion and City Council direction on free shelter for pets of homeless individuals is not a project subject to the California Environmental Quality Act (CEQA) because it is a procedural, administrative step in the process.

Prepared By: Councilmembers Gary Kendrick and Michelle Metschel

Reviewed By: N/A

Approved By: N/A



City Council
Agenda Report

DATE: September 26, 2023
TO: Honorable Mayor and City Councilmembers
FROM: Angela Cortez, City Clerk
SUBJECT: Approve Amendments to Section 10.20.130 of Chapter 10.20 of the El Cajon Municipal Code

RECOMMENDATION:

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

An Ordinance Amending Section 10.20.130 of Chapter 10.20 of the El Cajon Municipal Code to Establish a New Speed Limit on a Portion of Washington Avenue from El Cajon Boulevard to Granite Hills Drive.

The proposed speed limit will improve public safety and is therefore exempt from the provisions of the California Environmental Quality Act pursuant to CEQA Guidelines section 15301(c).

Attachments

Ord 5138

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 10.20.130 OF
CHAPTER 10.20 OF THE EL CAJON MUNICIPAL CODE
TO ESTABLISH A NEW SPEED LIMIT ON A
PORTION OF WASHINGTON AVENUE FROM
EL CAJON BOULEVARD TO GRANITE HILLS DRIVE

WHEREAS, California Vehicle Code section 40802 requires that the speed limits of city streets must be re-certified every five (5) years to be radar-enforceable by the Police Department; and

WHEREAS, the re-certification entails the preparation of an Engineering and Traffic Survey, also known as a radar speed survey, which was conducted in April and May of 2023 on the expired roadway section of Washington Avenue from El Cajon Boulevard to Granite Hills Drive.

THE CITY COUNCIL OF THE CITY OF EL CAJON DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: That the establishment of speed limits on existing public streets is categorically exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15301(c).

SECTION 2: That the designations of "Washington Avenue, from El Cajon Boulevard to First Street," listed in those sections of roads under the heading of "Forty Miles Per Hour," and "Washington Avenue, from First Street to Granite Hills Drive," listed in those sections of roads under the heading of "Forty-five Miles Per Hour", in section 10.20.130 of Chapter 10.20 of the El Cajon Municipal Code, are hereby deleted.

SECTION 3: That the designation of "Washington Avenue from El Cajon Boulevard to Granite Hills Drive," is hereby added in alphabetical order to the list of those sections of roads under the heading of "Forty Miles Per Hour" in section 10.20.130 of Chapter 10.20 of the El Cajon Municipal Code.

SECTION 4: This ordinance shall be effective thirty days following its passage and adoption.

09/12/23 CC Agenda – 1st Reading
09/26/23 CC Agenda – 2nd Reading

Ord – Posted Speed Limit on Washington Ave from EC Blvd to Granite Hills Dr 083023