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CITY OF EL CAJON

*City Council/Housing Authority/
Successor Agency to the Redevelopment Agency*

AGENDA



May 26, 2015

**Honoring
and celebrating
the people
who make
El Cajon**

*The Valley
of
Opportunity*

Bill Wells
Mayor

Bob McClellan
Mayor Pro Tem

Tony Ambrose
Councilmember

Star Bales
Councilmember

Gary Kendrick
Councilmember

Douglas Williford
City Manager

Morgan Foley
City Attorney

Majed Al-Ghafry
Assistant City Manager

Belinda Hawley
City Clerk



AGENDA



May 26, 2015
3:00 p.m.

The Agenda contains a brief general description of each item to be considered and most items have a *RECOMMENDATION* from Staff or a Commission, which Council will consider when making a final decision.

Copies of written documentation relating to each item of business on the Agenda are on file in the City Clerk's Office and in the Agenda Book next to the podium in the Council Chambers.

PLEASE COMPLETE A "REQUEST TO SPEAK" FORM FOR EACH ITEM PRIOR TO THE COMMENCEMENT OF THE MEETING AND SUBMIT IT TO THE CITY CLERK if you wish to speak about an Item on the Agenda or under Public Comment.

- **CALL TO ORDER:** Mayor Bill Wells
- **ROLL CALL:** City Clerk Belinda Hawley



PLEDGE OF ALLEGIANCE TO FLAG AND MOMENT OF SILENCE

- **POSTINGS:** The City Clerk posted Orders of Adjournment of the May 12, 2015, Meeting and the Agenda of the May 26, 2015, Meeting in accordance to State Law and Council/Authority/Successor Agency to the Redevelopment Agency Policy.
- **PRESENTATIONS:**
 - Helix Water District
 - America on Main Street
 - Waste Management Recycling Champions
- **AGENDA CHANGES:**

*Backup Information Available - Housing Authority and Successor Agency Items are identified.

CONSENT ITEMS: (1.1 – 1.7)

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.

***1.1 MINUTES OF CITY COUNCIL/HOUSING AUTHORITY/SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY MEETINGS**

RECOMMENDATION: That the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency approve Minutes of the May 12, 2015 Meeting of the El Cajon City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency.

1.2 WARRANTS

RECOMMENDATION: That the City Council approve payment of Warrants as submitted by the Finance Department.

1.3 APPROVAL OF READING BY TITLE AND WAIVER OF READING IN FULL OF ORDINANCES ON AGENDA

RECOMMENDATION: That the City Council approve the reading by title and waive the reading in full of all Ordinances on the Agenda.

***1.4 DONATED VEHICLE - UNITED STATES MARSHAL OFFICE
(Report: Police Chief)**

RECOMMENDATION: That the City Council take the following actions:

- Authorize the City Manager to approve the Police Department's request to receive a 2014 Ford F-150 Crew Cab Pick-up as a donation from the United States Marshal Office (USMO).
- Appropriate \$5,000.00 for operational upgrades and vehicle maintenance to be reimbursed by the USMO.

CONSENT ITEMS: (Continued)

- *1.5 RESOLUTION: AWARD OF BID NO. 034-15, FIRE STATION #6 RENOVATION AND CITY HALL MODERNIZATION RE-BID (Report: Purchasing Agent)**

RECOMMENDATION: That the City Council:

- Find the protest submitted by NEI Contracting and Engineering, Inc. to be timely, and with merit.
- Find the first low bidder, Good-Men Roofing and Construction, Inc., non-responsive for failure to fulfill flooring and synthetic products licensing requirements or list a subcontractor which fulfills the proper licensing requirements;
- Find the fifth low bidder, KEMCORP Construction, Inc., and the seventh low bidder, Fordyce Construction, non-responsive for failure to fulfill synthetic products licensing requirements or list a subcontractor which fulfills the proper licensing requirements; and
- Adopt the next RESOLUTION in order awarding the bid to the lowest responsive, responsible bidder, NEI Contracting and Engineering, Inc., in the amount of \$1,391,937.00.

- *1.6 SUBDIVISION AGREEMENT AND FINAL MAP FOR TENTATIVE SUBDIVISION MAP (TSM) 658, 801 AVOCADO AVE., ENGINEERING JOB NO. 3208 (Report: Deputy Director of Public Works)**

RECOMMENDATION: That the City Council approve the Subdivision Agreement and Final Map for Tentative Subdivision Map (TSM) 658 at 801 Avocado Avenue, authorizing execution of the Agreement.

- *1.7 ACCEPTANCE OF OVERLAY THOROUGHFARES 2014, ENGINEERING JOB NO. PW 3486/BID NO. 009-15 (Report: Deputy Director of Public Works)**

RECOMMENDATION: That the City Council accept the project, authorize the City Clerk to record a Notice of Completion and release the bonds in accordance with the contract terms.

(Remainder of this page intentionally left blank)

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 agenda 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.

2. WRITTEN COMMUNICATIONS: None

3. PUBLIC HEARINGS: None

4. ADMINISTRATIVE REPORTS:

***4.1 AN OWNER PARTICIPATION AND DEVELOPMENT AGREEMENT BETWEEN TIPTON ENTERPRISES, INC. AND THE CITY OF EL CAJON (Report: City Manager)**

RECOMMENDATION: That the City Council:

- Move to ADOPT the next RESOLUTION in order APPROVING Owner Participation and Development Agreement between Tipton Enterprises, Inc, and the City of El Cajon.

***4.2 MTS BOARD REQUEST FOR TAXICAB DRIVERS (Report: Assistant to the City Manager)**

RECOMMENDATION: That the City Council direct Mayor Pro Tem Bob McClellan to address the Metropolitan Transit System (MTS) Board with the request that the taxicab drivers with a permit to operate within El Cajon (1) be allowed to fulfill round trips between El Cajon and San Diego and (2) be given first priority when applying for the newly opened San Diego taxicab permit.

5. COMMISSION REPORTS: None

6. ACTIVITIES REPORTS OF MAYOR WELLS/COMMENTS

SANDAG (San Diego Association of Governments); SANDAG Public Safety Committee; League of California Cities, San Diego Division; Heartland; Fire Training JPA – Alternate; Indian Gaming Local Community Benefit Committee.

***6.1 COUNCIL ACTIVITIES REPORT/COMMENTS**

***6.2 LEGISLATIVE REPORT**

ACTIVITIES REPORTS OF COUNCILMEMBERS

7.

COUNCILMEMBER GARY KENDRICK

Heartland Communications JPA; Heartland Fire Training JPA.

***7.1 COUNCIL ACTIVITIES REPORT/COMMENTS**

8.

COUNCILMEMBER TONY AMBROSE

SANDAG (San Diego Association of Governments) - Alternate; SANDAG Public Safety Committee – Alternate Chamber of Commerce – Government Affairs; MTS (Metropolitan Transit System Board) - Alternate; East County Economic Development Council; METRO Commission/ Wastewater JPA.

***8.1 COUNCIL ACTIVITIES REPORT/COMMENTS**

9.

MAYOR PRO TEM BOB McCLELLAN

MTS (Metropolitan Transit System Board); Harry Griffen Park Joint Steering Committee; Heartland Communications JPA – Alternate.

***9.1 COUNCIL ACTIVITIES REPORT/COMMENTS**

10.

COUNCILMEMBER STAR BALES

East County Economic Development Council - Alternate; METRO Commission/ Wastewater JPA – Alternate; Indian Gaming Local Community Benefit Committee – Alternate.

***10.1 COUNCIL ACTIVITIES REPORT/COMMENTS**

11. JOINT COUNCILMEMBER REPORTS: None

12. GENERAL INFORMATION ITEMS FOR DISCUSSION

13. ORDINANCES: FIRST READING

***13.1 INTRODUCING CHAPTER 15.86 DESIGNATING FIRE HAZARD SEVERITY ZONES AND WILDLAND URBAN INTERFACE AREAS (Report: Fire Chief and Fire Marshal)**

RECOMMENDATION: That the City Council consider approving an ordinance adding Chapter 15.86 to the El Cajon Municipal Code designating fire hazard severity zones and wildland urban interface areas as designated on the map titled "El Cajon Fire Hazard Severity Zones," dated January 27, 2009.

- **Make a MOTION, and SECOND to introduce the Ordinance**
- **Discussion**
- **Vote**
- **If approved, the Mayor requests the City Clerk to recite the title**

An Ordinance of the City Council of the City of El Cajon Adding A New Chapter 15.86 to the El Cajon Municipal Code, Designating Very High Fire Hazard Severity Zones and Wildland Urban Interface Areas Within Its Jurisdictional Boundaries

14. ORDINANCES: SECOND READING AND ADOPTION

14.1 AMENDMENT TO CITY'S STORM WATER MANAGEMENT AND DISCHARGE CONTROL ORDINANCE

RECOMMENDATION: That the City Council requests the City Clerk to recite the title.

An Ordinance Repealing Chapter 13.10 of Title 13 and Adding a New Chapter 13.10 to Title 13 of the El Cajon Municipal Code Establishing Regulations for Storm Water Management and Discharge Control

- **MOTION to adopt the Ordinance**

15. CLOSED SESSIONS:

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

15.1 CONFERENCE WITH LABOR NEGOTIATOR pursuant to Government Code Section 54957.6.

Agency Designated Representatives:	Jim Lynch, Director of Human Resources Steve Berliner, Esq., Liebert Cassidy Whitmore Frances Rogers, Esq., Liebert Cassidy Whitmore
Employee Organizations:	El Cajon Mid-Management and Professional Employees Group El Cajon Municipal Employees Association El Cajon Police Officers Association El Cajon Police Officers Association Management Group El Cajon Professional Firefighters International Association of Fire Fighters Local 4603 (includes El Cajon Fire Supervisory Unit and El Cajon Firefighters' Association) Executive, Unrepresented and Confidential Employees

16. RECONVENE TO OPEN SESSION:

City Attorney or Representative reports on action taken in Closed Session.

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 May 2015, is adjourned to Tuesday, June 9, 2015, at 3:00 p.m.

GENERAL INFORMATION:

The following item is informational and is not discussed unless the Council/Authority brings the items forward for discussion under Item No. 12 of the agenda.

***A. APRIL 2015 DONATIONS TO THE EL CAJON ANIMAL SHELTER**

In accordance with City Council Policy B-2, the following donations were received:

Kenneth T. Fowler	\$100.00
Mr. & Mrs. Richard Berry (In memory of Matt O'Connor on his birthday)	\$100.00

Upcoming Events in El Cajon - City Council Meeting for May 26, 2015



May 27 - Cajon Classic Cruise Car Show - "Open Wheel Craze!" This weekly event continues every Wednesday night through October 28, from 5:00 p.m. to 8:00 p.m., on East Main Street, between Magnolia and Claydelle Avenues. The 2015 season of car shows is hosted by the Downtown Business Partners. For more information, visit www.cajonclassiccruise.org or call (619) 334-3000.

May 28 - The El Cajon Farmers' Market continues every Thursday in Downtown El Cajon, from 3:00 p.m. to 7:00 p.m., at the Prescott Promenade, 201 East Main Street. Enjoy fresh fruit, vegetables, bread, prepared hot food, music and more! Visit www.elcajonfarmersmarket.org.

May 29 - "Dinner & a Concert" with Heroes playing classic rock music! Enjoy all the great music and dancing at the Prescott Promenade from 6:00 p.m. to 8:00 p.m. On **June 5**, it's **Upstream** playing Caribbean/Reggae music. The Promenade is located at 201 E. Main Street in Downtown El Cajon. For a complete line-up of concerts, please visit www.downtownec.com.

June 5 & 19 - Alternate Friday closures for El Cajon City offices. Please go to www.cityofelcajon.us for a full calendar of hours for City offices during 2015.

June 9 & 23 - El Cajon City Council Meetings are at 3:00 p.m. and 7:00 p.m., as needed. The meetings are held in the City Council Chamber at 200 Civic Center Way. For more information and to view the full agenda online please visit www.cityofelcajon.us.

June 20 - KaBOOM! Playground Build Day At Bill Beck Park! The City of El Cajon, Foresters, Stoney's Kids, the El Cajon Kiwanis Club and KaBOOM! have designed a customized playground for Bill Beck Park, located at 543 N. Pierce Street. 200 volunteers are needed to construct the park. In particular, those highly skilled in the area of construction are needed. June 18 is prep day and June 20 will be the build day. Volunteers must pre-register. Hours will be from 8:00 a.m. to 2:30 p.m. for both days. If you can help, please call (619) 873-1641.

June 20 & 21 - AirShow San Diego at Gillespie Field Airport - (Formerly Wings Over Gillespie). This year's air show will feature a collection of aircraft and activities to commemorate the 70th anniversary of the end of WWII. See historic aircraft displays, military reenactments, a free Kid's Zone and more. Gates open at 9:00 a.m. and close at 5:00 p.m. at Gillespie Field, located at 1960 Joe Crosson Drive in El Cajon. For more details and tickets, please visit www.ag1caf.org.

June 21 - Happy Father's Day!

June 27 - The Rotary Club of El Cajon Presents "An Evening In The Tropics" - from 5:00 p.m. to 10:00 p.m. at the Water Conservation Garden on the campus of Cuyamaca College. Enjoy a tropical paradise, with South Sea island music, dancers, delicious food, and a silent auction. Tickets are \$80 each. For more information, please call (858) 408-1404, or visit www.elcajonrotary.org.

Recreation:

The Summer Recreation Guide is now available! The Recreation Guide is available online at www.elcajonrec.org or pick up a copy at any of the El Cajon recreation centers, local libraries and in the lobbies of City Hall and the El Cajon Police Station. For more information, call (619) 441-1516.

DRAFT MINUTES

1.1

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



MINUTES

CITY OF EL CAJON EL CAJON, CALIFORNIA

May 12, 2015

A Regular Joint Meeting of the El Cajon City Council/Housing Authority/Successor Agency to the Redevelopment Agency of the City of El Cajon, California held Tuesday, May 12, 2015, 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:	Ambrose, Bales and Kendrick
Council/Agencymembers absent:	None
Mayor Pro Tem/Vice Chair present:	McClellan
Mayor/Chair present:	Wells
Other Officers present:	Hawley, City Clerk/Secretary Foley, City Attorney/General Counsel Williford, City Manager/Executive Director Al-Ghafry, Assistant City Manager

PLEDGE OF ALLEGIANCE TO FLAG led by Mayor Wells and MOMENT OF SILENCE.

POSTINGS: The City Clerk posted Orders of Adjournment of the April 28, 2015, meeting and the Agenda of the May 12, 2015, meeting in accordance to State Law and Council/Authority/Successor Agency to the Redevelopment Agency Policy.

PRESENTATIONS:

- **2015 San Diego County Fair**
- **Youth of the Year Award**
- **PROCLAMATION: Bike to Work Day**
- **PROCLAMATION: National Public Works Week**
- **PROCLAMATION: Building Safety Month**
- **Recognitions: Monica Zech**

AGENDA CHANGES: None

CONSENT ITEMS: (1.1 – 1.7)

1.1 MINUTES OF CITY COUNCIL/HOUSING AUTHORITY/SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY.

Approve Minutes of the April 28, 2015 Meeting of the El Cajon City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency.

1.2 WARRANTS

Approve payment of Warrants as submitted by the Finance Department.

1.3 APPROVAL OF READING BY TITLE AND WAIVER OF READING IN FULL OF ORDINANCES ON AGENDA

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

1.4 PULLED FOR DISCUSSION.

CONSENT ITEMS: (Continued)

1.5 2015 REGIONAL ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE (Report: City Manager)

Review and accept the 2015 San Diego Regional Analysis of Impediments (AI) to Fair Housing Choice and authorize the City Manager or designee to certify its completion, submit the Plan to HUD upon request, and execute all affiliated documents.

1.6 JANUARY – MARCH 2015 QUARTERLY TREASURER’S REPORT (Report: Director of Finance and Treasurer)

Receive the Treasurer’s Report for the quarter ending March 31, 2015.

1.7 RESOLUTION: ALL-WAY STOP SIGN REQUEST ON TAFT AVENUE AT CAMDEN AVENUE (Report: Deputy Director of Public Works)

Adopt RESOLUTION NO. 041-15 to establish permanent all-way stop signs on Taft Avenue at the intersection of Camden Avenue in order to enhance safe and efficient pedestrian and traffic flow.

PULLED FOR DISCUSSION:

1.4 RESOLUTION: AWARD OF BID NO. 033-15, East County Performing Arts Center (ECPAC) Improvements – Re-Roofing Project (Report: Purchasing Agent)

RECOMMENDATION: That the City Council:

- Find that the bid of the first low bidder, Good-Men Roofing and Construction, Inc., is non-responsive for failure to perform at least fifty percent (50%) of the contract work.
- Based on the above, adopt RESOLUTION NO. 040-15 to award the bid to the lowest responsive, responsible bidder, Commercial & Industrial Roofing Co., Inc., in the amount of \$168,750.00.

CONSENT ITEMS: (Item 1.4 - Continued)

DISCUSSION

Art Ballantyne submitted a hand out to **Council** and spoke about the upcoming renovations to El Cajon Performing Arts Center. He requested replacement of the orchestra shell.

MOTION BY McCLELLAN, SECOND BY BALES, to APPROVE Consent Items 1.1 to 1.7.

MOTION CARRIES BY UNANIMOUS VOTE.

PUBLIC COMMENT:

David Miyashiro, Superintendent for the El Cajon Valley Union School District, spoke about Cajon Valley's Got Talent! event, where **Mayor Wells** will participate as a guest judge. In addition he presented a video about an upcoming youth-gearred conference 'TedxKids'.

Brenda Hammond praised a local car company who gave excellent customer service. The company belonged to **Mayor Pro Tem McClellan**.

Ray Lutz, Citizens Oversight, spoke about Monsanto, a pesticide company. He requested the City not use their products as he feels it is not safe. He offered the services of Citizens Oversight for anyone who would like to serve as a 'whistle blower'.

Sunshine Horton spoke about her upcoming 70th birthday celebration. She also shared comments about Miranda Rights and Pismo Beach, how their names came to be.

Monica Zech invited the community to the upcoming event 'America on Main Street', Saturday, May 16, 2015.

2. WRITTEN COMMUNICATIONS: None

3. PUBLIC HEARINGS: None

4. ADMINISTRATIVE HEARINGS:

**4A SKY FUEL – DEEMED APPROVED ADMINISTRATIVE HEARING –
APPEAL OF PLANNING COMMISSION DECISION
(Report: Planning Manager)**

RECOMMENDATION: That the **City Council:** Conduct the administrative hearing; and Move to adopt the next **RESOLUTIONS** in order **DENYING** the appeal and **REVOKING** Sky Fuel's Deemed Approved Status and **ADDING** new alcohol sales operating standards and conditions.

DISCUSSION

City Attorney Foley introduced the Item and described the process for the Administrative Hearing. The following witnesses were sworn in:

Appellant's witness list:

Nash Maroki
Mae Gappy
Rayan Rofael
Martin Audesh
Awsam Antwan
William A. Adams

City's witness list:

City Manager, Douglas Williford
Assistant City Manager, Majed Al-Ghafry
Police Chief, Jim Redman
Planning Manager, Anthony Shute

Planning Manager Anthony Shute gave opening remarks and explained the basis for the Planning Commission's decision to revoke Sky Fuel's Deemed Approved Status and add new alcohol sales operating standards and conditions on Conditional Use Permit No. 526.

Police Chief Redman spoke about the 'Minor Decoy Program' used in the City of El Cajon used to reduce the sale of alcoholic beverages to minors. He gave details about the decoy operation at the Sky Fuel Station, which sold to a minor on two occasions. He responded to questions from **Council** concerning sting operations from the Alcoholic Beverage Control (ABC) and the decoy operation used at Sky Fuel.

Mr. William Adams, attorney for the appellant, cross-examined **Chief Redman** in regards to the decoy program implemented in El Cajon.

ADMINISTRATIVE HEARINGS: (Item 4-A Continued)

Planning Manager Anthony Shute provided additional information on the violations committed by Sky Fuel's employee.

City Attorney Foley stated that the two other witnesses sworn in for the City, **City Manager Williford** and **Assistant City Manager Al-Ghafry** are available for rebuttal, not to offer testimony in this case.

Cross-examination between **Council, Planning Manager Shute** and **Mr. Adams** proceeds regarding letters sent to Sky Fuel about training and certification requirements of their employees. **Chief Redman** answered a question by **Council** and stated that a letter is sent to establishments after a sting operation is performed, whether an illegal sale is made or not.

Mr. Adams presented testimony on behalf of the appellant. He stated that the business did not violate the performance standards, but rather the employee was the problem in this situation.

Mr. Maroki and **Mrs. Mae Gappy**, explained that they have been in business for 17 years and never had problems. They ask **Council** to consider that the problem was the employee, and he is no longer employed by them.

Councilmember Kendrick questioned **Mr. Maroki** about receiving correspondence from the City and reminded him about his responsibility as a business owner to train his employees in regards to responsible alcohol sales.

Mr. Maroki answered questions from **Planning Manager Anthony Shute** about Responsible Beverage Service training (RBS) for his employees and himself.

In summation by **Planning Manager Anthony Shute**, a recommendation is made to deny the appeal and uphold the decision of the Planning Commission. In addition the City recommends the suspension of all alcohol sales until all the requirements of Conditional Use Permit No. 526 are fully implemented.

Mr. Bill Adams' closing statement indicated that they are not arguing the deemed approved ordinance. They requested that **Council** see that the problem was the employee, not the store, and asked that **Council** acknowledge that the remedy taken by **Mr. Maroki**, firing the employee and implementing the new ID checking machine, is appropriate. He stated that this business has not been a problem in the past; therefore, the revocation of the Deemed Approved status is inappropriate for this situation.

ADMINISTRATIVE HEARINGS: (Item 4-A Continued)

Mr. Maroki came back to podium and gave handout about an upcoming project with ARCO AM PM, which would be affected by the outcome of the Council's decision regarding the Deemed Approved Status.

Planning Manager Anthony Shute gave a closing statement.

Mr. Bill Adams gave final comments.

Mayor Wells stated that the **City Council** would deliberate and all discussion would remain with the **City Council**.

Councilmembers discussed the effectiveness and appropriateness of the decoy operation procedures, the appeal of certain products to minors, and expressed support of the Planning Commission decision. **Mayor Wells** recommended revoking the \$2,000 fine recommended by the Planning Commission.

MOTION BY WELLS, SECOND BY BALES, to ADOPT RESOLUTION NO. 042-15 to DENY the appeal and REVOKING Sky Fuel's Deemed Approved Status and RESOLUTION NO. 043-15 ADDING new alcohol sales operating standards and conditions, removing the condition imposing the \$2,000 fine.

MOTION CARRIES BY UNANIMOUS VOTE.

Recess called at 5:37p.m.

Meeting called back to order at 5:46 p.m.

4. ADMINISTRATIVE REPORTS:

4.1 CITY COUNCIL MEETING SCHEDULE (Report: City Manager)

RECOMMENDATION: That the **City Council** considers canceling one mid-summer City Council meeting for summer recess. Staff is recommending Council discuss and consider cancellation of the August 25, 2015 meeting.

DISCUSSION

City Manager Williford gave information on the Item.

MOTION BY WELLS, SECOND BY KENDRICK to CANCEL the August 25, 2015 City Council meeting for summer recess.

MOTION CARRIES BY UNANIMOUS VOTE.

**4.2 NEW CITY OF EL CAJON WEBSITE
(Report: Assistant to the City Manager)**

RECOMMENDATION: That the City Council receive and file the report.

DISCUSSION

City Manager Williford introduced **Assistant to the City Manager Brett Channing**, who gave a demonstration of the new website design for the City of El Cajon.

MOTION BY McCLELLAN, SECOND BY AMBROSE, to RECEIVE and FILE the report.

MOTION CARRIES BY UNANIMOUS VOTE.

5. COMMISSION REPORTS: None

6. ACTIVITIES REPORTS OF MAYOR WELLS/COMMENTS

SANDAG (San Diego Association of Governments); SANDAG Public Safety Committee – Chair; League of California Cities, San Diego Division; Heartland Fire Training JPA – Alternate; Indian Gaming/Local Community Benefit Committee.

6.1 Council Activities Report/Comments

REPORT AS STATED.

6.2 LEGISLATIVE REPORT – No Recommended Action.

ACTIVITIES REPORTS OF COUNCILMEMBERS

7.

COUNCILMEMBER GARY KENDRICK

Heartland Communications JPA; Heartland Fire Training JPA.

7.1 Council Activities Report/Comments

REPORT AS STATED.

ACTIVITIES REPORTS OF COUNCILMEMBERS (Continued)

8.

COUNCILMEMBER TONY AMBROSE

SANDAG – Alternate; SANDAG Public Safety Committee – Alternate; Chamber of Commerce – Government Affairs; MTS (Metropolitan Transit System Board) – Alternate; East County Economic Development Council; METRO Commission/Wastewater JPA.

8.1 Council Activities Report/Comments

In addition to the submitted report, **Council Member Ambrose** stated he attended the Police Awards Ceremony.

9.

MAYOR PRO TEM BOB McCLELLAN

MTS (Metropolitan Transit System Board); Harry Griffen Park Joint Steering Committee; Heartland Communications JPA – Alternate.

9.1 Council Activities Report/Comments

REPORT AS STATED.

10.

COUNCILMEMBER STAR BALES

East County Economic Development Council – Alternate; METRO Commission/Wastewater JPA – Alternate; Indian Gaming Local Community Benefit Committee – Alternate.

10.1 Council Activities Report/Comments

REPORT AS STATED.

11. JOINT COUNCILMEMBER REPORTS: None

12. GENERAL INFORMATION ITEMS FOR DISCUSSION: None

13. ORDINANCES: FIRST READING

13.1 AMENDMENT TO CITY'S STORM WATER MANAGEMENT AND DISCHARGE CONTROL ORDINANCE (Report: Deputy Director of Public Works)

RECOMMENDATION: That the City Council consider the ordinance attached to the Agenda Report amending Chapter 13.10 (Storm Water Management and Discharge Control) to comply with the Regional Board adopted Order No. R9-2013-0001 and, if approved, take the following actions:

- Make a MOTION, and second to introduce the Ordinance
- Discussion
- Vote
- If approved, the Mayor requests the City Clerk to recite the title

DISCUSSION

Deputy Director of Public Works Dennis Davies gave information on the Item.

Assistant City Manager Al-Ghafry added that this is part of regional efforts being made.

City Manager Williford stated that the City will focus on providing information for businesses and citizens with regards to the requirements of the Regional Water Control Board.

Discussion ensued between **Councilmembers** and **Deputy Director Davies** about runoff from water sprinklers, and options for car wash fundraisers, to lessen the environmental impact.

MOTION BY AMBROSE, SECOND BY McCLELLAN, to INTRODUCE the Ordinance.

MOTION CARRIES BY UNANIMOUS VOTE.

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

An Ordinance Repealing Chapter 13.10 of Title 13 and Adding a New Chapter 13.10 to Title 13 of the El Cajon Municipal Code Establishing Regulations for Storm Water Management and Discharge Control.

14. ORDINANCES: SECOND READING AND ADOPTION

14.1 AMENDMENT OF SPECIFIC PLAN NO. 182

RECOMMENDATION: That Mayor Wells requested the City Clerk to recite the title.

An Ordinance Amending Specific Plan No. 182 to Streamline the Development Permit Process

- **MOTION to adopt Ordinance amending Specific Plan No. 182**

MOTION BY BALES, SECOND BY McCLELLAN, to ADOPT Ordinance No. 5021.

MOTION CARRIES BY UNANIMOUS VOTE.

15. CLOSED SESSION:

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

15.1 CONFERENCE WITH LABOR NEGOTIATOR pursuant to Government Code Section 54957.6.

Agency Designated
Representatives:

Jim Lynch, Director of Human Resources
Steve Berliner, Esq., Liebert Cassidy Whitmore
Frances Rogers, Esq., Liebert Cassidy Whitmore

Employee Organizations:

El Cajon Mid-Management and Professional
Employees Group
El Cajon Municipal Employees Association
El Cajon Police Officers Association
El Cajon Police Officers Association Management Group
El Cajon Professional Firefighters International
Association of Fire Fighters Local 4603 (includes
El Cajon Fire Supervisory Unit and El Cajon
Firefighters' Association)
Executive, Unrepresented and Confidential Employees

MOTION BY KENDRICK, SECOND BY McCLELLAN, to ADJOURN to Closed Session at 6:15 p.m.

MOTION CARRIES BY UNANIMOUS VOTE.

16. RECONVENE TO OPEN SESSION AT 6:46 P.M.

City Attorney Foley reports the following actions:

15.1 Direction was given to the City's Labor Negotiators.

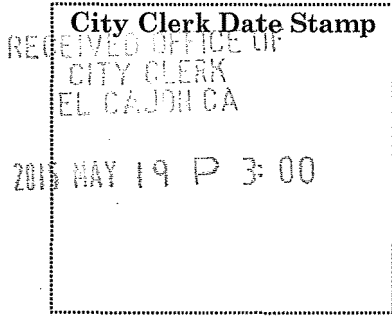
Adjournment: Mayor Wells adjourned the Regular Joint Meeting of the City Council/Housing Authority/Successor Agency to the Redevelopment Agency held this 12th day of May, 2015, at 6:46 p.m. to Tuesday, May 26, 2015, at 3:00 p.m.

BELINDA A. HAWLEY, CMC
City Clerk/Secretary

DRAFT

**APPROVAL OF READING BY TITLE AND WAIVER OF READING
OF ORDINANCES ON THIS AGENDA**

The City Council waives the reading of the full text of every ordinance contained in this agenda and approves the reading of the ordinance title only.



City of El Cajon Agenda Report

MEETING: 5/26/2015

ITEM NO: 1.4



TO: Mayor Wells, Mayor Pro Tem McClellan
Councilmembers Ambrose, Bales, Kendrick

FROM: Chief of Police Jim Redman

SUBJECT: Donated Vehicle - United States Marshal Office

RECOMMENDATION: That the City Council take the following actions:

1. Authorize the City Manager to approve the Police Department's request to receive a 2014 Ford F-150 Crew Cab Pick-up as a donation from the United States Marshal Office (USMO).
2. Appropriate \$5,000.00 for operational upgrades and vehicle maintenance to be reimbursed by the USMO.

BACKGROUND: The El Cajon Police Department is an active, part-time participant in the San Diego Regional United States Marshal Office Fugitive Apprehension Task Force. The USMO provides participating agencies with a vehicle (valued at \$27,000), and up to \$5,000.00 reimbursement for operational upgrades, such as installation of a police radio and purchase and installation of code three lights and siren. The vehicle is authorized for use in all police related functions.

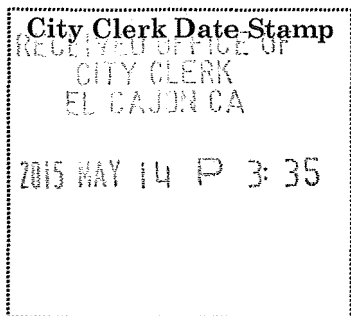
FISCAL IMPACT: The vehicle is provided at no cost to the City. Vehicle upgrades, up to \$5,000.00, will be reimbursed to the City and will be budgeted in Activity 225900 – Police Miscellaneous Grants. The truck will be added to the police fleet for support and maintenance.

PREPARED BY:

Jim Redman
CHIEF OF POLICE

APPROVED BY:

Douglas Williford
CITY MANAGER



City of El Cajon Agenda Report

MEETING: May 26, 2015

ITEM NO: 1.5



TO: ~~Mayor Wells, Mayor Pro Tem McClellan~~
Councilmembers Ambrose, Bales, Kendrick

FROM: Purchasing Agent

SUBJECT: Award of Bid No. 034-15, Fire Station #6 Renovation and City Hall Modernization Re-Bid

RECOMMENDATION: That the City Council:

- 1) Find the protest submitted by NEI Contracting and Engineering, Inc. to be timely, and with merit.
- 2) Find the first low bidder, Good-Men Roofing and Construction, Inc., non-responsive for failure to fulfill flooring and synthetic products licensing requirements or list a subcontractor which fulfills the proper licensing requirements.
- 3) Find the fifth low bidder, KEMCORP Construction, Inc., and the seventh low bidder, Fordyce Construction, non-responsive for failure to fulfill synthetic products licensing requirements or list a subcontractor which fulfills the proper licensing requirements.
- 4) Adopt the next resolution in order awarding the bid to the lowest responsive, responsible bidder, NEI Contracting and Engineering, Inc., in the amount of \$1,391,937.00.

BACKGROUND: On November 18, 2014, the City Council approved a project for the renovation of Fire Station #6 and the modernization of City Hall's first and second floors. Forty-three prospective bidders obtained bid packages and eight responses were received and opened at 2:00 p.m. on January 21, 2015. Due to ambiguous verbiage in the bid specifications and multiple non-responsive bidders, on February 24, 2015, the City Council approved the rejection of all bids and the rebidding of the project with revisions.

Upon rebidding, fifteen bidders obtained bid packages and seven responses were received and opened at 2:00 p.m. on April 7, 2015.

NEI Contracting and Engineering, Inc. submitted a written protest dated May 4, 2015. Therefore, staff considers the protest to be timely. NEI Contracting and Engineering, Inc. is protesting that Good-Men Roofing and Construction, Inc. does not maintain the proper licensing and did not list a subcontractor with the proper licensing to perform flooring or synthetic product work.

City staff reviewed the protest submitted by NEI Contracting and Engineering, Inc. with the City Attorney's Office. After review of the protest, staff has determined that NEI Contracting and Engineering, Inc.'s protest is with merit.

In accordance with the California State Licensing Board, a C-15 license is required for Flooring Contractors and a D-12 license is required for Synthetic Products Contractors, per California Code of Regulations, Title 16, Division 8, Article 3 Classifications. Good-Men Roofing and Construction, Inc. does not maintain a C-15 license, and did not list any subcontractors which maintain this license. In addition, Good-Men Roofing and Construction, Inc., KEMCORP Construction, Inc., and Fordyce Construction do not maintain a D-12 license, and did not list any subcontractors which maintain this license.

Purchasing, in concurrence with the Assistant City Manager, recommends award of the bid to the lowest responsive, responsible bidder, NEI Contracting and Engineering, Inc., in the amount of \$1,391,937.00. The lowest bid is 7% lower than the engineer's estimate of \$1,500,000.00. The summary of bids is attached and complete proposals are on file in Purchasing.

FISCAL IMPACT:

Sufficient funds are available for this project in the Public Works – Capital Improvement Program for Fiscal Year 2015-2016.

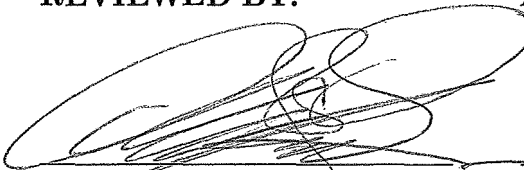
PREPARED BY:

REVIEWED BY:

APPROVED BY:



Nahid Razi
PURCHASING AGENT



Majed Al-Ghafry
ASSISTANT
CITY MANAGER



Douglas Williford
CITY MANAGER

BID SUMMARY - BID NO. 034-15

BIDDER

BID AMOUNT

NEI Contracting & Engineering (Chula Vista)	\$1,391,937.00*
M.A. Stevens Construction, Inc. (National City)	\$1,453,007.05
EC Constructors, Inc. (Lakeside)	\$1,506,556.00
Cyber Professional Solutions Corp. (Chula Vista)	\$1,577,594.43
Good-Men Roofing and Construction, Inc. (San Diego)	Non-responsive
Kemcorp Construction, Inc. (Ontario)	Non-responsive
Fordyce Construction, Inc. (Santee)	Non-responsive

*Recommend Award

RESOLUTION NO. -15

RESOLUTION AWARDING BID FOR
FIRE STATION #6 RENOVATION AND
CITY HALL MODERNIZATION – RE-BID
(Bid No. 034-15)

WHEREAS, on November 18, 2014, the City Council approved a budget for the renovation of Fire Station #6 and the modernization of the first and second floors of City Hall, in the City of El Cajon (the "Project"); and

WHEREAS, Purchasing, in conjunction with the Public Works Department, advertised a notice inviting bids for the construction of the Project; and

WHEREAS, fifteen (15) prospective bidders obtained bid packages, and seven (7) bids for the Project were received and publicly opened at 2:00 p.m. on April 7, 2015; and

WHEREAS, following the receipt of bids the apparent second low bidder, NEI Contracting and Engineering, Inc., submitted a written protest on May 4, 2015, alleging that the apparent first low bidder, Good-Men Roofing and Construction, Inc., does not maintain the proper licensing to perform flooring (specifically, a C-15 license) or synthetic product work (specifically, a D-12 license) and did not list a subcontractor with the proper licensing; and

WHEREAS, upon investigation staff determined that the protest submitted by NEI Contracting and Engineering, Inc., was timely and with merit; and

WHEREAS, in addition to the apparent first low bidder, Good-Men Roofing and Construction, Inc., it was determined that both the apparent fifth low bidder, KEMCORP Construction, Inc., and the apparent seventh low bidder, Fordyce Construction, do not maintain D-12 licenses, and did not list any subcontractors which maintain this license; and

WHEREAS, the bids submitted by the apparent first low bidder, Good-Men Roofing and Construction, Inc., the apparent fifth low bidder, KEMCORP Construction, Inc., and the apparent seventh low bidder, Fordyce Construction, were found to be non-responsive for failure to fulfill necessary licensing requirements or list subcontractors which fulfill the proper licensing requirements; and

WHEREAS, Purchasing, in concurrence with the Assistant City Manager, recommends award of the bid to the lowest responsive, responsible bidder; and

WHEREAS, the City Council believes it to be in the best interests of the City to award the contract to the lowest responsive, responsible bidder.

(Continued on Page 2)

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

1. The City Council does hereby find that the bids of Good-Men Roofing and Construction, Inc., KEMCORP Construction, Inc., and Fordyce Construction, are non-responsive for the reasons set forth above and, for those reasons, are hereby rejected.

2. The City Council does hereby reject all other bids and proposals except that herein mentioned, and awards the bid for the Fire Station #6 Renovation and City Hall Modernization – Re-Bid project to:

NEI Contracting and Engineering, Inc.

in the amount of \$1,391,937.00.

2. The Mayor and City Clerk are authorized and directed to execute a contract for said project on behalf of the City of El Cajon.

05/26/15 (Item 1.6)

Bid 034-15 – Fire Station 6 Renovation & City Hall Modernization Re-Bid awd 051515

City Clerk Date Stamp

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2015 MAY 21 A 7:56

City of El Cajon Agenda Report

MEETING: May 26, 2015

ITEM NO: 1.6



TO: Mayor Wells, Mayor Pro Tem McClellan
Councilmembers Ambrose, Bales, Kendrick

FROM: Deputy Director of Public Works

SUBJECT: Subdivision Agreement and Final Map for Tentative Subdivision
Map (TSM) 658, 801 Avocado Avenue, Engineering Job No. 3208

RECOMMENDATION: That the City Council approve the Subdivision Agreement and Final Map for Tentative Subdivision Map (TSM) 658 at 801 Avocado Avenue, authorizing execution of the Agreement.

BACKGROUND: On November 18, 2014, the City Council approved (TSM) 658 for an eight (8) lot subdivision with six (6) single-family homes and a common use area, by Resolution No. 131-14, subject to conditions. The subdivision is located adjacent to Avocado Avenue and across from Lindell Avenue.

The developer, San Diego Habitat for Humanity, has already entered into an agreement with the City to develop the property using HOME funds, CHDO funds, and Affordable Housing funds. The completion of all work, including the public improvements contemplated by this subdivision agreement, is guaranteed by performance bond #106089535 in the amount of \$1,824,219.00, written by Travelers Casualty and Surety Company of America. Therefore, no additional surety will be required.

All conditions have been satisfied or are guaranteed by the Subdivision Agreement. All fees and securities have been paid. Therefore, the Final Map is ready to be recorded.

FISCAL IMPACT: None. The property owner has paid all required fees.

PREPARED BY:

Dennis C. Davies
DEPUTY DIRECTOR
OF PUBLIC WORKS

REVIEWED BY:

Majed Al-Ghafry
ASSISTANT
CITY MANAGER

APPROVED BY:

Douglas Williford
CITY MANAGER

RESOLUTION NO. 131-14

A RESOLUTION APPROVING TENTATIVE SUBDIVISION MAP (TSM) NO. 658 FOR THE FOUNDATION LANE II RESIDENTIAL PROJECT FOR AN EIGHT-LOT SUBDIVISION ON THE EAST SIDE OF AVOCADO AVENUE BETWEEN EAST WASHINGTON AND EAST RENETTE AVENUES, IN THE RESIDENTIAL, SINGLE-FAMILY, 6,000 SQUARE FOOT (RS-6) ZONE, APNs 493-020-05 and 493-020-07;
GENERAL PLAN DESIGNATION: LOW DENSITY RESIDENTIAL (LR)

WHEREAS, on October 7, 2014, the Planning Commission held a duly advertised public hearing to review and consider TSM No. 658 for an eight-lot subdivision as Phase II of an affordable common-interest housing development in the RS-6 zone; and

WHEREAS, the Planning Commission adopted Resolution No. 10773, recommending City Council approval of the proposed CEQA Categorical Exemption Section 15332 (*Infill Development*); and

WHEREAS, the Planning Commission adopted Resolution No. 10774, recommending City Council approval of proposed Amendment of PUD No. 334; and

WHEREAS, the Planning Commission adopted Resolution No. 10775, recommending City Council approval of proposed CUP No. 2213 for a density bonus at an affordable housing development; and

WHEREAS, on November 18, 2014, the City Council reviewed and considered Planning Commission Resolution No. 10773, recommending City Council approval of a CEQA Categorical Exemption Section 15332 (*Infill Development*) for the Foundation Lane II Residential Project, and then adopted Resolution No. 129-14, approving the same; and

WHEREAS, on November 18, 2014, the City Council reviewed and considered Planning Commission Resolution No. 10774, recommending City Council approval of AM PUD No. 334, and then adopted Resolution No. 128-14, approving the same, subject to conditions; and

WHEREAS, on November 18, 2014, the City Council reviewed and considered Planning Commission Resolution No. 10775, recommending City Council approval of CUP No. 2213, and then adopted Resolution No. 130-14, approving the same, subject to conditions; and

WHEREAS, on November 18, 2014, the City Council held a duly advertised public hearing to review and consider Planning Commission Resolution No. 10776, recommending City Council approval of TSM No. 658; and

(Continued on Page 2)

WHEREAS, the following findings of fact are hereby made in regard to said tentative subdivision map:

- A. The proposed map is consistent with the General Plan and the General Plan goals related to housing that seek to provide a variety of residential development opportunities in the City to fulfill regional housing needs, and to encourage the use of density bonuses to facilitate affordable housing development.
- B. The design of the proposed subdivision map includes improvements for proper drainage and the provision of utilities for the benefit of the proposed affordable housing units. Access to the proposed subdivision will be provided in the form of an easement from an existing private street in a PUD. The site is generally flat and includes the improvement of an existing drainage course, making the site physically suited for the proposed residential density.
- C. The proposed project site has no habitat value and is located in an urbanized area. Furthermore, the subject property is in a disturbed condition, surrounded by urban development, not environmentally sensitive, and there are no fish or wildlife populations that would be harmed by the residential development of the subject property.
- D. The subdivision is required to incorporate storm water management improvements that will contribute to healthier streams, rivers, bays and the ocean. Furthermore, the design of the proposed subdivision will accommodate passive heating and cooling opportunities because the proposed homes are designed with windows that open and would allow occupants to take advantage of the prevailing west winds. The units are separated sufficiently to allow air flow through and around the units.
- E. There are no easements existing or required by the public at large.

NOW, THEREFORE, BE IT RESOLVED that based upon said findings of fact stated above, the El Cajon City Council hereby APPROVES TSM No. 658 for an eight-lot subdivision in the RS-6 zone, on the above described property subject to the following conditions:

- 1. The applicant shall comply with all requirements of the Public Works Department as indicated in the comments attached to the resolution recommending City Council approval of the Amendment of Planned Unit Development (AM PUD) No. 334 as "Exhibit B" and dated 8-20-14.

(Continued on Page 3)

2. Prior to the issuance of building permits for PUD No. 334, or as otherwise determined by the Planning Manager, the final map for TSM No. 658 shall be recorded and the appropriate number of copies returned to the City.
3. The final map shall be in substantial conformance with the approved site plan for AM PUD No. 334 and TSM No. 658, except as modified by this resolution.
4. Prior to acceptance of the final map by the City Council, a landscape maintenance easement shall be depicted on the map. The landscape maintenance easement shall be depicted over all of the landscaped areas at the site that are outside the private rear yards for the individual units.
5. Prior to acceptance of the final map by the City Council, a landscape maintenance easement shall be recorded over all of Lot 5 of Map No. 15742 (Phase I) and also over the portion of Pauline Avenue vacated by the City of El Cajon.
6. Prior to acceptance of the final map by the City Council, new Conditions, Covenants, and Restrictions (CC&R's) shall be recorded for Phase I of the project, which requires the homeowner's association to maintain the landscaping in Lot 5 of Map 15742.
7. Prior to the acceptance of the final map by the City Council, an easement shall be recorded over a portion of Lot 5 of Map No. 15742 (Phase I), providing vehicular access to the subject property from Avocado Avenue.
8. The final map shall be accepted by the City Council and prepared for recordation in accordance with El Cajon Municipal Code Chapter 16.20.
9. The recordation of the final map shall be in accordance with the time limits permitted in Government Code §66452.6 et. seq.

PASSED AND ADOPTED by the City Council of the City of El Cajon, California at a Regular Joint City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency Meeting held this 18th day of November 2014, by the following vote to wit:

AYES	:	Ambrose, Bales, McClellan, Wells
NOES	:	None
ABSENT	:	Kendrick
DISQUALIFY:	:	None

BILL WELLS
Mayor of the City of El Cajon

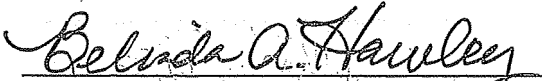
(Continued on Page 4)

ATTEST:

BELINDA A. HAWLEY, CMC

City Clerk

I hereby certify that the above and foregoing is a full and true copy of Resolution No. 131-14 of the Resolutions of the City of El Cajon, California, as adopted by the City Council at the Regular Joint Meeting of the City Council/Housing Authority/Successor Agency to the Redevelopment Agency on the 18th day of November 2014.


Belinda A. Hawley, CMC, City Clerk

11/18/14 (Item 100)

Foundation Lane II TSM 658 111314

SUBDIVISION AGREEMENT

(Public Improvements)
(Foundation Lane Phase II)
(Avocado Avenue)

THIS AGREEMENT entered into by and between the CITY OF EL CAJON, a California charter city and municipal corporation, hereinafter referred to as "City", and SAN DIEGO HABITAT FOR HUMANITY, INC., a California non-profit public benefit corporation, hereinafter referred to as "Developer";

WHEREAS, Developer, pursuant to the provisions of the Subdivision Map Act of the State of California and Title 16 of the El Cajon Municipal Code, contemplates the filing of Tentative Subdivision Map 658 ("TSM 658") prior to the completion of certain public improvements as shown on the official plans, specifications and detailed drawings on file with the City Engineer of City (the "Improvements"); and

WHEREAS, the City Engineer has estimated the cost of said Improvements to be the sum of FORTY-SIX THOUSAND FIVE HUNDRED NINETY-EIGHT DOLLARS AND NO CENTS (\$46,598.00); and

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

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

1. That in consideration of the approval of said TSM 658 prior to the completion of the Improvements for said project, Developer hereby covenants and agrees to install and construct the said Improvements in accordance with the official plans, and that said Improvements shall be completed within one (1) year from the date of the recording of the subdivision map by the County Recorder of the County of San Diego.

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

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

4. Developer further agrees to furnish the following surety bonds or cash deposits, if applicable to the project. Any such bonds shall be issued by corporate sureties authorized to do business in California and approved by the City Attorney:

- a. \$ -0- for Lot Staking
- b. \$ -0- for installation of Underground Utilities
- c. \$ -0- for any deposits or bonds identified in the Resolution approving this project not otherwise in this Agreement.

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

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

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

[Remainder of page intentionally left blank]

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

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

Date: _____

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

**SAN DIEGO HABITAT FOR
HUMANITY, INC.,** a California
non-profit public benefit corporation.

By _____
Bill Wells, Mayor

By _____
Lori Holt Pfeiler, Executive Director

ATTEST:

By _____
Belinda A. Hawley, CMC, City Clerk

APPROVED AS TO FORM:

By _____
Morgan L. Foley, City Attorney

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City of El Cajon Agenda Report

MEETING: May 26, 2015

ITEM NO: 1.7



TO: Mayor Wells, Mayor Pro Tem McClellan
Councilmembers Ambrose, Bales, Kendrick


FROM: Deputy Director of Public Works

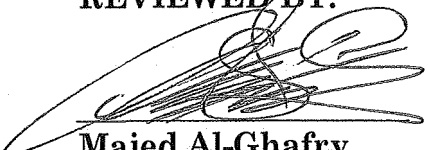
SUBJECT: Acceptance of Overlay Thoroughfares 2014, PW 3486, Bid Number 009-15.


RECOMMENDATION: That the City Council accept the project, authorize the City Clerk to record a Notice of Completion and release the bonds in accordance with the contract terms.

BACKGROUND: On August 12, 2014, the contract was awarded by City Council Resolution No. 088-14 to T C Construction Company, Inc. This project included the overlay of approximately four (4) miles of streets with tire modified asphalt concrete and approximately 1,700 linear feet with conventional asphalt concrete. The project also included the replacement of damaged curb and gutter on Shady Lane, the repair of a cross gutter and curb and gutter at Laguna Avenue and Hardin Drive and replacement of an alley apron and sidewalk on Boulevard Place. The project also included the installation of a raised concrete median on East Chase Avenue from Avocado Boulevard easterly for approximately 290 feet. The project was completed on March 31, 2015. Quantities and payments have been finalized.

FISCAL IMPACT: There is no fiscal impact as a result of this action. The total construction expenditure on this project is \$1,280,867.17.

PREPARED BY:

Dennis Davies
DEPUTY DIRECTOR
OF PUBLIC WORKS

REVIEWED BY:

Majed Al-Ghafry
ASSISTANT
CITY MANAGER

APPROVED BY:

Douglas Williford
CITY MANAGER

City Clerk Date Stamp

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2015 MAY 21 P 2:27

City of El Cajon Agenda Report

MEETING: May 26, 2015

ITEM NO: 4.1



TO: Mayor Wells, Mayor Pro Tem McClellan
Councilmembers Ambrose, Bales, Kendrick

FROM: City Manager

SUBJECT: AN OWNER PARTICIPATION AND DEVELOPMENT AGREEMENT
BETWEEN TIPTON ENTERPRISES, INC. AND THE CITY OF
EL CAJON

RECOMMENDATION: That the City Council:

1. Move to ADOPT the next RESOLUTION in order APPROVING Owner Participation and Development Agreement between Tipton Enterprises, Inc, and the City of El Cajon.

BACKGROUND: On June 24, 2014, the City Council authorized the City Manager to enter into an exclusive negotiation agreement with Tipton Enterprises, Inc. DBA Tipton Honda, for the major renovation and expansion of an existing auto dealership, located at 889 Arnele Avenue. That negotiation agreement has resulted in a proposed agreement between the two parties for the Council's review and approval.

Over the years Tipton has provided incalculable benefits to the City as a whole. They have continued to provide quality jobs for many residents; tremendous service to its customers; and have given back to the community with contributions to youth groups and athletic teams, as well as other nonprofit organizations that provide cultural and community services.

Tipton Honda has been a long-time quality automobile dealership in El Cajon. Tipton is interested in the significant renovation of their dealership on Arnele Avenue consistent with corporate Honda's new image requirements, as well as expanding onto additional properties in El Cajon. These economic development goals of Tipton are estimated to cost approximately \$3.3 million.

The City of El Cajon historically has placed much value on not only Tipton Honda, but all of the City's auto dealerships. The significant conglomeration of high quality dealerships within this City over many decades has proven to be of great value to both the City as well as the dealerships themselves.

In past years, the City's Redevelopment Agency assisted in various ways other dealerships in locating or re-building in El Cajon. This powerful and beneficial economic

development tool has since been removed by the State. Nevertheless, the City can continue its aggressive stance in being pro-business and seek ways to achieve ever growing economic development within this City, to the betterment of the community as a whole. However, given that we are now faced with primarily having only general tax revenues at our disposal to assist with economic development such as is now being proposed, the City must be prudent in both the extent and the nature of how the City participates in such activities.

With the elimination of redevelopment and the re-allocation of property tax revenues between municipalities and the State of California it has become important for both the public and private sectors to consider new and innovative structures to promote redevelopment in order to realize significant public benefits in the form of increased revenues, additional employment opportunities for a wide range of trades and occupations, and the elimination of blight and optimum use of underutilized land in the city. This strategy was also the basis for the recent agreement with BMW, which has resulted in an outstanding new dealership being developed on El Cajon Boulevard.

For these reasons the City Manager, City Attorney and representatives of Tipton have engaged in lengthy and serious discussions in order to retain and significantly improve upon the Honda dealership in El Cajon. As a result, Tipton and staff are at the point where the parties wish to seek City Council approval of an agreement that will result in a renovated, state-of-the-art Honda dealership.

In consideration for Tipton Honda's performance under the agreement, the City will agree to make payments to Tipton Honda, measured by a portion of the net sales tax generated by Tipton Honda as indicated in the City Reimbursement Schedule included in the agreement as Attachment. Staff and Tipton Honda have agreed that the amount to be paid by the City to Tipton Honda during the operating period is a fair exchange for the construction value and potential additional sales tax to be furnished by Tipton Honda to the City in the operating period. The sales tax reimbursement will be based upon their ability to increase taxable sales in the future in excess of a calculated average of the previous five years.

If such an increase in sales tax does not occur, then the City's financial responsibilities to assist Tipton Honda would be zero.

The proposed agreement is as follows:

Using the average taxable sales of Tipton Honda during the past five years (2010-2014 inclusive) as the base amount, any taxable sales in addition to this amount will be divided per the below schedule:

Sixty-five percent (65%) to Tipton Honda and thirty-five percent (35%) to the City of El Cajon during Operating Years 1 through 6, inclusive; and

Fifty percent (50%) to Tipton Honda and fifty percent (50%) to the City of El Cajon during Operating Years 7 through 12, inclusive.

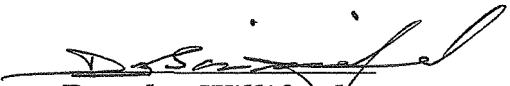
After Year 12, all subsequent sales tax goes to the City of El Cajon.

The proposed Owner Participation and Development Agreement is not a "development

agreement," whereby the developer will be obtaining vested rights to zoning or building codes. Instead, it is an arrangement, by which Tipton Honda will contractually agree to renovate and operate a dealership at 889 Arnele Avenue as well as other possible locations in the City, in consideration for which the City will be paying a calculable amount of money, over a period of years, which will provide capital so that Tipton Honda can partially recoup their investment. Such agreements are not uncommon and are widely used as an economic development incentive. Economic development incentives are tools used by state and local governments to retain or attract jobs and/or a tax base. This agreement ensures that Tipton Honda retains its sales operation through a specified time period, thus providing a continuous flow of sales tax to the City.

FISCAL IMPACT:

The agreement commits the City to sharing a net increase in sales tax revenue with Tipton Enterprises, Inc. If no net increase as defined by the agreement occurs, then the City is not obligated to any sales tax revenue sharing.



Douglas Williford
CITY MANAGER

RESOLUTION NO. ___-15

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CAJON
APPROVING AND AUTHORIZING THE EXECUTION OF AN
OWNER PARTICIPATION AND DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF EL CAJON AND
TIPTON ENTERPRISES, INC. DBA TIPTON HONDA, AND
MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH

WHEREAS, on July 3, 2014, the El Cajon City Council approved and authorized the City Manager to enter into an Exclusive Negotiation Agreement on behalf of the City of El Cajon (the "City") with Tipton Enterprises, Inc. dba Tipton Honda (the "Developer"), to: (1) negotiate in good faith as to the development of the Dealership on the Site; (2) refine the Dealership description and design; (3) conduct due diligence on the continued economic viability of the Dealership; (4) prepare a Development and Tax Increase Incentive and Sharing Agreement (the "Development Agreement") for City consideration; (5) determine if and how the City can promote the economic sustainability of the Dealership; and (6) determine what, if any, modifications may be necessary and appropriate to the Dealership to improve its viability as an vital business enterprise in the City; located at 889 Arnele Avenue, El Cajon (the "Subject Property"); and

WHEREAS, the Developer and City now wish to enter into an Owner Participation and Development Agreement (the "Agreement") whereby the Developer will covenant to the redevelopment of Tipton Honda consistent with Honda's corporate identity design criteria, which includes Gen 4 (the "Dealership") that will serve Honda customers, and the Developer has expressed an interest in developing the Dealership on property located at 889 Arnele Avenue in the City (the "Site"); and

WHEREAS, the City Council has determined that the imposition of these and other operating covenants and restrictive covenants with respect to the Project constitutes a valid public purpose, is in the interest of public convenience and necessity, and will be a benefit to the City and its citizens for the reasons stated herein and therein, and therefore the City desires to obtain such operating covenants and restrictive covenants with respect to the Project in consideration of the transfer of sums in accordance with the terms of the Agreement.

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

1. The City Council hereby finds that the foregoing Recitals are true and correct.
2. Based upon the record as a whole, the City Council hereby finds and determines that the proposed Agreement is subject to CEQA because it requires a discretionary action by the City Council to approve a plan for the redevelopment and continued operation of Tipton Honda at its present location. The City Council further finds and determines that these improvements fall under CEQA Categorical Exemption 15301 (*Existing Facilities*), because Class 1 allows for the maintenance and minor alteration of such facilities.
3. The City Council hereby approves that certain Owner Participation and Development Agreement in substantially the same form as presented to the City Council at this meeting, with such changes as may be approved by the City Manager or designee.

4. The City Manager, Assistant City Manager, or their designees, are hereby authorized to sign the Agreement. The City Clerk, or Deputy City Clerk, is hereby authorized to attest to the signature of the City Manager, Deputy City Manager, or designee. The execution of the Agreement by the City Manager, Assistant City Manager, or designee shall be deemed approval of any changes in the Agreement at the time of execution.

5. The City Clerk shall certify to the adoption of this Resolution.

Tipton Honda – approve Owner Participation & Development Agmt 052115

05/26/15 (Item 4.1)

OWNER PARTICIPATION AND DEVELOPMENT AGREEMENT

by and between

CITY OF EL CAJON
a charter city and municipal corporation

and

TIPTON ENTERPRISES, INC.,
a California corporation, dba Tipton Honda

OWNER PARTICIPATION AND DEVELOPMENT AGREEMENT

This **OWNER PARTICIPATION AND DEVELOPMENT AGREEMENT** (this “Agreement”) (the “Effective Date”), is made by and between the **CITY OF EL CAJON**, a charter city and municipal corporation (the “City”), and **TIPTON ENTERPRISES, INC.** a California corporation, dba Tipton Honda (the “Developer”) and shall be effective upon the date of full execution by the parties and approval by the City Council (the “Effective Date”).

RECITALS

The following recitals are a substantive part of this Agreement:

A. The City is interested in the redevelopment of Tipton Honda (the “Dealership”) consistent with design criteria established by American Honda Motor Company, Inc. (“Honda”) that will serve Honda customers, and the Developer has expressed an interest in redeveloping the Dealership on property located at 889 Arnele Avenue in the City, including the acquisition of adjacent property for expansion of the Dealership (the “Site”).

B. The continued operation of the Dealership is an important component in the City’s efforts to maintain a vibrant and expanding group of existing and new auto dealerships in the City to promote economic development and employment opportunities for its citizens.

C. Recent changes in redevelopment law and the allocation of property tax revenues between municipalities and the State of California require the public and private sectors to consider new and innovative structures to promote redevelopment in order to realize significant public benefits in the form of increase revenues and employment opportunities.

D. The Site is more particularly described on Attachment 1, which is attached hereto and incorporated herein by this reference.

E. Subject to and as provided by this Agreement, the parties contemplate that (i) the Developer will reconfigure, renovate and rehabilitate the Site so that it conforms to Honda’s design criteria Gen 4 (the “Project”), as further defined herein, and (ii) the City will provide financial assistance towards the costs incurred by the Developer to construct the Project.

F. The City has determined that the imposition of certain operating covenants and restrictive covenants with respect to the Project constitutes a valid public purpose, and therefore the City desires to obtain such operating covenants and restrictive covenants with respect to the Project in consideration of the transfer of sums in accordance with the terms hereof.

G. In consideration for the Developer’s agreement to be bound by such operating covenants and restrictive covenants, the City has agreed to make certain payments to the Developer. The City and the Developer agree the amount of each payment required to be made by the City hereunder is a fair exchange for the consideration actually furnished pursuant to this Agreement by the Developer during each fiscal year of the City in which payment is made, that each payment to be made by the City hereunder has been calculated so that it will not exceed the

resources available to make such payment, and further that in no event shall the City be immediately indebted to the Developer for the aggregate payments herein provided.

H. The purpose and intention of the City in making the transfers to the Developer is solely to induce the Developer to construct the public improvements described in this Agreement and to develop and operate, or cause to be developed and operated, the Project on the Site so as to further the enhancement, the well-being of the citizens at large, the enhanced local employment, and expand the City's tax revenue base.

I. This Agreement is categorically exempt from environmental review pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act (California Public Resources Code § 21000 *et seq.*) ("CEQA").

J. This Agreement and the Developer's development of the Project is a new and innovative structure of public and private participation in an effort to promote and assist economic development in the City, which will realize significant public benefits in the form of increased revenues to the City and increased employment opportunities of quality trades, and are in the vital and best interest of the City.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions contained herein, the City and the Developer agree as follows:

1. RECITALS INCORPORATED.

The recitals are hereby incorporated by reference into this Agreement and are a material part of this Agreement.

2. DEVELOPMENT OF THE SITE

2.1 Description of Project. The Project shall consist of the Developer's acquisition of additional properties and rehabilitation of the Site as further described in the Scope of Development attached hereto and incorporated herein as Attachment 2 (the "Scope of Development"). The Developer shall construct the Project in compliance with (i) the terms and conditions of this Agreement, (ii) the "Project Entitlements" (as that term is defined in Section 2.2 below), (iii) Honda's design criteria Gen 4 (the "Honda Standards"), (iv) all plans and permits approved by City with respect to the Project, and (v) the Schedule of Performance attached hereto and incorporated herein as Attachment 3. The Developer shall thereafter operate the Project as provided in Section 4 below. The Developer shall ensure that all designs prepared for the Project shall be (1) prepared by an architect and development team that is recognized by Honda as having the expertise and ability to prepare and implement plans that meet Honda Standards, and (2) approved by Honda as being compliant with Honda Standards. Developer represents to the City that it will invest approximately \$2,300,000 in the Project.

2.2 Project Entitlements. As a condition precedent to the Developer's right to construct the Project under this Agreement, the Developer shall obtain from the City all permits, approvals, and entitlements necessary for the Project as required in this Agreement, by applicable State law, by City code, and all other applicable laws, including but not limited to any

approvals or certifications as required by CEQA, the approval of which is subject to the City's legislative discretion (all of the foregoing, the "Project Entitlements"). City staff shall use reasonable efforts to assist the Developer in coordinating the expeditious processing and consideration of the Project Entitlements. However, the execution of this Agreement does not constitute the granting of or a commitment to obtain the Project Entitlements required by the City, nor does such execution obligate the City to incur any expense in assisting the Developer in the acquisition of the Project Entitlements. In the event of a conflict between Honda Standards and the Project Entitlements, the Project Entitlements shall control.

2.3 Entitlement Process. The Developer acknowledges that the requirements set forth in this Article 2, including, without limitation the Developer's construction and completion of the Project, are material considerations for the participation by the City in this Agreement, and that but for such requirements, the City would not have entered into this Agreement. The Developer acknowledges and agrees that in reviewing and approving documents under this Section 2.3, the City is not acting on behalf of the Developer. Further, the Developer understands that the City shall conduct its typical governmental functions and exercise of its police powers in its capacity as the jurisdiction responsible for land use and building permit approvals.

2.3.1 Submittal of Developer's Applications. The Developer shall submit relevant development applications and supporting documentation, and all other applications necessary to obtain the Project Entitlements (collectively, the "Developer's Applications"). These submittals shall be provided in the time period designated in the Schedule of Performance.

2.3.2 Defects in Plans. The City shall not be responsible to the Developer or to third parties in any way for any defects in the Developer's Applications nor for any structural or other defects in any work done according to the Developer's Applications, nor shall the City be responsible for any delays caused by the review and approval processes established by this Article 2 or the reviews conducted by the City in the Schedule of Performance.

2.4 Schedule of Performance. The Developer has submitted or shall submit all of the Developer's Applications, and if approved by the City shall commence and complete construction of the Project, and shall satisfy all other obligations and conditions of this Agreement within the times established therefor in the Schedule of Performance. The City's City Manager is permitted to modify or extend the Schedule of Performance without further authorization by the City of El Cajon City Council (the "City Council") provided that each of the following conditions are satisfied: (i) the modification does not prohibit the Developer from obtaining a certificate of occupancy for the Project no later than eighteen (18) months from the Effective Date; (ii) the City Manager and the Developer agree to the modification or extension in a writing executed by both the Developer and the City Manager; (iii) the Developer is not otherwise in default under this Agreement; and (iv) such modification or extension does not increase the City's obligations or costs under this Agreement.

2.5 Costs of Construction. Except as provided in Section 3 below, all of the costs of planning, designing, developing and constructing the Project, site preparation and grading shall be borne solely by the Developer.

2.6 Rights of Access. For purposes of assuring compliance with this Agreement, representatives of the City shall have the right of access to the Site at normal construction hours during the period of construction and upon reasonable prior notice to the Developer, including but not limited to, the inspection of the work being performed in the construction of the Project. The City shall indemnify, defend and hold the Developer harmless from any loss, damage, injury, accident, casualty, liability, claim, cost or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property (collectively, "Claims") arising from or related to the City's inspection of the Project as permitted by this Section 2.6. Notwithstanding the prior sentence, the City shall not be liable for such Claims to the extent and in the proportion that the same is ultimately determined to be attributable to the negligence or misconduct of the Developer or its agents, representatives, employees, directors, officers or consultants. This section does not apply to, limit or otherwise restrict or impose conditions on any inspection or entry right the City has pursuant to State law or the City of El Cajon Municipal Code.

2.7 Miscellaneous Rules and Regulations Applicable to Development of the Project.

2.7.1 Compliance with Laws. The Developer shall carry out the design and construction of the Project in conformity with all applicable laws, including all applicable state labor standards, the City zoning and development standards (except as otherwise provided herein), building, plumbing, mechanical and electrical codes, and all other provisions of the City of El Cajon Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

2.7.2 Nondiscrimination in Employment. The Developer certifies and agrees that all persons employed or applying for employment by it (including all contractors and subcontractors used by the Developer) in constructing the Project on the Site (collectively, the "Construction Personnel") are and will be treated equally without regard to, or because of, race, color, religion, ancestry, national origin, sex, sexual orientation, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other antidiscrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Subject to any

privacy rights of the affected individuals, upon the reasonable request by the City, the Developer shall allow representatives of the City access to Construction Personnel records during regular business hours to verify compliance with these provisions in connection with the Project and construction thereof. Any contract or agreement entered by the Developer with Construction Personnel shall specifically incorporate this section and shall include a provision providing the City access to the Construction Personnel's records referenced in the prior sentence.

2.7.3 Levies and Attachments on Site and Building. As a condition precedent to the City's obligation to issue a Release of Construction Covenants pursuant to Section 2.8 of this Agreement, the Developer shall remove or have removed any levy or attachment made on the Site and Building or any part thereof, or assures the satisfaction thereof within a reasonable time. Nothing herein shall be deemed to prohibit the Developer from contesting the validity or amount of any levy or attachment or to limit the remedies available to the Developer with respect thereto.

2.7.4 Insurance. The Developer shall maintain insurance as provided by Section 6 of this Agreement.

2.8 Release of Construction Covenants.

2.8.1 Promptly after completion of construction of the Project in conformity with this Agreement, the City shall promptly deliver to the Developer a Release of Construction Covenants, executed and acknowledged by the City substantially in the form provided on Attachment 4, attached hereto and incorporated herein by this reference. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the construction of the Project, and the Release of Construction Covenants shall so state. Following the issuance of a Release of Construction Covenants, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement with respect to development of the Site or construction of the Project; however, any such party shall be subject to those continuing covenants described in Section 4 of this Agreement.

2.8.2 If City refuses or fails to furnish a Release of Construction Covenants in accordance with the preceding paragraph, and after written request from the Developer, the City shall, within thirty (30) days after receipt of such written request therefor, provide the Developer with a written statement of the reasons the City refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the City's opinion of the actions the Developer must take or cause to be taken to obtain the Release of Construction Covenants. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Project, or any part thereof. The Release of Construction Covenants is not a notice of completion as referred to in Section 3093 of the California Civil Code.

3. CITY REIMBURSEMENT FOR IMPROVEMENTS

3.1 Eligible Rehabilitation Improvements. In consideration for the Developer's investment of approximately \$2,300,000 in the City through the acquisition and construction of the Project on the Site (the "Eligible Rehabilitation Costs"), the City shall, subject to the satisfaction of the conditions precedent identified in Section 3.2, return to the Developer a percentage of the Net Sales Taxes From the Site consistent with the formula and term described in the City Reimbursement Schedule set forth in Attachment 5 hereto (the "City Reimbursement").

3.2 Conditions Precedent to City Reimbursement Obligation. Prior to, and as a condition precedent to, the City's obligation to fund or disburse any portion of the City Reimbursement, the following conditions precedent (each a "Disbursement Milestone"), which are for the sole and exclusive benefit of the City, and shall be completed to the satisfaction of, or valued by, the City, but shall not be unreasonably withheld by the City.

3.2.1 The Developer shall have executed, with signatures notarized, the "Operating Covenant" (as that term is defined in Section 4 below), and the Operating Covenant shall have been recorded against the Site, subject only to (a) easements, restrictions, financing, and reservations of record in existence prior to the Effective Date; and (b) Developer as Tenant and Tipton Motors, Inc. as landlord. The City acknowledges that the Developer is pursuing financing to fund construction of the Project and agrees, if requested by the mortgagor, to subordinate the Operating Covenant to any documents recorded in favor of the mortgagor in connection with such financing.

3.2.2 All Project Entitlements shall have been approved by all applicable government or regulatory entities and shall be final. Any applicable statute of limitations to challenge such Project Entitlements shall have passed without the commencement of a challenge (including a referendum), shall have been waived by the City or, if a timely challenge has been made, such challenge shall be resolved in a manner that is acceptable to the City.

3.2.3 The Developer shall have provided evidence of financing to the City and the City shall have approved the same.

3.2.4 The Developer shall have provided evidence to the City that the Developer has procured insurance as required by Section 6.1 hereof.

3.2.5 The Developer shall have provided evidence to the City's City Manager that the Developer has obtained approval from Honda for the Project, including the Developer's site plan and all construction plans and drawings.

3.2.6 The Developer shall not be in breach of its obligations under this Agreement and the Operating Covenant.

3.2.7 The Developer shall obtain building permits for the Project work to be performed.

3.3 Disbursement of City Reimbursement. The City shall disburse the City Reimbursement to the Developer in accordance with the provisions of this Agreement. Each disbursement of a portion of the City Reimbursement shall be conditioned upon the Developer's compliance with this Agreement, and shall include a calculation of the Net Sales Taxes From the Site as defined in City Reimbursement Schedule set forth in Attachment 5, hereto.

3.4 City Development Responsibilities. In order to assist the Developer in the successful construction of the Dealership, and in addition to the consideration otherwise contained herein, the City hereby agrees to use its best efforts to initiate and process, for City Council consideration, the adoption of an updated land use plan (e.g., a specific plan, or a general plan amendment, including implementing ordinances to amend its zoning code, as necessary) applicable to the Site and adjacent areas. Accordingly, City agrees to assign a mid-management level employee to expedite the processing of all required approvals, permits, and inspections, including the review of all required plans, studies or reports for the Project.

4. OPERATION OF THE PROJECT AND COVENANTS, CONDITIONS AND RESTRICTIONS APPLICABLE TO THE SITE AFTER COMPLETION OF CONSTRUCTION OF THE PROJECT

Concurrently with the Developer's execution of this Agreement, the Developer shall execute and acknowledge an Operating Covenant substantially in the form attached hereto and incorporated herein as Attachment 6 (the "Operating Covenant"). The Operating Covenant shall be recorded within five (5) days after the Effective Date. The Developer's execution of the Operating Covenant shall be a material component of this Agreement and a condition precedent to all of the City's obligations in this Agreement. The Operating Covenant shall obligate the Developer or assignee to construct the Project and shall obligate the Developer or assignee to operate the Project for a minimum period of fifteen (15) years, commencing on the date the City issues a Release of Construction Covenants for the Project.

5. DEFAULTS AND REMEDIES

5.1 Default. Subject to the extensions of time set forth in Section 9.2 of this Agreement, (1) failure by any party to perform any action or adhere to any covenant or representation or warranty required by this Agreement, including in any of the attachments hereto, within the time periods provided herein following notice and an opportunity to cure as described in this Section 5.1, or (2) the filing of a petition in bankruptcy by or against the Developer or appointment of the receiver or trustee of any property constitutes a "Default" under this Agreement. The breach or falsity of any representation or warranty by a party as set forth in this Agreement also constitutes a "Default" under this Agreement following notice and an opportunity to cure as described hereinafter. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default as to non-monetary Defaults if such party, within thirty (30) days from receipt of such notice, promptly and with due diligence, commences to cure, correct or remedy such failure or delay and thereafter completes such cure, correction or

remedy with due diligence. In no event shall a party be allowed more than 180 days to cure a default. As to monetary Defaults, a cure period of ten (10) days upon written notice shall apply.

Notwithstanding anything to the contrary in this Agreement, no notice of Default shall be necessary, nor shall the Developer have a right to cure a Default resulting from a Transfer, as that term is defined below, that has not been approved by the City.

5.2 Institution of Legal Actions; Remedies. In addition to any other rights or remedies, and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, or to obtain any other remedy consistent with the purpose of this Agreement. The City shall also have the right to pursue damages (but only actual damages) for the Developer's Defaults, but in no event shall the Developer be entitled to damages of any kind from City, except as a result of the City's Default of its obligation to make the City Reimbursement in which case the Developer shall be entitled to specific performance of this Agreement or, if such remedy is not available, then damages not in excess of the maximum amount of the City Reimbursement, but such damages shall not include lost profits or other consequential damages of any kind. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California. Developer hereby waives any right to remove any such action from San Diego County as is otherwise allowed by California Code of Civil Procedure section 394.

5.3 Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Manager of the City or the City Clerk of the City if there is no City Manager in addition to such other manner as may be provided by law. In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon any officer or director of the Developer, whether made within or outside the State of California, or in such other manner as may be provided by law.

5.4 Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of 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.

5.5 Inaction Not a Waiver of Default. 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.

5.6 No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be

construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

5.7 Applicable Law. The internal laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

6. INSURANCE REQUIREMENTS; REPAIR AND RESTORATION OF PROJECT

6.1 Insurance Requirements. The Developer shall maintain, at all times during the term of this Agreement, insurance in such amounts and providing such coverage commonly required for an automobile dealership in the State of California, including, but not limited to, commercial general liability, workers' compensation, automobile, and fire and casualty (including "all risk") insurance, and business interruption insurance, all to protect the Dealership from interruption from operations.

6.2 Remedies for Defaults Re: Insurance. In addition to any other remedies the City may have if the Developer commits a Default hereunder by failing to provide or maintain any insurance policies or policy endorsements to the extent, and within the time herein required, the City may at its reasonable discretion obtain such insurance and deduct the amount of the premium for such insurance from any sums due to the Developer by the City from the City Reimbursement. Exercise of such remedy, however, is an alternative to other remedies the City may have and is not the exclusive remedy for the Developer's failure to maintain insurance or secure appropriate endorsements.

6.3 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. If the Project shall be totally or partially destroyed or rendered uninhabitable by fire or other casualty required to be insured against by the Developer, the Developer shall promptly proceed to obtain all available insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Project to substantially the same condition as they existed prior to the casualty, and the Developer shall complete or cause to be completed the same as soon as possible thereafter so that the Project can be operated in accordance with this Agreement. The City shall cooperate with the Developer, at no expense to the City, in obtaining any governmental permits required for the repair, replacement, or restoration.

7. TRANSFER RESTRICTIONS

7.1 Prohibition. The qualifications and identity of the Developer are of particular concern to the City. It is because of these qualifications and identity that the City has entered into this Agreement with the Developer. Accordingly, commencing upon the Effective Date and continuing throughout the term of the Operating Covenant: (i) no voluntary successor in interest of the Developer shall acquire any rights or powers under this Agreement; (ii) the Developer shall not make any total or partial sale, transfer, conveyance, assignment, subdivision, further encumbrance, refinancing, or lease of the whole or any part of the Site or the Project thereon; and (iii) no major changes shall occur with respect to the ownership and/or control of the Developer, including, without limitation, stock transfers, sales of issuances, or transfers, sales or

issuances of membership or ownership interests, or statutory conversions (with each of the actions in clauses in clauses (i), (ii), and (iii) above, referred 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 approval of the City, shall be voidable upon any purported assignee or transferee upon written notification by the City within a reasonable period after the City learns of the Transfer.

7.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, the City’s approval of a Transfer shall not be required in connection with any of the following:

(a) Any Transfer by the Developer to a “Related Person or Entity” (as defined below).

(b) A Transfer consisting of the conveyance or dedication of any portion of the Site to the City or other appropriate governmental City, including public utilities, where the granting of such easements permits or facilitates the development of the Site and the Project.

(c) Any Transfer for: (i) financing purposes to the holder of a mortgage; (ii) any refinancing or permanent financing of the mortgage; or (iii) any Transfer to any person or entity pursuant to foreclosure or deed in lieu of foreclosure of any such mortgage referred to in clauses (i) or (ii).

In the event of a Transfer by the Developer not requiring the City’s prior approval, the Developer nevertheless agrees that at least thirty (30) days prior to such Transfer, the Developer shall give written notice to the City of such Transfer. In the case of a Transfer pursuant to subparagraph (a) above, the Developer 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 transfer will assume, in writing through an assignment and assumption agreement, in form reasonably acceptable to the City, all of the obligations of the Developer under this Agreement which remain unperformed as of such Transfer or which arise from and after the date of Transfer.

As used in this Agreement, a “Related Person or Entity” shall mean an entity in which the Developer, or an entity in which Tipton Enterprises, Inc., or a majority of Developer’s shareholders, own a greater than fifty percent (50%) ownership and management interest, has 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 Honda to operate the Project thereon.

7.3 City Consideration of Proposed Transfer; Release of Transferor Upon Permitted or Approved Transfer. If the Developer desires to cause a Transfer of any of its interests in this Agreement or the Site, and such Transfer requires the City’s approval under Section 7.1, the Developer shall request in writing to the City that it consent to such Transfer, which consent shall not be unreasonably delayed or withheld. A Transfer shall be conditioned upon: (i) the

proposed assignee expressly assuming, in writing, the unexecuted obligations hereunder of the transferor/assignor, as applicable, as to times following the effective date of the assignment; and (ii) the proposed assignee demonstrating to the reasonable satisfaction of the City that such person or entity has adequate financial capacity to complete the development and/or operation of the Project on the Site and that such person or entity has been approved in writing by Honda to operate the Project thereon.

Notwithstanding any other provision set forth in this Agreement to the contrary, upon the effective date of a permitted or approved Transfer, and provided that the transferor/assignor shall have delivered to the City an executed assignment and assumption agreement in form reasonably acceptable to City 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.

7.4 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall run with the Site and be binding upon the Developer and the City and their permitted successors and assigns. Whenever the term “Developer” or “City” is used in this Agreement, such term shall include any other permitted successors and assigns.

8. INDEMNIFICATION OF CITY

The Developer shall indemnify, defend, and hold harmless the City and City Personnel from and against any and all claims, liabilities, damages, and losses, including without limitation, reasonable attorneys’ fees and litigation expenses, including court costs and expert witness fees (collectively “Claims”), due to the death or personal injury of any person, or physical damage to any person’s real or personal property, caused by the construction of improvements by, or construction-related activities of, the Developer on the Site and the Building, or for any construction defects in any improvements constructed by the Developer on the Site and the Building, or the approval or operation of the Project on the Site and the Building; provided, however, that the foregoing indemnification shall not apply to the extent such Claims are caused by the sole negligence or willful misconduct of the City or City, subject to any immunities which may apply to the City or City with respect to such Claims. The foregoing indemnification provision shall survive the termination of this Agreement.

9. GENERAL PROVISIONS

9.1 Notices. All notices under this Agreement 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; (iii) via facsimile, so long as the sender receives confirmation of successful transmission from the sending machine; or (iv) three (3) business days after deposit in the United States mail, registered or certified, postage fully prepaid, 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, CA 92020
Phone No.: 619-441-1716
Attention: City Manager

With a copy to: El Cajon City Attorney
200 Civic Center Way
El Cajon, CA 92020
Phone No.: 619-441-1798
Attention: Morgan L. Foley, Esq.

To Developer: Tipton Enterprises, Inc.
889 Arnele Avenue
El Cajon, CA 92020
Phone No.: (619) 440-1000
Attention: Kathie Stedham

With a copy to: Jason P. Saccuzzo, Esq.
Vivoli Saccuzzo, LLP
2550 5th Avenue, Suite 709
San Diego, CA 92103
Phone No.: 619-744-9992

9.2 Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended where delays or Defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; inability to obtain reasonably acceptable financing; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; or acts or failures to act of the City or City or any other public or governmental City or entity. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause. Subject to the second sentence of Section 2.4, times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and Developer.

9.3 Non-Liability of Officials and Employees of the City to the Developer. No member, official, director, officer, agent, or employee of City shall be personally liable to the

Developer, or any successor in interest of the Developer, in the event of any Default or breach by the City or for any amount which may become due to the Developer or the Developer's successors, or on any obligations under the terms of this Agreement.

9.4 Relationship Between City and Developer. It is hereby acknowledged that the relationship between the City and the Developer is not that of a partnership or joint venture and that the City and the Developer shall not be deemed or construed for any purpose to be the agent of the other.

9.5 City Approvals and Actions. The City shall maintain the authority to implement this Agreement on behalf of the City through the City Manager (or his or her duly authorized representative). The City Manager shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially change the uses or development permitted on the Site and in the Building, or add to the costs incurred or to be incurred by the City. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council.

9.6 Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

9.7 Integration. This Agreement, including the Attachments hereto, contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

9.8 Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled to its reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

9.9 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise.

9.10 Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

9.11 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

9.12 Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law and consistent with the mutual intent of the parties as expressed herein.

9.13 Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be the applicable time of day in the Pacific Time Zone.

9.14 Legal Advice. Each party represents and warrants to the other the following: it has carefully read this Agreement, and in signing this Agreement, it does so with full knowledge of any right which it may have; it has received independent legal advice from its legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, it has freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or its agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

9.15 Time of Essence. Time is expressly made of the essence with respect to the performance by the City and the Developer of each and every obligation and condition of this Agreement.

9.16 Conflicts of Interest. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

9.17 Third Party Beneficiaries. With the exception of the provisions in Section, 8, which benefits, and is enforceable by, the City and the indemnitees described therein, there are no intended third party beneficiaries to this Agreement. Members of the public are not third party beneficiaries to this Agreement.

9.18 Corporate Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that: (i) such party is duly organized and existing; (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party; (iii) by so

executing this Agreement such party is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Developer and the City each hereby represents that it has read this Agreement, understands it, and hereby executes this Agreement to be effective as of the day and year first written above.

“Developer”

**TIPTON ENTERPRISES, INC., a
California corporation**

Date: _____, 2015

By: _____
Its: _____

“City”

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

Date: _____, 2015

By: _____
Douglas Williford, City Manager

ATTEST:

Belinda Hawley, CMC, City Clerk

APPROVED AS TO FORM:

Morgan L. Foley
City Attorney

ATTACHMENT "1"

LEGAL DESCRIPTION OF SITE

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

ALL THAT PORTION OF TRACT 7 OF JAMES HILL ESTATE OF THAT PARTITION OF RANCHO EL CAJON, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THAT PARTITION MAP ON FILE IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SCHULENBERG TRACT AS SAME IS SHOWN ON MAP OF FLETCHER HILLS UNIT NO. 2, MAP NO. 2122; THENCE SOUTH 89° 58' 30" WEST ALONG THE NORTHERLY LINE OF SAID SCHULENBERG TRACT, A DISTANCE OF 75 FEET; THENCE SOUTH 0° 03' 52" EAST, A DISTANCE OF 55.86 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1010 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 5° 26' 15" A DISTANCE OF 95.85 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 990 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 4° 59' 26" A DISTANCE OF 86.23 FEET (95 FEET, MORE OR LESS, PER DEED) TO A POINT OF CUSP WITH THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF JOHNSON AVENUE AS SAME IS SHOWN ON SAID MAP 2122, SAID POINT BEING ON THE NORTHERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 80-XI-SD-12-ECJ AND DESCRIBED IN DEED RECORDED TO THE STATE OF CALIFORNIA ON FEBRUARY 6, 1957, AS DOCUMENT NO. 18896 OF OFFICIAL RECORDS THENCE ALONG SAID NORTHERLY LINE, SOUTH 72° 53' 30" WEST (SOUTH 72° 52' 40" WEST PER DEED) 288.19 FEET TO AN ANGLE POINT IN SAID NORTHERLY LINE; THENCE SOUTH 59° 00' 24" WEST (SOUTH 58° 59' 33" WEST PER DEED) 267.91 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHERLY RIGHT OF WAY LINE, SOUTH 59° 00' 24" WEST 364.55 FEET TO A POINT ON THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 2525 FEET, A RADIAL TO SAID POINT HAVING A BEARING OF NORTH 34° 58' 44" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0° 11' 57" A DISTANCE OF 8.78 FEET TO A POINT ON SAID CURVE, THE RADIAL TO WHICH HAS A BEARING OF NORTH 35° 10' 41" WEST; THENCE LEAVING SAID CURVE AND NORTHERLY RIGHT OF WAY LINE, NORTH 0° 05' 40" WEST A DISTANCE OF 633.88 FEET TO A POINT ON A LINE WHICH IS PARALLEL WITH AND 30 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES FROM SAID NORTHERLY LINE OF SCHULENBERG TRACT; THENCE NORTH 89° 58' 30" EAST ALONG SAID PARALLEL LINE 320.00 FEET TO A POINT WHICH BEARS NORTH 0° 05' 40" WEST, 440.68 FEET FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 0° 05' 40" EAST, A DISTANCE OF 440.68 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM THE INTEREST CONVEYED TO THE CITY OF EL CAJON, FOR STREET PURPOSES BY DEED RECORDED APRIL 2, 1973, FILE NO. 73-085565 OF OFFICIAL RECORDS IN AND TO THE NORTHERLY 5 FEET THEREOF.

ALSO EXCEPT THEREFROM ALL THAT PORTION OF TRACT 7 OF JAMES HILL ESTATE OF THAT PARTITION OF RANCHO EL CAJON, IN THE CITY OF EL CAJON, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOWS:

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HAVING A RADIUS OF 1010.00 FEET; THENCE SOUTH SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 5° 26' 15" A DISTANCE OF 95.85 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 990.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 5° 37' 15" A DISTANCE OF 97.12 FEET (95 FEET, MORE OR LESS, PER DEED) TO A POINT OF CUSP WITH THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF JOHNSON AVENUE AS SAME IS SHOWN ON SAID MAP 2122, SAID POINT BEING THE NORTHERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 80-XI-SD-12-ECJ AND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED ON FEBRUARY 6, 1957, AS DOCUMENT NO. 18896 OF OFFICIAL RECORDS; THENCE ALONG NORTHERLY RIGHT OF WAY LINE SOUTH 72° 53' 30" WEST (SOUTH 72° 52' 40" WEST PER DEED) 288.19 FEET TO AN ANGLE POINT IN SAID NORTHERLY RIGHT OF WAY LINE; THENCE SOUTH 59° 00' 24" WEST (SOUTH 58° 59' 33" WEST PER DEED) 267.91 FEET AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 59° 00' 24" WEST 364.55 FEET TO A POINT ON THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 2525.00 FEET, A RADIAL TO SAID POINT HAVING A BEARING OF NORTH 34° 58' 44" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 0° 11' 57", A DISTANCE OF 8.78 FEET; THENCE LEAVING SAID CURVE NORTH 0° 05' 40" WEST A DISTANCE OF 18.31 FEET; THENCE NORTH 55° 33' 02" EAST A DISTANCE OF 387.62 FEET; THENCE SOUTH 0° 05' 40" EAST A DISTANCE OF 44.81 FEET TO THE TRUE POINT OF BEGINNING.

APN: **482-250-27**

ATTACHMENT “2”

SCOPE OF DEVELOPMENT

[See Following Document]

ATTACHMENT “3”

SCHEDULE OF PERFORMANCE

	Item of Performance	Time for Completion
1.	Developer’s execution and acknowledgement of the Operating Covenant; execution and recording of the Leasehold Deed of Trust.	Concurrently with Developer’s execution of Agreement.
2.	City recordation of the Operating Covenant.	Within five (5) days after Effective Date.
3.	Developer’s preparation and submission of Developer Applications, including a complete application for a Site Development Permit (SDPA) or amended CUP, as applicable, which shall include: <ul style="list-style-type: none"> • Detailed Site Plans • Revised Site Plans • Lighting Plans (photometric) • “Conceptual” Landscaping Plans • Preliminary Grading Plans • “Conceptual” Floor Plans • “Conceptual” Elevations 	Prior to Effective Date or within a reasonable time thereafter.
4.	Review of Developer Applications by applicable City departments and provision of any comments to Developer.	Prior to Effective Date or within a reasonable time thereafter.
5.	Developer to revise and resubmit (as necessary to address City comments) Developer Applications.	Prior to Effective Date or within a reasonable time thereafter.
6.	Re-review of Developer Applications by applicable City departments and preparation of conditions of approval.	Prior to Effective Date or within a reasonable time thereafter.
7.	Planning Commission and City Council hearing and consideration of Developer Applications, if applicable.	Prior to Effective Date or within a reasonable time thereafter.
8.	Developer’s submission of application for building permits.	Within sixty (60) days of receipt of City Council approval of Developer Applications.
9.	Plan check review by applicable City departments and preparation of any corrections to Developer.	City will use reasonable efforts to cause such review, and to obtain and provide to Developer any corrections, within three (3) weeks of Developer’s submittal of items listed in No. 8 above.
10.	Developer to correct and resubmit (as necessary to address City comments) plans.	Within thirty (30) days of receipt of comments received in No. 9 above.

	Item of Performance	Time for Completion
11.	Plan check re-review by applicable City departments; Developer obtains issuance of building permits (if Developer is entitled to issuance).	City will use reasonable efforts to cause such re-review and the issuance of building permits (if Developer is entitled to issuance) within three (3) weeks of Developer's submittal of items listed in No. 10 above.
12.	Developer begins demolition portion of Project.	Within six (6) weeks of approval of building permits.
13.	Developer constructs Project improvements.	Within twelve (12) months of issuance of building permits, unless extended by the City Manager.
14.	Developer obtains certificate of occupancy for Project.	Upon completion of final inspection of the Project.
15.	City issues certificate of occupancy for Project.	Within two (2) days after City's final inspection of Project.

This Schedule of Performance represents the parties' target dates. However, subject to Section 2.4 of the Agreement, this Schedule of Performance may be adjusted by the City Manager so long as the Developer moves the Project forward and obtains a certificate of occupancy for the Project by no later than eighteen (18) months from the Effective Date. This Schedule of Performance does not include the time of performance for all obligations arising under the Agreement; rather this schedule focuses only on the development schedule of the Project. The parties are referred to the Agreement for the total description of the parties' obligations and times for performance of matters not identified in this Schedule. The Developer understands that obligations contained in the Agreement may be conditions precedent to the City's obligations under this schedule.

Nothing herein shall be construed to limit the City's legislative authority, which the City may exercise in the City's sole and absolute discretion. In all cases where a City action is required, the City shall use reasonable efforts to cause the City to take such action in the time prescribed herein.

ATTACHMENT "4"

RELEASE OF CONSTRUCTION COVENANTS

[See Following Document]

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

OWNER

Mailing address:

ADDRESS
ATTN:

[Space above for Recorder.]

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

RELEASE OF CONSTRUCTION COVENANTS

This RELEASE OF CONSTRUCTION COVENANTS (the "Release") is made by the CITY OF EL CAJON, a charter city and municipal corporation (the "City"), in favor of TIPTON ENTERPRISES, INC., a California corporation (the "Developer"), as of the date set forth below.

RECITALS

A. The City and the Developer have entered into that certain Owner Participation and Development Agreement (the "Agreement") dated _____, 2015 concerning the redevelopment of certain real property situated in the City of El Cajon, California, as more fully described in Exhibit "A" attached hereto and made a part hereof (the "Site").

B. As referenced in Section 2.8 of the Agreement, the City is authorized and required to furnish the Developer or its successors with a Release of Construction Covenants upon completion of construction of the "Project" (as defined in the Agreement), which Release is required to be in such form as to permit it to be recorded in the Recorder's office of San Diego County. This Release is conclusive determination of satisfactory completion of the construction and development of the Project.

C. The City has conclusively determined that construction and development of the Project has been satisfactorily completed.

NOW, THEREFORE, the City hereby certifies as follows:

1. The Project to be constructed by the Developer has been satisfactorily completed in accordance with the provisions of said Agreement.

2. This Release of Construction Covenants shall not constitute evidence of compliance with, or satisfaction of, any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the Project or any part thereof.

3. This Release of Construction Covenants is the release of construction covenants referred to in, and satisfies the requirements of, Section 2.8 of the Agreement for construction of the Project.

4. This Release of Construction Covenants is not a Notice of Completion as referred to in California Civil Code Section 3093.

5. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the Agreement or any other provisions of any other documents executed pursuant to the Agreement, all of which shall remain enforceable according to their terms of the documents incorporated therein.

BY WITNESS WHEREOF, the City and the Developer have signed this Release of Construction Covenants as of the respective dates set forth below.

“Developer”

TIPTON ENTERPRISES, INC., a California corporation

Date: _____, 2015

By: _____

Its: _____

“City”

CITY OF EL CAJON, a charter city and municipal corporation

Date: _____, 2015

By: _____

Douglas Williford, City Manager

ATTEST:

Belinda A. Hawley, CMC, City Clerk

APPROVED AS TO FORM:

Morgan L. Foley
City Attorney

ALL PURPOSE ACKNOWLEDGMENT

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

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

On _____, 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

(SEAL)

EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

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

ALL THAT PORTION OF TRACT 7 OF JAMES HILL ESTATE OF THAT PARTITION OF RANCHO EL CAJON, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THAT PARTITION MAP ON FILE IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOWS:

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ALSO EXCEPT THEREFROM ALL THAT PORTION OF TRACT 7 OF JAMES HILL ESTATE OF THAT PARTITION OF RANCHO EL CAJON, IN THE CITY OF EL CAJON, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SCHULENBERG TRACT AS SAME IS SHOWN ON MAP OF FLETCHER HILLS UNIT NO. 2, MAP NO. 2122, THENCE SOUTH 89° 58' 30" WEST ALONG THE NORTHERLY LINE OF SAID SCHULENBERG TRACT, A DISTANCE OF 75.00 FEET; THENCE SOUTH 0° 03' 52" EAST A DISTANCE OF 55.86 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1010.00 FEET; THENCE SOUTH SOUTHERLY ALONG THE ARC OF SAID

CURVE THROUGH A CENTRAL ANGLE OF 5° 26' 15" A DISTANCE OF 95.85 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 990.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 5° 37' 15" A DISTANCE OF 97.12 FEET (95 FEET, MORE OR LESS, PER DEED) TO A POINT OF CUSP WITH THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF JOHNSON AVENUE AS SAME IS SHOWN ON SAID MAP 2122, SAID POINT BEING THE NORTHERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 80-XI-SD-12-ECJ AND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED ON FEBRUARY 6, 1957, AS DOCUMENT NO. 18896 OF OFFICIAL RECORDS; THENCE ALONG NORTHERLY RIGHT OF WAY LINE SOUTH 72° 53' 30" WEST (SOUTH 72° 52' 40" WEST PER DEED) 288.19 FEET TO AN ANGLE POINT IN SAID NORTHERLY RIGHT OF WAY LINE; THENCE SOUTH 59° 00' 24" WEST (SOUTH 58° 59' 33" WEST PER DEED) 267.91 FEET AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 59° 00' 24" WEST 364.55 FEET TO A POINT ON THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 2525.00 FEET, A RADIAL TO SAID POINT HAVING A BEARING OF NORTH 34° 58' 44" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 0° 11' 57", A DISTANCE OF 8.78 FEET; THENCE LEAVING SAID CURVE NORTH 0° 05' 40" WEST A DISTANCE OF 18.31 FEET; THENCE NORTH 55° 33' 02" EAST A DISTANCE OF 387.62 FEET; THENCE SOUTH 0° 05' 40" EAST A DISTANCE OF 44.81 FEET TO THE TRUE POINT OF BEGINNING.

APN: **482-250-27**

ATTACHMENT “5”

CITY REIMBURSEMENT SCHEDULE

1. Reimbursement Payments. Starting in the first Operating Year, as defined below, following recordation of the Release of Construction Covenants as the term is defined in the Agreement, and each Operating Year thereafter for the Term of this Note, the City shall reimburse the Developer within sixty (60) days of the conclusion of the Operating Year in an amount equal to:

Sixty-five percent (65%) of the “Net Sales Taxes From the Site” generated on the Site during Operating Years 1 through 6, inclusive; and

Fifty percent (50%) of the “Net Sales Taxes From the Site” generated on the Site during Operating Years 7 through 12, inclusive.

The total amount of City Reimbursement shall not exceed the actual amount of Developer’s costs incurred to complete the Project, but in no event shall it exceed \$2,300,000.

As used herein, the term “Net Sales Taxes from the Site” shall mean the “Sales Taxes From the Site” in excess of \$342,000 in each Operating Year. Operating Year shall mean the first twelve full months following the recordation of the Release of Construction Covenants and each subsequent twelve full months the Operating Covenant is in place, as calculated by the State Board of Equalization.

a. As used herein, the term “Sales Taxes From the Site” means the amount equal to the sales and use taxes that are generated from sales occurring on the Site 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 Developer shall timely report, and shall cause its tenants (if any) to report all sales and use taxes from the Site to the State Board of Equalization in accordance with the laws, rules, and regulations applicable to such reporting.

(ii) Sales Taxes from the Site 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 Site against any other obligation of the City.

(iii) The Developer 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 Site 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 Site to the City. Any adjustments resulting from any interim or estimated determination of Sales Taxes From the Site 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 Taxes From the Site shall be determined based on actual amounts received by the City based only on the City's share of the State sales and use tax applicable to the Site (which, as of the Effective Date, is 1.0% of the taxable amount) within each Operating Year. Sales Taxes From the Site shall not include amounts paid to the City by the State Board of Equalization derived from any sales tax overrides or special tax amounts received by the City, nor shall include any administrative fees or charges imposed by the State Board of Equalization that reduce the actual amounts of sales and use taxes received by the City.

(v) The Developer 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 Site that is reportable for California sales and use tax purposes, including all documents required to be maintained by the State of California for sales and use tax purposes.

(vi) The Developer shall furnish, and shall cause its tenants (if any) to furnish, to City true and correct photocopies of its quarterly California sales and use tax returns at the time each is filed with the State of California, together with a copy of all checks or wire transfers or other forms of transfer of funds sent for such payment of sales and use taxes.

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.

3. Expiration of Reimbursement Obligation. If, after fifteen (15) years after the recordation of the Release of Construction Covenants, the cumulative applicable Net Sales Taxes From the Site has not fully reimbursed the Developer for its Eligible Rehabilitation Costs, the term of the Agreement notwithstanding, City's obligation to pay reimbursements to the Developer shall terminate and be of no further force or effect.

ATTACHMENT "6"
OPERATING COVENANT

[See Following Document]

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of El Cajon
200 Civic Center Way
El Cajon, CA 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 _____, 2015 (the “Effective Date”), by and between the **CITY OF EL CAJON**, a charter city and municipal corporation (the “City”), and **TIPTON ENTERPRISES, INC.** a California corporation (the “Developer”), with reference to the following:

A. The City and the Developer have executed an Owner Participation and Development Agreement (“Agreement”), dated as of _____, 2015, which provides, inter alia, for the redevelopment of that certain real property located in the City of El Cajon, County of San Diego, State of California, more fully described in Exhibit “A” attached hereto and incorporated herein by this reference (the “Land”), and Developer’s construction and redevelopment thereon of Tipton Honda (the “Project”). The Agreement is available for public inspection and copying at the office of the City Clerk, El Cajon City Hall, 200 Civic Center Way, El Cajon, CA 92020.

B. The Developer’s affiliate Tipton Motors, Inc. owns the Land, which interest shall hereafter be referred to as the “Property”.

C. Pursuant to the Agreement, the Developer has agreed to construct the Project on the Property, and the City has agreed to provide the Developer with certain financial incentives to reimburse the Developer for costs associated therewith.

D. The Agreement also provides for the recordation of this Operating Covenant against the Property to memorialize certain covenants, conditions, and restrictions regarding the use, maintenance, and operation of the Property by the Developer and the Developer’s successors and assigns.

E. The City has fee interests in parks, City Hall, and in various streets, sidewalks, and other property within the City (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. The Benefited Public Property is legally described in Exhibit “B” attached hereto and incorporated herein by this reference.

NOW, THEREFORE, Developer and Tipton Motors, Inc. hereby covenants, agrees, and declares by and for itself and its successors and assigns that the Property shall be held, sold,

conveyed, 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) Construction of Project. The Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to Developer's interest in the Property or any part thereof, that within the times set forth in the Schedule of Performance attached to the Agreement as Attachment 3 (the "Schedule of Performance"), Developer shall commence, diligently proceed with, and satisfactorily complete construction of the Project so as to entitle Developer to the City's issuance of a Release of Construction Covenants for the Project as provided for in Section 2.8 of the Agreement. The foregoing covenant shall be deemed satisfied and shall terminate upon the City's issuance of a Release of Construction Covenants.

(b) Operation of Project. For a term (the "Term") commencing upon the recordation of the Release of Construction Covenants and continuing until the fifteenth (15th) anniversary of the date of recording of the Release of Construction Covenants for the Project (the "Operating Covenant Termination Date"), the Developer hereby covenants and agrees to devote the Property for the exclusive purpose and use of development and operation of the Project and will comply with the other obligations contained herein. Notwithstanding anything herein to the contrary, the nondiscrimination covenants contained in subdivision (a) of Section 4 hereof shall run with the Property in perpetuity 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 consent may be granted or withheld in the City's sole and absolute discretion, the failure of the Developer (or its tenant) to operate any portion of the Project on the Property as required herein for thirty (30) or more consecutive days shall, at the City's option, constitute a default hereunder; provided, however, that the Developer shall for purposes of this Section 1 be deemed to be operating such portion of the Project during any period that the Developer is prevented from operating such portion due to: (i) required or necessary rehabilitation of such portion of the Project (provided that the period during which such portion of the Project is not operated as a result of the rehabilitation shall in no event exceed thirty (30) days), unless the rehabilitation cannot reasonably be completed within such thirty (30) day period, in which case the period may extend as necessary for completion, provided such rehabilitation was commenced within the thirty (30) 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 the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; or acts or failures to act 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 from the time of the commencement of the cause, if notice by the Developer is sent to the

other party within ten (10) days of the commencement of the cause, and (b) the Developer is not entitled pursuant to this Section 1 to an extension of time to perform because of past, present, or future difficulty in obtaining financing necessary to operate the Project because of economic or market conditions.

2. Performance of Maintenance.

(a) The Developer shall maintain the Project, the Property and all “improvements” (as defined hereinafter) thereon in accordance with the Maintenance Standards, as hereinafter defined. As used herein, the term “Improvements” shall mean and include, but not be limited to, buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping, architectural elements identifying the Property and any and all other improvements on the Property.

(b) To accomplish said maintenance, the Developer shall either use staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Operating Covenant.

(c) The following standards (“Maintenance Standards”) shall be complied with by the Developer and the Developer’s maintenance staff, contractors or subcontractors:

1. Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

2. Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

3. All maintenance work shall conform to all applicable federal and state Occupational Safety and Health Act standards and regulations for the performance of maintenance.

4. Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied in strict accordance with all governing regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.

5. The Project and Property shall be maintained in conformance and in compliance with the approved Property construction and architectural plans and design scheme, as the same may be amended from time to time with the approval of the City, and

reasonable commercial development maintenance standards for similar projects, including but not limited to: painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curblin and the repair and maintenance of all sidewalks, driveways, parking areas and all hard scape surfaces to keep these areas free from cracked and damaged surfaces.

3. Failure to Maintain Property.

In the event the Developer does not maintain the Property in the manner set forth herein and in accordance with the Maintenance Standards, the City shall have the right to maintain such private and/or public improvements, or to contract for the correction of such deficiencies, after written notice to the Developer. However, prior to taking any such action, the City agrees to notify the Developer in writing if the condition of the Project or Property does not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by the Developer to cure the deficiencies. Upon notification of any maintenance deficiency, the Developer 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, then the Developer shall have forty-eight (48) hours to rectify the problem.

In the event the Developer fails to correct, remedy, or cure (or for deficiencies which cannot reasonably be corrected, remedied, or cured within thirty (30) days has failed to commence correcting, remedying or curing such maintenance deficiency and diligently pursue such correction, remedy, or cure to completion) after notification and after the period of correction has lapsed, then the City shall have the right to maintain such improvements. The Developer agrees to pay the City such charges and costs. Until so paid, the City shall have a lien on the Property for the amount of such charges or costs, which lien shall be perfected by the recordation of a "Notice of Claim of Lien" against the Property. Upon recordation of a Notice of a Claim of Lien against the Property, such lien shall constitute a lien on the leasehold interest in the Property prior and superior to all other monetary liens except: (i) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto; (ii) the lien or charge of any mortgage, deed of trust, or other security interest then of record made in good faith and for value, it being understood that the priority of any such lien for costs incurred to comply with this Operating Covenant shall date from the date of the recordation of the Notice of Claim of Lien. The Developer shall be liable for any and all attorneys' fees, and other legal costs or fees incurred in collecting said maintenance costs.

4. Compliance with Law. The Developer shall comply with all local, state and federal laws relating to the uses of or condition of the Property and the Project. The operation of the Project shall be in compliance with the requirements of any entitlements issued by the City for the Project, including, as applicable, a conditional use permit, site development permit, and specific plan amendment.

(a) Nondiscrimination Covenants. The Developer covenants, by and for itself and any successors 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 the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the

Developer 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, lessees, subtenants, subleases or vendees of the Property. The foregoing covenants shall run with the land.

The Developer shall refrain from restricting the rental, sale or lease of the Property any portion thereof on the basis of race, color, religion, sex, sexual preference, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(1) In deeds: “The grantee herein covenants, by and for himself or herself, his or her 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 the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

(2) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“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 the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(3) In contracts: “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 sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises.”

(b) No Violation of Statutes Relating to Direct Assistance by City. The Developer represents and warrants that it is using the City financial assistance for the sole and exclusive purpose of causing the construction of the Project on the Property and for no other purpose. The Developer 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 such violation arising out of actions by the Developer.

5. Sales and Use Tax Covenant. From the date this Operating Covenant is recorded against the Property until the Operating Covenant Termination Date, the Developer shall designate the Property as the point of sale for sales tax purposes for all goods and services sold or leased on the Property, whose sales and leases originate from the Property.

6. Covenant to Pay Taxes and Assessments. From the date this Operating Covenant is recorded against the Property until the Operating Covenant Termination Date, the Developer 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 Developer's right to contest any such tax or assessment in good faith. During such period, the Developer 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 a sale of the Property.

7. Defaults.

(a) Failure or delay by either party to perform any term or provision of this Operating Covenant 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 the Agreement, the claimant shall not institute proceedings against the other party if the other party, within thirty (30) days from 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 the notice and cure provisions in Section 7 above, 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 or equitable remedy consistent with the purpose of this Operating Covenant. The City shall also have the right to pursue damages for the Developer's defaults, but in no event shall the Developer be entitled to damages of any kind from City, 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 Central District of California. 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 attorney's fees and costs and such other costs incurred in investigating the action and prosecuting the same, including costs for expert witnesses, costs on appeal, and for discovery.

(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 Developer against the City, service of process on the City shall be made by personal service upon the City Manager 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 Developer, service of process on the Developer shall be made by personal service upon any officer or director of the Developer, 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 this Operating Covenant, the rights and remedies of the parties are cumulative, and the exercise by either party of 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. This Operating Covenant and the covenants shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Property. 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, Section 1462, 1465 and 1468 of the Civil Code of the State of California, all provisions of this Covenant Agreement 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. Miscellaneous Provisions.

(a) If any provision of this Operating Covenant or portion thereof, or the application to any person or circumstances, 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 other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for 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 Developer but any Transfer shall be subject to the requirements and provisions of Section 7 of the Agreement.

(d) The City of El Cajon is a third party beneficiary of the terms of this Operating Covenant, and shall have the right, but not the obligation, to enforce the terms hereof.

11. 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; (iii) via facsimile, so long as the sender receives confirmation of successful transmission from the sending machine; or (iv) three (3) business days after deposit in the United States mail, registered or certified, postage fully prepaid 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, CA 92020
Phone No.: 619-441-1716
Attention: City Manager

With a copy to: El Cajon City Attorney
200 Civic Center Way
El Cajon, CA 92020
Phone No.: 619-441-1798
Attention: Morgan Foley, Esq.

To Developer: Tipton Enterprises, Inc.
889 Arnele Avenue
El Cajon, CA 92020
Phone No. (619) 440-1000
Attention: Kathie Stedham

To Fee Owner: Tipton Motors, Inc.
889 Arnele Avenue
El Cajon, CA 92020
Phone No. (619) 440-1000
Attention: Kathie Stedham

With a copy to: Jason P. Saccuzzo, Esq.
Vivoli Saccuzzo, LLP
2550 5th Avenue, Suite 709
San Diego, CA 92103
Phone No.: 619-744-9992

IN WITNESS WHEREOF, the parties hereto has executed this instrument the day and year first hereinabove written.

“Developer”

TIPTON ENTERPRISES, INC., a California corporation

Date: _____, 2015

By: _____
Its: _____

“Fee Owner”

TIPTON MOTORS, INC., a California corporation

Date: _____, 2015

By: _____
Its: _____

“City”

CITY OF ELCAJON, a charter city and
municipal corporation

Date: _____, 2015

By: _____
Douglas Williford, City Manager

ATTEST:

Belinda A. Hawley, CMC, City Clerk

APPROVED AS TO FORM:

Morgan L. Foley
City Attorney

ALL PURPOSE ACKNOWLEDGMENT

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

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

On _____, 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

(SEAL)

ALL PURPOSE ACKNOWLEDGMENT

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

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

On _____, 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

(SEAL)

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

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

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

ALL THAT PORTION OF TRACT 7 OF JAMES HILL ESTATE OF THAT PARTITION OF RANCHO EL CAJON, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THAT PARTITION MAP ON FILE IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SCHULENBERG TRACT AS SAME IS SHOWN ON MAP OF FLETCHER HILLS UNIT NO. 2, MAP NO. 2122; THENCE SOUTH 89° 58' 30" WEST ALONG THE NORTHERLY LINE OF SAID SCHULENBERG TRACT, A DISTANCE OF 75 FEET; THENCE SOUTH 0° 03' 52" EAST, A DISTANCE OF 55.86 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1010 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 5° 26' 15" A DISTANCE OF 95.85 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 990 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 4° 59' 26" A DISTANCE OF 86.23 FEET (95 FEET, MORE OR LESS, PER DEED) TO A POINT OF CUSP WITH THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF JOHNSON AVENUE AS SAME IS SHOWN ON SAID MAP 2122, SAID POINT BEING ON THE NORTHERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 80-XI-SD-12-ECJ AND DESCRIBED IN DEED RECORDED TO THE STATE OF CALIFORNIA ON FEBRUARY 6, 1957, AS DOCUMENT NO. 18896 OF OFFICIAL RECORDS THENCE ALONG SAID NORTHERLY LINE, SOUTH 72° 53' 30" WEST (SOUTH 72° 52' 40" WEST PER DEED) 288.19 FEET TO AN ANGLE POINT IN SAID NORTHERLY LINE; THENCE SOUTH 59° 00' 24" WEST (SOUTH 58° 59' 33" WEST PER DEED) 267.91 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHERLY RIGHT OF WAY LINE, SOUTH 59° 00' 24" WEST 364.55 FEET TO A POINT ON THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 2525 FEET, A RADIAL TO SAID POINT HAVING A BEARING OF NORTH 34° 58' 44" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0° 11' 57" A DISTANCE OF 8.78 FEET TO A POINT ON SAID CURVE, THE RADIAL TO WHICH HAS A BEARING OF NORTH 35° 10' 41" WEST; THENCE LEAVING SAID CURVE AND NORTHERLY RIGHT OF WAY LINE, NORTH 0° 05' 40" WEST A DISTANCE OF 633.88 FEET TO A POINT ON A LINE WHICH IS PARALLEL WITH AND 30 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES FROM SAID NORTHERLY LINE OF SCHULENBERG TRACT; THENCE NORTH 89° 58' 30" EAST ALONG SAID PARALLEL LINE 320.00 FEET TO A POINT WHICH BEARS NORTH 0° 05' 40" WEST, 440.68 FEET FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 0° 05' 40" EAST, A DISTANCE OF 440.68 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM THE INTEREST CONVEYED TO THE CITY OF EL CAJON, FOR STREET PURPOSES BY DEED RECORDED APRIL 2, 1973, FILE NO. 73-085565 OF OFFICIAL RECORDS IN AND TO THE NORTHERLY 5 FEET THEREOF.

ALSO EXCEPT THEREFROM ALL THAT PORTION OF TRACT 7 OF JAMES HILL ESTATE OF THAT PARTITION OF RANCHO EL CAJON, IN THE CITY OF EL CAJON, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SCHULENBERG TRACT AS SAME IS SHOWN ON MAP OF FLETCHER HILLS UNIT NO. 2, MAP NO. 2122, THENCE SOUTH 89° 58' 30" WEST ALONG THE NORTHERLY LINE OF SAID SCHULENBERG TRACT, A DISTANCE OF 75.00 FEET; THENCE SOUTH 0° 03' 52" EAST A DISTANCE OF 55.86 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1010.00 FEET; THENCE SOUTH SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 5° 26' 15" A DISTANCE OF 95.85 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 990.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 5° 37' 15" A DISTANCE OF 97.12 FEET (95 FEET, MORE OR LESS, PER DEED) TO A POINT OF CUSP WITH THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF JOHNSON AVENUE AS SAME IS SHOWN ON SAID MAP 2122, SAID POINT BEING THE NORTHERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 80-XI-SD-12-ECJ AND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED ON FEBRUARY 6, 1957, AS DOCUMENT NO. 18896 OF OFFICIAL RECORDS; THENCE ALONG NORTHERLY RIGHT OF WAY LINE SOUTH 72° 53' 30" WEST (SOUTH 72° 52' 40" WEST PER DEED) 288.19 FEET TO AN ANGLE POINT IN SAID NORTHERLY RIGHT OF WAY LINE; THENCE SOUTH 59° 00' 24" WEST (SOUTH 58° 59' 33" WEST PER DEED) 267.91 FEET AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 59° 00' 24" WEST 364.55 FEET TO A POINT ON THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 2525.00 FEET, A RADIAL TO SAID POINT HAVING A BEARING OF NORTH 34° 58' 44" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 0° 11' 57", A DISTANCE OF 8.78 FEET; THENCE LEAVING SAID CURVE NORTH 0° 05' 40" WEST A DISTANCE OF 18.31 FEET; THENCE NORTH 55° 33' 02" EAST A DISTANCE OF 387.62 FEET; THENCE SOUTH 0° 05' 40" EAST A DISTANCE OF 44.81 FEET TO THE TRUE POINT OF BEGINNING.

APN: **482-250-27**

EXHIBIT “B”

DESCRIPTION OF BENEFITED 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

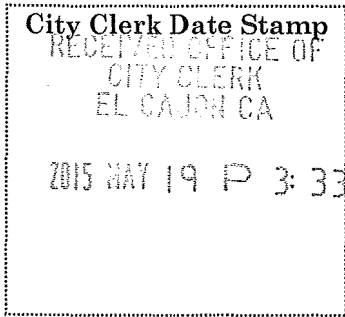
Renette Center and Park, 935 South Emerald Avenue
APN: 492-320-01 & 492-320-02

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

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LIST OF ATTACHMENTS

ATTACHMENT "1"	Legal Description of Site
ATTACHMENT "2"	Scope of Development
ATTACHMENT "3"	Schedule of Performance
ATTACHMENT "4"	Release of Construction Covenants
ATTACHMENT "5"	City Reimbursement Schedule
ATTACHMENT "6"	Operating Covenant



City of El Cajon Agenda Report

MEETING: May 26, 2015

ITEM NO: 4.2



TO: Mayor Bill Wells, Mayor Pro Tem McClellan and Councilmembers Ambrose, Bales, Kendrick

FROM: Brett Channing, Assistant to the City Manager

SUBJECT: MTS Board Request for Taxicab Drivers

RECOMMENDATION: That the City Council direct Mayor Pro Tem Bob McClellan to address the Metropolitan Transit System (MTS) Board with the request that the taxicab drivers with a permit to operate within El Cajon (1) be allowed to fulfill round trips between El Cajon and San Diego and (2) be given first priority when applying for the newly opened San Diego taxicab permit.

BACKGROUND: El Cajon contracts with MTS to license and regulate its taxicab vehicles within the City. Other Cities, such as Imperial Beach, La Mesa, Lemon Grove, Poway, and Santee also contract with MTS for this service.

The license and regulations that MTS oversees is exactly the same for every city mentioned. This means that taxicab drivers can pick up and drop off clients within any of those cities.

The City of San Diego also contracts with MTS for taxicab licensing and administration. But, San Diego has its own permit, with separate rules and regulations that only apply to taxicabs operating within the City of San Diego. As a result, those with a permit to operate taxicabs within El Cajon can not operate within the City of San Diego unless the driver has a City of San Diego permit. Taxicab drivers with an El Cajon permit can drop off clients within San Diego, but they can not pick up anyone. Just recently, the City of San Diego agreed to accept new San Diego taxicab permits for the first time in many years.

A few months ago, a representative from the taxicab drivers that operate within El Cajon came to the City Council with a few requests to assist them with issues they have with the MTS policies regarding the City of San Diego's Medallion Permit. The City Council asked staff to meet with this representative and his colleagues to decipher the issue and come back to the City Council with a recommendation.


Since then, staff has met with the taxi cab representatives a few times to discuss their issues and has also had many conversations with the MTS Manager. As a result, it is the recommendation of Staff that the City Council direct Mayor Pro Tem Bob McClellan, the

Council's liaison with MTS, to make the following requests to the MTS Board on behalf of the taxicab drivers with El Cajon permits:

1. Taxicab drivers with an El Cajon permit be allowed to perform round-trip jobs between the City of El Cajon and the City of San Diego, even if the driver does not have a City of San Diego permit. This would allow a taxicab driver to pick up a client in El Cajon, drop off the client in San Diego, and then pick up that client later in the day to be brought back to El Cajon.
2. Taxicab drivers with an El Cajon permit and a history of complete compliance to all the rules and regulations be given first priority in the application process for the newly available City of San Diego permit.


FINANCIAL IMPACT: None.

PREPARED BY:

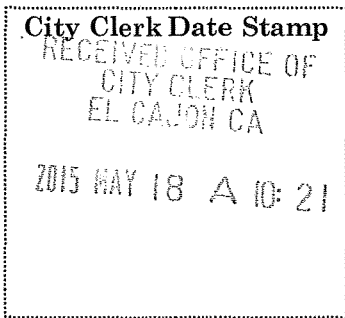


Brett Channing
Assistant to the City Manager

APPROVED BY:



Douglas Williford
City Manager



City of El Cajon Agenda Report

MEETING: 5/26/15

ITEM NO: 6.1



TO: Mayor Pro Tem McClellan
Councilmembers Ambrose, Bales, Kendrick
FROM: Mayor Wells

SUBJECT: Council Activities Report

RECOMMENDATION: That the City Council accept and file the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

REPORT:

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

- May 14, 2015 - Interviews w/ KSON, KGB, KUSI, Channel 7-39
- May 15, 2015 - Interview w/ KOGO
- May 16, 2015 - America on Main Street
- May 18, 2015 - County Sheriff's Department RAN Meeting
- May 22, 2015 - SANDAG Meeting
- May 26, 2015 - City Council Meeting at 3:00 p.m.

I will be happy to answer any questions you may have.

SUBMITTED BY,

Bill Wells

Bill Wells
Mayor

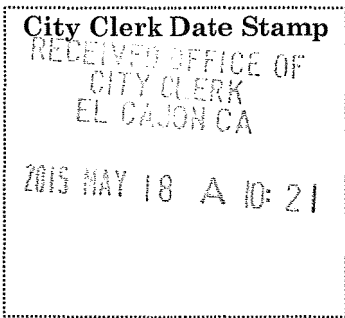


LEGISLATIVE REPORT 2015-2016



6.2

BILL	NO.	SPONSOR	SUBJECT	COUNCIL DATE	POSITION	COMMITTEE	BILL STATUS / LAST ACTION DATE
AB	2	Alejo	Community Revitalization Authority (Amended: 3/26/15)	1/27/2015	"Watch"	Assembly	5/11/2015-In Senate. Read first time. To Com. on RLS. for assignment.
AB	35	Chiu/Atkins	Affordable Housing Income taxes: credits: low-income housing: allocation increase. (Amended: 4/16/2015)	4/28/2015	"Watch"	Assembly	5/19/2015-From committee: Amend, and do pass as amended and re-refer to Com. on APPR.
AB	266	Cooley	Medical marijuana. (Amended: 4/14/2015)	4/28/2015	"Watch"	Assembly	5/12/2015-Re-referred to Com. on APPR.
AB	278	Hernandez	District-based municipal elections. (Amended: 4/13/2015)	4/28/2015	"Watch"	Assembly	5/13/2015-In committee: Set, first hearing. Referred to APPR. suspense file.
AB	1335	Atkins	Building Homes and Jobs Act (Amended: 4/30/2015)	4/28/2015	"Watch"	Assembly	5/18/2015-Re-referred to Com. on APPR.
SB	493	Cannella	Elections in cities: by or from districts. (Amended: 4/20/2015)	4/28/2015	"Watch"	Assembly	5/18/2015-In Assembly. Read first time. Held at Desk.



City of El Cajon Agenda Report

MEETING: 5/26/15

ITEM NO: 7.1



TO: Mayor Wells, Mayor Pro Tem McClellan
Councilmembers Ambrose, Bales
FROM: Councilmember Kendrick

SUBJECT: Council Activities Report

RECOMMENDATION: That the City Council accept and file the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

REPORT:

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

- May 15, 2015 - Meeting w/ City Manager
- May 16, 2015 - America on Main Street
- May 26, 2015 - City Council Meeting at 3:00 p.m.

I will be happy to answer any questions you may have.

SUBMITTED BY,

Gary Kendrick
Gary Kendrick
Councilmember

City Clerk Date Stamp

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City of El Cajon Agenda Report

MEETING: 5/26/15

ITEM NO: 8.1



TO: Mayor Wells, Mayor Pro Tem McClellan
Councilmembers Bales, Kendrick

FROM: Councilmember Ambrose

SUBJECT: Council Activities Report

RECOMMENDATION: That the City Council accept and file the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

REPORT:

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

May 15, 2015 - Meeting with City Manager
May 16, 2015 - America on Main Street
May 19, 2015 - ECEDC Gillespie Field Committee
May 19, 2015 - Meeting with Dr. Barka re: Incubator Project
May 20, 2015 - ECEDC Board Meeting
May 20, 2015 - Meeting with Assemblyman Brian Jones
May 26, 2015 - Council Meeting 3:00 p.m.

I will be happy to answer any questions you may have.

SUBMITTED BY,

Tony Ambrose

Tony Ambrose
Councilmember

TA

MEETING: 5/26/15

ITEM NO: 9.1

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City of El Cajon Agenda Report



TO: Mayor Wells, Councilmembers Ambrose,
Bales, Kendrick
FROM: Mayor Pro Tem McClellan

SUBJECT: Council Activities Report

RECOMMENDATION: That the City Council accept and file the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

REPORT:

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

- May 11, 2015 - Eldorado Health Care – Nursing Home Week Proclamation
- May 14, 2015 - MTS Finance Workshop
- May 16, 2015 - America on Main Street
- May 26, 2015 - City Council Meeting at 3:00 p.m.

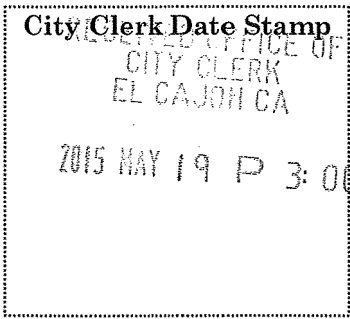
I will be happy to answer any questions you may have.

SUBMITTED BY,



Bob McClellan
Mayor Pro Tem





City of El Cajon Agenda Report

MEETING: 5/26/15

ITEM NO: 10.1



TO: Mayor Wells, Mayor Pro Tem McClellan
Councilmembers Ambrose, Kendrick
FROM: Councilmember Bales

SUBJECT: Council Activities Report

RECOMMENDATION: That the City Council accept and file the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.


REPORT:

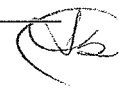
Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

May 8, 2015 -	Plato's Closet Ribbon Cutting
May 14, 2015 -	Meeting w/ City Manager
May 16, 2015 -	America on Main Street
May 19, 2015 -	Meeting w/ Officer Louie Michael
May 21, 2015 -	Attention Getters Ribbon Cutting
May 23, 2015 -	12 th Annual Lebanese Festival
May 25, 2015 -	Meeting w/ City Manager
May 26, 2015 -	City Council Meeting at 3:00 pm.

I will be happy to answer any questions you may have.

SUBMITTED BY,



Star Bales
Councilmember 

City Clerk Date Stamp

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City of El Cajon Agenda Report

MEETING: May 26, 2015

ITEM NO: 13.1



TO: Mayor Wells, Mayor Pro Tem McClellan
Councilmembers Ambrose, Bales, Kendrick

FROM: Rick Sitta, Fire Chief
Christopher P. Jensen, Fire Marshal

SUBJECT: Introducing Chapter 15.86 Designating Fire Hazard Severity Zones & Wildland Urban Interface Areas

RECOMMENDATION: That the City Council consider approving the attached ordinance adding Chapter 15.86 to the El Cajon Municipal Code designating fire hazard severity zones and wildland urban interface areas as designated on the map titled "El Cajon Fire Hazard Severity Zones," dated January 27, 2009.

BACKGROUND: In October 2007, the City Council adopted Ordinance No. 4897, which added Chapter 15.86 adopting the International Wildland Urban Interface Code. In March 2009, the City Council adopted Ordinance No. 4927, which added Chapter 15.86.060 designating the fire hazard severity zones and wildland urban interface areas within the City, pursuant to Government Code Section 51179. In December 2010, the City Council adopted Ordinance No. 4963, repealing Chapter 15.86 in its entirety which was intended to repeal only the Wildland Urban Interface Code found in Chapter 15.86, but inadvertently repealed the fire hazard severity zones and wildland urban interface areas which were included in this chapter as 15.86.060.

The designation of the fire hazard severity zones and wildland urban interface areas were studied by Cal-Fire in early 2000 based on topography, fuel types, consistency of fuels, weather conditions, proximity to the built environment, as well as fire history. Cal-Fire determined that the City of El Cajon had specific areas of the City that they recommended be designated as fire hazard severity zones and wildland urban interface areas by ordinance, which was achieved in March 2009. The purpose for these designations was to increase life safety and reduce the potential for structure ignitability by reducing fuels (defensible space) and improving construction features that would prevent ignition and ember intrusion, thereby reducing the threat of life or structure loss during a wild fire event.

This Ordinance, introducing Chapter 15.86, is before the City Council only to restore the work the City Council did in Ordinance No. 4927, which designated the fire hazard severity zones and wildland urban interface areas, as identified on the map titled "El Cajon Fire Hazard Severity Zones" and dated January 27, 2009.

FISCAL IMPACT: There is no fiscal impact identified


PREPARED BY:


Christopher P. Jensen
FIRE MARSHAL

REVIEWED BY:


Rick Sitta
FIRE CHIEF

APPROVED BY:


Douglas Williford
CITY MANAGER

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF EL CAJON ADDING
A NEW CHAPTER 15.86 TO THE
EL CAJON MUNICIPAL CODE, DESIGNATING
VERY HIGH FIRE HAZARD SEVERITY ZONES
AND WILDLAND URBAN INTERFACE AREAS
WITHIN ITS JURISDICTIONAL BOUNDARIES

WHEREAS the International Wildland Urban Interface Code, now Chapter 7A of the California Building Code, has been adopted by reference as the urban interface code of the City of El Cajon; and

WHEREAS the City desires to establish the minimum requirements for the protection of life, limb, health, property, safety and welfare of the general public, and the owners and occupants of structures in the City, and maintenance of all buildings and structures within the City, and incidental matters relating thereto; and

WHEREAS it is necessary that the City designate Very High Fire Hazard Severity Zones and Wildland Urban Interface Areas within its jurisdictional boundaries because of the threat of catastrophic wildfires based on the topography of valleys and drainages combined with steep grades and hillsides that have the consistency of extremely flammable vegetation that creates hazardous fire conditions based on the close proximity to structures; and the climatic conditions of hot temperatures, low humidity and winds that the City of El Cajon experiences.

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

SECTION 1. Chapter 15.86 is hereby added to the El Cajon Municipal Code to read as follows:

15.86.010. Designation of Very High Fire Hazard Severity Zones in Local Responsibility Areas.

The City of El Cajon hereby designates Very High Fire Hazard Severity Zones and Wildland Urban Interface Areas within its jurisdictional boundaries pursuant to California Government Code Section 51179. The Very High Fire Hazard Severity Zones and Wildland Urban Interface Areas designated by this ordinance are designated on a map titled El Cajon Fire Hazard Severity Zones, dated January 27, 2009, and retained on file at the Fire Department Administrative Office and the Building and Fire Safety Division in El Cajon City Hall. This map is intended to supersede other maps previously adopted by the City of El Cajon designating high fire hazard areas.

(Continued on Page 2)

SECTION 2. Pursuant to California Government Code Section 51179(g), the City of El Cajon shall post a notice at the offices of the county recorder, county assessor, and county planning agency identifying the Fire Department Administrative Office and the Building and Fire Safety Division in El Cajon City Hall as the location of the map entitled El Cajon Fire Hazard Severity Zones. If the City of El Cajon amends the map, the notice shall instead identify the location of the amended map.

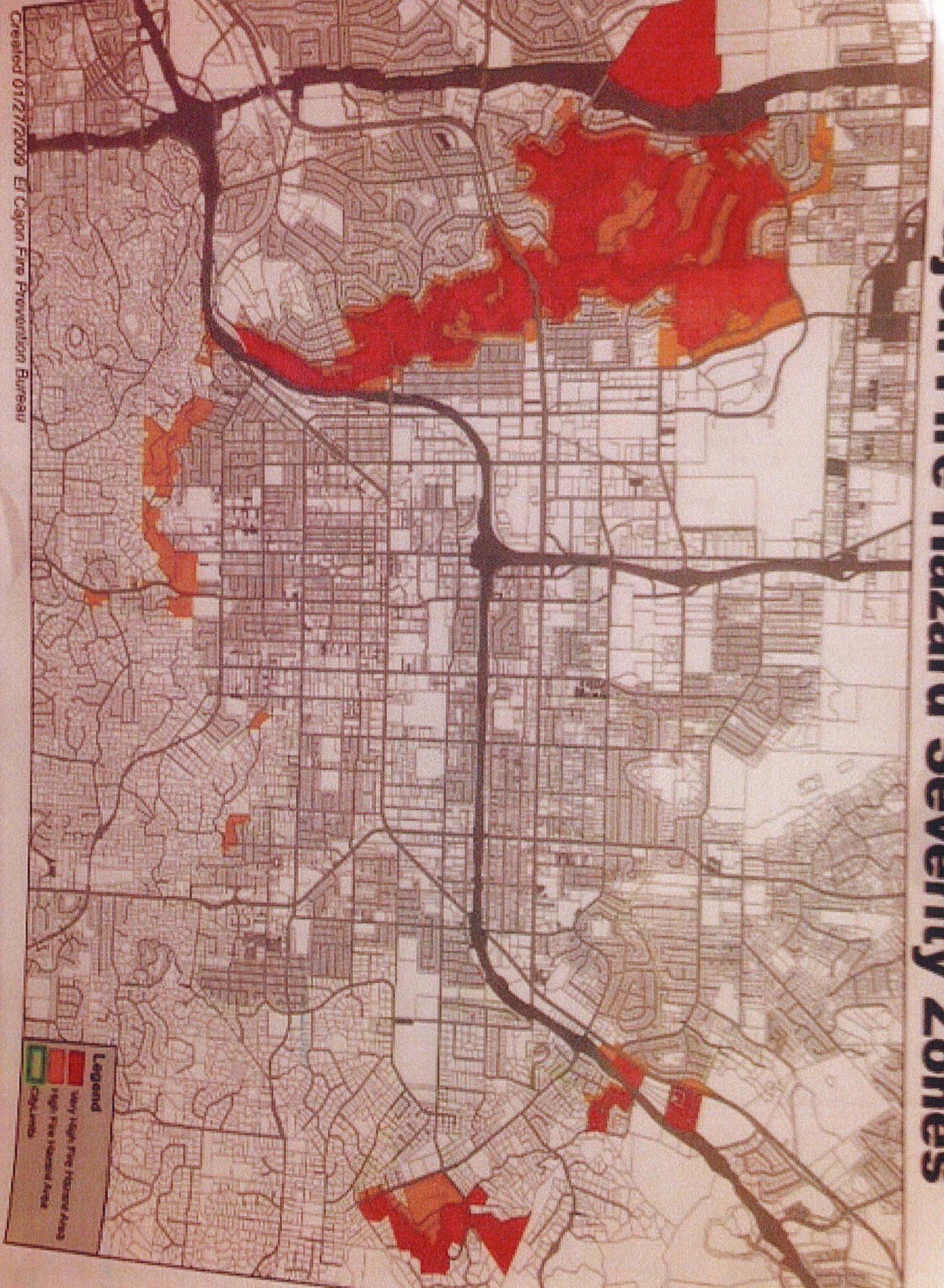
SECTION 3. This ordinance shall be effective thirty days following its passage and adoption.

Adopt Chapter 15.86 Designate VHFHSZ & Wildland Urban Interface Areas

05/26/15 (Item No. 13.1) – 1st Reading

06/09/15 (Item No. 14.1) – 2nd Reading

El Cajon Fire Hazard Severity Zones



Created 01/27/2009 El Cajon Fire Prevention Bureau

ORDINANCE NO. ____

AN ORDINANCE REPEALING CHAPTER 13.10 OF TITLE 13 AND
 ADDING A NEW CHAPTER 13.10 TO TITLE 13 OF THE
 EL CAJON MUNICIPAL CODE ESTABLISHING REGULATIONS FOR
STORM WATER MANAGEMENT AND DISCHARGE CONTROL

WHEREAS, the 1987 amendments to the Federal Clean Water Act, as implemented by the United States Environmental Protection Agency regulations adopted November 16, 1990, make necessary the adoption of plans and programs for storm water management that meet specified criteria; and

WHEREAS, section 402 (p) of the Clean Water Act (33 U.S.C. 1251 et seq.), as amended by the Water Quality Act of 1987, requires that all large and medium-sized incorporated municipalities must:

"effectively" prohibit non-storm water discharges into the storm water conveyance system; and reduce the discharge of pollutants from storm water conveyance systems to waters of the United States to the maximum extent practicable (MEP); and

WHEREAS, the State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Board for the San Diego region (RWQCB), have determined that in order to protect the waters of the United States, all jurisdictions, regardless of population, must comply with all the federal regulations; and

WHEREAS, on February 21, 2001, the San Diego RWQCB, issued Order No. 2001-01, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0108758 regulating storm water discharges by the City of El Cajon and 19 other municipal co-permittees; and

WHEREAS, on January 24, 2007, the RWQCB issued Order No. R9-2007-0001, NPDES Permit No. CAS0108758, which renewed Order No. 2001-01, regulating storm water discharges by the City of El Cajon and 20 other municipal co-permittees, and adding or modifying discharge requirements for urban runoff to the MEP standard; and

WHEREAS, on May 8, 2013, the RWQCB issued Order No. R9-2013-0001, NPDES Permit No. CAS0109266, which replaces Order No. R9-2007-0001, regulating storm water discharges by the City of El Cajon and 20 other municipal co-permittees, and adding or modifying discharge requirements for storm water discharges to the MEP standard; and

WHEREAS, in order to implement the federal regulatory requirements and RWQCB Order No. R9-2013-0001 described as above, the City of El Cajon must execute the Order, effective June 27, 2015, and

WHEREAS, this Ordinance has been duly processed with proper public notice; and

WHEREAS, the City of El Cajon has conducted legally noticed public hearings and has provided all interested parties an opportunity to be heard on the issues; and

(Continued on Page 2)

WHEREAS, the City of El Cajon has carefully considered the following proposed Storm Water Management and Discharge Control Ordinance and finds that its adoption is required by RWQCB Order No. R9-2013-0001 (MS4 Permit); that said Ordinance is enacted pursuant to the city's police power in accordance with California Constitution Article XI, section 7; that said Ordinance is consistent with the City of El Cajon's General Plan; that said Ordinance provides for the protection of water resources within the City of El Cajon and the protection of health, safety, and general welfare of its citizens.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CAJON DOES ORDAIN AS FOLLOWS:

SECTION 1: The City of El Cajon finds that the adoption of this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061 (b) (3), General Rule, as follows: "The activity is covered by the General Rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have an effect on the environment, the activity is not subject to CEQA."

SECTION 2: Chapter 13.10 of Title 13 of the El Cajon Municipal Code is hereby repealed in its entirety.

SECTION 3: Chapter 13.10 of Title 13 of the El Cajon Municipal Code, consisting of sections 13.10.010 through 13.10.190, inclusive, is hereby added to read as follows:

13.10.010. Title.

This chapter shall be known as the "Storm Water Management and Discharge Control Ordinance."

13.10.020. Purpose and intent.

The purposes of this chapter are to protect the health, safety and general welfare of City of El Cajon residents; to protect water resources and to improve water quality; to cause the use of management practices by the city and its citizens that will reduce the adverse effects of polluted runoff discharges on waters of the state; to secure benefits from the use of storm water as a resource; and to ensure that the city is compliant with the MS4 Permit (as defined in section 13.10.030), as may be amended, and with applicable state and federal law. This chapter seeks to promote these purposes by:

- A. Prohibiting polluted non-storm water discharges to the storm water conveyance system;
- B. Establishing minimum requirements for storm water management, including source control requirements, to prevent and reduce pollution;
- C. Establishing requirements for development project site design, to reduce storm water pollution and erosion;

- D. Establishing requirements for the management of storm water flows from development projects, both to prevent erosion and to protect and enhance existing water-dependent habitats;
- E. Establishing standards for the use of off-site facilities for storm water management to supplement on-site practices at new development sites; and
- F. Establishing notice procedures and standards for adjusting storm water and non-storm water management requirements where necessary.

13.10.030. Definitions.

The following definitions shall be applicable when the following words or phrases are used hereafter in this chapter, including use in the City of El Cajon's Jurisdictional Runoff Management Program (JRMP) document, whether or not these words or phrases are capitalized.

"Attached residential development" means any development that provides 10 or more residential units that share an interior/exterior wall. This category includes, but is not limited to: dormitories, condominiums and apartments.

"Authorized enforcement official" means the city manager or the city council of the city of El Cajon or any designee of the city manager or the city council of the city of El Cajon, who is responsible for enforcing the provisions of this chapter, including but not limited to, the directors, their management staff, and designees.

"Authorized enforcement staff" means any city employee who is assigned to duties involving permits and other city approvals, inspections, or enforcement related to this chapter.

"Automotive repair shop" means a facility that is categorized in any one of the following standard industrial classification codes: 5013, 5014, 5541, 7532-7534, or 7536-7539.

"Best management practices" or **"BMPs"** defined by 40 CFR 122.2 means schedules of activities, pollution treatment practices or devices, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices or devices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or the storm water conveyance system. Best management practices also include, but are not limited to, treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage. Best management practices may include any type of pollution prevention and pollution control measure, approved by the city and consistent with the MS4 Permit that can help to achieve compliance with this chapter.

"Biofiltration" means practices that use vegetation and amended soils to detail and treat runoff from impervious surfaces. Treatment is through filtration, infiltration, adsorption, ion exchange, and biological uptake of pollutants.

"Channel" means a natural or improved watercourse with a definite bed and banks that conducts flowing water either continuously or intermittently.

"City" means the city of El Cajon.

"**Clean Water Act section 303(d) impaired water body**" means an impaired water body in which water quality does not meet applicable water quality standards and/or is not expected to meet water quality standards, even after the application of technology based pollution controls required by the Clean Water Act. The discharge of runoff to these water bodies by the co-permittees is significant because these discharges can cause or contribute to violations of applicable water quality standards.

"**Code**" means the El Cajon Municipal Code and each and every title, chapter, and section contained therein.

"**Co-permittee**" is defined at 40 CFR 122.26(b)(1), and means a permittee to an NPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

"**Commercial development**" means any development on private land that is not exclusively heavy industrial or residential uses. The category includes, but is not limited to: mini-malls and other business complexes, shopping malls, hotels, office buildings, public warehouses, hospitals, laboratories and other medical facilities, educational institutions, recreational facilities, plant nurseries, car wash facilities, automotive dealerships, commercial airfields, and other light industrial complexes.

"**Commercial, industrial, residential, mixed-use development greater than one (1) acre**" means any commercial, industrial, residential, or mixed-use development that results in the disturbance of one (1) acre or more in land.

"**Construction site**" means any project, including projects requiring coverage under the state general construction storm water permit, that involves soil disturbing activities including, but not limited to, clearing, grading, disturbances to ground such as stockpiling, and excavation.

"**Contamination**" as defined in section 13050 of the Porter-Cologne Water Quality Control Act is "an impairment of the quality of waters of the State by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. Contamination includes any equivalent effect resulting from the disposal of waste whether or not waters of the State are affected." In the event section 13050 of the Porter-Cologne Water Quality Act is amended or superseded, the amended or superseding section shall define "contamination"

"**Constructed wetland**" means a vegetated area that has been deliberately modified to provide or enhance habitat, to provide water quality benefits, or to moderate water flow rates or velocities, that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

"**County**" means the County of San Diego.

"**Detached residential development**" means any development that provides ten (10) or more freestanding residential units. This category includes, but is not limited to: detached homes, such as single-family homes and detached condominium.

"Developer" or **"development project proponent"** means a person who seeks or receives permits for, or who undertakes, land development activity.

"Development projects" means the construction, rehabilitation, redevelopment or reconstruction of any public or private projects.

"Directly connected impervious area" or **"DCIA"** means the area covered by a building, impermeable pavement, and/ or other impervious surfaces, which drains directly into the storm drain without first flowing across permeable vegetated land area (e.g., lawns).

"Directors" means the directors or director of the Building Department, Community Development Department and the Public Works Department.

"Discharge," when used as a verb, means to allow pollutants to directly or indirectly enter storm water, or to allow storm water or non-storm water to directly or indirectly enter the storm water conveyance system or receiving waters, from an activity or operations which one owns or operates. When used as a noun, "discharge" means the pollutants, storm water, and/or non-storm water that are discharged.

"Discharger" means any person or entity engaged in activities or operations or owning facilities, which will or may result in pollutants entering storm water, the storm water conveyance system, or receiving waters; and the owners of real property on which such activities, operations or facilities are located; provided however that a local government or public authority is not a discharger as to activities conducted by others in public rights-of-way.

"Discharges directly to" means that storm water or non-storm water enters receiving waters from a facility or activity, without mixing with any storm water or non-storm water from another facility or activity prior to entering such receiving waters.

"Drainage easement" means a legal right granted by a landowner to a grantee allowing the use of private land for storm water management purposes.

"Environmentally sensitive areas" means areas that include, but are not limited to, all Clean Water Act section 303(d) impaired water bodies; areas designated as an Area of Special Biological Significance by the SWRCB and the RWQCB; State Water Quality Projected Areas; water bodies designated as having a RARE beneficial use by the SWRCB and the RWQCB (as designated in the Water Quality Control Plan for the San Diego Basin and amendments); areas designated as preserves; and any other equivalent environmentally sensitive areas which have been identified by the co-permittees.

"Erosion" refers to any process in which land is diminished or worn away due to wind, water, or glacial ice. Often the eroded debris (silt or sediment) becomes a pollutant via storm water runoff. Erosion occurs naturally but can be intensified by land clearing activities such as farming, development, and road building.

"Erosion and sediment control plan" means a plan prepared under the direction of and signed by a Civil Engineer competent in the preparation of such plans and knowledgeable about current erosion and sediment control methods. The plan shall provide for protection of exposed

soils, prevention of discharge of sediment, and desiltation of runoff at frequent intervals along flowage areas, at entrances to storm drains, at entrances to streets and driveways, and at the exit of the area being graded.

"Erosion control system" means any combinations of desilting facilities, retarding basins, flow decelerates, and/or erosion protection (including effective planning and the maintenance thereof) to protect the project site, adjacent private property, watercourses, public facilities, graded improvements, existing natural facilities, archaeological artifacts, and relieve waters of suspended sediments or debris prior to discharge from the site.

"Existing development" means any area that has been developed and exists for municipal, commercial, industrial or residential purposes, uses or activities. May include that area not actively used for its originally developed purpose, but may be re-purposed or redeveloped for another use or activity.

"Grading" means cutting and/or filling of the land surface to a designed slope or elevation.

"Groundwater" means subsurface water that occurs beneath the water table in soils and geologic formations that are fully saturated.

"Hillside" means lands that have a natural gradient of 25 percent (4 feet of horizontal distance for every 1 foot of vertical distance) or greater and a minimum elevation differential of 50 feet, or a natural gradient of 200 percent (1 foot of horizontal distance for every 2 feet of vertical distance) or greater and a minimum elevation differential of 10 feet.

"Hillside development greater than 5,000 square feet" means any development that would create more than 5,000 square feet of impervious surfaces in hillsides with known erosive soil conditions.

"Hydrologic soil group" means the classification system for soil erodability set out in Soil Survey — San Diego Area, California (December 1973), issued by the U.S. Department of Agriculture Soil Conservation Service and U.S. Forest Service. In this system soils are categorized into four runoff potential groups. The groups range from "A" soils, which have high permeability and little runoff production, to "D" soils, which have low permeability rates and produce much more runoff.

"Hydromodification" means the change in the natural hydrologic processes and runoff characteristics (i.e., interception, infiltration, overland flow, interflow and groundwater flow) caused by urbanization or other land use changes that result in increased stream flows and changes in sediment transport. In addition, alteration of stream and river channels, installation of dams and water impoundments, and excessive stream bank and shoreline erosion are also considered hydromodification, due to their disruption of natural watershed hydrologic processes.

"Illicit connection" or **"illegal connection"** means a pipe, facility, or other device connected to the storm water conveyance system or receiving waters, which has not been reviewed and authorized by the city; or a permitted or authorized pipe, facility, or other device, which conveys illicit discharges.

"Illicit discharge" or **"illegal discharge"** means any discharge into the storm water conveyance system, or receiving waters that is prohibited by this chapter. This includes, but is not limited to, discharges of non-storm water that are not exempt discharges listed in section 13.10.060 of this code, discharges of irrigation runoff to the storm water conveyance system, any discharge from an illegal connection, and any discharge that contains additional pollutants due to the absence of a required BMP or the failure of a BMP. Discharges that require a NPDES permit that has not been issued or has not been acknowledged by the discharger to be applicable are illegal discharges. Discharges regulated under an applicable NPDES permit are illicit discharges for purposes of this chapter unless compliance with all applicable permit and SWPPP conditions are maintained.

"Impervious cover" or **"impervious surface"** means constructed or modified surfaces that cannot effectively infiltrate rainfall. The term includes, but is not limited to, building rooftops, pavement, concrete or asphaltic sidewalks, and concrete driveways.

"Impervious surface area" means the ground area covered or sheltered by an impervious surface, measured in plan view (i.e., as if from directly above). For example, the impervious surface area for a pitched roof is equal to the ground area it shelters, rather than the surface area of the roof itself.

"Industrial activity" means manufacturing, processing, or raw materials storage at a commercial, industrial or municipal facility. The term includes, but is not limited to, such manufacturing, processing, or storage in or upon industrial plant yards or immediate access roads used or traveled by carriers of raw materials; manufacture of products, waste material, or by-product creation or storage; material handling; refuse storage or disposal; the application or disposal of processed wastewaters; storage and maintenance of material handling equipment; treatment, storage or disposal of residuals; outdoor shipping and receiving; activities in manufacturing buildings; storage of raw materials and intermediate and finished products; and the ownership, use or control of areas where significant industrial activity has taken place in the past and significant materials remain and are exposed to storm water. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product, or waste product.

"Infiltration," when used as a verb, means the process of percolating storm water or non-storm water into the soil. Infiltration, when used as a noun, is water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections or manholes.

"Infiltration BMPs" or **"infiltration facility"** means any structural treatment BMP designed primarily to percolate water into the subsurface, such as an infiltration trench or infiltration basin. An infiltration facility may include filtering prior to or during infiltration. BMPs that infiltrate some water but which are designed primarily to retain water or to treat water, such as retention basins, constructed wetlands, or filtering swales are not infiltration facilities.

"Jurisdictional Runoff Management Program document" or **"JRMP document"** means a written plan describing the specific jurisdictional runoff management measures and programs that each co-permittee implements to comply with the MS4 Permit and to ensure that storm water pollutant discharges in runoff are reduced to the maximum extent practicable and do not cause or contribute to a violation of water quality standards.

"Land development activity" means construction, rehabilitation, redevelopment, or reconstruction of any public or private projects.

"Land disturbance activity" means any activity that moves soils or substantially alters the pre-existing vegetated or man-made cover of any land. This includes, but is not limited to, grading, digging, cutting, scraping, stockpiling or excavating of soil; placement of fill materials; paving, pavement removal, exterior construction; substantial removal of vegetation where soils are disturbed including, but not limited to, removal by clearing or grubbing; or any activity which bares soil or rock or involves streambed alterations or the diversion or piping of any watercourse. Land disturbance activity does not include routine maintenance to maintain original line and grade, hydraulic capacity, or the original purpose of the facility, nor does it include emergency construction activities (i.e., land disturbances) required to protect public health and safety.

"Land owner" means the holder of legal title to the land, and other persons or entities who exercise control over a land development project pursuant to rights granted in a purchase agreement, joint venture agreement, development agreement, or long term lease.

"Low Impact Development" or "LID" means a storm water management and land use development strategy that emphasizes conservation and the use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely reflect pre-development hydrologic functions.

"Low Impact Development BMPs" or "LID BMPs" include schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of water of the United States through storm water management and land development strategies that emphasize conservation and the use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely reflect re-development hydrologic functions. LID BMPs may include retention practices that do not allow runoff, such as infiltration, rain water harvesting and reuse, and evapotranspiration. LID BMPs also include flow-through practices such as biofiltration that may have some discharge of storm water following pollutant reduction.

"Maintenance of a BMP" means periodic action taken to maintain the as-designed performance of a BMP, and includes, but is not limited to, repairs to the BMP as necessary, and replacement of the BMP by an equally effective or more effective BMP at the end of its useful life.

"Maximum extent practicable" or "MEP" is an acceptability standard for BMPs. When BMPs are required to meet this standard, the BMPs must be the most effective set of BMPs that are still practicable. A BMP is effective if it prevents, reduces or removes the pollutants that would otherwise be present in runoff due to human activity. A BMP is practicable if: it complies with other regulations as well as storm water regulations; is compatible with the area's land use, character, facilities, and activities; is technically feasible (considering area soil, geography, water resources, and other resources available); is economically feasible; and provides benefits that are reasonable in relation to costs.

"MS4 Permit" refers to RWQCB Order No. R9-2013-0001, NPDES Permit No. CAS0109266, National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region, as may be amended.

"Municipal facility" means a facility owned or operated by the city of El Cajon that is used for a governmental purpose. Facilities or municipally owned land that are leased or rented to others to generate municipal revenues are not municipal facilities. The commercial or industrial lessees of such facilities may, however, be subject to this chapter as dischargers.

"Natural drainage" means a natural swale or topographic depression, which gathers and/or conveys runoff to a permanent or intermittent watercourse or water body.

"New development" means land disturbing activities; structural development, including construction or installation of a building or structure; the creation of impervious surfaces; and land subdivision.

"Non-storm water discharge" includes discharges to and from a storm water conveyance system that do not originate from precipitation events. Non-storm water includes illicit discharges and NPDES permitted discharges.

"NPDES Permit" means a National Pollutant Discharge Elimination System (NPDES) permit issued by the United States Environmental Protection Agency, the SWRCB, or the RWQCB. The NPDES is the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 318, 402, and 405 of the Clean Water Act.

"Parking lot" means land area or facility for the temporary parking or storage of motor vehicles used personally, or for business or commerce.

"Permittee" means any person or owner to whom a grading permit is issued, or for whom a grading plan is approved, pursuant to chapter 15.64 of this code.

"Pollutant" means any agent that may cause or contribute to the degradation of water quality such that a condition of pollution or contamination is created or aggravated.

"Pollution" as defined in the Porter-Cologne Water Quality Control Act is the "alteration of the quality of the waters of the state by waste, to a degree which unreasonably affects either of the following: (A) The waters for beneficial uses"; or "(B) Facilities which serve these beneficial uses." Pollution may include contamination.

"Pollution prevention" is defined as practices and processes that reduce or eliminate the generation of pollutants, in contrast to source control BMPs, treatment control BMPs, erosion and sediment control BMPs or disposal.

"Porter-Cologne Water Quality Act" or **"Act"** means Division 7 of the California Water Code as may be amended from time to time.

"Premises" means any building, lot parcel, land or portion of land whether improved or unimproved.

"Priority Development Project" or **"PDP"** or **"Priority Project"** refers to new development and redevelopment project categories as more fully set forth in chapter 16.60 of this code.

"Project footprint" means the limits of all grading and ground disturbance, including landscaping, associated with a project.

"Public Nuisance" has the same meaning as in section 1.16.020 of this code.

"Rainy season" means from October 1 through April 30.

"Receiving waters" means all waters that are "Waters of the United States," such as surface bodies of water, which directly or indirectly receive discharges from urban runoff conveyance systems, including naturally occurring wetlands, streams (perennial, intermittent, and ephemeral (exhibiting bed, bank, and ordinary high water mark)), creeks, rivers, reservoirs, lakes, lagoons, estuaries, harbors, bays and the Pacific Ocean.

"Redevelopment" means any construction, alteration or improvement at an already developed site that will increase the total impervious surface area of that site, or that involves activities that could expose contaminants to rainfall. Redevelopment can include, but is not limited to, the expansion of building footprints, the addition or replacement of a structure, exterior construction and remodeling, replacement of existing impervious surfaces that are not part of a routine maintenance activity, and other activities that create additional impervious surface. Redevelopment also includes disturbance of one or more acres of land and expected to generate pollutants post construction.

"Restaurant" means, for the purposes of this chapter, a facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption (standard industrial classification code 5812).

"Retail gasoline outlet" means a retail gasoline outlet that is 5,000 square feet or more or with a projected average daily traffic of 100 or more vehicles per day.

"Runoff" means all flows in a storm water conveyance system including storm water (wet weather flows) and non-storm water (dry weather flows).

"RWQCB" means the Regional Water Quality Control Board for the San Diego region.

"Sediment" means soils, sand, minerals or other surficial materials eroded and then transported or deposited by the action of wind, water, ice, or gravity. Sediments can increase turbidity, clog fish gills, reduce spawning habitat, lower young aquatic organisms' survival rates, smother bottom dwelling organisms, and suppress aquatic vegetation growth.

"Significant redevelopment" means development that would create, add, or replace at least 5,000 square feet of impervious surfaces on an already developed site that falls under a priority development project category. Significant redevelopment includes, but is not limited to: the expansion of a building footprint; addition to or replacement of a structure; replacement of an impervious surface that is not part of a routine maintenance activity; and land disturbing activities related with structural or impervious surfaces. Replacement of impervious surfaces includes any activity that is not part of a routine maintenance activity where impervious material(s) are removed, exposing underlying soil during construction.

"Site design BMPs" also known as a significant part of low impact development, means any project design feature that reduces the amount of impervious surfaces, disconnects impervious surfaces, reduces creation or severity of potential pollutant sources, and/or reduces the alteration of the project site's natural flow regime. Redevelopment projects that are undertaken to remove pollutant sources (such as existing surface parking lots and other impervious surfaces) or to reduce the need for new roads and other impervious surfaces (as compared to conventional or low-density new development) by incorporating higher densities and/or mixed land uses into the project design, are also considered site design BMPs.

"Source control BMPs" (both structural and non-structural) means land use or site planning practices, or structures that aim to prevent urban runoff pollution by reducing the potential for contamination at the source of pollution. Source control BMPs minimize the contact between pollutants and urban runoff. Examples include roof structures over trash or material storage areas, and berms around fuel dispensing areas.

"State" means the State of California.

"State general construction storm water permit" means NPDES Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Associated with Construction Activities, and any amendments thereto.

"State general industrial storm water permit" means NPDES Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities, and any amendments thereto.

"Stop work order" means an order issued which requires that specifically identified activity or all activity on a site be stopped.

"Storm water" means storm water runoff, snowmelt runoff and surface runoff and drainage. Surface runoff and drainage pertains to runoff and drainage resulting from precipitation events.

"Storm water conveyance system" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or designated and approved management agency under section 208 of the Clean Water Act that discharges to waters of the United States; (ii) designated or used for collecting or conveying storm water; (iii) which is not a combined sewer; and (iv) which is not part of the Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.26.

"Storm water management" means the use of structural or non-structural BMPs that are designed to reduce urban run-off pollutant loads, discharge volumes, and/or peak discharge flow rates or velocities. When applied to the city or another municipality, storm water management also includes planning and programmatic measures.

"Storm water mitigation plan" means a plan, submitted on a city form or in a city-specific format in connection with an application for a city permit or other city approval, identifying the measures that will be used for storm water and non-storm water management during the permitted activity.

"Storm water pollution prevention plan" or "SWPPP" means a document (other than a storm water mitigation plan), which meets the requirements for an SWPPP set out in the state general construction storm water permit or the state general industrial storm water permit. An SWPPP submitted to the city must describe the BMPs to be implemented and other steps to be taken by the discharger to meet the requirements of this chapter.

"Streets, roads, highways, freeways, and driveways" for the purposes of this chapter, means any paved impervious surface used for the transportation of automobiles, trucks, motorcycles, and other vehicles.

"Structural BMP" means a BMP that relies on either a physical condition, other than an entirely natural and undisturbed condition, or on a constructed or installed device to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. Constructed or enhanced BMPs that depend on natural materials and processes (e.g., constructed drainage swales or buffers, or constructed wetlands) and that require periodic maintenance to function as designed, are structural BMPs. Structural BMPs in place in connection with a land development or redevelopment project to prevent or reduce contamination in storm water and receiving waters, or to prevent or reduce erosion downstream from the project.

"Structural post-construction BMP" means a structural BMP, other than a temporary construction-related BMP, put in place in connection with a land development or redevelopment project to prevent or reduce contamination in storm water or receiving waters, or to prevent or reduce erosion downstream from the project. All treatment control BMPs are structural post-construction BMPs.

"SWRCB" means the State Water Resources Control Board.

"Treatment control BMP" means any engineered system designed and constructed to remove pollutants from urban runoff. Pollutant removal is achieved by simple gravity settling of particulate pollutants, filtration, biological uptake, media adsorption or any other physical, biological, or chemical process.

"Total maximum daily loads" or "TMDLs" is defined as the maximum amount of a pollutant that can be discharged into a water body from all sources (point and non-point) and still maintain water quality standards. Under Clean Water Act section 303(d), TMDLs must be developed for all water bodies that do not meet water quality standards after application of technology-based controls.

"Water main" means a potable or recycled water delivery line greater than or equal to four inches in diameter.

"Watercourse" means a permanent or intermittent stream, creek, or other body of water, either natural or improved, which gathers or carries surface water.

"Water quality standards" are defined as the beneficial uses (e.g., swimming, fishing, municipal drinking water supply, etc.) of water and the water quality objectives adopted by the State or the United States Environmental Protection Agency to protect those uses.

"Waters of the state" means any water, surface or underground, including saline waters within the boundaries of the state as defined in section 10350(e) of the Act. The definition of the "waters of the state" is broader than that for the "waters of the United States" in that all water in the state is considered to be "waters of the state" regardless of circumstances or condition.

"Waters of the United States" means water subject to the regulatory jurisdiction of the United States under the Federal Clean Water Act and applicable case law. In general, this includes "navigable" waters, waters tributary to "navigable" waters, and adjacent wetlands.

"Watershed" means a geographical area that drains to a specified point on a water course, usually a confluence of streams or rivers (known as a drainage area, catchment, or river basin).

Section 13.10.040. General provisions.

- A. Responsibility for Administration. This chapter shall be administered for the city of El Cajon by its authorized enforcement officials.
- B. Construction and Application. Interpretation of this chapter shall assure consistency with the purpose and intent of this chapter and shall implement the requirements of the MS4 Permit. This chapter is not intended to interfere with, abrogate or annul any other chapter, rule or regulation, statute, or other provision of law. The requirements of this chapter should be considered minimum requirements, and where any provision of this chapter imposes restrictions different from those imposed by any other chapter, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall take precedence. Storm water and non-storm water discharges regulated under a valid facility-specific NPDES permit or facility-specific RWQCB Waste Discharge Requirements Permit are not subject to this chapter, but shall instead be regulated exclusively by the RWQCB.
- C. Severability and Validity. If any section of this chapter is declared invalid by a court of law, the remaining sections shall remain valid.
- D. JRMP Document. The city has established and adopted a written description of the runoff management measures and programs, including minimum BMPs that the city will implement, or require to be implemented, to ensure compliance with this chapter. Amendments to the JRMP document shall be approved by the authorized enforcement official.

13.10.050. Discharge prohibitions.

- A. Discharges from the storm water conveyance system in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance (as defined in the section 13050 of the Act) in receiving waters of the state are prohibited.
- B. Any discharge to a storm water conveyance system that is not composed entirely of storm water is prohibited unless authorized by the RWQCB.
- C. Illegal Discharges. The discharge of pollutants to non-storm water, directly or indirectly into the storm water conveyance system or receiving waters, is prohibited, except as exempted in section 13.10.060 of this chapter. The discharge of pollutants to storm water, directly or indirectly into the storm water conveyance system or receiving waters, is prohibited, unless the applicable requirements of this chapter have been met.
- D. Illegal Connection. The establishment of illegal connections is prohibited. The use of illegal connections is prohibited, even if the connection was established pursuant to a valid city permit and was legal at the time it was constructed.
- E. Prevention of Illegal Discharges. Throwing, depositing, leaving, abandoning, maintaining or keeping materials or wastes on public or private lands in a manner and place where they may result in an illegal discharge is prohibited.
- F. Waste Discharges. The discharge of waste or materials from the following categories is prohibited:
 - 1. The discharge of industrial wastes to conventional septic tank or subsurface disposal systems, except as authorized by the terms described in section 13264 of the Act, is prohibited.
 - 2. The discharge of waste to land, except as authorized by waste discharge requirements or the terms described in section 13264 of the Act is prohibited.
 - 3. The discharge of waste to inland surface waters, except in cases where the quality of the discharge complies with applicable receiving water quality objectives, is prohibited.
 - 4. The discharge of waste in a manner causing flow, ponding, or surfacing on lands not owned or under the control of the discharger is prohibited, unless the discharge is authorized by the RWQCB.
 - 5. The discharge of radioactive, chemical or biological warfare agent into waters of the state is prohibited.

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6. The dumping, deposition, or discharge of waste directly into waters of the state, or adjacent to such waters in any manner which may allow the waste to be transported into the waters, is prohibited unless authorized by the RWQCB.
 7. The unauthorized discharge of treated or untreated sewage to receiving waters of the state or to a storm water conveyance is prohibited.
 8. The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.
- G. Violations of the MS4 Permit. It is unlawful for any person to cause, or threaten to cause, either individually or jointly any discharge into or from the storm water conveyance system that results in or contributes to a violation of the MS4 Permit.

13.10.060. Exemptions to discharge prohibitions.

- A. Permitted Discharges. Any discharge to the storm water conveyance system that is regulated under a NPDES permit issued to the discharger and administered by the state pursuant to the Porter-Cologne Water Quality Control Act is allowed, provided that the discharger is in compliance with all requirements of the NPDES permit and other applicable laws and regulations.
- B. Groundwater Discharges Typically Requiring Permits. Non-storm water discharges to the storm water conveyance system from the following categories are allowed if: (i) the discharger obtains coverage under NPDES Permit No. CAG919002 (RWQCB Order No. R9-2008-0002, or subsequent order) for discharges to surface waters other than San Diego Bay, and the discharger is in compliance with all requirements of the applicable NPDES permit and all other applicable laws and regulations; or (ii) the RWQCB determines in writing that coverage under NPDES Permit No. CAG919002 (or subsequent permit) is not required. Otherwise, non-storm water discharges from the following categories are illicit discharges:
 1. Discharges from uncontaminated pumped groundwater;
 2. Discharges from foundation drains when the system is designed to be located at or below the groundwater table to actively or passively extract groundwater during any part of the year;
 3. Discharges from water from crawl space pumps;
 4. Discharges from water from footing drains when the system is designed to be located at or below the groundwater table to actively or passively extract groundwater during any part of the year.

- C. Discharges from Water Lines. Non-storm water discharges to the storm water conveyance system from water line flushing and water main breaks are allowed if the discharges have coverage under NPDES Permit No. CAG679001 (RWQCB Order No. R9-2010-0003, or subsequent order), and the discharger is in compliance with all requirements of that NPDES permit and other applicable laws and regulations. This category includes water line flushing and water main break discharges from water purveyors issued a water supply permit by the California Department of Public Health or federal military installations. Discharges from recycled or reclaimed water lines to the storm water conveyance system are allowed if the discharges have coverage under an NPDES permit, and the discharger is in compliance with the applicable NPDES permit and other applicable laws and regulations. Otherwise, discharges from water lines are illicit discharges.
- D. Allowable Discharges. Non-storm water discharges to the storm water conveyance system from the following categories are allowed, unless the authorized enforcement official or the RWQCB identifies the discharge as a source of pollutants to receiving waters, in which case the discharge is considered an illicit discharge:
1. Discharges from diverted stream flows;
 2. Discharges from rising groundwater;
 3. Discharges from uncontaminated groundwater infiltration to the storm water conveyance system;
 4. Discharges from springs;
 5. Discharges from flows from riparian habitats and wetlands;
 6. Discharges from potable water sources, except as set forth in section 13.10.060 of this chapter; and except that irrigation runoff discharges are considered illegal discharges and are not allowed;
 7. Discharges from foundation drains when the system is designed to be located above the groundwater table at all times of the year, and the system is only expected to produce non-storm water discharges under unusual circumstances; and
 8. Discharges from footing drains when the system is designed to be located above the groundwater table at all times of the year, and the system is only expected to produce non-storm water discharges under unusual circumstances.
- E. Conditionally Allowed Discharges. Non-storm water discharges from the following categories are allowed if they are addressed as described below; otherwise, non-storm water discharges from the following categories are illicit discharges:

1. Air conditioning condensation. Air conditioning condensation discharges shall comply with applicable BMPs such as directing to landscaped areas, pervious surfaces, and sanitary sewer (where feasible) or other equivalent BMPs as identified in the city's JRMP document.
 2. Individual residential vehicle washing. Wash water from individual residential vehicle washing should be directed to landscaped areas, or other pervious surfaces, or the sanitary sewer, where feasible. Individuals must minimize water usage, washing detergents, and other related vehicle washing products used for residential vehicle washing and implement BMPs from the JRMP document to help prevent the discharge of pollutants associated with individual residential vehicle washing from entering the storm water conveyance system. Non-commercial car washes, such as fundraisers and other similar activities, are not considered to be individual residential vehicle washing. Discharges from such activities are therefore considered illegal discharges.
 3. Swimming pool discharges.
 - a. Chlorinated swimming pool water. Residual chlorine, algaecide, filter backwash, and other pollutants shall be eliminated prior to discharging swimming pool water to the storm water conveyance system.
 - b. Saline swimming pool water. Saline swimming pool water must be directed to the sanitary sewer, landscaped areas, or other pervious surfaces that can accommodate the volume of water.
- F. Firefighting Activities. Non-storm water discharges to the storm water conveyance system from firefighting activities are allowed if they are addressed as follows:
1. Non-emergency firefighting discharges. Non-emergency firefighting discharges, including building fire suppression system maintenance discharges (e.g. sprinkler line flushing), controlled or practice blazes, training, and maintenance activities shall be addressed by BMPs to prevent the discharge of pollutants to the storm water conveyance system.
 2. Emergency firefighting discharges. BMPs are encouraged to prevent pollutants from entering the storm water conveyance system. During emergencies, priority of efforts should be directed toward life, property, and the environment (in descending order). BMPs shall not interfere with emergency response operations or impact public health and safety.

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- G. Exemptions not Absolute. Notwithstanding the categories of non-storm water discharges conditionally allowed by A through F of this section, if the RWQCB or the authorized enforcement official determines that any of these categories of otherwise conditionally allowed non-storm water discharges are a source of pollutants to receiving waters, are a danger to public health or safety, or are causing a public nuisance, such discharges shall be prohibited from entering the storm water conveyance system.

13.10.070. Best management practice requirements for all dischargers.

- A. Best Management Practices. Any person engaged in activities which may result in discharges to the storm water conveyance system shall, to the MEP, undertake all measures to reduce the risk of non-storm water discharges and pollutant discharges. The following requirements shall apply:
1. Every person or entity undertaking any activity or use of a premises that may cause or contribute to storm water pollution or contamination, illegal discharges, or non-storm water discharges to the storm water conveyance system shall comply with BMP guidelines or pollution control requirements, as may be established by the authorized enforcement official. Such BMPs include the minimum BMPs set forth in the JRMP document.
 2. An authorized enforcement official may require any business or operation that is engaged in activities which may result in pollutant discharges to the storm water conveyance system to develop and implement a BMP plan, which must include the applicable minimum BMPs from the city's JRMP document.
 3. Each discharger that is subject to any NPDES permit shall comply with all requirements of all such permits. The discharger must also make reports submitted to the RWQCB or other permitting agency, including monitoring data, available to the city upon request.
 4. Parties undertaking land disturbance activities shall comply with all applicable requirements of section 13.10.080.
 5. Parties undertaking land development and redevelopment activities shall comply with all applicable requirements of section 13.10.090.
- B. Guidance Documents. Any authorized enforcement staff under the supervision of the city engineer may prepare, disseminate and maintain guidance documents addressing the use of BMPs for specific activities or facilities, illegal connections, and illegal discharges. These guidance documents may set out additional compliance alternatives that, in specified circumstances, can provide the same environmental protection that is afforded by the BMPs required by this chapter or specified in the JRMP document.

- C. Significant Sources of Pollutants. Where authorized enforcement staff identify a discharge that is in violation, or is likely to result in a violation, of sections 13.10.050 or 13.10.060 of this code. Authorized enforcement staff may order the discharger to install, implement and maintain additional BMPs. Any such order shall specify a reasonable date by which those BMPs must be put in place. A failure to install, implement, or maintain additional BMPs as required by any such order is a violation of this chapter.
- D. Collection and Use of Storm Water. Authorized enforcement staff may modify any requirement imposed by this chapter to allow the on-site collection and use of storm water, or the collection of storm water for delivery to and use at city-designated sites, provided the modified requirements are enforceable and provide equivalent environmental protection.

13.10.080. Additional requirements for land disturbance activity.

- A. Permit Issuance. No discharger or development project proponent shall receive any city grading, clearing, building or other land development permit or equivalent approval without first meeting the requirements of this chapter and the minimum BMPs listed in the city's JRMP document.
- B. Owners and Operators Both Responsible and Liable. Persons or entities performing a land disturbance activity (including but not limited to construction activities) in the city, and the owners of land on which a land disturbance activity is performed, are dischargers for purposes of this chapter; provided, however, that a local government or public authority is not a discharger as to activities conducted by others in public rights of way.
- C. Plan Submittal Requirements. Any authorized enforcement staff under supervision of the city engineer may prepare plan submittal requirements for permit applications, consistent with this chapter and the city's JRMP document. All applications to the city for a permit or approval associated with a land disturbance activity must demonstrate how the proposed activity will comply with all applicable BMP requirements in a format specified by the city. The submitted materials shall specify the manner in which the discharger or applicant will implement the BMPs required by this chapter and the city's JRMP document for the activity at issue.
- D. Agricultural Grading and Clearing. The requirements imposed by this section for land disturbance activities apply to agricultural grading and clearing, whether or not a city-issued grading and clearing permit is required for that activity. Tilling or cultivating land exclusively for the purpose of growing plants or animals is not considered to be grading or clearing, provided all disturbed material remains on the same site, the tilling or cultivating will not block or divert any natural drainage way, and the land to be tilled or cultivated has been in agricultural production for at least one of the preceding five years.

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13.10.090. Additional requirements for all land development and redevelopment projects.

- A. Application to Development and Redevelopment Projects. No land owner or development project proponent in the city shall receive any city grading, clearing, building or other land development permit required for land development activity or redevelopment activity unless the project meets or will meet the requirements of this chapter, chapter 16.60, and the city's JRMP document.
- B. Post-construction BMPs. BMP requirements imposed by this section and by the city's JRMP document shall not apply to those physical aspects of the project that have been completed or substantially completed pursuant to and as required by a valid city permit or approval, at the time a complete application for a subsequent permit or approval is submitted.
- C. Owners and Developers Responsible and Liable. Developers, development project proponents, and land owners for land on which land development activity is performed, are dischargers for purposes of this chapter; provided however that a local government or public authority is not a discharger as to activities conducted by others in public rights of way.
- D. Post-construction BMPs Required. Land development and redevelopment projects with the potential to add pollutants to storm water or to affect the flow rate or velocity of storm water runoff after construction is completed, shall be designed to include and shall implement post-construction BMPs to ensure that pollutants and runoff from the development will be reduced to the MEP, will not significantly degrade receiving water quality, and will not cause or contribute to an exceedance of receiving water quality standards in accordance with the requirements defined in chapter 16.60 and in the city's JRMP document.
- E. Land Development Associated with Agricultural Operations. The requirements imposed by this section for land development activities apply to such activities when they are associated with agricultural operations.
- F. Post-construction Storm Water Mitigation Plan. Where required by chapter 16.60, the JRMP document, or by the city engineer, all applicable project applications to the city for a permit or approval associated with a land development or redevelopment activity must be accompanied by a post-construction storm water mitigation plan on a form or in a format specified by the city. The plan shall specify the manner in which the discharger/applicant will implement the post-construction BMPs required by this chapter. The plan must address those aspects of the project that, at the time a complete application is submitted, are subject to further environmental review pursuant to section 15162 of the California Environmental Quality Act. Post-construction BMPs for other aspects of the project need not be addressed in this plan.
- G. Storm Water Mitigation Plan Review Fee and Deposit. Fees for storm water mitigation plan review and deposit thereof shall be adopted by resolution of the city council.

- H. Additional Minimum Post-Construction BMPs for Land Development Activity. Whether a permit or approval is required, and whether a storm water mitigation plan is required to be submitted, all dischargers engaged in land development or redevelopment activities in the city shall implement post-construction BMPs as required by the city's JRMP document if applicable to the project:
- I. Control to the Maximum Extent Practicable. All dischargers engaged in land development and significant redevelopment activities shall install, implement and maintain post-construction BMPs as needed to prevent or reduce pollutant discharges in storm water from land disturbance to the MEP.

13.10.100. Maintenance of best management practices.

- A. Existing Development. Dischargers shall maintain the designed functionality of the storm water conveyance system and BMPs they rely upon to achieve and maintain compliance with this chapter.
- B. Development Projects. The proponents of any development project or redevelopment project that requires a city permit shall provide to the city, prior to issuance of permits for the project, proof of a mechanism acceptable to the city that will ensure ongoing long-term maintenance of all structural post-construction BMPs associated with the proposed project. The property owners shall be responsible for maintenance of BMPs unless, and until, an alternative mechanism for ensuring maintenance is accepted by the city and becomes effective, and shall themselves maintain those BMPs if other persons or entities who are also obliged to maintain those BMPs (by contract or covenant, or pursuant to this chapter) fail to do so.
- C. Maintenance Obligations Assumed by Contract or Other Agreement. Primary responsibility to maintain a BMP may be transferred through a contract or other agreement. If that contract provides that it will be submitted to the city pursuant to this chapter as part of a development permit application, and if that contract is so submitted, the person or entity accepting a maintenance obligation in such a contract or agreement will also be legally obligated to maintain that BMP pursuant to this chapter.
- D. Obligation to Maintain BMPs Not Avoided by Contracts or Other Agreements. For purposes of city enforcement, no contract or other agreement imposing an obligation to maintain a BMP can relieve a person or entity of any obligation to maintain a BMP imposed by this chapter.
- E. Disclosure of Maintenance Obligations. Any developer who transfers ownership of land on which a BMP is located or will be located, or who otherwise transfers ownership of a BMP or responsibility for the maintenance of a BMP to another person or entity, shall provide clear written notice of the maintenance obligations associated with that BMP to the new or additional responsible party prior to that transfer.

- F. Maintenance Plans for Land Development Activities. The proponents of any land development project or redevelopment project that requires installation of structural post-construction BMPs shall (prior to issuance of permits for the project) provide to the city for review and approval a plan for maintenance of all structural post-construction BMPs associated with the project. The plan shall specify the persons or entities responsible for maintenance activity, the persons or entities responsible for funding, schedules and procedures for inspection and maintenance of the BMPs, worker training requirements, and any other activities necessary to ensure BMP maintenance. The plan shall provide for servicing of all structural post-construction structural BMPs at least annually and for the retention of inspection and maintenance records for at least three (3) years.
- G. Access for Maintenance. Structural post-construction BMPs shall provide for adequate access for long-term inspection and maintenance purposes by city's authorized enforcement staff. Where deemed necessary by the city engineer, the proponents of any land development project or redevelopment project that requires a city permit, shall provide to the city for review and approval prior to issuance of such permit an executed, permanent, easement onto the land on which post-construction structural BMPs will be located (and across other lands as necessary for access), to allow inspection or maintenance (or both) of those BMPs.
- H. Assurance of Maintenance for Land Development Projects. The proponents of any land development activity or redevelopment activity that requires a city permit shall provide to the city, prior to issuance of permits for the project, proof of a mechanism acceptable to the city that will ensure ongoing long-term maintenance of all structural post-construction BMPs associated with the proposed project. The proponents shall be responsible for maintenance of BMPs unless, and until, an alternative mechanism for ensuring maintenance is accepted by the city and becomes effective.
- I. Security for Maintenance for Land Development Projects. If it is determined by the authorized enforcement official that the public interest requires the posting of a bond or other security to assure the maintenance of a BMP, such bond or security may be required by the authorized enforcement official.

13.10.110. Inspection and sampling.

- A. Regulatory Inspections and Certification Programs. The authorized enforcement official may establish inspection or certification programs to evaluate and enforce compliance with the requirements of this chapter. Authorized enforcement officials and authorized enforcement staff may inspect facilities, activities and properties subject to this chapter at reasonable times and in a reasonable manner to carry out the purposes of this chapter. If entry for a regulatory inspection is refused by the facility owner or operator, or by the occupant of a residence, an inspection warrant shall be obtained prior to inspection.

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- B. Inspections of Improvements Associated with Development Projects. In order to comply with this chapter, when any storm drain system or structural BMP is installed on private property as part of a project that requires a city permit, the property owner shall grant to the city permission to access and enter the property at reasonable times and in a reasonable manner to ensure compliance with this chapter. This includes the right to enter the property without prior notice for routine inspections, to enter as needed for additional inspections during construction, to enter for any needed follow-up inspections, and to enter when necessary for abatement of a nuisance or correction of a violation of this chapter.

- C. Scope of Inspections. Inspections may include all actions necessary to determine whether any illegal discharges or illegal connections exist, whether the BMPs installed and implemented are adequate to comply with this chapter, whether those BMPs are being properly maintained, and whether the facility or activity complies with the other requirements of this chapter.

13.10.120. Enforcement authority.

Authorized enforcement officials may enforce this chapter and abate public nuisances as follows:

- A. Administrative Authorities.
 - 1. Administrative Penalties. Administrative penalties may be imposed pursuant to chapter 1.13 of this code. Administrative penalties may include the recovery of fines assessed against the city by the RWQCB. Any later-enacted administrative penalty provision in this code shall also be applicable to this chapter, unless otherwise provided therein.
 - 2. Cease and Desist Orders. Written or verbal orders may be issued to stop illegal discharges and/or remove illegal connections. If it is determined by an authorized enforcement official that the public interest requires the posting of bond or other security to assure the violation is corrected, such bond or security may be required by the authorized enforcement official.
 - 3. Notice and Order to Clean, Test, or Abate. Written or verbal orders may be issued to perform activities to comply with the city's JRMP document, this chapter, or as directed by authorized enforcement staff where conditions warrant.
 - 4. Public Nuisance Abatement. Violations of this chapter are deemed a threat to public health, safety, and welfare; and constitute a public nuisance. If actions ordered under sections 13.10.120(A) (1), (2), and 3 are not performed, the authorized enforcement official may abate any public nuisance pursuant to chapter 1.16 of this code. City costs for pollution detection and abatement, if not paid in full by the discharger in addition to any other penalties, may be made a lien against the property in accordance with the abatement procedure.

5. Stop Work Orders. Whenever any work is being done contrary to the provisions of this chapter, or other laws implemented through enforcement of this chapter, an authorized enforcement official may order the work stopped by notice in writing served on any person engaged in the doing or causing such work to be done, and any such person shall immediately stop such work until authorized by the authorized enforcement official to proceed with the work.
6. Permit Suspension or Revocation. Violations of this chapter may be grounds for permit and/or other city license suspension or revocation in accordance with applicable sections of this code.

B. Judicial Authorities.

1. Civil Penalties and Remedies. The city attorney is hereby authorized to file criminal and civil actions to enforce this chapter and to seek civil penalties and/or other remedies as provided in this section and in section 13.10.140(D) of this chapter. There is no requirement that administrative enforcement procedures be pursued before such actions are filed.
2. Injunctive Relief. The city may enforce compliance with this chapter by judicial action for injunctive relief.
3. Arrest or Issue Citations. The assistance of a peace officer may be enlisted to arrest violators as provided in California Penal Code, or to issue a citation and notice to appear as prescribed by chapter 1.16 and by the Penal Code section 853.6. There is no requirement that administrative enforcement remedies be used before such actions are taken. The immunities prescribed in section 836.5 of the Penal Code are applicable to authorized enforcement officials acting in the course and scope of their employment pursuant to this chapter.

13.10.130. Other acts and omissions that are violations.

In addition to failing to comply with any of the other requirements of this chapter, the following acts and omissions are violations of this chapter, whether committed by a discharger or by another person or entity:

- A. Causing, Permitting, Aiding, or Abetting Non-compliance. Causing, permitting, aiding, or abetting non-compliance with any part of this chapter constitutes a violation of this chapter.
- B. Concealment, Misrepresentation and False Statements. Any falsification or misrepresentation made to the city concerning compliance with this chapter, including any misrepresentation in a voluntary disclosure, any submission of a report that omits required material facts without disclosing such omission, and any withholding of information required to be submitted by or pursuant to this chapter in order to delay city enforcement action, is a violation of this chapter. Concealing a violation of this chapter is a violation of this chapter.

- C. Failure to Promptly Correct Non-compliance. Violations of this chapter must be corrected with the time period specified by an authorized enforcement official. Each day (or part thereof) in excess of that period during which action necessary to correct a violation is not initiated and diligently pursued is a separate violation of this chapter. Notwithstanding the granting of any period of time to the discharger to correct the damage, the discharger shall remain liable for some or all of any fines or penalties imposed pursuant to this chapter, or by the RWQCB.
- D. City Permits and SWPPPs. Any failure to conform to an applicable SWPPP prepared pursuant to this chapter; any failure to comply with storm water-related provisions of a city-issued grading permit or grading plan prepared to secure such a permit; and any failure to comply with storm water-related provisions in any other city permit or approval, is also a violation of this chapter. For purposes of this chapter a permit provision or condition of approval is "storm water-related" if compliance with the provision or condition would have the effect of preventing or reducing contamination of storm water or of moderating runoff flows rates or velocities, whether the provision or condition was initially imposed to promote those outcomes.

13.10.140. Lot grading; responsibility of permittee; protection of adjacent property.

- A. For all public watercourses, the applicant shall grant or cause to be granted to the city, at the city engineer's discretion, a drainage easement (riparian buffers and corridors) in accordance with the requirements of the city engineer prior to the issuance of a grading permit, or prior to the approval of a grading plan.
- B. For all private watercourses, including brow ditches, where the continuous functioning of the drainage way is essential to the protection and use of multiple properties, a covenant, a maintenance agreement and/or deed restriction, or any combination thereof, shall be recorded by the applicant, placing the responsibility for the maintenance of the drainage way(s) on the owners of record of each respective lot affected. Permanent off-site drainage or flowage easements, as required by the city engineer, shall be acquired by the applicant. Such easements shall be subject to approval by the city engineer and recorded prior to approval of the grading plan, or issuance of a grading permit.
- C. No man-made dams, ponds, diversions, flow decelerators or excessive vegetation shall be placed, allowed to be placed, or allowed to grow within the property subject to an approved grading plan, or a grading permit, without suitable provisions, as approved by the city engineer, for maintenance. Erosion or siltation as a result of these features shall be the sole responsibility of the property owner.
- D. The permittee has the right to the proper discharge of natural drainage, within the provisions of this chapter, into natural drainage courses. The quantity of peak runoff shall be limited to the quantity of peak runoff of predevelopment conditions. This includes the right to discharge, within natural basins, runoff due to decrease of permeability of the property from grading operations, landscaping, and the construction of improvements and to discharge a reasonable silt load in this runoff comparable to the historic, predevelopment condition.

13.10.150. Lot grading; safety precautions.

- A. If, at any stage of work for which an approved grading plan, or a grading permit, is required, the city engineer determines that authorized grading is likely to endanger any public or private property or result in the deposition of debris on any public way or interfere with any existing drainage course, the city engineer may specify and require reasonable safety precautions to avoid the danger. The permittee may be responsible for removing excess soil and debris deposited upon adjacent and downstream public or private property resulting from his or her grading operations. Soil and debris shall be removed and damage to adjacent and downstream property repaired as directed by the city engineer. Erosion and sediment control shall require temporary or permanent siltation basins, energy dissipaters, or other measures as field conditions warrant, whether or not such measures are a part of approved plans. Costs associated with any work outlined in this section shall be incurred by the permittee.
- B. No off-site work will be required when, in the opinion of the city engineer, the permittee has properly implemented and maintained erosion control measures and the deposition of soil and debris or erosion on adjacent properties is the direct or indirect result of actions of the downstream property owner.

13.10.160. Erosion and sediment control plan requirements.

- A. As applicable, all applications for permits related to construction activities, regardless of the date of submittal and including but not limited to projects that require an approved grading plan or permit, shall include an erosion and sediment control plan designed to limit erosion of all disturbed portions of the property and to eliminate the transport of soil onto adjacent properties or into streets, storm drains, or drainage ways.
- B. Plans for an erosion and sediment control system shall be prepared and submitted for the review and approval of the city engineer as a part of any application for a construction permit. The erosion and sediment control plan shall comply with the requirements of the latest state general construction storm water permit (if applicable) and this chapter to satisfy the requirements for controlling erosion and eliminating the discharge of sediment and pollutants. The erosion and sediment control plan shall include, but not be limited to, the following information:
 - 1. Name, address, and a 24-hour phone number of the owner or responsible party, and the person or contractor responsible for construction activities, installing and maintaining the site's BMPs, and performing emergency BMP deployment work.
 - 2. The name, address and signature of the civil engineer or person who prepared the plan.

3. Show the location of all proposed erosion and sediment control BMPs, non-storm water control BMPs, and waste management control BMPs. Show the location and placement of BMPs such as gravel bags, diverters, check dams, slope planting, drains, and other BMPs required by the city's JRMP document.
 4. All desilting basins; debris basins; silt traps; and other desilting, velocity retarding facilities necessary to adequately protect the site and downstream properties from erosion and its effects, preserve natural hydrologic features, and preserve riparian buffers and corridors.
 5. The streets, easements, drains, and other improvements.
- C. Erosion and sediment control system standards shall be as follows:
1. BMPs in the erosion and sediment control plan shall be implemented as required by the city's JRMP document.
 2. All removable protective devices shown on the plan shall be in place at the beginning of construction activities and at the end of each working day when there is a 50% chance (or greater) of rain within a 48-hour period. If the developer does not provide the required installation or maintenance of erosion and sediment control plan BMPs within 2-hours of notification at the 24-hour phone number on the plans, the city engineer may order city crews to do the work or may issue contracts for such work and charge the cost of this work along with reasonable overhead charges to the cash deposits or other instruments implemented for this work without further notification to the owner. No additional work on the project except sediment and erosion control work activities may be performed until the full amount drawn from the deposit is restored by the developer.
 3. No earth or organic material shall be deposited or placed where it may be directly carried into a stream or body of standing water.
 4. At any time of year, all inactive areas of a site shall be fully protected from erosion. An area of a site is considered inactive if construction activities have ceased for a period of 14 days or more consecutive days.
- D. Dust Control. All graded surfaces and materials, whether filled, excavated, transported or stockpiled, shall be wetted, protected or contained in such a manner as to reduce or minimize nuisance from dust or spillage upon adjoining property or streets. Equipment and materials on the site shall be used in such a manner as to avoid excessive dust.
- E. Maintenance of BMPs. All erosion and sediment control BMPs shall be functional at all times. Prior to the rainy season and after each major storm, all BMPs shall be inspected to assure the functionality. BMP maintenance shall be conducted throughout the life of the project.

- F. No grading work shall be allowed during the rainy season on any site when the city engineer determines that erosion, mudflow or sediment of silt discharge may adversely affect downstream properties, drainage courses, storm drains, streets, easements, or public or private facilities or improvements unless an approved erosion control system has been implemented on the site. If the city determines that it is necessary for the city to cause erosion control measures to be installed or cleanup to be done, the developer shall pay all of the city's direct and indirect costs including extra inspection, supervision, and reasonable overhead charges.

13.10.170. Irrigation system requirements.

- A. Except for agricultural grading plans, all slopes to be constructed, but only final slopes of any borrow pit, shall be provided with an irrigation system which shall be used by the permittee to promote the growth of plants to protect the slopes against erosion. The permittee shall be responsible for installation and maintenance of the irrigation system until the city engineer determines that the system has been properly installed and meets the minimum requirements of this section. When the city engineer finds that a slope less than 15 feet in height is located in an area as to make hand watering possible, conveniently located hose bibs may be accepted in lieu of the required irrigation system when a hose no longer than 50 feet would be required.
- B. Plans for the irrigation system shall be approved by the city engineer prior to installation. The irrigation system shall be located relative to existing and proposed property lines to insure that the irrigation system and the slopes sprinkled thereby will both be within the same property boundaries. The irrigation system shall be supplied or be readily converted so as to be supplied through the metered water service line serving each individual property. The irrigation system shall provide uniform coverage for the slope area at a rate of not less than 0.03 inches per hour, nor greater than 0.30 inches per hour. A functional test of the irrigation systems shall be performed to the satisfaction of the city engineer prior to final approval of the grading. A check valve and balance cock shall be installed in the system where drainage from sprinkler heads will create an erosion problem. Adequate back flow protection devices shall be installed in each irrigation system. Such devices shall be protected against physical damage during construction operations.

13.10.180. Waiver of planting and irrigation requirements.

- A. The city engineer may modify or waive the requirements for planting or irrigation systems if he or she finds that said requirements would be unreasonable or unnecessary for any of the following reasons: (a) the area is subject to periodic inundation, (b) water is unavailable to the area such that irrigation would be impractical or impossible, or (c) the area is naturally devoid of vegetation.

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13.10.190. Penalties.

- A. Administrative Penalties. Administrative penalties may be imposed pursuant to this code. Any later-enacted administrative penalty provision in this code shall also be applicable to violations of this chapter, unless otherwise provided therein.
- B. Misdemeanor Penalties. Non-compliance with any part of this chapter may be charged as a misdemeanor and may be enforced and punished as prescribed in the Penal Code and Government Code of the State of California, and this code.
- C. Penalties for Infractions. Any violation of this chapter may be charged as an infraction at the discretion of the prosecutor. Infractions may be abated as a nuisance or enforced and punished as prescribed in this code, or the Penal Code, or the Government Code of the State of California.
- D. For Civil Actions. In addition to other penalties and remedies permitted in this chapter, a violation of this chapter may result in the filing of a civil action by the city. Except where a maximum monetary amount is specified, the following may also be awarded without monetary limitations in any civil action:
 - 1. Injunctive relief;
 - 2. Costs to investigate, inspect, monitor, survey, or litigate;
 - 3. Costs to place or remove soils or erosion and sediment control BMPs, costs to correct any violation, and costs to restore environmental damage or to end any other adverse effects of a violation;
 - 4. Compensatory damages for losses to the city or any other plaintiff caused by violations; and/or restitution to third parties for losses caused by violations;
 - 5. Civil Penalties;
 - 6. Reasonable attorney fees; and
 - 7. Fines assessed against the city by the RWQCB, SWRCB, or the United States Environmental Protection Agency.

As part of a civil action filed by the city to enforce provisions of this chapter, a court may assess a maximum civil penalty in accordance with the general penalty clause as set forth in the El Cajon city charter, in section 1.24.010 of this code, or any other penalty adopted by the city, but in any case to be assessed per violation of this chapter for each day during which any violation of any provision of this chapter is committed, continued, permitted or maintained by such person(s).

In determining the amount of any civil liability to be imposed pursuant to this chapter, the court shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether any discharge caused the violation is susceptible to cleanup or abatement, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any resulting from the violation, and such other matters as justice may require.

- E. Penalties and Remedies Not Exclusive. Penalties and remedies under this section may be cumulative and in addition to other administrative, civil or criminal remedies.

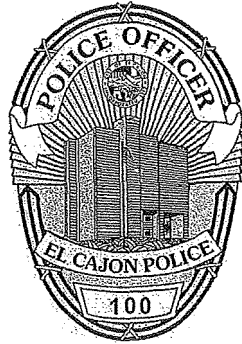
SECTION 4: This ordinance shall be effective thirty days following its passage and adoption.

Chapter 13.10 SW Mgmt & Discharge Control (repeal & add new) 050515

05/12/15 (Item No. 13.1) – 1st Reading
05/26/15 (Item No. 14.1) – 2nd Reading

CITY OF EL CAJON

Gen. Info. "A"



POLICE DEPARTMENT

MEMORANDUM

DATE: FRIDAY, MAY 1, 2015

TO: CHIEF JIM REDMAN
POLICE ADMINISTRATION DIVISION

FROM: SUPPORT CAPTAIN JEFF DAVIS
POLICE ADMINISTRATION DIVISION

SUBJECT: APRIL 2015 DONATIONS TO THE EL CAJON ANIMAL SHELTER

Handwritten signature and date:
Davis
5/1/15

In accordance with City Council Policy B-2, I am writing to let you know that we have received the following donations from:

04/14/15 Kenneth T. Fowler

\$100.00

04/16/15 Mr. & Mrs. Richard Berry

\$100.00 (In memory of Matt O'Connor on his birthday)

RECEIVED OFFICE OF
CITY CLERK
EL CAJON CA
2015 MAY 15 P 4:04