



AGENDA

Consolidated Regular Meeting

City Council Chamber - 1243 National City
Boulevard, National City, CA

Ron Morrison, Mayor
Luz Molina, Vice-Mayor
Marcus Bush, Councilmember
Jose Rodriguez, Councilmember
Ditas Yamane, Councilmember

Brad Raulston, City Manager
Barry J. Schultz, City Attorney
Shelley Chapel, Interim City Clerk
R. Mitchel Beauchamp, City Treasurer

The City Council also sits as the City of National City Community Development Commission, Housing Authority, Joint Powers Financing Authority, and Successor Agency to the Community Development Commission as the National City Redevelopment Agency

Thank you for participating in local government and the City of National City Council Meetings.

Meetings: Regular City Council Meetings are held on the first and third Tuesday of the month at 6:00 p.m. Special Closed Session Meeting and Workshops may be same day, the start time is based on needs. Check Special Agendas for times.

Location: Regular City Council Meetings are held in the Council Chamber located at City Hall, 1243 National City Boulevard, National City, CA 91950, the meetings are open to the public.

Agendas and Material: [Agendas and Agenda Packet](#) for items listed are available on the City website, and distributed to the City Council no less than 72 hours prior to the City Council Meeting. Sign up for [E-Notifications](#) to receive alerts when items are posted.

Public Participation: Encouraged in a number of ways as described below. Members of the public may attend the City Council Meeting in person, watch the City Council Meeting via [live](#) web stream, or participate remotely via Zoom. [Recording of Meetings](#) are archived and available for viewing on the City's website.

Public Comment: Persons wishing to address the City Council on matters not on the agenda may do so under Public Comments. Those wishing to speak on items on the agenda may do so when the item is being considered. Please submit a Speaker's Slip to the City Clerk prior to the meeting or immediately following the announcement of the item. All comments will be limited up to three (3) minutes. The Presiding Officer shall have the authority to reduce the time allotted to accommodate for a large number of speakers. *(City Council Policy 104)*

If you wish to submit written comment [email](#) to the City Clerk's Office at least 2 hours prior to the City Council Meeting to allow time for distribution to the City Council.

Spanish Interpretation Services: Spanish Interpretation Services are available, please contact the City Clerk prior to the start of the meeting for assistance.

American Disabilities Act Title II: In compliance with the American Disabilities Act of 1990, persons with a disability may request an agenda in appropriate alternative formats as required by Title II. Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such request to the City Clerk's Office (619) 336-4228 at least 24 hours in advance of the meeting.



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Gracias por participar en las reuniones del gobierno local y del Consejo de la Ciudad de National City.

Reuniones: Las reuniones regulares del Consejo Municipal se llevan a cabo el primer y tercer martes del mes a las 6:00 p.m. La reunión especial de sesión privada y los talleres pueden ser el mismo día, la hora de inicio se basa en las necesidades. Consulte las agendas especiales para conocer los horarios.

Ubicación: Las reuniones regulares del Concejo Municipal se llevan a cabo en la Cámara del Consejo ubicada en el Ayuntamiento, 1243 National City Boulevard, National City, CA 91950, las reuniones están abiertas al público.

Agendas y Material: Las Agendas y el Paquete de Agenda para los temas enumerados están disponibles en el sitio web de la Ciudad y se distribuyen al Concejo Municipal no menos de 72 horas antes de la Reunión del Concejo Municipal. Regístrese para recibir notificaciones electrónicas cuando se publiquen artículos.

Participación pública: Se fomenta de varias maneras como se describe a continuación. Los miembros del público pueden asistir a la Reunión del Concejo Municipal en persona, ver la Reunión del Concejo Municipal a través de la transmisión web en vivo o participar de forma remota a través de Zoom. Las grabaciones de las reuniones están archivadas y disponibles para su visualización en el sitio web de la Ciudad.

Comentario Público: Las personas que deseen dirigirse al Concejo Municipal sobre asuntos que no están en la agenda pueden hacerlo bajo Comentarios públicos. Quienes deseen hacer uso de la palabra sobre los temas del programa podrán hacerlo cuando se esté examinando el tema. Por favor, envíe una solicitud del orador al Secretario de la Ciudad antes de la reunión o inmediatamente después del anuncio del artículo. Todos los comentarios estarán limitados a tres (3) minutos. El Presidente tendrá la autoridad para reducir el tiempo asignado para dar cabida a un gran número de oradores. (Política del Concejo Municipal 104)

Si desea enviar comentarios por escrito, envíe un correo electrónico a la Oficina del Secretario de la Ciudad al menos 2 horas antes de la Reunión del Concejo Municipal para dar tiempo a la distribución al Consejo Municipal.

Servicios de interpretación en español: Los servicios de interpretación en español están disponibles, comuníquese con el Secretario de la Ciudad antes del inicio de la reunión para obtener ayuda.

Título II de la Ley de Discapacidades Americanas: En cumplimiento con la Ley de Discapacidades Americanas de 1990, las personas con discapacidad pueden solicitar una agenda en formatos alternativos apropiados según lo requerido por el Título II. Cualquier persona con una discapacidad que requiera un modificación o adaptación para participar en una reunión debe dirigir dicha solicitud a la Oficina del Secretario de la Ciudad (619) 336-4228 al menos 24 horas antes de la reunión.



AGENDA

Consolidated Regular Meeting

Tuesday, February 7, 2023, 6:00 p.m.
City Council Chamber - 1243 National City Boulevard
National City, CA

Pages

1. CALL TO ORDER

2. ROLL CALL

3. PLEDGE OF ALLEGIANCE TO THE FLAG

4. PUBLIC COMMENT

In accordance with State law, an item not scheduled on the agenda may be brought forward by the general public for comment; however, the City Council will not be able to discuss or take action on any issue not included on the agenda. Speakers will have up to three (3) minutes.

5. PROCLAMATIONS AND RECOGNITION

5.1 Introduction of New City Employees

5

5.2 Presentation of Proclamation - 82nd Airborne Division, San Diego Chapter - Honor Guard Day

6

6. REGIONAL BOARDS AND COMMITTEE REPORTS (Limited to Five (5) Minutes each)

7. CONSENT CALENDAR

The Consent Calendar may be enacted in one motion by the City Council with a Roll Call Vote without discussion unless a Councilmember, a member of the Public, or the City Manager request an item be removed for discussion. Items removed from the Consent Calendar will be considered immediately following the adoption of the Calendar.

7.1 Approval of Reading by Title Only and Waiver of Reading in Full of Ordinance on this Agenda

- 7.2 Approval of City Council Meeting Minutes. 7
- Recommendation:
Approve and file.
- 7.3 Authorizing the City to piggyback onto San Diego Unified Port District Agreement #70-2022MA with Data Ticket, Inc., for Parking Citation Processing Services in a not-to-exceed amount of \$70,000. 19
- Recommendation:
Adopt the Resolution Entitled, "Resolution of the City Council of the City of National City, waiving the formal bid process pursuant to National City Municipal Code Section 2.60.260 regarding cooperative purchasing and authorizing the City to piggyback onto San Diego Unified Port District Agreement #70-2022MA with Data Ticket, Inc., for Parking Citation Processing Services in a not-to-exceed amount of \$70,000."
- 7.4 Approval of Agreement with EXOS Community Services LLC for Las Palmas Pool Operations 108
- Recommendation:
Adopt a Resolution Entitled, "Resolution of the City Council of the City of National City, California, authorizing the Mayor to Execute a Service Agreement between the City of National City and EXOS Community Services, LLC, to provide Aquatic Programs and Services at Las Palmas Pool located at 1800 East 22nd Street."
- 7.5 Memorandum of Agreement between the California Department of Transportation and the City of National City for the preparation and approval of the environmental document for the I-5/SR-15/Harbor Drive 2.0 Connected Corridor project. 140
- Recommendation:
Resolution of the City Council of the City of National City, California, Authorizing City Manager or Designee to Execute a Memorandum of Agreement between the California Department of Transportation and the City of National City for the Preparation and Approval of the Environmental Document for the I-5/SR-15/Harbor Drive 2.0 Connected Corridor Project.
- 7.6 Acceptance of a Grant of Easement and Right-of-Way from National Plaza LLC and Plaza Blvd LLC for the private street commonly known as a portion of N Avenue, for the installation of bicycle lanes and other improvements. 152
- Recommendation:
Adopt a Resolution Entitled, "Resolution of the City Council of the City of National City, California, Accepting and Authorizing the City Manager to Sign a Grant of Easement and Right-of-Way from National Plaza LLC, and Plaza Blvd LLC, for the private street commonly known as a portion of N Avenue, for the installation of bicycle lanes and other improvements associated with the Central

Community Mobility Enhancements Project, CIP No. 19-23.”

- 7.7 Semi-Annual Report – Boards, Commissions, and Committee Attendance Report – Includes Fourth Quarter and Full Calendar Year 2022 169

Recommendation:
Receive and file.

- 7.8 Temporary Use Permit – Circus Vargas event sponsored by Circus Vargas from February 17, 2023 to February 27, 2023 at the Westfield Plaza Bonita Mall with no waiver of fees. 182

Recommendation:
Approve the application for a Temporary Use Permit subject to compliance with all conditions of approval with no waiver of fees.

- 7.9 Warrant Register #23 for the period of 12/2/22 through 12/8/22 in the amount of \$715,173.08. 216

Recommendation:
Ratify Warrants Totaling \$715,173.08

- 7.10 Warrant Register #24 for the period of 12/9/22 through 12/15/22 in the amount of \$3,727,077.84 220

Recommendation:
Ratify Warrants Totaling \$3,727,077.84

8. PUBLIC HEARING

The following item(s) have been advertised as public hearing(s) as required by law.

- 8.1 Public Hearing and Introduction of Multiple Ordinances Amending the National City Municipal Code Chapters 15.08, 15.14, 15.20, 15.24, 15.28, 15.75, 15.78, and 15.79 related to California Codes for Fire, Electrical, Energy, Building, Plumbing, Mechanical, 225

Recommendation:
Introduce the Ordinances for the 2022 California Fire Code and the National Fire Protection Association Standards; the 2022 California Building Code; the 2022 California Electrical Code and 2020 National Electrical Code; the 2022 California Energy Code; Appendix J of the 2022 California Building Code, and Amending Chapter 15.70 (Grading) of the National City Municipal Code; the 2022 California Green Building Standards Code; the 2022 California Mechanical Code; the 2022 California Plumbing Code; and the 2022 California Residential Code and all Appendices related to these Codes; receive public input; and schedule for the meeting of February 21, 2023, for consideration and adoption.

- 8.2 Public Hearing and Introduction of an Ordinance of the City Council of the City 276

of National City, California Establishing the Compensation of the Mayor and City Council.

Recommendation:

Introduce an ordinance adjusting Mayor and City Council compensation in accordance with City Council direction.

9. STAFF REPORTS

- 9.1 Senior Nutrition Infrastructure Grant Acceptance 279

Recommendation:

Adopt a Resolution Entitled, "Resolution of the City Council of the City of National City, California, authorizing the Mayor to execute an amendment to the agreement between the City of National City and the County of San Diego to accept the Senior Nutrition Infrastructure Grant and establish grant fund appropriations of \$198,815 and corresponding revenue budget."

- 9.2 Resolution of the City Council of the City of National City, California authorizing various fiscal year 2023 first quarter budget adjustments 342

Recommendation:

Accept the staff report and adopt the resolution authorizing fiscal year 2023 supplemental budget appropriations.

10. CITY MANAGER'S REPORT

11. ELECTED OFFICIALS REPORT

- 11.1 POLICY 105 REQUEST - Street Sweeping Schedule and Associated Policy/Procedures Requested by Councilmember Rodriguez 348

- 11.2 POLICY 105 REQUEST - City Council Policy #901 Management of Real Property (Sale, Lease, Rental, Surplus) Requested by Councilmember Rodriguez 349

12. CITY ATTORNEY REPORT

13. ADJOURNMENT

Regular Meeting of the City Council of the City of National City - Tuesday, February 21, 2023 - 6:00 p.m. - Council Chambers - National City, California.

CALIFORNIA
NATIONAL CITY
1837
INCORPORATED

NEW HIRE
December 2022 - January 2023

CITY ATTORNEY'S OFFICE



Barry Schultz
City Attorney



Ashlin Lutes
Deputy City Attorney



Emily Portes
Senior Office Assistant

CITY MANAGER'S OFFICE

POLICE DEPARTMENT



Kaitlynn Norie
Police Officer



Rasheed Farha
Police Officer



Sandra Tec-Durazo
Police Dispatcher

HOUSING AUTHORITY



Daniel Gonzalez
Housing Assistant



David McEachern
Community Development Specialist II

ENGINEERING/PUBLIC WORK'S



Ricardo Rodriguez
Assistant Civil Engineer



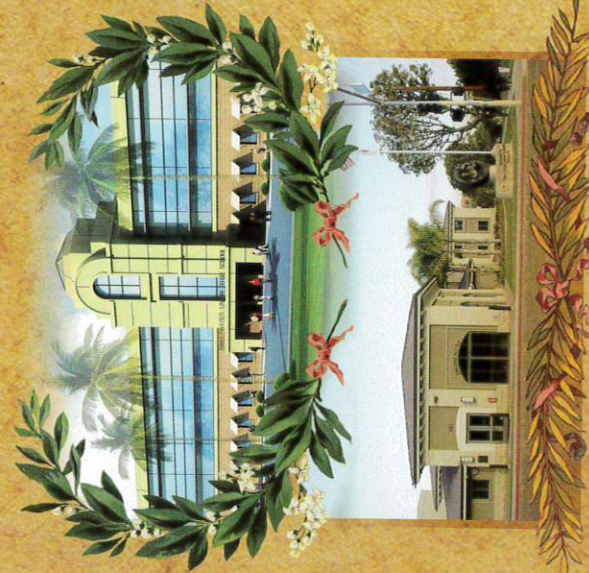
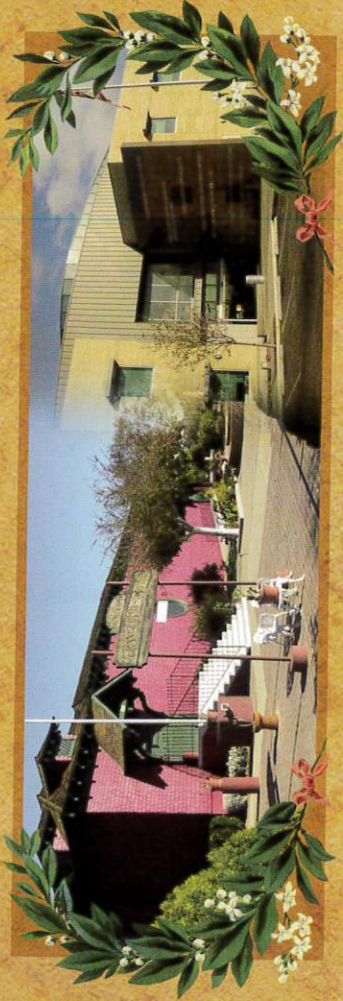
Jose Casillas
Sr. Park Caretaker



Avier Washington
Maintenance Worker



Roberto Castaneda
Custodian



Proclamation



WHEREAS, the 82nd Airborne Division San Diego Chapter Color Guard has provided invaluable service for their Country and their Community for the last 25 years; and

WHEREAS, the 82nd Airborne Division Color Guard is a valuable asset that provides service throughout our region it has been based here in National city; and

WHEREAS, the pride and patriotism that this unit tolls upon the crowd at every event that they are a part of is indeed an inspiration. Their willingness and sacrifice at the drop of a hat is a true demonstration of dedication and love of Country; and

WHEREAS, they have provided support on a volunteer basis to any veteran, including homeless veterans at the time of their burial; and

WHEREAS, they believe that every veteran has earned the right to receive full Military Honors at the time of their interment. They feel that honoring our dead veterans is all of our obligation in appreciation of the sacrifice they have made to keep us safe; and

WHEREAS, they support an average of 150 events per year without the aid of sponsors, relying on donations to help them to continue to provide services to the veterans and the community that they live in; and

WHEREAS, the 82nd Airborne Division Color Guard Nick Aguilar, Al Calderon, Al Gonzales, Gilberto Montañó, Lalo Rodriguez and Ruben Salgado have become the unofficial Color Guard of National City, they support Monthly Military Memorials at the Balboa Park Veterans Museum, the Veterans Administration Hospital and at the Chula Vista Veterans Home; and

WHEREAS, they provide the color guard for such events as; Veterans and Military Memorials and the exhibit of the Vietnam Wall, Presidential nomination campaigns for President George W. Bush and President Barack Obama, State of the City Address by the Mayors of San Diego and National City, Super Bowl, Padres Games, Little League openings, Memorial Day at La Vista Memorial Park and IB Veterans Park, Support of our Wounded Warriors just to name a few.

NOW, THEREFORE, BE IT RESOLVED, I, Ron Morrison, Mayor of National City, California by virtue of the authority vested in me by the City of National City, affix the official seal and do hereby on behalf of the City Council, proclaim February 7, 2023 as:

82nd Airborne Division San Diego Chapter Honor Guard Day



As the Mayor of the City of National City, I call upon all citizens of National City to take a moment to commend and honor this fine group of volunteer veterans that after 25 years of outstanding service to Country and Community have arrived at Stand Down. On behalf of a grateful Community, we say Thank You for your unselfish and unwavering service!

Ron Morrison

Proud to be Mayor of National City



AGENDA REPORT

Department: City Clerk's Office
Prepared by: Shelley Chapel, Interim City Clerk
Meeting Date: Tuesday, February 7, 2023
Approved by: Brad Raulston, City Manager

SUBJECT:

Approval of City Council Meeting Minutes.

RECOMMENDATION:

Approve and file.

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

Meeting Minutes:

January 17, 2023 City Council Special Meeting
January 17, 2023 City Council Regular Meeting

FINANCIAL STATEMENT:

None.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Not Applicable.

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378;
PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

Exhibit A – January 17, 2023 City Council Special Meeting – Meeting Minutes
Exhibit B – January 17, 2023 City Council Regular Meeting – Meeting Minutes



SPECIAL MEETING MINUTES OF THE CITY COUNCIL

**January 17, 2023, 5:00 p.m.
City Council Chamber - 1243 National City Boulevard
National City, CA**

Present: Mayor Morrison
Vice-Mayor Molina
Councilmember Bush (Via Zoom)
Councilmember Rodriguez
Councilmember Yamane

Others Present: Shelley Chapel, Interim City Clerk
Barry J. Schultz, City Attorney
Brad Raulston, City Manager
Frank Parra, Assistant City Manager
Tonya Hussain, Executive Secretary

1. CALL TO ORDER

The meeting was called to order at 5:01 p.m. by Mayor Morrison.

AB 2449 Request:

City Councilmember Bush requested to attend the meeting virtually due to “emergency circumstances.”

Mayor Morrison explained the protocol for AB 2449 Teleconference Attendance of a City Councilmember.

Mayor Morrison confirmed that at least a quorum of the legislative body is present at the location of the meeting in City Council Chamber as identified on the agenda.

Mayor Morrison confirmed a two-way visual and telephonic service and a live webcasting of the meeting to allow the public to hear, and observe the meeting was available, and the opportunity for public to attend via call-in option, Zoom, and in-person location of the meeting.

This will be the first virtual City Council Meeting Councilmember Bush has attended in 2023 under the AB 2449 provision due to “Emergency Circumstances.”

Councilmember Bush confirmed there was no other individual over the age of 18 present at the remote location with him.

ACTION: Motion by Councilmember Rodriguez, seconded by Councilmember Yamane to approve the remote participation of Councilmember Bush due to “Emergency Circumstance.”

Motion approved unanimously.

2. ROLL CALL

All members present.

3. PLEDGE OF ALLEGIANCE TO THE FLAG

Vice-Mayor Molina led the Pledge of Allegiance.

4. PUBLIC COMMENT

No Public Comment was received.

5. CLOSED SESSION

Members retired into Closed Session at 5:16 p.m. and returned at 5:49 p.m. with all members present in attendance: Morrison, Molina, Bush (via Zoom), Rodriguez, Yamane, Schultz.

Announcement of actions taken in Closed Session shall be made at the Regular City Council Meeting following this meeting at 6:00 p.m.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Government Code Section 54957.6

Position to be Reviewed: City Manager

6. **ADJOURNMENT**

Mayor Morrison adjourned to the Regular Meeting of the City Council of the City of National City, Tuesday, January 17, 2023, 6:00 in the Council Chamber, located in City Hall, 1243 National City Boulevard, National City, California.

The meeting adjourned at 5:49 p.m.

Shelley Chapel, MMC, Interim City Clerk

The foregoing minutes were approved at the Regular Meeting of February 7, 2023.

Ron Morrison, Mayor



REGULAR MEETING MINUTES OF THE CITY COUNCIL

**January 17, 2023, 6:00 p.m.
City Council Chamber - 1243 National City Boulevard
National City, CA**

Present:
Mayor Morrison
Vice-Mayor Molina
Councilmember Bush (via Zoom)
Councilmember Rodriguez
Councilmember Yamane

Others Present:
Brad Raulston, City Manager
Barry Schultz, City Attorney
Frank Parra, Assistant City Manager
Shelley Chapel, Interim City Clerk (via Zoom)
Tonya Hussain, Executive Secretary
Carlos Aguirre, Director of Housing
Molly Brennan, Administrative Services Director
Tonya Hussain, Executive Secretary
Joanne McGee, Community Services Manager
Sergio Mora, Fire Battalion Chief
Joyce Ryan, Library & Community Services Director
Jose Tellez, Chief of Police
Armando Vergara, Director of Community Development
Roberto Yano, Director of Public Works and City Engineering

1. **CALL TO ORDER**

A Regular Meeting of the City Council of the City of National City was called to order at 6:04 p.m. via teleconference and in the Council Chamber, located in City Hall, 1243 National City Boulevard, National City, California.

AB 2449 Request:

City Councilmember Bush requested to attend the meeting virtually due to “emergency circumstances.”

Mayor Morrison explained the protocol for AB 2449 Teleconference Attendance of a City Councilmember.

Mayor Morrison confirmed that at least a quorum of the legislative body is present at the location of the meeting in City Council Chamber as identified on the agenda.

Mayor Morrison confirmed a two-way visual and telephonic service and a live webcasting of the meeting to allow the public to hear, and observe the meeting was available, and the opportunity for public to attend via call-in option, Zoom, and in-person location of the meeting.

This will be the first virtual City Council Meeting Councilmember Bush has attended in 2023 under the AB 2449 provision due to “Emergency Circumstances.”

Councilmember Bush confirmed there was no other individual over the age of 18 present at the remote location with him.

ACTION: Motion by Councilmember Rodriguez, seconded by Councilmember Yamane to approve the remote participation of Councilmember Bush due to “Emergency Circumstance.”

Motion approved unanimously.

2. **ROLL CALL**

Councilmembers present: Morrison, Molina, Bush (*via Zoom*), Rodriguez, Yamane

Other elected officials: Treasurer Mitch Beauchamp

Administrative Officials present: Raulston, Parra, Schultz, Chapel (*via Zoom*), Aguirre, Brennan, Hussain, McGee, Mora, Ryan, Tellez, Vergara, Yano

Interpretation in Spanish provided by Carlos Diaz and Luisa Diaz de Leon.

3. **PLEDGE OF ALLEGIANCE TO THE FLAG**

Councilmember Yamane led the Pledge of Allegiance. Invocation was delivered.

4. PUBLIC COMMENT

Mayor Morrison summarized the process for acceptance of live public comment allowing two (2) minutes per comment and introduced Interim City Clerk Chapel.

Comment received via Zoom:

Terri-Ann Skelly
Judith Strang
Barbara Gordon
Peggy Walker
Becky Rapp
Jacqueline Reynoso

In-person comment:

Stephanie Delgado
Rosaura Delgado
Sherry Gogue
Laura Wilkinson Sinton
Ted Godshalk
Geoffrey Schrock
Jeremy Day
Dukie Valderrama
Karla Apalategui
Adrian Rodriguez, SEIU
Morgan White, SEIU

5. PROCLAMATIONS AND RECOGNITION

5.1 Employee of the Quarter - Kevin Hamel, Fire Engineer

Fire Chief Mora presented the item and recognized Fire Engineer Kevin Hamel.

5.2 Retiree Service Recognition - Steve Shephard, Police Sergeant

Mayor Morrison announced that this item would be heard at the February 7, 2023 City Council meeting.

6. PRESENTATION (Limited to Five (5) Minutes each)

6.1 Presentation of 2023 Storm Water Calendar Winners

Presented by Engineering and Public Works Department, Management Analyst Tirza Gonzales, who introduced the youth calendar winners. Ms. Gonzales introduced National School District Superintendent Leighangela Brady who addressed the City Council.

7. REGIONAL BOARDS AND COMMITTEE REPORTS

Port of San Diego Commissioner Sandy Naranjo provided an update on the National City Balanced Plan and Pepper Park.

Vice-Mayor Molina provided an update on the San Diego Association of Governments Board.

Mayor Morrison reported that the Sweetwater Authority meeting was cancelled.

Councilmember Bush provided an update on the business of the Air Pollution Control District.

8. CONSENT CALENDAR

ACTION: Motion by Councilmember Bush, seconded by Councilmember Rodriguez to approve the Consent Calendar Items 8.1 through 8.11.

Motion carried by unanimous vote.

- 8.1 Approval of Reading by Title Only and Waiver of Reading in Full of Ordinance on this Agenda

Motion carried by unanimous vote

- 8.2 Approval of City Council Meeting Minutes.
Approve and file.

Motion carried by unanimous vote

- 8.3 Affordable Housing Density Bonus Agreement for 1628 Orange Street
Adopted Resolution No. 2023-1

Approve the Resolution Entitled, "Resolution of the City Council of the City of National City, California (1) approving an Affordable Housing Density Bonus Agreement with Orange St. Partners, LLC, a California limited partnership, restricting the rent and occupancy of one (1) unit to a very low income household in exchange for two concessions pursuant to California Government Code Sections 65915 – 65918 for the development of 8 housing units located at 1628 Orange Street in National City."

Motion carried by unanimous vote

- 8.4 Awarding a Contract to E&H General Contracting Inc. for the MLK Community Center – Kitchen Upgrades and New Flooring CIP No. 22-06

Adopted Resolution No. 2023-2.

Adopt a Resolution Entitled, "Resolution of the City Council of the City of National City, California, 1) awarding a contract to E&H General Contracting Inc.

in the not-to-exceed amount of \$599,810 for the MLK Community Center – Kitchen Upgrades and New Flooring Project CIP No. 22-06 2) authorizing a 15% contingency in the amount of \$89,972 for any unforeseen changes; and 3) authorizing the Mayor to execute the contract.”

Motion carried by unanimous vote

- 8.5 Notice of Decision – Planning Commission approval - Conditional Use Permit for on-sale beer, wine, and distilled spirits (Type 47) at a proposed restaurant (Texas Roadhouse) to be located at 1908 Sweetwater Rd.

Staff concurs with the decision of the Planning Commission and recommends that the Notice of Decision be filed (Case File No. 2022-33 CUP) (Community Development – Planning).

Motion carried by unanimous vote

- 8.6 Investment transactions for the month ended October 31, 2022.

Accept and file the Investment Transaction Ledger for the month ended October 31, 2022.

Motion carried by unanimous vote

- 8.7 Warrant Register #18 for the period of 10/28/22 through 11/03/22 in the amount of \$3,085,499.65

Ratify Warrants Totaling \$3,085,499.65

Motion carried by unanimous vote

- 8.8 Warrant Register #19 for the period of 11/04/22 through 11/10/22 in the amount of \$518,728.25

Ratify Warrants Totaling \$518,728.25

Motion carried by unanimous vote

- 8.9 Warrant Register #20 for the period of 11/11/22 through 11/17/22 in the amount of \$5,702,924.29

Ratify Warrants Totaling \$5,702,924.29

Motion carried by unanimous vote

8.10 Warrant Register #21 for the period of 11/18/22 through 11/24/22 in the amount of \$1,571,871.71

Ratify Warrants Totaling \$1,571,871.71

Motion carried by unanimous vote

8.11 Warrant Register #22 for the period of 11/25/22 through 12/01/22 in the amount of \$3,493,881.88

Ratify Warrants Totaling \$3,493,881.88

Motion carried by unanimous vote

9. STAFF REPORTS

9.1 Resolution of the City of National City, California authorizing the Police Lateral Officer Bonus Program from January 2023 through December 2024

Presented by Administrative Services Director Molly Brennan. Police Chief Tellez answered questions posed by the City Council.

Adopted Resolution No. 2023-3.

ACTION: Approved the Resolution Entitled, "Resolution of the City Council of the City of National City, California, Authorizing the Police Officer Lateral Bonus Program from January 2023 through December 2024."

Motion carried by unanimous vote

9.2 Exclusive Negotiating Agreement between the City of National City and Tower 999, LLC for the disposition of City-owned real property located at 921, 925, and 929 National City Boulevard, National City and development of a mixed-use housing project.

Councilmember Yamane recused on the item and disclosed that she had received a campaign contribution within the last 12 months from the applicant. Councilmember Yamane exited Council Chamber.

Housing Director Carlos Aguirre introduced Kosmont Companies Senior Vice President Wil Soholt who presented the item utilizing a PowerPoint Presentation.

In-Person Public Comment:

Mark Marquez
Robert Moreno

Adopted Resolution No. 2023-4.

Approve a Resolution Entitled, "Resolution of the City Council of the City of National City, California authorizing the City Manager to execute an Exclusive Negotiating Agreement by and between the City of National City and Tower 999, LLC, a Nevada limited liability company for the disposition of City-owned real property located at 921, 925, and 929 National City Boulevard and development of a seven-story, mixed use building with approximately 9,294 square feet of retail/commercial space and 127 rental dwelling units."

ACTION: Motion by Councilmember Bush, seconded by Councilmember Rodriguez to approve the staff recommendation with an amendment that the terms include a Project Labor Agreement, free transit passes provided by the developer, and a homeownership component.

Friendly amendment by Councilmember Rodriguez that the terms include a student housing component.

Original motion:

Ayes: Morrison, Bush, Molina, Rodriguez

Nays: None.

Recused: Yamane

Motion carried by 4-0 vote.

Councilmember Yamane returned to the dais at 8:09 p.m.

9.3 Compensation of Mayor and City Council.

City Attorney Barry Schultz introduced the item.

Recommendation: Discuss and provide direction to staff.

ACTION: Motion by Councilmember Bush, seconded by Councilmember Rodriguez to increase the salary of the Mayor and City Council by 30%.

Substitute Motion by Vice-Mayor Molina to increase the salary by 15%. Motion died for lack of a second.

Original motion:

Ayes: Molina, Bush, Rodriguez, Yamane

Nays: Morrison

Motion carried by 4-1 vote.

10. CITY MANAGER'S REPORT

City Manager Brad Raulston thanked staff for their hard work and provided information regarding San Diego Community Power.

11. ELECTED OFFICIALS REPORT

Closing remarks were provided by City Treasurer, and members of the City Council.

12. CITY ATTORNEY REPORT

CLOSED SESSION

Mayor Morrison introduced City Attorney Schultz who announced that on December 6, 2022 the City Council unanimously approved a settlement related to a sewage spill.

City Attorney Schultz reported that discussions related to the Public Employee Performance Evaluation would be continued to a Closed Session meeting on February 7, 2023.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Government Code Section 54957.6

Position to be Reviewed: City Manager

13. ADJOURNMENT

Mayor Morrison adjourned to the Regular Meeting of the City Council of the City of National City, Tuesday, February 7, 2023, 6:00 in the Council Chamber, located in City Hall, 1243 National City Boulevard, National City, California.

The meeting adjourned at 8:59 p.m.

LaTonya Hussain, Executive Secretary

The foregoing minutes were approved at the Regular Meeting of February 7, 2023.

Ron Morrison, Mayor



AGENDA REPORT

Department: Community Development
Prepared by: Armando Vergara, Director of Community Development
Meeting Date: Tuesday, February 7, 2023
Approved by: Brad Raulston, City Manager

SUBJECT:

Authorizing the City to piggyback onto San Diego Unified Port District Agreement #70-2022MA with Data Ticket, Inc., for Parking Citation Processing Services in a not-to-exceed amount of \$70,000.

RECOMMENDATION:

Adopt the Resolution Entitled, "Resolution of the City Council of the City of National City, waiving the formal bid process pursuant to National City Municipal Code Section 2.60.260 regarding cooperative purchasing and authorizing the City to piggyback onto San Diego Unified Port District Agreement #70-2022MA with Data Ticket, Inc., for Parking Citation Processing Services in a not-to-exceed amount of \$70,000."

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

The management of parking supply plays a critical role in economic growth of an urban city, like National City. The proper management of this infrastructure affects the quality of life of residents and the operation of businesses. Currently, parking enforcement operates out of the City's Neighborhood Services Division of the Community Development Department with a staff of three (3) officers and a manager. The Police Department also plays an important role in providing parking enforcement. Last year, the City of National City issued approximately 9,000 citations.

The City must provide professional parking citation processing services that are compliant with all laws in the State of California. These services also need to be available 24 hours a day and 7 days a week providing real time, online access to the system for City staff and citizens. DMV and adjudication services must be streamlined and simple to use and online permitting for parking districts is essential.

The City is currently in the process of updating Title 11 of the National City Municipal Code ("NCMC") – Vehicles and Traffic to codify a systematic approach to the overall parking program. The proposed updates will include opportunities for increased curb space management, paid parking approaches, expansion of the existing residential parking permit program, inclusion of employee parking options and other parking methodologies. The updates, when combined with the addition of enforcement and citation processing, will enhance National City's parking program, particularly related to the user experience.

City staff recommends hiring Data Ticket, Inc. to provide on-going parking citation processing services in the future due to their vast experience and expertise in this field since 1989. Data Ticket, Inc. currently provides services to approximately 400 agencies nationally.

The proposed agreement (Exhibit A) has a term of five years with cancellation rights by either party to the other with no less than 90 days prior to the end of the scheduled term. The formal bid process is waived pursuant to National City Municipal Code Section 2.60.260 regarding cooperative purchasing that authorizes the City to piggyback onto San Diego Unified Port District (SDUPD) Agreement #70-2022MA with Data Ticket, Inc., for Parking Citation Processing Services (Exhibit C). Said agreement was solicited through formal bid by the SDUPD per Request For Proposals 22-04MA: Parking Citation Processing Services.

FINANCIAL STATEMENT:

The funding included in the FY23 Parking Authority/Neighborhood Services Maintenance & Operations budget. No additional appropriations are required.

420-420-137-355-0000 - \$70,000

The total fee shall not exceed \$70,000 per fee schedule attached as Exhibit B.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Public Safety

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

Exhibit A - Data Ticket, Inc. - Scope of Services and Performance Agreement for National City
Exhibit B - Data Ticket, Inc. - Parking Fee Schedule for National City
Exhibit C - Agreement with Data Ticket, Inc. and the SDUPD
Exhibit D - Resolution



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SCOPE OF SERVICES AND PERFORMANCE AGREEMENT

Data Ticket, Inc.
2603 Main Street, Suite 300
Irvine, California 92614
(here-in-after sometimes referred to as "Company")

AND:

City of National City
1243 National City Boulevard
National City, California 91950
(here-in-after sometimes referred to as "Agency")

The Company intends to provide for the processing of fines, bail and forfeiture thereof, in connection with the issuance of citations for illegal parking pursuant to the laws of the California.

ARTICLE I - CITATION PROCESSING

1.1 Referral and Reconciliation: COMPANY shall receive and process parking citations which COMPANY shall receive from AGENCY. COMPANY will provide a reconciliation of the number of citations received from AGENCY.

1.2 Determination of Processable Citations: COMPANY shall screen the parking citations referred to it by AGENCY to determine if the citation is processable. If the citation is determined by COMPANY to be unprocessable (e.g., essential processing information is missing), COMPANY shall return the citation to AGENCY within seven (7) days of receipt, by COMPANY'S office, for clarification. COMPANY will be paid the contractual rate hereinafter provided, for citations properly returned to the AGENCY as unprocessable.

1.3 Collection and deposit of funds: A "direct deposit" system shall be employed for all funds received in payment of citations. The AGENCY shall own the account and deposits shall be made directly into the account by the COMPANY for the collecting AGENCY. The COMPANY will invoice the AGENCY for services rendered. Payment in full shall be due within thirty (30) days after which interest shall be accrued at the rate of 6%, (or lower if any statutes, rules or regulations prohibit this rate). If the COMPANY deposits into an account held jointly between the AGENCY and the COMPANY, the COMPANY shall reconcile the account the month following the banking activity, disburse all revenue due the AGENCY, the COMPANY, any tax or surcharge



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liability and all refunds and provide all supporting documentation for the AGENCY records.

1.4 Identification of Registered Vehicle Owners: COMPANY shall exert best efforts and attempt to obtain the name and address of the registered vehicle owner from the State Department of Motor Vehicles (DMV) for each vehicle for which a parking citation has been issued but payment for which has not been received within the required time period. COMPANY shall follow all procedures specified by the DMV, and be consistent with the Vehicle Code when identifying registered vehicle owners.

1.5 Verification of Ownership: COMPANY will take reasonable measures to identify and verify registered vehicle owners. Such measures will take into consideration factors such as issuance of new license plates; address changes; license plate transfers to other vehicles; name changes; and the validity of plates and registration during specific time periods applicable to individual cases.

1.6 Delinquency Notices: In accordance with State law, COMPANY will generate and mail (presorted, first-class postage) no sooner than allowable by law, a delinquency notice to all identified registered owners of vehicles who fail to pay their parking citation fines or to post bail in the required manner. The mailed notice will include all information required by the State Vehicle Code, including, but not limited to the following:

- A. The parking citation issuance date and number;
- B. The consequences of nonpayment (i.e., a hold on the vehicle registration and the imposition of penalties, towing, or issuance of a possible warrant for arrest);
- C. The amount of fines and fees due and payable;
- D. Affidavit of Non-Ownership.

1.7 Registration Holds: The COMPANY will provide the system and procedures and will interface with the State Department of Motor Vehicles to place a hold on vehicle registration having unpaid parking fines and fees due against those vehicles in accordance with the Vehicle Code and any other applicable State and local laws. The notification will be given within a reasonable period of time after issuance of a delinquency notice. The period of time will not exceed the time limits provided by state and local law.

1.8 Removal of Registration Holds: COMPANY will provide the system and procedures and will interface with the State Department of Motor Vehicles to remove registration holds when a registered vehicle owner satisfies the entire amount of parking citation fines, penalties, and fees due against the vehicle and establishes such payment to the satisfaction of COMPANY.

1.9 Contested Citations: In the event a registered vehicle owner disputes the liability for the outstanding parking citation, COMPANY will advise the registered vehicle owner



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of his/her right to request an appeal according to the laws in the state of citation issue. All contested citations will be forwarded to the appeals administrator or AGENCY within the prescribed time period so that the matter can be adjudicated.

1.10 Appeals: If requested by AGENCY, the COMPANY will schedule and conduct appeals in accordance with state law, to respond to parking violators wishing to contest their citations. The COMPANY will provide a toll-free number for contestants to call, correspond with contestants and notify them of decisions; maintain records of dispositions and appeal paperwork and refer all paperwork to Court if required. The COMPANY shall not be responsible for the AGENCY'S failure to provide correct or timely infraction information. The AGENCY shall be responsible to pay any court filing fees due, if appeals are sent to Court and earlier decisions are overturned by the Court.

1.11 Citations Disposed of by Hearing/Court: The COMPANY may be required, as a result of court action, to reduce or cancel, on an individual basis, parking citations which have been referred to it. COMPANY shall be paid the contractual rate hereinafter provided for processing the citation regardless of the outcome of court action. COMPANY will maintain records indicating any reduction or cancellations of parking citations as a result of hearing/ court action. Parking citations that are dismissed as a result of hearing/court action, will have the dismissal processed by the COMPANY promptly after receipt from the Hearing/Court.

1.12 Suspension of Processing: COMPANY will suspend processing on any citation referred to it for processing upon written notice to do so by an authorized officer of the AGENCY. COMPANY will promptly return any citation or facsimile properly requested by the AGENCY. COMPANY will maintain records indicating any suspension of citation as a result of AGENCY'S request. COMPANY shall be paid the contractual rate hereinafter provided for processing the citations suspended by the AGENCY.

1.13 Payments by U.S. Mail: It is the citizen's responsibility to ensure that payments are received on or before the date due. The date received by the COMPANY will be the criteria to establish any delinquent fees due.

1.14 Parking Citation System Master File Update: COMPANY will regularly, on a daily basis, update the parking citation database with new citations, payments, reductions, cancellations, dismissals and any other pertinent data.

ARTICLE II - PAYMENT PROCESSING

2.1 Disposition Processing: COMPANY will maintain all citation dispositions for a minimum of two (2) years. Closed citations will remain on-line for at least one (1) year, for research and statistical purposes.



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2.2 Payments Processing: COMPANY shall process citation payments within twenty-four (24) hours of receipt. Payments shall be immediately posted in one (1) of three (3) following categories:

"Regular Payments" are payments with the correct bail, paid on or before the due date. (This includes payments properly complying with prior Notices-of-Intent).

"Partial Payments" are payments paid for less than the amount of bail due. A notice or additional correspondence may advise defendant of late charges and/or incorrect bail.

"Court/Hearing Requests" are all requests for administrative/court hearings by defendants. These requests are sorted so that bail submitted is immediately posted, and if needed the original citations are retrieved.

2.3 Miscellaneous Letters Processing: COMPANY will receive and review all miscellaneous correspondence. These are generally letters requesting meter checks, refunds, voids, or otherwise setting forth complaints. These letters will be researched by COMPANY for proper follow-up either by AGENCY or by COMPANY.

2.4 Batching Procedures: COMPANY shall maintain an effective method of internal control procedures. Such procedures shall involve reconciliation of all payments received using generally accepted accounting principles. After proper reconciliation, deposit slips shall be prepared for and deposits made at the appropriate bank, including an itemized listing of all batch numbers included in the deposit. The batch of citation payment documentation shall then be scanned and stored electronically on the network for a minimum period of three (3) years.

2.5 Cash Payments: COMPANY shall maintain an effective method of handling cash payments. All cash received through the mail, shall be logged in a cash journal. Thereafter, effective internal control procedures shall be implemented to reconcile such payments, using generally accepted accounting principles.

2.6 Deposits: All deposits shall be made daily, subject to regular banking hours. Deposits shall be itemized and detailed information will be captured regarding submitted funds. Deposit slips shall be prepared in triplicate. If a joint account between COMPANY and AGENCY is opened, all deposits shall be directly deposited and COMPANY shall perform all reconciliation and check generation along with monthly invoicing. If only the AGENCY'S designated bank account is used, COMPANY will deposit directly into the designated account, but will have no authorization to perform any other duties. Monthly invoicing will be generated by the parking management system and AGENCY will be responsible



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to reconcile the account and cut all checks. In that case, AGENCY will supply deposit slips and endorsement stamp to COMPANY

2.7 Revenue Report: A monthly revenue report will list all revenues received during a given month. This report will also provide information regarding the AGENCY'S responsibility for any taxes on collected funds.

ARTICLE III – WEB SITE

3.1 Citation Management Web Site: The COMPANY offers a web site for AGENCY review and interface of its database, including all citations and information relating to changes in status.

3.2 Patron Web Site Access: When the AGENCY has web site access, the citizens who receive citations will be able to access the web site to review their individual citations, pay on-line and appeal on-line.

3.3 Web Site Interaction: The web site may be “view only” or “interactive,” for AGENCY staff depending on requirements of the AGENCY.

3.4 Web Site Reports: Web site reports are available to the AGENCY on a daily 24/7 schedule and export into Excel for easy flexible reporting.

3.5 Web Site Cost: User ID's and passwords will be assigned to the AGENCY at no cost.

ARTICLE IV – ADDITIONAL SERVICES

4.1 California Vehicle Code 40215: Services provided include accepting, scheduling, reviewing and hearing of first and second level administrative appeals, interfacing and providing backup for Court appearances and notifying AGENCY contestants by phone and in writing of decisions. The AGENCY shall be responsible to pay the \$25.00 Court filing fee if the review and administrative hearing decisions are overturned by the Court.

4.2 Other Collections: COMPANY shall retain a percent of payments collected on delinquent citations which have been processed in accordance with the current Agreement, and meet the following criteria:

- A. Delinquent citations; those for which the California State Department of Motor Vehicles have been placed on a registration hold and/or dropped from the registration hold due to a transfer of ownership or non-renewal of registration or a registration hold has not been placed, but the normal daily



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- processing cycle is complete.
- B. Citations with out-of-state license plates.
 - C. Any other problem or special citations that AGENCY so designates and refers to COMPANY under this Agreement.

4.3 Postal Rate Increase: The COMPANY will maintain auditable records to document the COMPANY'S actual postage costs associated with the mailing of delinquency notices for unpaid citations and for other mailings related to the processing of correspondence. If there is a postal increase, that increase will be invoiced effective on the date that the postal rate increase goes into effect.

ARTICLE V - GENERAL

5.1 Public Inquiries: The COMPANY will respond to reasonable inquiry by telephone or letter of a nonjudicial nature. Inquiries of a judicial nature will be referred to the AGENCY for determination, unless the COMPANY has been designated to handle appeals.

5.2 COMPANY Limitations: COMPANY will not take legal action or threaten legal action in any specific case without AGENCY'S prior approval.

5.3 Use of Approved Forms: AGENCY shall have the right to reasonable approval of all forms, delinquency notices, and correspondence sent by the COMPANY. These must conform to State and local law.

5.4 Books and Records: COMPANY will maintain adequate books or records for parking citations issued within the AGENCY'S jurisdiction and referred to COMPANY for processing. Such books or records, and related computer processing data, shall be available for reasonable inspection and audit by AGENCY at the COMPANY'S location at reasonable times upon adequate prior notice to COMPANY.

5.5 Ownership: All reports, information, and data, including but not limited to computer tapes or discs, files, and tapes furnished or prepared by the COMPANY, (collectively the "Materials"), are and shall remain exclusively the sole property of COMPANY, and the AGENCY shall acquire no right or title to said Materials. All computer software and systems, related automated and manual procedures, instructions, computer programs, and data storage media containing same, and written procedures performed hereunder (collectively the "System") are and shall remain exclusively the sole property of COMPANY, and the AGENCY shall acquire no right or title to said Systems.

5.6 Property of AGENCY: All documents, records and tapes supplied by AGENCY to COMPANY in performance of this contract are agreed to be and shall remain the sole property of AGENCY.



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COMPANY agrees to return same promptly to AGENCY no later than forty-five (45) days following notice to the COMPANY. The AGENCY shall make arrangements with COMPANY for the transmission of such data to the AGENCY upon payment to COMPANY of the cost of copy and delivery of such tape from COMPANY'S computer facilities to AGENCY'S designated point of delivery, plus any open invoices.

5.7 Confidentiality: In order to enable COMPANY to carry out its work hereunder, to some extent it will have to impart to the AGENCY'S employees information contained in the Materials and Systems (collectively the "CONFIDENTIAL DATA"). The AGENCY agrees that information contained in the data that was marked in writing as "CONFIDENTIAL", "PROPRIETARY" or similarly, so as to give notice of its confidential nature, when submitted to the AGENCY by COMPANY shall be retained by AGENCY in the strictest confidence and shall not be used or disclosed in any form except in accordance with paragraph 5.8 hereinbelow. The PUBLIC AGENCY recognizes that irreparable harm could be occasioned to COMPANY by disclosure of CONFIDENTIAL DATA that is related to its business and that COMPANY may accordingly seek to protect such CONFIDENTIAL DATA by enjoining disclosure.

5.8 Consent for Disclosure: No report, information, data, files, or tapes furnished or prepared by COMPANY or its subcontractors, successors, officers, employees, servants, or agents shall be made available to any individual or organization without the prior written approval of AGENCY other than individuals or organizations that are necessary to properly effectuate the terms and conditions of this agreement, unless requested under State or Federal law, subpoena or court order. Agency shall promptly inform Company of any such request or order of disclosure immediately upon receipt by Agency. This Non-Disclosure obligation shall survive the Termination of this Agreement.

5.9 COMPANY Files: COMPANY shall maintain master files on parking citations referred to it for processing under the scope of services. Such files will contain records of payments, dispositions, and any other pertinent information required to provide a reasonable audit trail.

5.10 Storage for AGENCY:

- A. COMPANY agrees to store original citations, manually scanned or received electronically, on the network for a minimum of three (3) years. AGENCY relieves COMPANY of all liability costs associated with data released by AGENCY to any other person or entity using such data.
- B. Subsequent to the termination of the contract, COMPANY will return all hard copies to the AGENCY or shred them. If requested, an electronic file, diskette or CD of all processed data will be available to the AGENCY.



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ARTICLE VI - REPORTS

6.1 Periodic Reports: COMPANY will submit reports to AGENCY each month. The reports will provide activities relating to performance under this Scope of Services. Among the reports, which COMPANY will generate, are the following:

- A. Report of Revenue Collected for Period
- B. Report for Parking Citations Issued for Period
- C. A balanced summary report for issuing AGENCY providing the status of all parking citations at the beginning of the period, current period and at the end of the period.
- D. A report for issuing Agency identifying registered vehicle owners with multiple outstanding parking citations.
- E. A report for issuing Agency identifying the parking citations issued, location, and violation by officer.

6.2 PCI Compliance Reports/Certificates: Quarterly and Ad Hoc certificates will be sent to the Agency.

6.3 Annual Reports: Annually, COMPANY shall comply with existing state laws.

ARTICLE VII – TERM OF CONTRACT AND COSTS

7.1 Terms and Renewals: This Agreement shall be for five (5) years commencing as of the last date of signature. Notice of termination may be made in writing by either party to the other no less than ninety (90) days prior to the end of the scheduled term. Company may give notice of reasonable price adjustments for its processing services, if such a cost rate increase is directly tied to the most appropriate index of cost-of-living rate, or a pass through of increased costs to the COMPANY. The AGENCY will have thirty (30) days to respond in writing to the proposed increase. Unless AGENCY gives notice in writing of its rejection of these price adjustments, the term shall be extended with these price adjustments as stated. If the AGENCY gives notice of its rejection of these price adjustments, unless there is a further written Agreement between the parties, the term of the Agreement shall not be extended and the Agreement shall terminate.

7.2 Cancellation: Upon a material breach or upon ninety (90) days written notice to the COMPANY, the AGENCY may cancel or terminate this Agreement. The COMPANY shall have thirty (30) days to cure any material breach or defect set forth in the written termination notice provided by the AGENCY.

7.3 Exclusivity: AGENCY agrees to utilize only the services of the COMPANY during the term of the Agreement for the processing of the citations referred to above. AGENCY



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agrees during the term of the Agreement, to not directly or indirectly engage a competitor of the COMPANY for the performance of the services provided by the COMPANY under this Agreement.

7.4 Costs: Cost shall be charged as set forth in Exhibit A.

ARTICLE VIII – CLAIMS AND ACTIONS

8.1 AGENCY Cooperation: in the event any claim or action is brought against COMPANY relating to COMPANY'S performance or services rendered under this Agreement, COMPANY shall notify the AGENCY, in writing, within five (5) working days, of said claim or action.

8.2 Hold Harmless Clause:

- A. COMPANY agrees to the fullest extent provided by law to indemnify, defend, and hold harmless the AGENCY and its officers and employees against all claims, demands, damages, costs (including reasonable attorney's fees) or expense for, and liabilities caused by arising out of, or in connection with the performance by COMPANY or or any of their officers, employees or agency under this AGREEMENT, excepting only loss, injury or damage caused solely by the negligent acts or omissions of AGENCY or any of its officers or employees.

ARTICLE IX – SUBCONTRACTORS AND ASSIGNMENTS

9.1 Subcontracting: It may be necessary for COMPANY to sub-contract for the performance of certain technical services or other services for COMPANY to perform and complete the required services; provided, however, all COMPANY sub-contractors shall be subject to prior written approval by AGENCY. The COMPANY shall remain responsible to AGENCY for any and all services and obligations required under this Agreement, whether performed by COMPANY or COMPANY'S sub-contractors. COMPANY shall compensate each COMPANY'S sub-contractors in the time period required by law. Any COMPANY'S sub- contractors employed by COMPANY shall be independent sub-contractors and not agents of AGENCY. COMPANY shall insure that COMPANY'S sub-contractors satisfy all substantive requirements for the work set forth by this Agreement including insurance and indemnification.

9.2 Assignments: This contract may not be assigned without the prior consent of the AGENCY. It is understood and acknowledged by the parties that the COMPANY is uniquely qualified to perform the services in this Agreement.

ARTICLE X - INDEPENDENT COMPANY

10.1 COMPANY'S Relationship: COMPANY'S relationship to the AGENCY in the performance of this Agreement is that of an independent COMPANY. Personnel performing



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services under this Agreement shall at all times be under COMPANY'S exclusive direction and control and shall be employees of COMPANY and not employees of the AGENCY. COMPANY shall pay all wages and salaries and shall be responsible for all reports and obligations respecting them relating to social security, income tax withholding, unemployment compensation, worker's compensation, and similar matters. Neither COMPANY nor any officer, agent, or employee of COMPANY shall obtain any right to retirement benefits or other benefits which accrue to employees of AGENCY, and COMPANY hereby expressly waives any claim it might have to such rights.

ARTICLE XI – INSURANCE

11.1 Insurance Provisions: COMPANY shall provide and maintain at its own expense during the term of this Agreement, the following policy or policies of insurance covering its operations hereunder. Such insurance shall be provided by insurer(s) satisfactory to the AGENCY and certificates of such insurance shall be delivered to the AGENCY on or before the effective date of this Agreement. Such certificates shall specifically identify this Agreement and shall not be cancelled, reduced in coverage or limits or non-renewed except after thirty (30) days written notice has been given to the AGENCY.

- A) Comprehensive general liability insurance covering bodily and personal injury and property damage. Limits shall be in an amount of not less than two million (\$2,000,000) dollars per occurrence. Such insurance policies shall name the AGENCY, its officers, agents and employees, individually and collectively, as additionally insured. Such coverage for additional insured shall apply as primary insurance and any other insurance or self-insured retention maintained by the AGENCY, its officers, agents and employees shall be excess only and not contributing with insurance provided under said policy.
- B) Comprehensive automobile liability, owned, non-owned and hired vehicles with not less than one million (\$1,000,000) dollars combined single limit, per occurrence for property damage and for bodily injury or death of persons. Such insurance shall include the same additional-insured and cancellation notice provisions as specified above and may be combined with the comprehensive general liability coverage required above.
- C) Throughout the period of the Agreement, COMPANY, at its sole cost, shall maintain in full force and effect a policy of worker's compensation insurance covering all of its employees as required by the labor code of the State of California.

ARTICLE XII – SECURITY PROVISIONS

12.1 Security Provisions: AGENCY agrees to follow all defined security requirements including but not limited to:

- A) All AGENCY employees who are provided access to services provided by

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COMPANY must complete a background check and must complete annual security awareness trainings.

- B) All AGENCY employees must sign security agreement documents subject to the source state of the information being obtained by DMV entities.
- C) AGENCY must inform COMPANY within 24 hours of an AGENCY employee with access to COMPANY services leaving their role.
- D) AGENCY must inform COMPANY of any breach of information within 24 hours, so the appropriate government agencies can be notified of the breach.
- E) AGENCY understands and agrees that security requirements may change and be updated to reflect the most current security requirements of the government agencies we work with to obtain vehicle registered information.
- F) AGENCY understands that evidence of the security requirements may be requested to comply with COMPANY audit requirements of the governmental agencies we work with.
- G) AGENCY understands and agrees that access to confidential registered owner information may be immediately restricted or terminated if any of the mandatory provisions above are found to be violated or abused.

ARTICLE XIII – ENTIRE AGREEMENT

13.1 Integrated Agreement: This contract is intended by the parties as a final expression of their Agreement and also as a complete and exclusive statement of the terms thereof, any prior oral or written Agreement regarding the same subject matter notwithstanding. This Agreement may not be modified or terminated orally and no modification or any claim or waiver of any of the provisions shall be effective unless in writing and signed by both parties.

13.2 Law Applicable: This Agreement shall be construed in accordance with the Laws of the State of California.

13.3 Notice to Parties: Any notice required under this Agreement to be given to either party may be given by depositing in the United States mail, postage prepaid, first-class, addressed to the following:



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AS TO THE AGENCY:

City of National City
1243 National City Boulevard
National City, California 91950

AS TO THE COMPANY:

Data Ticket, Inc.
A California Corporation
2603 Main Street, Suite 300
Irvine, California 92614

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year last written below.

AGENCY:

COMPANY:

CITY OF NATIONAL CITY

DATA TICKET, INC.

Signature

Signature

Print Name and Title

Print Name and Title

Date

Date



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949 428-7241 - Phone
ClientServices@DataTicket.com

EXECUTIVE SUMMARY

Data Ticket, Inc. is a California Corporation that provides parking citation processing and collection services, administrative review and hearing coordination, permit sales and processing, accounting services, customer service and a web-based solution that manages the entire process. Data Ticket has been providing these services for Cities, Counties, Universities, Districts and other Public entities nationwide for over 30 years. Data Ticket was incorporated in California in 1989. We provide expertise to ensure that citations get processed and collected in a timely manner for over 400 Agencies, nationwide.

Data Ticket is located in Irvine, California and employs 52 full time individuals. Our offices are always open to our clients and we encourage in-person communication on a regular basis. Data Ticket, Inc. is a California certified Small Business Enterprise and a California certified Woman-Owned Business Enterprise.

Data Ticket fully understands we are in a service industry that we consider our Client's acceptance of our software and services paramount to our success. When we partner with each Client, the goal is to ensure that each Client is treated as a unique entity, that our Client's Patrons are treated with respect and care, and that our Clients gain compliance and realize increased revenue collection through our comprehensive parking management program.

We attribute much of our success to the fact that our Clients and their Patrons are always treated politely and professionally. Providing easy, clear access for our Clients and their Patrons is of primary importance because it encourages communication between all interested parties, transparency in the data processing for our Clients and prompt payment by Patrons.

Our web-based Solution provides patrons with access to lookup their citation(s), pay for their citation(s), get specific information about their citation(s), appeal their citations and attach supporting documentation and print a receipt; all online, all via real-time data. In addition, the Agency's Patrons will have access to a toll-free, bi-lingual customer service department who will answer general and specific questions about each citation and will accept payment over the phone via a real-time interface. Finally, patrons will also be able to submit payment and appeals to the Agency or to Data Ticket via mail or in person at the Agency's preferred location. All of the types of access we allow are intended to make the process simple for the Agency's patrons so they pay their citations in a timely manner.

Access to the data for Agency Staff is equally as important as is access for the Agency's Patrons. Our Solution provides online access to our Clients to lookup citations, enter notes on citations, process voids, dismissals, reductions, refunds, refund requests, view online reports, print receipts and process and review the adjudication process. Each capability is provided based on the level of access each person is granted.

Data Ticket allows for real-time processing of payments via VISA, MasterCard, Discover, and American Express. Credit/debit card payments are accepted online, via phone with a customer service representative or using our state of the art IVR system or via paper.



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EXECUTIVE SUMMARY

Website payments are updated in the system real-time, as soon as they are authorized and accepted by the bank. Payments are immediately updated to the citation records and receipts can be printed verifying payment for the payer.

Data Ticket's Solution is Payment Card Industry (PCI) certified and our Solution is subjected to both quarterly, scheduled scans of our database as well as unscheduled scans, thus providing the ultimate security for our Clients as well as their patrons.

Our Solution offers all adjudication services via our online appeals website. We allow patrons to place their citations on hold and submit their full explanation and attach backup documentation via the web. This allows patrons to appeal their citation(s) online only if they are eligible to appeal based on the rules set forth by each Agency and the State of California. Once the appeal is submitted, either online or via U.S. Mail, our Solution processes the request and makes it immediately available for an Administrative Review Disposition or it is immediately available to be scheduled for an Administrative Hearing with a certified, independent hearing officer. These individuals review or hear the cases and enter judgments that automatically mark the citation and generate written notification of the results. This notification informs the appellant of the decision and provides additional information if the individual wishes to continue his/her appeal and/or refund information and/or court filing instructions, depending on the appeal decision.

Our Solution provides an Online Reporting capability that allows our Clients to generate and print real-time and month-end reports via the web. These reports can be saved to a network, PC or external drive, copied into Excel for additional manipulation as the Agency wishes or they can simply be viewed. These reports are available to the Agency as long as the Agency is a Client. In addition, when the Agency needs ad hoc reports or additional data, Data Ticket will provide those at no cost.

Data Ticket is experienced at working backlog and delinquent citations, which all agencies seem to have. We have years of experience collecting from "old databases and citations", and we do it carefully and professionally, with the utmost care given to the agency image and collection attitude. Since 2002, Data Ticket, Inc. has been offering additional collections through the Franchise Tax Board's Interagency Intercept Program on behalf of our Clients in order to provide an additional opportunity for collection of delinquent California debts. Many of our agencies have been participating in this program since we began offering this interface and they have all been impressed with the return-rate on collections from this submission.

On behalf of Data Ticket, thank you for the opportunity to provide Parking Citation Processing Collections, Services and Technology as well we excellent Client and Customer Service!



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PROPOSAL FOR THE CITY OF NATIONAL CITY

Manual Parking Citation Processing: \$0.60

Services for the above-mentioned items include:

- On-site data entry of manually written citations performed within 48 hours of receipt
- On-site quality assurance verification of manually entered citations
- Scanning of all manually written citations onto our network for storage and ease of retrieval
- Bi-monthly shredding of manually written citations

Electronic Parking Citation Processing: \$0.50

Services for the above-mentioned items include:

- Automated citation transmission into Data Ticket's Citation Management Solution 24/7
- Automated confirmation email detailing successfully transmitted citations
- Automated transmission of photos attached to citations

Courtesy Notice: \$0.75

Services for the above-mentioned item include:

- Semi-custom Courtesy Notice that is printed on an 8 ½ x 11" piece of paper and provided in a window envelope sent to the registered owner of a vehicle
- All notices are attached to the citation online and are viewable via the web
- All notices sent via 1st Class Mail
- All notices include a return envelope in which the responsible party may submit payment
- This cost will increase as the US Postal Service increases the 1st Class postage rate
- This charge is only incurred if the individual does not pay off the windshield and a notice is sent to the individual.

Out-of-State Collections: 28% of revenue collected

- This fee will cover all expenses associated with obtaining out-of-state registered owner information and will be due when a citation is paid
- Data Ticket is a recognized Strategic Partner with NLETs; should the Agency have an assigned ORI, Data Ticket will request usage of the ORI for reference/audit purposes only. Data Ticket utilizes its own ORI for transactional purposes
- This fee is not combined with any other contingency fee. For example, if a citation is rolled to a delinquent status, only 28% of revenue collected will be charged
- If Data Ticket does not collect on a citation that is issued to an out of state plate, the Agency does not owe this fee.



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Delinquent Collections:

28% of revenue collected

- This fee will be assessed when a citation is ninety (90) days past the citation issue date, or when a second (2nd) notice is sent if sooner than ninety (90) days, assuming a first notice has been sent to the registered owner and the citation is not on hold for any reason
- In addition to the Courtesy Notice, three Delinquent Notices will be sent to the registered owner
- All notices are sent via First Class mail and all notices are printed on an 8 ½ x 11" sheet of paper and folded into a window envelope; in addition, a window envelope is provided for the recipient to return payment
- All notices are attached to the citation online and are viewable via the web
- If Data Ticket does not collect on a citation that is delinquent, the Agency does not owe this fee
- Notices will be sent via 1st Class Mail, and Data Ticket will be responsible for the cost incurred

Franchise Tax Board Processing - Optional

SSN Look-up

\$3.00 per SSN

- This fee will be assessed to lookup a social security number associated with a particular registered owner and address
- This charge is charged per unique SSN, not per citation

FTB Collections

15% of revenue collected

- This fee is charged if a citation is paid at the Franchise Tax Board
- This charge is not combined with any other charge; for example, if a citation is rolled to delinquent status and paid at FTB, only the 15% of revenue collected will be charged
- Data Ticket will send an FTB Notice to the Patron as required by the Interagency Intercept Program; this notice will be sent via 1st Class Mail
- All notices are attached to the citation online and are viewable via the web
- Data Ticket will pay for the Agency's cost to participate in the FTB program; annually, FTB will send an invoice to the Agency for the number of debts placed at FTB; the Agency will simply provide this invoice to Data Ticket and Data Ticket will pay it in full
- If Data Ticket does not collect on a citation that is at FTB, the Agency does not owe the collection fee
- Data Ticket will send an FTB Notice to the Patron as required by the Interagency Intercept Program; this notice will be sent via 1st Class Mail



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PROPOSAL FOR THE CITY OF NATIONAL CITY

Adjudication:

1st Level Review Hold & Scanning of Review Request **\$0.50 per citation**

- Data Ticket will review all documentation received by the Appellant and determine whether the request received within the required timeframe
- If the request was received within the required timeframe, Data Ticket's Adjudication Department will place the citation on an Administrative Review Request Hold and scan all received documentation into the Citation Management Solution so it is displayed on the web for the Agency's Staff
- If the request is received outside the required timeframe, the Agency will have the option to proceed as though the request was received within the timeframe or it may elect to have Data Ticket send a "time expired letter" rejecting the appeal

1st Level Review Disposition Letters **\$0.85 per letter**

- Data Ticket will send a custom disposition letter to the Appellant via 1st Class Mail
- All letters are attached to the citation online and are viewable via the web
- Disposition letters will be sent Monday - Friday

2nd Level Hearing Hold, Scanning and Scheduling of Hearing **\$0.50 per citation**

- Data Ticket will review all documentation received by the Appellant and determine whether the request received within the required timeframe
- If the request was received within the required timeframe, Data Ticket's Adjudication Department will place the citation on an Administrative Hearing Request Hold and scan all received documentation into the Solution so that it is displayed on the web for the Agency's Staff and the Hearing Officer
- If the request is received outside the required timeframe, the Agency will have the option to proceed as though the request was received within the timeframe or it may elect to have Data Ticket send a "time expired letter" rejecting the appeal
- Data Ticket will work with the designated Hearing Officer to schedule the Hearing based on either a pre-determined schedule or an ad hoc basis, depending on the Agency's schedule

2nd Level Hearing Officer - Optional **\$45.00 per hearing**

- Data Ticket's independent, certified, insured hearing officers will be provided to the to perform in-person, phone and written hearings
- Each hearing request will be reviewed, heard or read, and all required research will be performed
- The Hearing Officer will enter a judgment into the Citation Processing System for viewing by the Agency, Appellant and Data Ticket
- Hearings will be scheduled
- The Agency will incur costs associated with mileage as defined by Federal guidelines
- Data Ticket will work with the Agency to arrange for the use of a conference room at a Agency location or the Agency may elect to have citations heard at a centralized location within the County

2nd Level Hearing Schedule & Disposition Letters **\$0.85 per letter**

- Data Ticket will send a custom disposition letter to the Appellant via 1st Class Mail
- All letters are attached to the citation online and are viewable via the web
- Disposition letters will be sent Monday – Friday



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- **Acceptance and Scanning of Indigent Payment Plan Requests (Approval/Denial by Data Ticket) \$5.00 per request**

OR

- **Accepting and Scanning of Indigent Payment Plan Requests (Approval/Denial by City) \$2.00 per request**

AND

- **Indigent Payment Plan/Denial Letters \$0.85 per letter**

Additional Correspondence \$0.85 per letter

- Printing & Sending daily
- Electronic attachment to the citation
- Windowed #10 envelope and return #9 envelope

Joint / Escrow Banking Services - Optional \$100.00 per month

Services for the above-mentioned item include:

- Daily deposits of funds to the Agency’s escrow account
- Online, real-time reconciliation reports that tie directly to the bank statement
- Processing of all credit card charge-backs and Insufficient Funds
- Month-end reconciliation of all funds collected
- Disbursement of County / State Surcharges at month-end
- Payment of Data Ticket’s invoice
- Disbursement of the net remittance to the Agency
- Scanning of all payments directly to joint bank account daily using remote check deposit
- The Agency will be responsible for the purchase of banking supplies, including checks and endorsement stamps; these fees typically run \$200.00 per year

Charge-backs and NSF’s - Optional \$3.00 per issued instance

- Data Ticket will process credit card charge-backs and NSFs when notified of each occurrence
- Once processed, Data Ticket will send a custom letter to the individual detailing the returned item and the amount due on the citation

Refunds - Optional \$8.00 per issued instance

- Data Ticket will process refunds when notified of each need
- In the event the Agency utilizes Joint Banking Data Ticket will verify, generate and send each refund due
- Refunds will be issued weekly
- Refunds will be sent via 1st Class Mail

Monthly Minimum \$200.00

- A minimum fee of \$200.00 will be charged on a monthly basis if services do not reach this level (not inclusive of the Joint/Escrow Banking Services fee)



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PROPOSAL FOR THE CITY OF NATIONAL CITY

Cost Increases:

Postal Rate Increase Offset – If postal rates increase during the term of the agreement, fees to DTI shall be raised immediately to offset the effect of the actual postal rate increase.

CPI Increases – *There will be NO CPI increases for the duration of the agreement.*



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PROPOSAL FOR THE CITY OF NATIONAL CITY - SERVICES INCLUDED AT NO ADDITIONAL COST

Online Access for the Agency's Patrons: **Included**

The Agency's Patrons will have the ability to perform the following functions online:

- View real-time citation(s) data
- Pay for a single or many citation(s)
- Request a 1st Level Administrative Review and attach up to three documents supporting their position
- Request a 2nd Level Administrative Hearing Request and attach up to three documents supporting their position
- Print a receipt
- View pictures of the citation taken by the issuing officer (if the Agency allows)

Online Access for the Agency's Staff: **Included**

Access to the Agency's data is based on unique usernames and passwords assigned to each individual who requires access to the system. Data Ticket does not limit the number of individuals who have access to the system and the number and types of access can change at any point with a simple email request to Data Ticket.

Our Solution is setup to maintain a complete audit trail for each and every transaction in the system so that the username is displayed next to every transaction in the system, indicating who performed the transaction and when.

Dependent on the access rights provided to each Agency Staff member, the following capabilities are available:

- View real-time citation(s) data, including pictures taken by the Issuing Officer
- Accept payment via VISA, MasterCard, Discover and American Express credit/debit cards
- Accept payment via Cash, Check or Money Order
- Process NSF's and Refunds
- Reduce or increase violation amounts, dismiss citations, void citations and place a citation on hold
- Change citation data, including violations, date, time, plate, location, comments, make, model, color, registration expiration date and others
- Perform Administrative Reviews online by entering the disposition directly online
- Generate a time expired or letter of non responsibility for a citation in the adjudication process
- View the complete reason for the Review Request and supporting documentation provided by the Appellant directly online
- Edit Appellant information
- Upload disposition documents sent to the Agency via US Mail
- Add a note to a citation and see all comments added to the citation
- View the reason for the 2nd Level Administrative Hearing Request online and view the supporting documentation provided by the Appellant, directly online
- Print a receipt with or without registered owner information



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PROPOSAL FOR THE CITY OF NATIONAL CITY - SERVICES INCLUDED AT NO ADDITIONAL COST

Reporting: **Included**

- Data Ticket offers 36 reports online as well as a Customized reporting application for our Clients to generate, print and re-print 24/7. We provide real-time reports that can be generated for any timeframe required and we provide pre-processed/month-end reports that reflect the month-end view of data.
- All reports are available online and because we do not purge data unless specifically requested to do so by a Client, the data is available as long as the Agency is a Client.
- All reports are generated in HTML so our Clients can copy and paste the data into Excel for data manipulation purposes.
- If the Agency were to request a report that was not already available, Data Ticket would work with the Agency to design the report and provide it to the Agency at no cost.

Manual Payment Processing: **Included**

- Manually received payments (checks, cash, money orders and credit card payments sent via US Mail) are received at our PO Box in Newport Beach where a bonded and insured courier picks up the mail daily and delivers it to our Newport Beach office
- On-site Mail Department opens, sorts and batches the payments before providing them to our on-site Data Entry Department
- After double-blind entry of each payment, the citations are updated by our Quality Assurance team
- Payments are then provided to our Accounting Department where daily deposit slips are completed and provided to a bonded, insured courier who takes them to the bank

Registered Owner Information: **Included**

- Registered owner information for all citations issued on California license plates
- Turnaround time for acquisition of California registered owner information is same day
- Registered owner information for all citations issued on out of state license plates
- Data Ticket is a recognized Strategic Partner with NLETs and has access to registered owner information nationwide through the NLETs service
- Access to this system requires the use of the County's ORI for tracking purposes only; Data Ticket will utilize its own ORI for actually acquiring the out of state data
- Turnaround time for acquisition of out of state registered owner information using NLETs is same day

CA DMV Holds and Releases: **Included**

- California DMV Holds and Release performed daily via an online connection
- Holds and releases can also be performed real-time, upon request
- Citation amounts placed on hold are updated daily in the event a partial payment is made



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**PROPOSAL FOR THE CITY OF NATIONAL CITY - SERVICES INCLUDED AT NO
ADDITIONAL COST**

Customer Service: Included

- Data Ticket provides a live, bi-lingual, on-site Customer Service Department that is fully trained to answer questions related to citation issuance, payment, adjudication, fix-it tickets, sign-offs, FTB, advanced credit reporting collections and more
- All calls are recorded to quality assurance and recordings can be sent to the Agency at any time for review.
- Data Ticket's IVR is bi-lingual and accessible via several toll-free numbers; the IVR provides real-time information to the caller regarding current status, including the amount due
- The IVR accepts VISA, MasterCard, Discover, and American Express

Web Presence: Included

- Data Ticket's Solution is 100% web-based and Section 508 Compliant and is provided at: www.CitationProcessingCenter.com; this is a generic website in the sense that it is not Agency branded. This website allows for the Agency and the Agency's Patrons to access citations online
- If the Agency prefers to have an Agency branded website, one in which the look and feel mimics that of the Agency's website, Data Ticket can and will provide this feature to the Agency.

Conversion: Included

- Data Ticket will convert the citations currently with the Agency's existing vendor at no cost to the Agency
- Citations that have not had a payment and do not have a registered owner will immediately be sent to the appropriate DMV so as to obtain a registered owner



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PROPOSAL FOR THE CITY OF NATIONAL CITY – FEES ASSESSED TO THE PATRON

Credit / Debit Card Processing

\$3.50 per transaction

- Data Ticket is PCI Compliant and provides for the ability to pay via Visa, MasterCard, Discover, and American Express on our website, www.CitationProcessingCenter.com, via our toll-free, bi-lingual Customer Service Representatives, and via our toll-free, bi-lingual IVR Solution
- There is no charge to the Agency for credit / debit card processing; however, the Patron is charged \$3.50 per transaction; this means the Patron can pay for a single or many citations at once and incur a single \$3.50 fee

Payment Plan Processing

\$15.00 per transaction

- An administrative fee will be assessed to Patrons who wish to participate in a payment plan
- This fee will cover the cost of the payment plan initiation, and the cost of a confirmation letter that is sent to the Patron confirming the details of the payment plan
- The Agency will have the ability to determine whether Payment Plans are accepted and, if so, what the parameters for payment will be

Credit Card Chargeback Processing

\$33.50 per transaction

- If a chargeback occurs, a fee will be charged to the Patron for the processing of the chargeback
- No fee will be charged to the Agency

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
DATA TICKET, INC.
for
PARKING CITATION PROCESSING SERVICES
AGREEMENT NO. 70-2022MA**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and DATA TICKET, INC., a California Corporation (Service Provider). The parties agree to the following:

1. **SCOPE OF SERVICES.** Service Provider shall furnish all technical and professional labor, and materials to satisfactorily comply with Attachment A, Scope of Services, attached hereto and incorporated herein, as requested by District. Service Provider shall keep the Executive Director of the District or their designated representative informed of the progress of said services at all times.

2. **TERM OF AGREEMENT.** This Agreement shall commence on October 1, 2022 and shall terminate on September 30, 2027, subject to earlier termination as provided below. The District may, at its sole discretion, extend the term of this Agreement for five 1-year option terms (each additional year an "Option Term"). The District will provide notice of its exercise of any Option Term a minimum of thirty (30) days prior to the expiration of the prior term. If extended by the District, an Option Term will commence automatically on the termination date of the previous year's term, consistent with the following:

Option Term 1	October 1, 2027 – September 30, 2028
Option Term 2	October 1, 2028 – September 30, 2029
Option Term 3	October 1, 2029 – September 30, 2030
Option Term 4	October 1, 2030 – September 30, 2031
Option Term 5	October 1, 2031 – September 30, 2032

3. **COMPENSATION.** For performance of services rendered pursuant to this Agreement and as further described in Attachment B, Compensation and Invoicing, attached hereto and incorporated herein; District shall compensate Service Provider based on the following, subject to the limitation of the maximum expenditure provided herein:
- a. **Maximum Expenditure.** The maximum expenditure under this Agreement shall not exceed \$950,000.00. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Service Provider shall not be required to perform further services after compensation has been expended. In the event that the Service Provider anticipates the need for services in excess of the maximum Agreement amount, the District shall be notified in writing immediately. District must approve an amendment to this Agreement before additional fees and costs are incurred.
 - b. **Payment Procedure.** For work performed on an hourly basis, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider finds it necessary to have work, which would usually be performed by personnel with a lower rate, performed by personnel paid at the higher hourly rate, Service Provider shall nevertheless, bill at the lower rate.
 - c. **Progress Documentation.** Service Provider shall provide District progress reports in a format and on a schedule as District directs. Progress reports shall include a description of work completed, cumulative dollar costs incurred, anticipated work for the next reporting period, percentage of work complete, and the expected completion date for remaining work. The report shall identify problem areas and important issues that may affect project cost and/or schedule. The report shall present actual percent completion versus planned percent completion.

d. **Accounting of Parking Ticket Revenue**

- (1) Service Provider shall collect, account for, and deposit and pay over to a depository selected by District, all gross income derived from the parking citations. Such collecting, accounting, and depositing of said gross income shall be accomplished in a manner to be approved expressly in writing by the Executive Director of District and/or his/her/its designated representative , and such aforesaid collecting, accounting, and depositing activities shall be subject to change by express written direction from the Executive Director of District and/or his/her/its designated representative . District shall supply the Service Provider with deposit slips and an endorsement stamp; and Service Provider shall deposit daily all such gross income (cash and checks) in the designated depository. Service Provider shall deposit Monday through Friday all credit card revenue (net of convenience fees) in the designated depository. Should District at any time change its depository, Service Provider shall be given at least seven (7) days' express written notice of such change. District will be responsible for costs incurred due to such depository change.

- (2) Service Provider further agrees that it will maintain for District true, accurate, and complete records in a form satisfactory to District of all such gross income. Designated District staff will be able to use the Service Provider's System to view real time deposits. District shall have the right at any and all reasonable times to examine and audit said records without restriction for the purpose of determining the accuracy thereof and of the daily and monthly records of gross income derived from the Service Provider of the parking citation. All records kept by the Service Provider shall be maintained in a location satisfactory to District. No later than the fifth (5th) day following the close of each calendar month, Service Provider shall file with District a statement showing the daily gross income and total gross income for the preceding calendar month along with a duplicate deposit slip

for each daily deposit made during the preceding month. Said statement shall be signed by the Service Provider, or its responsible agent, under penalty of perjury.

e. **Additional Services; Task Authorizations.**

- (1) Additional services may be required for the completion of the services specified in this Agreement. For performance of Additional Services, District shall compensate Service Provider using the terms and conditions in Attachment B, Compensation and Invoicing. If Additional Services are required, they shall be undertaken by Service Provider only upon issuance of a Task Authorization (TA), Exhibit A, attached hereto and incorporated herein, for said services.
- (2) An estimate of the level of effort shall be submitted to the District and negotiated for each Task Authorization. Pricing of each Task Authorization shall be governed by the cost and pricing information attached hereto and made a part of this Agreement as Attachment B, Compensation and Invoicing.
- (3) A Task Authorization shall not be considered effective until the Task Authorization form has been signed by District.
- (4) Service Provider shall bill for Additional Services in accordance with the terms of payment, including the documentation required in this Agreement. In addition, invoices for Additional Services shall cite the appropriate Task Authorization (TA) number.

4. **RECORDS.**

- a. Service Provider shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to inspection of District at all reasonable times in the City of San Diego and

such records shall be kept for at least three (3) years after the termination of this Agreement.

- b. Such records shall be maintained by Service Provider for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.
- c. Service Provider understands and agrees that District, at all times under this Agreement, has the right to review project documents and work in progress and to audit financial records, whether or not final, which Service Provider or anyone else associated with the work has prepared or which relate to the work which Service Provider is performing for District pursuant to this Agreement regardless of whether such records have previously been provided to District. Service Provider shall provide District at Service Provider's expense a copy of all such records within five (5) working days of a written request by District. District's right shall also include inspection at reasonable times of the Service Provider's office or facilities, which are engaged in the performance of services pursuant to this Agreement. Service Provider shall, at no cost to District furnish reasonable facilities and assistance for such review and audit. Service Provider's failure to provide the records within the time requested shall preclude Service Provider from receiving any compensation due under this Agreement until such documents are provided.

5. **SERVICE PROVIDER'S SUB-CONTRACTORS.**

- a. It may be necessary for Service Provider to sub-contract for the performance of certain technical services or other services for Service Provider to perform and complete the required services; provided, however, all Service Provider's sub-contractors shall be subject to prior written approval by District. The Service Provider shall remain responsible to District for any and all services and obligations required under this

Agreement, whether performed by Service Provider or Service Provider's sub-contractors. Service Provider shall compensate each Service Provider's sub-contractors in the time periods required by law. Any Service Provider's sub-contractors employed by Service Provider shall be independent Service Providers and not agents of District. Service Provider shall insure that Service Provider's sub-contractors satisfy all substantive requirements for the work set forth by this Agreement, including insurance and indemnification.

- b. Service Provider shall also include a clause in its Agreements with Service Provider's sub-contractors which reserves the right, during the performance of this Agreement and for a period of three (3) years following termination of this Agreement, for a District representative to audit any cost, compensation or settlement resulting from any items set forth in this Agreement. This clause shall also require Service Provider's sub-contractors to retain all necessary records for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

6. **COMPLIANCE.**

- a. In performance of this Agreement, Service Provider and Service Provider's sub-contractors shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.

- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.
7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision.
8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of Executive Director (President/CEO) of District in each instance.
9. **INDEMNIFY, DEFEND, HOLD HARMLESS.**
- a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

- b. The Service Provider further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Service Provider pay all reasonable attorneys' fees and costs District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the services of the Service Provider provided for in this Agreement.
- c. The District may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this Agreement. If the District chooses at its own election to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any Claim arising from the services of Service Provider provided for in this Agreement, Service Provider agrees to pay all reasonable attorneys' fees and all costs incurred by District.

10. **INSURANCE REQUIREMENTS.**

- a. Service Provider shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:
 - (1) Workers' Compensation, statutory limits, is required of the Service Provider and all sub-consultants (or be a qualified self-insured) under the applicable laws and in accordance with "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Employer's Liability, in an amount of not less than one million dollars (\$1,000,000) each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee. This policy shall be endorsed to include a waiver of subrogation endorsement, where permitted by law.
 - (2) Professional Liability insurance in the amount of \$1,000,000 per claim and \$1,000,000 aggregate.

- (a) At the end of the Agreement period, Consultant shall maintain, at its own expense, continued Professional Liability insurance of not less than five (5) years, in an amount no less than the amount required pursuant to this Agreement.
 - (b) Alternately, if the existing Professional Liability is terminated during the above referenced five-year period, Consultant shall maintain at its own expense, “tail” coverage in the same minimum amount as set forth in this paragraph.
 - (c) All coverages under this section shall be effective as of the effective date of this Agreement or provide for a retroactive date of placement that coincides with the effective date of this Agreement.
- (3) Cyber Liability Insurance: Service Provider shall at all times during the term of this Agreement maintain, at its expense, Cyber Liability Insurance in the amount of \$1,000,000 per claim and \$1,000,000 aggregate.
- (4) Fidelity Bond: Service Provider during the term of this Agreement shall name San Diego Unified Port District as “Loss Payee” under Service Provider’s Fidelity Bond.
- (5) Performance Bond: Service Provider shall at all times during the term of this Agreement maintain, at its expense, a Performance Bond naming Data Ticket as the Principal and the San Diego Unified Port District as Obligee to ensure protection of public funds as required by Government Code Section 53651 in the event the Principal fails to faithfully perform under the terms of this Agreement. The penal amount of the Performance Bond shall be \$10,000.00. This amount is 110% of the estimated funds collected by Service Provider and not yet paid to the District (Unpaid Funds). If the amount of Unpaid Funds

becomes greater than \$10,000.00, the Performance Bond requirement shall be immediately Increased by the Service Provider to the greater amount.

- b. Service Provider shall furnish District with certificates of insurance coverage for all the policies described above upon execution of this Agreement and upon renewal of any of these policies. A Certificate of Insurance in a form acceptable to the District, an exemplar Certificate of Insurance is attached as Exhibit B and made a part hereof, evidencing the existence of the necessary insurance policies and endorsements required shall be kept on file with the District. Except in the event of cancellation for non-payment of premium, in which case notice shall be 10 days, all such policies must be endorsed so that the insurer(s) must notify the District in writing at least 30 days in advance of policy cancellation. Service Provider shall also provide notice to District prior to cancellation of, or any change in, the stated coverages of insurance.
- c. The Certificate of Insurance must delineate the name of the insurance company affording coverage and the policy number(s) specifically referenced to each type of insurance, either on the face of the certificate or on an attachment thereto. If an addendum setting forth multiple insurance companies or underwriters is attached to the certificate of insurance, the addendum shall indicate the insurance carrier or underwriter who is the lead carrier and the applicable policy number for the CGL coverage.
- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District

shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or subcontractors.

12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own

judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.

15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.
16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.
17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider of such termination and specifying the effective date thereof. In that

event, all finished or unfinished documents and other materials shall at the option of District be delivered by Service Provider to the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101). Termination of this Agreement by Executive Director (President/CEO) as provided in this paragraph shall release District from any further fee or claim hereunder by Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

18. **DISPUTE RESOLUTION.**

- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.
- b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, sub-contractor and all parties bound by this arbitration provision agree to join in and become parties to the arbitration proceeding.

c. The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of the Agreement documents, the California Government Code, and otherwise, shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the District Clerk as required by said Agreement, Government Code, and otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims.

19. **PAYMENT BY DISTRICT.** Payment by the District pursuant to this Agreement does not represent that the District has made a detailed examination, audit, or arithmetic verification of the documentation submitted for payment by the Service Provider, made an exhaustive inspection to check the quality or quantity of the services performed by the Service Provider, made an examination to ascertain how or for what purpose the Service Provider has used money previously paid on account by the District, or constitute a waiver of claims against the Service Provider by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Service Provider for expenses, miscellaneous charges, or other liabilities or increased costs incurred or anticipated by the District which are the fault of or as result of work performed or negligent conduct by or on behalf of the Service Provider. Upon five (5) day written notice to the Service Provider, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Service Provider to pay the same; and the amount due the Service Provider under this Agreement or the whole or so much of the money due or to become due to the Service Provider under this Agreement as may be considered reasonably necessary by the District shall be retained by the District until such expenses, miscellaneous charges, or other liabilities or increased costs shall have been corrected or otherwise disposed of by the Service Provider at no expense to the District. If such expenses,

miscellaneous charges, or other liabilities or increased costs are not corrected or otherwise disposed of at no expense to the District prior to completion date of the Agreement, the District is authorized to pay for such expenses, miscellaneous charges, or other liabilities or increased costs from the amounts retained as outlined above or to seek reimbursement of same from the Service Provider. It is the express intent of the parties to this Agreement to protect the District from loss because of conduct by or on behalf of the Service Provider.

20. **COMPLIANCE WITH PREVAILING WAGE LAWS (IF APPLICABLE).**

- a. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of Service Provider to: (a) ensure that all persons and/or entities (including, but not limited to, Service Provider or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.
- b. Certified Payrolls. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of the Service Provider to insure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls electronically via the software LCPtracker.
 - (1) LCPtracker is a web-based system, accessed on the World Wide Web by a web browser. Service Provider will be given a Log-On identification and password to access the San Diego Unified Port District's reporting system upon Service Provider's request.
 - (2) The use of LCPtracker by the Service Provider is mandatory. Access to LCPtracker will be provided at no cost to the Service Provider.

- (3) In order to utilize LCPtracker, the Service Provider needs a computer and internet access. A digital camera and a scanner may be useful. For more information, go to www.lcptracker.com. To Login, go to www.lcptracker.net and from the homepage, select LOGIN and enter the Username and Password that will be provided to you by the District upon Service Provider's request.
- (4) Use of the system will entail data entry of weekly payroll information including; employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid etc. The Service Provider's payroll and accounting software might be capable of generating a 'comma delimited file' that will interface with the software.
- (5) Service Provider must require all lower-tier sub participants the mandatory requirement to use LCPtracker to provide any required labor compliance documentation. Lower-tier sub participants will be given a Log-On identification and password from the Service Provider.
- (6) Training options can be provided to the Service Provider upon request.

21. **SERVICE PROVIDER/CONTRACTOR REGISTRATION PROGRAM (IF APPLICABLE).**

- a. In accordance with the provisions of Labor Code section 1771.1. (a) A contractor or subcontractor shall not be qualified to bid on; be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section

7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

- b. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
 - c. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
 - d. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
22. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
23. **EQUAL OPPORTUNITY EMPLOYMENT.** Service Provider represents that it is an equal opportunity employer, and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, gender, gender expression, sexual orientation, or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

Service Provider will, within forty-five (45) days of the effectiveness of this Agreement, provide a written statement of its commitment to diversity, equity, and inclusion, which shall include a commitment and brief description of its plan to

implement good faith efforts to recruit subconsultants and employees in a non-discriminatory manner. If Service Provider fails to provide such written statement as required, the District may terminate this Agreement, effective immediately, by providing written notice of such termination. Service Provider shall, not later than sixty (60) days prior to the expiration of each anniversary of the effective date of this Agreement, provide a written report describing Service Provider's actions and results in furtherance of its commitment to diversity, equity, and inclusion, as well as provide an updated Employment & Ownership Report in the form attached hereto as Exhibit C, or updated form provided by District. Service Provider's report shall not identify individual subconsultants and employees by name. If Service Provider fails to provide such report and/or Exhibit C, as required, the District may terminate this Agreement, effective immediately, by providing written notice of such termination.

24. **EXECUTIVE DIRECTOR'S SIGNATURE.** It is an express condition of this Agreement that said Agreement shall not be complete nor effective until signed by either the Executive Director (President/CEO) or Authorized Designee on behalf of the District and by Authorized Representative of the Service Provider.

a. Submit all correspondence regarding this Agreement to:

Ken Wallis, Director, Guest Experiences
Guest Experiences
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. 619-686-6361
Email: kwallis@portofsandiego.org

b. The Service Provider's Authorized Representative assigned below has the authority to authorize changes to the scope, terms and conditions of this Agreement:

***** END OF PAGE *****

Brook Westcott, Chief Operating Officer
Data Ticket, Inc.
2603 Main St., Suite 300
Irvine, CA 92614
Tel. 949-428-7240
Email: BWestcott@DataTicket.com

- c. Written notification to the other party shall be provided, in advance, of changes in the name or address of the designated Authorized Representative.

SAN DIEGO UNIFIED PORT DISTRICT

DATA TICKET, INC.

Ken Wallis

Brook Westcott

Ken Wallis
Director, Guest Experiences

Brook Westcott
Chief Operating Officer

Approved as to form and legality:
GENERAL COUNSEL

Rebecca Harrington

By: Assistant/Deputy

A manually signed copy of this Agreement transmitted by email or any other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

ATTACHMENT A SCOPE OF SERVICES

San Diego Unified Port District

Service Provider shall provide Parking Citation Processing Services, including a parking citation processing management system (System) and custom interface payment website, parking enforcement handheld equipment (Equipment), Equipment software, manual citation booklets, and all related customer services. Services provided by the Service Provider shall include, but not be limited to:

A. Citation Processing

Receiving and processing parking citations issued by the District both handwritten and electronic citations (citations issued previous to Agreement commencement date may be processed by previous Service Provider). The District may request for previous citations to be handled by the new Service Provider, therefore the Service Provider shall provide an implementation and conversion plan associated with parking citations. Service Provider shall at no additional cost, provide the conversion of all of the District's data from the previous Service Provider to the new Service Provider. Previous Service Provider shall be required to provide a sample conversion file and a final conversion file to the new Service Provider. The District shall be responsible for submitting citations to the Service Provider daily or weekly via electronic communication or hard copy (to avoid duplication, the District shall select one method of submitting citations). Service Provider to accept, data enter and update all handwritten citations and make available in the System within 24 hours of receipt, Monday through Friday from 8 am – 5 pm, Pacific Standard Time. Service Provider shall accept the District's electronically issued citations via a wireless connection.

B. Citation Processing Management System (System) and Client & Public-Facing Website

Client-Facing Website

Access by District staff to the website shall be via a unique username and encrypted password, which shall be provided by the Service Provider in the implementation phase. Service Provider's website shall be configured to allow for each staff member to have different levels of security and access. Throughout the life of the Agreement, the District shall have the opportunity to define the user access levels for each staff member with access to the website. District staff shall be able to search the System and view all citation information and current status, all associated photographs, DMV hold information, delinquent notice history, adjudication history, payment information, penalty history, registered owner information, customer service representative phone notes, and vehicle

registration history. Easy search criteria shall be established (Citation number, notice number, vehicle license plate number, state, name or VIN). All information that is displayed to District staff shall be in real-time and certain fields shall be hyperlinked (person, plate, responsible party history, vehicle history, payment plan, noticed history, and all regular notices and adjudication letters sent) for easy access to more detailed information. District staff shall be able to view a complete audit trail for every citation within the website.

Public-Facing Website

Payment processing services are provided by the Service Provider for the District. Service Provider shall create and maintain a website for public inquiry and payment. This website must be 100% web-based, customized and branded for the District. PCI compliance and real-time payment authorization must be displayed on the website. The website shall be setup to allow for at a minimum six (6) different search options and the entire website's language to switch to one of over 100 languages for public citation inquiry, payment and appeals. The website shall have 99.99% uptime and any downtime must be planned and authorized by the District, preferably between the hours of 1am and 2am Pacific Standard Time. Service Provider shall communicate with the District regarding status of payment updates on a monthly basis. The District retains the right to change the payment processing procedure. Changes to the payment processing procedure shall be agreed upon in advance and in writing between the District and Service Provider. All new website content or updates shall be submitted in written form by the District to the Service Provider for approval. Upon receipt of any written new web content update requests from the District, Service Provider to implement the District's requested changes as soon as reasonably possible, or else respond to the District with any questions or concerns. Service Provider is responsible for the following forms of payment:

1. **Online payments (Credit/Debit Card)** – This shall be set-up and maintained by the Service Provider on a secure website to ensure correct payment and due date, at no additional cost to the District. Data is comprised of citation and individual information and includes total amount due (which may include a customer convenience fee) before final authorization is complete. Website shall accept all major credit cards for payment (Discover, MasterCard, Visa or American Express). Service Provider to be PCI-DSS (Payment Application Data Security Standards) certified to meet payment card security requirements and standards. Service Provider to provide written annual confirmation of PCI DSS compliance and shall immediately notify the District if it undergoes, or has reason to believe that it shall undergo, an adverse change resulting in the loss of compliance with PCI DSS standards and/or other related material payment card industry standards. The services include:

- a. Provide the ability to make payments, contest citations, and provide any governing rules that are applicable.
 - b. Service Provider shall be the Merchant of Record and shall make daily deposits of all revenue (net of customer convenience fee) to the District's banking facility, Wells Fargo Bank. Deposits slips for the District's bank shall be provided by the District. All merchant fees, including credit card transaction fees shall be responsibility of the Service Provider (there shall be no credit card or online transaction fees charged to the District). A separate customer convenience fee, if any shall be charged only to the public and Service Provider to indicate the convenience fee cost within Compensation & Invoicing – Attachment B.
 - c. Internet security and website fees shall be the Service Provider's responsibility. Service Provider shall display a real-time authorization link (example: Authorize.Net) as well as a link providing proof of PCI Compliance (example: Trustwave link) directly on the website.
2. **Mailed Payments** – Service Provider shall set-up and provide a PO Box address for payments. With the volume of mail received, Service Provider must provide a detailed explanation of proposed levels of control, audit and redundancy to ensure the accurate and timely receipt, processing, and update of mail-in payments. Services must include:
- a. Mail (individual non-electronic payments) shall be picked up from a local Post Office daily and normally processed within 24 hours at the Service Provider's secured place of business by a bonded and insured courier or employee each business day along with the required documentation to support pick-up and drop-off at Post Office. All mail must be sorted and batched by postmarked date.
 - b. Complete procedures for batch counts that are verified to ensure an accurate starting record for control throughout processing. The batching process shall include the counting of physical payments received as well as the 10-key summation of each batch.
 - c. Service Provider to accept payments (Check or Money Order – no cash accepted), correspondence, adjudication requests and any other items that require special handling. This includes, but is not limited to:
 - 1) Any correspondence that is included with payment. Service Provider shall be responsible for the receipt, tracking and processing of all inbound correspondence via US mail.

- 2) Payments received without accompanying source documents, such as citation or delinquent notice.
 - 3) Legal written amount differs from numeric amount.
- d. Copying the payment document and establishing a completely reliable audit trail for the processing procedures, endorsing and encoding the payment documents with the unique control number of each citation paid, date of processing and batch numbers, and daily reconciling by the Service Provider.
 - e. Preparing funds in accordance with all required District policies and procedures for transfer to the District's designated financial institution, Wells Fargo Bank. District required records shall be prepared and retained for every deposit.
 - f. Updating payment data to the System and depositing the payments to the District's designated financial institution within twenty-four (24) hours of collection from the Post Office.
 - g. Service Provider shall be held completely and solely responsible for ensuring the integrity and security of District revenue throughout the entire processing procedure. Any shortages or losses shall be the exclusive responsibility of the Service Provider and must be fully reimbursed to the District.
3. **Phone Payments** - Service Provider shall set-up and provide a toll-free (1-800) number that has an Integrated Voice Response (IVR) System available 24 hours/day, 7 days/week in at a minimum English and Spanish language, which shall accept payments using all major credit cards and debit cards and provide information via pre-recorded message. The IVR shall be customizable to meet the exact needs of the District. All Service Provider representative answered calls must be digitally recorded and made available to the District upon request. The IVR System must provide the following:
- a. Customers with general citation information by citation number including, but not limited to status of citation, amount due, and due date.
 - b. Provide open citations by license plate.
 - c. Enable customer that are familiar with the call flow to enter their menu selections and entries without having to listen to all the promptings.
 - d. Payments are processed in real-time and the customer is provided with a confirmation number that matches the authorization number.

- e. Customers that require further assistance must be given the option to reach and speak with a live representative during business hours and the ability to leave a message after hours to request a call back.
4. **Indigent Payment Plan** – Service Provider shall oversee and administer the Indigent Payment Plan following rules and regulations pertaining to California Vehicle Code Section (CVC) 40220. District shall complete initial review and approve the indigent determination. Service Provider to place the indigent hold, administer the plan, and charge the approved \$5 processing fee (processing fee is retained by Service Provider). All fees associated with the plan shall be listed within the Compensation & Invoicing – Attachment B.

C . Call Center & Client Service Support

1. Service Provider shall have a fully staffed bi-lingual customer service department available Monday thru Friday from 8am to 5pm Pacific Standard Time to answer all calls and to return calls related to citation payment, inquiries, payment plans, and appeals. Service Provider shall provide staffing that is adequate to meet all service and performance required under the Agreement. The Service Provider's staffing shall be sufficient to provide customer service that meets District's standards. All calls answered and handled by Service Provider's staffing shall be digitally recorded and made available to the District upon request. Staffing based on the approved plan shall be maintained throughout the Agreement period, including peak periods.
2. The District shall have the right to approve any personnel assigned to work under this Agreement. In addition, at the request of the District, if the District is not satisfied in any manner with the performance of an employee who is determined by the District representative to be incompetent, disorderly, intemperate, or otherwise objectionable for any reason, that employee shall be immediately removed from performing under this Agreement and replaced with a qualified and satisfactory replacement by the next business day.
3. Trained call center/customer service personnel shall:
 - a. Act in a courteous and professional manner while performing work under this Agreement.
 - b. Have the ability to communicate effectively and politely with persons from various backgrounds and cultures.
 - c. Provide public customer support services available by a toll-free phone number, Monday through Friday, from 8:00 a.m. to 5:00 p.m. Pacific Time Zone. Live operator support shall be available to support

customers when needed during these business hours. Customer support line shall include after hour information and messaging services.

- d. Provide bilingual support services during operating hours (Service Provider shall identify all supported languages available to customers, District prefers, at a minimum, English and Spanish).

D. Fine schedule

1. The District shall provide to the Service Provider their existing fee schedule such as: late fees, penalties, and due dates. The District shall keep the Service Provider updated on any changes to their fee schedule. All fee schedule changes shall require signature approval by both parties before implementation.
2. Fees established by the District for bank returned checks and additional follow-up shall be included to the citation/account as directed by the District.

E. Banking & Merchant of Record

1. Service Provider shall be set-up as Merchant of Record and shall be responsible for all credit card processing fees. District shall control the bank account and all gross income derived from parking citations, which shall include credit card, check, or money order payments, shall be processed and deposited daily by Service Provider to the District's banking facility – Wells Fargo Bank. District shall provide Service Provider with the necessary deposit slips for daily deposits.
2. District shall pay Service Provider a fixed monthly flat rate Accounting Fee of \$100.00 to process the following on behalf of the District:
 - a. Processing and payment of accounting surcharge fees paid to County and State. Service Provider to provide the District with a Citation Tax Revenue Report, which is required to be submitted to the County/State and to use for reconciliation purposes along with their monthly payment. This shall be provided to the District online for the term of the Agreement. Service Provider shall invoice the District separately for reimbursement of these funds paid on the District behalf.
 - b. Processing and issuing refunds on behalf of the District for such cases as overturned citations and erroneous payments. Service Provider shall set-up an escrow account for the District with an initial deposit amount of \$4,000. This account shall be replenished by the District at

a frequency agreed upon by the District and Service Provider. For replenishment of funds, Service Provider to provide the District a list of all paid refunds to date.

F. Delinquent Account Notices and Revenue

1. Service Provider shall generate and mail notices for citations that have been referred to the Service Provider by the District following the guidelines set forth in California Vehicle Code (CVC) 40207. Notices are sent from the Service Provider to the Registered Owner (RO) of the cited vehicle. RO information is gathered from current DMV records. The notice shall include all information included in the citation and consequences for nonpayment, and/or additional information required by the code section. The notice of violation includes a remittance return portion of payment. Additional letters may be generated if required by the District.

G. Monthly Reporting

1. Service Provider's client-facing website/System shall provide the District the ability to run, print, and save real-time reports. Service Provider to provide a list of available reports with descriptions. All reports shall be available to export to Excel, in a PDF format, or any other method mutually agreed upon by both parties. The reports shall include (if applicable), but is not limited to the following: (Additional requirements to be submitted to the Service Provider in writing)
 - a. Monthly Billing Support
 - b. Officer Summary Report
 - c. Officer Summary Y-T-D Monthly Recap
 - d. Void/Dismissal Report by Operator
 - e. Habitual Offender Hot Sheet Report and Detail
 - f. DMV Monthly Reports
 - g. Out of State Revenue Detail Report
 - h. Revenue Collection Detail Report
 - i. Revenue Distribution Surcharge Report
 - j. Contested Citations Pending and Outcome
 - k. FTB or Special Collections Report
 - l. Bail Schedule Report
 - m. Refund Request Report
 - n. Outstanding Collections Report
 - o. Scofflaw Report
 - p. Indigent Payment Plan Report

q. County/State Fees Report

H. Handheld/Citation equipment

The District currently owns (12) Samsung Galaxy S8 handheld/cellphones along with (12) TSC Alpha 3" Printers as a two-part solution (Equipment), which are used by our Harbor Police - Community Service Officers and Sworn Officers.

1. **Lease to Own New Equipment (36 Months)** – Equipment to be leased and provided by Service Provider as listed in the Fee Schedule – Attachment A. Cost shall include software installation, license fee, hardware/software support, as-needed updates and upgrades and any other material designated for the use of the equipment. All equipment provided shall be new and unused, and include full manufacturer's warranty. Service Provider to lease to the District (12) Samsung Galaxy A52 with (12) 3" TSC Printers. Service Provider shall be responsible for all maintenance of equipment and software, service and warranty support for all equipment and software for the term of the Agreement. Service Provider shall repair and replace leased equipment with the same as needed throughout the term of the 36-month equipment lease. Service Provider shall provide on-going technical support and problem solving as needed throughout the term of the Agreement for both the equipment and software. Service Provider to also provide cost for ticket stock – polythermal paper for the TSC 3' Printers. All costs are listed and detailed within Compensation & Invoicing – Attachment B.
2. **On-going Software Maintenance and Support (after 36 Months)** – Service Provider to continue to provide software support, maintenance, and as-needed updates and upgrades once the equipment is owned by the District. Costs are listed and detailed within Compensation & Invoicing - Attachment B.
3. **Availability of Service Provider's Software** – Software shall be available to download to Sworn Officers District issued phones for use. All costs are listed and detailed within Compensation & Invoicing – Attachment B. Cost s include software installation, software maintenance and software support.

I. System/Equipment Support

1. Service Provider to provide system/software/equipment support and troubleshooting during District business hours (6:00 a.m. to 6:00 p.m., Monday through Friday) and provide emergency support for after hours and holidays. Service Provider shall respond within one (1) working day of a reported

- equipment or software failure by providing the on-site technical support at the District's premises if the fault lies at a District site.
2. Include all updates to System;
 3. Provide ongoing support training to the District using real-time remote support capability with existing internet browser applications;
 4. Provide training program to District staff, including update training as needed; and
 5. Provide user manuals which include step-by-step instructions.
 6. Service Provider shall provide the following to the District:
 - a. Access to the citation data is available by citation number, vehicle license number, name, or VIN number, driver's license number or ID number (whichever is applicable)
 - b. All citation information
 - c. Current status of the citation
 - d. Delinquent notice information, due date, mailing date
 - e. Administrative review, hearing court appeals, and disposition information
 - f. Payment information, including all dates, amounts and payment codes
 - g. Registered owner information and electronic facsimile of the original citation.
 7. Service Provider shall confirm that updates to the System may not be performed or disrupt any operations during District business hours (6 a.m. to 6 p.m. Monday thru Friday).
 8. Service Provider shall provide an online user's manual, which includes systematic instructions for accessing computer database information, and a list and description of any codes used in screens accessed by the District.
 9. Service Provider shall provide initial orientation and ongoing training on the use of software, database and equipment (include a summary of the training program).
 10. Service Provider shall take every precaution to ensure that the System, files, data, equipment, communications, and facilities are reliable. In the event that a natural disaster does disrupt the System, the Service Provider shall have a detailed, District approved Disaster Recovery Plan (Plan) in place within ninety (90) days of award of Agreement. The plan shall be tested and ready to be implemented for all key facilities so that services are restored quickly and in accordance with District performance standards. Service Provider shall describe backup procedures for System failures and outline the Plan.
 11. Service Provider shall respond within one (1) working day of a reported equipment or software failure by providing the on-site technical support at the District's premises if the fault lies at a District site.

12. Service Provider shall be responsible for providing a System made up of many different components, providing technical support for solution and future development, providing security for both physical facilities and District data, and ensuring that the proposed solution is protected through periodic maintenance and able to recover from major disruptions.

J. General Requirements

1. Applicable Federal, State and Local Law

All functions must be performed in accordance with all applicable federal, state and local laws. The selected Service Provider shall track and inform the District of all additions, changes, and deletions to existing laws affecting parking issues. Service Provider shall make the necessary adjustments in the System (hardware and software) to incorporate and modify all additions, changes and deletions to the existing parking regulations and statutes.

2. Ownership of Software

The District acknowledges that the software provided by the Service Provider and software programs provided by the Service Provider and used by the District have been developed by the Service Provider. The software provided is the proprietary and intellectual property of the Service Provider. The District agrees that all rights to any intellectual property is confidential information and shall remain the exclusive of the Service Provider.

All data collected on behalf of the District is the property of the District. None of the data shall be used for any other purpose. Upon termination or, expiry of any contractual Agreement, the Service Provider shall retain the District's data for a minimum of (90) days and shall transfer District data in its possession to the District at no cost by using a method that protects the confidentiality of the information being exchanged and as agreed upon by the District but, at a minimum, data records shall be provided with binary images in TIFF, JPG, or PDF format.

3. Scheduled Downtime, Application Maintenance and Updates

Downtimes require two (2) weeks written notification and approval from designated District staff. Scheduled downtime does not count against System availability. Maintenance of the System and self-service options must occur on Sundays or at a designated down period when usage is at a minimum. Service Provider shall indicate requirements for a scheduled maintenance window. Service Provider shall provide a test environment for quality assurance and control testing. System/programming changes and

maintenance must be conducted and tested in the test environment prior to deployment to the production environment. The test environment must be accessible to selected District staff. Service Provider shall make available to the District at no additional cost, all updates to the System as they are released so long as the District is currently under the Service Provider's Agreement.

4. Collections and Federal Tax Board (FTB) Collections

If authorized by the District, Service Provider shall pursue individuals with unpaid citations that meet the criteria of special collections and/or Franchise Tax Board collections (FTB). Service Provider collections criteria includes: Not paid, not suspended, and in an open status. Service Provider shall mail out a delinquent letter of warning. If the citation remains unpaid Service Provider shall use one or several collections efforts including, but not limited to: Special Collections and/or FTB Collections and/or DMV holds.

5. PCI Certification

Service Provider shall be certified to meet payment card security requirements for Visa, MasterCard, American Express and Discover, including, but not limited to PCI DSS (Payment Card Industry Data Security Standards), PA DSS (Payment Application Data Security Standards) and PABP (Payment Application Best Practices) requirements and other requirements as they are adopted by Visa, MasterCard, American Express and Discover. Service Provider shall provide written annual confirmation of PCI DSS compliance from the credit card types used by District (Visa, MasterCard, American Express and Discover). Service Provider shall immediately notify the District if it undergoes, or has reason to believe that it shall undergo, an adverse change resulting in the loss of compliance with the PCI DSS standards and/or other material payment card industry standard.

The real-time bank card authorization process shall be PCI Level 1 compliant and hardware/software must be PA-DSS validated at time of proposal submission. Service Provider shall provide evidence of Payment Card Industry-Data Security Standard (PCI-DSS) compliance at time of proposal submission. PCI compliance and real-time payment authorization must be displayed on the public-facing website

6. Security

Security includes the protection of physical items such as records, files, communications networks, cash, checks and citations. Security shall also

include guarding non-physical items such as the confidentiality of data, prevention of System abuse, and limiting access to only personnel with proper authorization.

Service Provider shall fully cooperate with regular audits by District staff and implement internal audits that shall be performed to review control policies and procedures, both physical and non-physical security, and provide any sample testing that shall be provided to ensure security. The results of internal audits performed by the Service Provider shall be reported quarterly to the District.

Service Provider shall describe the physical and non-physical security measures that shall be managed by the Service Provider upon implementation of the solution.

7. System Control

Service Provider's System, shall identify and respond to requests for remedial maintenance, reports of System anomalies, and reports of user problems and System questions, including tools available to Service Provider's staff, software to be utilized, etc. The Service Provider's System shall be supported by staff of experienced, well trained technicians.

At a minimum, the contracted Service Provider shall:

- a. Monitor its System for outages;
- b. Monitor and evaluate performance;
- c. Distribute daily problem status reports;
- d. Track to resolution, all reported incidents; and,
- e. Track and report on System availability.

Problem resolution procedures should include a comprehensive review process of management reports highlighting any special problem areas or trends and should be available for the District. At a minimum, the reports include, but are not limited to:

- a. Problem status by site;
- b. Response time statistics;
- c. Monthly availability statistics; and
- d. Statistics on the time required to make repairs.

8. Implementation

Service Provider shall submit an implementation plan that includes the following:

- a. A comprehensive description of the operational and staffing plan for the transfer of the citation files from the previous Service Provider.
- b. A demonstration of the Service Provider's understanding of components to be considered in the transfer process.
- c. A demonstration of the Service Provider's capability of performing in good faith the transfer from the previous Service Provider.
- d. A plan for the disposition of citations issued by the current Service Provider.
- e. An integration plan to receive/send permit/citation data (as applicable)
- f. A comprehensive list of items or support that the Service Provider requires from the District in order to facilitate carrying out the implementation plan.
- g. A timetable for assuming citation management operations and collection support.

9. Training

Service Provider shall train its staff in the use of its System, customer service performance standards set by the District, District policies and procedures, and in State law and local ordinances affecting parking enforcement and processing. The training shall be required for the Service Provider's staff.

Upon request, the Service Provider shall provide District staff with training in the operation and maintenance of the Service Provider's System, including such topics as software functions, hardware use, and any System procedures that are unique to a particular job function. Service Provider shall also provide annual refresher training and new hire training for District staff. The refresher course should include training on new integrations, new features and new functionalities.

Service Provider shall develop and implement a detailed training plan for District staff for the operation of all System modules and processing functions. The plan might encompass a combination of virtual, on-demand, in-person classroom, small group, and hands-on training in the use of computer hardware and software and all related citation processing policies and procedures.

Service Provider shall provide detailed System manuals and procedures manuals to District staff. Service Provider shall routinely update the manuals as policies or programs are changed.

There shall be no cost to the District for any of the listed training for the duration of this Agreement.

10. Manuals, Documentation & Forms

The Service Provider shall provide up-to-date, detailed documentation relating to all operational aspects of using its System. In addition, the Service Provider shall provide any forms required to use its System. This should include, but not be limited to:

- a. Detailed user manuals explaining each component of the Service Provider's System;
- b. Functional manuals, tailored to each processing unit, to explain the Service Provider's System as it relates to the job responsibilities of the particular user; and
- c. Forms and the various documents which shall be completed by the public in order to conduct routine matters involving the processing and adjudication of parking citations.

11. Document Storage and Retrieval

Service Provider shall store all documents relating to operations for District for a minimum of five (5) years. Stored documents must be capable of being retrieved to substantiate financial adjustments to make citation corrections to resolve complaints and as evidence during adjudication. Service Provider shall notify the District as soon as reasonably possible of any discrepancies.

12. Records Destruction

Service Provider to perform destruction of records with District approval in compliance with the District's policies. Data shall be removed and/or archived from the System daily. Data archived from the System shall be retained by Service Provider an archived database and is retained for a period of five (5) years unless returned to the District before that time. The District has the option to request such data. Data retained by Service Provider shall be done so in the format of the Service Provider' choice, unless otherwise agreed upon in writing by both parties.

The Service Provider shall notify the District quarterly (by January 20th, April 20th, July 20th, and October 20th) of the documents that have been maintained for five (5) years and are ready for destruction. The District shall provide written authorization for the Service Provider to destroy the documents.

Service Provider shall describe a plan for the destruction of records that is consistent with the District's Records Retention Policy.

13. Inspection of Records

The Service Provider's records, which include, but are not limited to, accounting records (hard copy as well as computer data); written policies and procedures; organization charts; internal audit reports; all correspondence, reports, and invoices; daily reports; and any other documents relating to the performance of this Agreement shall be open to inspection and subject to audit and/or reproduction by the District auditors, the District Attorney or any authorized representatives of the District as necessary to adequately permit evaluation and verification of Service Provider compliance with the Agreement provisions.

The Service Provider shall cooperate fully in furnishing or in making available to the District, whenever requested and in an expeditious manner, any records, information, materials, and data relating to determining Service Provider's compliance with the Agreement.

14. Public Records

The District complies with the California Public Records Act (CPRA) and therefore all data in the System must be clearly identified as public, personal or confidential (such as data and information provided by the DMV).

15. Return and Ownership of Citation Data

All electronic and handwritten citations, reports, electronic media, and other relevant documents, shall be the property of the District shall be returned to the District upon either the completion of this Agreement or the termination of this Agreement within fifteen (15) days. This including copies and reproductions assembled or prepared by Service Provider's employees, agents, and/or officers, in connection with this Agreement. Citation data returned to District by the Service Provider shall be done so in the format of Service Provider's choice, unless otherwise agreed upon in writing by both parties.

16. Auditing

The Service Provider shall perform on a monthly basis, random sampling of correspondence and suspend transactions for review against System processing and hard copy documentation. Special attention is required for suspends that result in the permanent cancellation of a citation.

Data entered to the System database shall be checked against the information entered on the original citations or permit records.

The Service Provider shall develop a procedure approved by the Department for random monitoring of phone calls to check the information and instructions given out by the Service Provider's staff for accuracy.

All transactions entered in the Service Provider's System shall have an audit trail, which at a minimum shows the date and time of the transaction, the name or identification of the person who entered the transaction, and the appropriate processing codes. This information shall be accessible in an on-line real-time mode.

Upon two week written prior notice, all records shall be available for inspection or audit by the District at Service Provider's location during regular business hours.

17. System Control & Security

The Service Provider's System shall have security features that are designed to maintain the security of all information contained in the System database and maintain the confidentiality of information. All System users shall be assigned a unique identity and password. As an additional security measure, a password change shall be required every thirty (30) days.

Based on an individual's password, the Service Provider's System provide functional security by restricting certain functions such as permitting access to inquiry only and allow data update capability on an as-needed basis.

18. Subcontractors

The majority of the work as required herein and at the time the work is requested must be done by the awarded Service Provider.

The work may not be subcontracted or sublet to another Service Provider unless the Service Provider has been listed on the Subcontractor List or a substitution of that contractor has been approved by District in advance of any scheduled or actual work.

19. Non-Performance

If District staff determines that there are deficiencies in the performance of any part of this Agreement, the Service Provider shall be notified, both verbally and in writing, each time service requirements are unsatisfactory and corrective action is necessary.

Upon notification of service failure, the Service Provider shall complete corrective action within the time frame specified in the notification.

Should the Service Provider fail to complete corrective action within the specified time frame, the District may exercise the following measures:

- Deduct from the Service Provider's payment, daily liquidated damages until deficiency is corrected;
- Withhold the entire or partial payment;
- Utilize District staff, or an alternate source, to correct the deficiency and deduct from the Service Provider's payment the total cost, including District overhead.

K. System Interface Requirements

1. Maintaining real-time online communication with the California Department of Motor Vehicles (DMV). This communication is required as part of this agreement to request registered owner information. The System shall interface with the California Department of Motor Vehicles (CA DMV) to provide Registered Owner (RO) information and to place holds (liens) on the vehicle registration. This capability must include the continuous placing and releasing of vehicle registration holds with the CA DMV and other states' registries, if allowed by other states. The System shall allow to obtain registered owner information for out-of-state plates using the National Law Enforcement Telecommunications System (NLETs). The System shall accommodate DMV provided data including, but not limited to:

- RO Name
- RO Address
- RO City

- RO State
- RO Zip Code
- RO Request Status
- RO Request Date
- Response Text
- Response Date
- Hold Status
- Hold Date
- Plate
- VIN
- Vehicle Make

The System shall automatically validate plate number by matching DMV provided vehicle make with officer provided vehicle make. The System shall have an integrated CA DMV look up/inquiry feature as well as CA DMV update feature. Service Provider shall include detailed description of CA DMV look up capabilities and limitations.

The CA DMV allows local jurisdictions to add the fine amount of unresolved parking citations to the bill for annual vehicle registration renewal. This is called placing a “hold” on vehicle registration and is an effective means of securing payment of delinquent parking citations. The System shall provide a real-time interface with DMV to place these “holds” for unpaid parking citations, to “release” the holds within twenty-four (24) hours when a citation is resolved or a hearing is scheduled, and, if permitted by DMV, to reactivate a registration hold when appropriate as determined by the District. The System shall automatically provide next day confirmation that a registration hold or release was successful. The information required by DMV shall be automatically forwarded for registration hold processing and receipt by DMV acknowledged. Service Provider shall also have the ability to return registered owner’s information from the DMVs in every other state in the USA. It is highly desired the System have the means to process citations on vehicles with registered owners with out of country (particularly Mexico and Canada) addresses.

2. The System shall have the ability to lookup registered owner information and place holds and releases manually. Manual holds or releases requested by the District should be processed the same business day the request is received.
3. The System shall be able to receive parking citation data from a variety of electronic ticketing devices as well as via data entry of handwritten citations. The minimum required fields for each citation issued are:

- Issuing Agency
- Citation Number
- Issue Date
- License Plate
- State
- Expiration
- VIN
- Vehicle Make
- Vehicle Model/Style
- Color
- Violation Code
- Violation Description
- Officer Name
- Officer ID
- Meter Number
- Mark Time
- Location
- Fine Amount
- State Surcharge Amount
- Total Amount (sum of Fine Amount and State Surcharge Amount)
- Officer Remarks
- Private Officer Remarks

Citations issued on an electronic ticketing device must transmit via wireless connection in real-time to the System regardless of handheld type or issuance software. System shall be capable of accepting citation data for handwritten tickets by batch or single entry. Handwritten citations that contain an error must be recorded in the System as incomplete and therefore suspended.

The System shall accommodate officer voids as distinguished from processing agency waivers and dismissals. Officer voids must be limited to point of issuance only. Duplicate citation numbers must be automatically identified and included in a report reviewed by the District. All citation data regardless of age, cannot be deleted or archived without written authorization from the District.

The System shall permit District staff generated adjustment transactions, waived amounts, voided citations, dismissed citations, late fee “roll back”, returned checks and refunds. The adjustments may include reversing an entire payment, modifying a payment amount, and adjusting the amount due to closing a citation and reopening a citation.

The System shall accommodate three levels of parking citation appeals. (1) Administrative Review, (2) Administrative Hearing, and (3) Superior Court. District staff shall be able to place the citation in a “suspend” status pending adjudication. “Suspend” status must stop the normal due date process until the “suspend” status is removed.

The System shall record the appealing parties name, address and email address as well as record each step along the appeal process including, but not limited to:

- Administrative Review Request Date
- Administrative Review Decision Date
- Administrative Review Decision
- Administrative Review Notes
- Administrative Hearing Request Date
- Administrative Hearing Outcome Date
- Administrative Hearing Outcome Decision
- Administrative Hearing Notes
- Superior Court Decision Date
- Superior Court Outcome
- Superior Court Notes

Once a decision is made at each of the three (3) levels, the System must automatically “unsuspend” the citation. If a citation is dismissed or reduced after it has been paid, the System shall flag the citation for a refund if applicable.

The public must be able to request an Administrative Review and an Administrative Hearing online. The District shall have a location set-up for the public to submit appeals in person Monday through Thursday from 8:00 a.m. to 5:00 p.m. at the following address: **San Diego Harbor Police 3380 N. Harbor Drive, San Diego, CA 92101.**

Performing and processing of all 1st level administrative reviews shall not be out-sourced. The District and its designated staff shall conduct all 1st level administrative reviews. Service Provider shall be responsible for conducting all 2nd level administrative hearings and coordinating all 3rd level hearings (Court) on behalf of the District.

4. The System shall be able to initiate the process to mail District designated parking citation notices in accordance with District provided timeline and business rules. The System shall be able to accommodate a District

established series of notices, which is fully automated based on District provided business rules and timelines, including, but not limited to:

- 1st Notice (late1)
- 2nd Notice (late 2)
- Appeal Request Received/Accepted
- Appeal Request Denied – Late
- Appeal Decision Liable/Not Liable
- Hearing Request Received/Accepted
- Hearing Request Denied – Late
- Hearing Decision Liable/Not Liable
- Partial Payment Received/Balance Due

Service Provider shall include a description of how they shall print and mail these notices. The System must record the notice type, mailing date and mailing address of each notice.

The System shall allow the District to manually generate, print and mail notices when necessary. If a notice was already systematically generated and mailed, the District requires the ability to re-print that notice in-house and have it be an exact copy of what was already generated. This action must not cause any change in citation timeline and due date.

Notices shall be printed and mailed in order to maintain customer confidentiality regarding the content of the notice, these shall be mailed First Class via the United States Postal Service within 24 hours to any U.S. address and preferably also to addresses out of the country, especially Mexico and Canada.

Service Provider shall provide a secure portal that allows the District to review and approve daily notices. Notices must be available for reprint from the secure site and must be retained for a least a period of three (3) years.

L. Third-Party Integration

Service Provider's system shall be able to integrate with the District's current providers (IPS, Group, Inc., Cale America, Inc. dba Flowbird, Passport Labs, Inc., and Motorola Solutions, Inc. formerly Vigilant Solutions) at no additional cost to the District. Transactional data used for enforcement shall be transmitted and integrated in real time from the Equipment to all of the District's sub-systems

including, but not limited to LPR, using industry standard secure communication methods and protocols.

M. Audited Financials

Service Provider shall provide yearly audited financials upon request through the term of the Agreement.

**ATTACHMENT B
COMPENSATION & INVOICING
San Diego Unified Port District**

1. COMPENSATION.

a. For the satisfactory performance and completion of the services under this Agreement, District shall pay Service Provider compensation as set forth hereunder.

(1) Service Provider shall be compensated and reimbursed by District on the basis of invoices submitted each month for services performed during the preceding month. Invoice(s) shall be on a Fixed Fee and/or Time and Materials basis.

(a) Each invoice for Fixed Fee work shall include:

Date work performed;
Description of the work performed;
Percent of total work being invoiced;
Percent of total work completed;
Direct Costs.

(b) Each invoice for Time and Materials work shall include:

Date work performed;
Description of the work performed;
Hours worked by personnel classification;
Rate per personnel classification;
Total personnel cost by classification; and
Direct Costs.

(2) Services shall be invoiced in accordance with the following **Fee Schedule:**

CORE PRICING PARKING CITATIONS		
Description	Unit (per/each)	Fee
Cost per Citation (manual citation, includes data entry)	Per manual citation keyed	\$0.45
Cost per Citation (electronic)	Per electronic citation issued	\$0.40
Delinquent Notices	Per delinquent notice sent	\$0.72
Postage – First Class Rates (for all correspondence mailed)	Included in each notice fee	Included
Out of State Collections	Per amount collected	23%

CORE PRICING PARKING CITATIONS		
Description	Unit (per/each)	Fee
Payment processing	-	Included
Other Correspondence Letter	Per letter sent	\$0.80
Credit Card Convenience Fee (Per transaction, charged to the public)	Per transaction	\$3.50
1 st Level Hearing Hold Payment (Includes cost of scanning associated documents)	Per 1 st Level Hold	\$0.50
2 nd Level Hearing Scheduling (Includes cost of scanning associated documents)	Per 2 nd Level Hold	\$0.50
2 nd Level Hearing Officer costs, per hour	Per Hearing	\$45.00
DMV Hold Placements	Per placement	Included
Conversion Cost	Conversion	Included
Online Contesting	Per appeal	\$0.50
Payment Plan Admin Fee (Per transaction, charged to the public)	Per payment plan	\$15.00
Indigent Hold Payment (Includes cost of scanning associated documents) The District shall review and make indigent determination.	Per payment plan	\$2.50
Indigent Review Determination Fee (Cost of indigent hold payment included)	Per payment plan	\$5.00
Refunds fee - per refund check issued (Service provider shall process on behalf of the District)	Per refund issued	\$3.00

COLLECTIONS		
Description	Unit (per/each)	Fee
Preliminary Collections (citations 90 days past due date, but not over 13 months). Criteria can be changed per District request.	Per amount collected	23%
FTB Collections	Per amount collected	15%
FTB Pre Intercept Notice (letter)	Per letter	\$0.00
Social Security Number search for FTB processing	Per SSN	\$2.25
Advanced Collections	Per amount collected	30%
Accounting Fee (per month fixed fee)	Per month	\$100.00

EQUIPMENT HARDWARE/SOFTWARE		
Description	Unit (per/each)	Fee
Upgrade of current Equipment (12 – Samsung Galaxy S8 cellphones, with and without printers) (Cost to include software installation, license fee, support, maintenance and any future as-needed updates and upgrades).	Per unit w/ printer	\$1,300.00
	Per unit w/out printer	\$950.00
	Annual SW License Fee per unit per year	\$150.00
	Monthly maintenance per unit per month	\$25.00
Software installation, software support, maintenance, and as-needed updates and upgrades (District owned Equipment)	Per unit per month	\$15.00
Software installation, software support, and maintenance (District owned Sworn Officer Cellphones)	Per unit per month	\$15.00
Leasing of new Equipment, which should include the handheld issuance citation device and similar portable printer (up to 12 units) (Cost shall include polythermal paper, software installation, license fee, hardware/software support, as-needed updates and upgrades and any other material designated for the use of the Equipment)	Per unit per month inclusive of printer for 36 months. This fee is exclusive of paper cost	\$65.00

TICKET STOCK & MANUAL CITATION BOOKLETS		
Description	Unit (per/each)	Fee
Ticket Stock – Polythermal Paper	250 Rolls	\$2,500.00
Ticket Stock – Polythermal Paper	500 Rolls	\$4,000.00
Manual Citation Booklets (Duplicate Form)	5,000 citations (100 booklets with 50 citations per booklet)	\$1,650.00

THIRD PARTY INTEGRATIONS		
Description	Unit (per/each)	Fee
Integration fees, if applicable	Per integration	No Cost

TRAINING		
Description	Unit (per/each)	Fee
All training, which shall include refresher, new hire, on demand, as-needed software and equipment training	Per training	No Cost

Note: Fees not shown in the Fee Schedule above may be allowed by written authorization of District.

2. **INVOICING.**

- a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.
- b. Service Provider shall include the following information on each invoice submitted for payment by District, in addition to the information required in Section 1, above:
 - 1) Agreement No. 70-2022MA
 - 2) If applicable, the Task Authorization(s) (TA) number being charged.
 - 3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. **74423**, and that payment has not been received."
 - 4) Dates of service provided
 - 5) Date of invoice
 - 6) A unique invoice number
- c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- d. Invoices shall be mailed to the attention of: Liza Anderson, Guest Experiences - Parking, San Diego Unified Port District, P.O. Box 120488, San Diego, CA 92112-0488.
- e. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Service Provider for the Services. Any overpayment discovered in such an

audit may be charged against the Service Provider's future invoices and any retention funds.

- f. Service Provider shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Service Provider within thirty (30) days after receipt by District of a proper invoice.

**EXHIBIT A
TASK AUTHORIZATION FORM
San Diego Unified Port District**



(DEPARTMENT NAME)
San Diego Unified Port District
 P.O. Box 120488
 San Diego, CA 92112-0488
 (619) 686-____
 Fax (619) 725-____

TASK AUTHORIZATION NO. _

(Date)

(Name)

(Title)

(Name of Company)

(Address)

(City, State, Zip)

Email:

Subject: Task Authorization for Agreement No. _ - 20_
 (Agreement Title)

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed \$____. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #_** on invoice(s) for this Task.

TASK DESCRIPTION

1. Requestor:		4. WBS or IO/ Cost Center:	
2. Date of Request:		5. Task Start Date:	
3. Task Budget:	\$	6. Task End Date:	
7. Task Title:			

8. Scope of Services.

9. Contractor Staffing (If applicable)

Name	Classification	Hours
Staff as needed per Agreement rates		

10. List of Sub-Contractors (If applicable)

N/A

11. Please acknowledge acceptance of this Task Authorization by signing below and returning via mail to _____, Contracts Administrator, at the address above.

APPROVALS

Service Provider:

Signature: _____
 Name: _____
 Title: _____
 Firm: _____
 Date: _____

Project Manager:

Signature: _____
 Name: _____
 Title: Project Manager
 Date: _____

Manager:

Signature: _____
 Name: _____
 Title: Manager
 Date: _____

Director/Chief Engineer:

Signature: _____
 Name: _____
 Title: Director/Chief Engineer
 Date: _____

EXHIBIT B
CERTIFICATE OF INSURANCE
San Diego Unified Port District

By signing this form, the authorized agent or broker **certifies** the following:

- (1) The Policy or Policies described below have been issued by the noted Insurer(s) [Insurance Company(ies)] to the Insured and is (are) in force at this time.
- (2) As required in the Insured's agreement(s) with the District, the policies include, or have been endorsed to include, the coverages or conditions of coverage **noted on page 2 of this certificate**.
- (3) Signed copies of **all** endorsements issued to effect require coverages or conditions of coverage are attached to this certificate.

Return this form to: **San Diego Unified Port District**
c/o Ebix BPO
P.O. Box 100085 – 185
Duluth, GA 30096 – OR –
Email: portofsandiego@ebix.com
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)	SDUPD Agreement Number: _____ This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.
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CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability <input type="checkbox"/> Occurrence Form <input type="checkbox"/> Claims-made Form Retro Date _____ <input type="checkbox"/> Liquor Liability Deductible/SIR: \$ _____		Commencement Date: Expiration Date:	Each Occurrence: \$ _____ General Aggregate: \$ _____
	Commercial Automobile Liability <input type="checkbox"/> All Autos <input type="checkbox"/> Owned Autos <input type="checkbox"/> Non-Owned & Hired Autos		Commencement Date: Expiration Date:	Each Occurrence: \$ _____
	Workers Compensation – Statutory Employer's Liability		Commencement Date: Expiration Date:	E.L. Each Accident \$ _____ E.L. Disease Each Employee \$ _____ E.L. Disease Policy Limit \$ _____
	Professional Liability <input type="checkbox"/> Claims Made Retro-Active Date _____		Commencement Date: Expiration Date:	Each Claim \$ _____
	Excess/Umbrella Liability		Commencement Date: Expiration Date:	Each Occurrence: \$ _____ General Aggregate: \$ _____

CO LTR	COMPANIES AFFORDING COVERAGE	A. M. BEST RATING
A		
B		
C		
D		

A. M. Best Financial Ratings of Insurance Companies Affording Coverage Must be A-VII or better unless approved in writing by the District.

Name and Address of Authorized Agent(s) or Broker(s)	E-mail Address: _____
	Phone: _____ Fax Number: _____
	Signature of Authorized Agent(s) or Broker(s)
	Date: _____

SAN DIEGO UNIFIED PORT DISTRICT
REQUIRED INSURANCE ENDORSEMENT

<u>ENDORSEMENT NO.</u>	<u>EFFECTIVE DATE</u>	<u>POLICY NO.</u>
NAMED INSURED:		
GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES): All written agreements, contracts and leases with the San Diego Unified Port District and any and all activities or work performed on district premises		

Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or in any endorsement now or hereafter attached thereto, it is agreed as follows:

1. The San Diego Unified Port District, its officers, agents, and employees are additional insureds in relation to those operations, uses, occupations, acts, and activities described generally above, including activities of the named insured, its officers, agents, employees or invitees, or activities performed on behalf of the named insured.
2. Insurance under the policy(ies) listed on this endorsement is primary and no other insurance or self-insured retention carried by the San Diego Unified Port District will be called upon to contribute to a loss covered by insurance for the named insured.
3. This endorsement shall include a waiver of transfer of rights of recovery against the San Diego Unified Port District ("Waiver of Subrogation").
4. The policy(ies) listed on this endorsement will apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.
5. As respects the policy(ies) listed on this endorsement, with the exception of cancellation due to nonpayment of premium, thirty (30) days written notice by certified mail, return receipt requested, will be given to the San Diego Unified Port District prior to the effective date of cancellation. In the event of cancellation due to nonpayment of premium, ten (10) days written notice shall be given.

Except as stated above, and not in conflict with this endorsement, nothing contained herein shall be held to waive, alter or extend any of the limits, agreements or exclusions of the policy(ies) to which this endorsement applies.

(NAME OF INSURANCE COMPANY)

(SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:
San Diego Unified Port District c/o Ebix BPO P.O. Box 100085 – 185 Duluth, GA 30096 – OR – Email to: portofsandiego@ebix.com

EXHIBIT C



Employment and Ownership Report

Submitted to:

**Diversity, Equity, and Inclusion
Port of San Diego**

Submitted by:

Name of Business	
Contact Person	
Address	
City, State, Zip Code	
Phone Number	
FAX Number	
E-Mail Address	
Date	
Signature	

The submittal of this information and subsequent DEI updates and/or reports required by Agreement language is for recordkeeping and tracking purposes only and will not be used as a basis for decisions, unless Service Provider fails to provide such information.

A. Employment Report

Job Categories	Number of Employees – Report Employees in only one category																					
	Race/Ethnicity																					
	Women							Men							Nonbinary							Total Col A-U
	White	Black or African American	Hispanic	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	White	Black or African American	Hispanic	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	White	Black or African American	Hispanic	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	
Executives																						
Mid-Level Executives																						
Professionals																						
Technicians																						
Sales Workers																						
Admin Support																						
Craft Workers																						
Operatives																						
Laborers																						
Service Workers																						
Total																						

B. Explanation for Completing Employment Data

Employment data must include ALL current full-time and part-time employees. Employees must be counted by sex and race/ethnic category for each of the occupational categories. You may acquire the race/ethnic information necessary for this report either by voluntary self-identification surveys of the workforce, or from post-employment records, or visual surveys of the workforce. Eliciting information on the race/ethnic identity of an employee by direct inquiry is not allowed.

For the purpose of this report, an employee may be included in the group to which they appear to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- Hispanic or Latino – A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.
- White – A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
- Black or African American – A person having origins in any of the Black racial groups of Africa.
- Native Hawaiian or Other Pacific Islander – A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- Asian – A person having origins in any of the original peoples of the Far East, Southeast Asian, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- American Indian or Alaska Native – A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.
- Two or More Races – All persons who identify with more than one of the above five races.

To assist you in determining where to place your jobs within the occupational categories, a description of job categories is as follows:

- ***Executives (Officials and Managers):*** Individuals, who plan, direct and formulate policies, set strategy and provide the overall direction of enterprises/organizations for the development and delivery of products or services, within the parameters approved by boards of directors or other governing bodies. Residing in the highest levels of organizations, these executives plan, direct or coordinate activities with the support of subordinate executives and staff managers. They include, in larger organizations, those individuals within two reporting levels of the CEO, whose responsibilities require frequent interaction with the CEO. Examples of these kinds of managers are chief executive officers, chief operating officers, chief financial officers, line of business heads, presidents or executive vice presidents of functional areas or operating groups, chief

information officers, chief human resources officers, chief marketing officers, chief legal officers, management directors and managing partners.

- **Mid-Level Executives:** Individuals who serve as managers, other than those who serve as Executive/Senior Level Officials and Managers, including those who oversee and direct the delivery of products, services, or functions at group, regional or divisional levels of organizations. These managers receive directions from the Executive/Senior Level management and typically lead major business units. They implement policies, programs, and directives of executive/senior management through subordinate managers and within the parameters set by Executive/Senior Level management. Examples of these kinds of managers are vice presidents and directors, group, regional or divisional controllers; treasurers; human resources, information systems, marketing, and operations managers. The First/Mid-Level Officials and Managers subcategory also includes those who report directly to middle managers. These individuals serve at functional, line of business segment or branch levels and are responsible for directing and executing the day-to-day operational objectives of enterprises/organizations, conveying the directions of higher-level officials and managers to subordinate personnel and, in some instances, directly supervising the activities of exempt and non-exempt personnel. Examples of these kinds of managers are: first-line managers; team managers; unit managers; operations and production managers; branch managers; administrative services managers; purchasing and transportation managers; storage and distribution managers; call center or customer service managers; technical support managers; and brand or product managers.
- **Professionals:** Most jobs in this category require bachelor and graduate degrees, and/or professional certification. In some instances, comparable experience may establish a person's qualifications. Examples of these kinds of positions include accountants and auditors; airplane pilots and flight engineers; architects; artists; chemists; computer programmers; designers; dietitians; editors; engineers; lawyers; librarians; mathematical scientists; natural scientists; registered nurses; physical scientists; physicians and surgeons; social scientists; teachers; and surveyors.
- **Technicians:** Jobs in this category include activities that require applied scientific skills, usually obtained by post-secondary education of varying lengths, depending on the particular occupation, recognizing that in some instances additional training, certification, or comparable experience is required. Examples of these types of positions include drafters; emergency medical technicians; chemical technicians; and broadcast and sound engineering technicians.
- **Sales Workers:** These jobs include non-managerial activities that wholly and primarily involve direct sales. Examples of these types of positions include advertising sales agents; insurance sales agents; real estate brokers and sales agents; wholesale sales representatives; securities, commodities, and financial services sales agents; telemarketers; demonstrators; retail salespersons; counter and rental clerks; and cashiers.
- **Administrative Support Workers:** These jobs involve non-managerial tasks providing administrative and support assistance, primarily in office settings. Examples of these types of positions include office and administrative support workers; bookkeeping; accounting and auditing clerks; cargo and freight agents; dispatchers; couriers; data entry keyers; computer

operators; shipping, receiving and traffic clerks; word processing and typists; proofreaders; desktop publishers; and general office clerks.

- **Craft Workers:** Most jobs in this category include higher skilled occupations in construction (building trade craft workers and their formal apprentices) and natural resource extraction workers. Examples of these types of positions include boilermakers; brick and stone masons; carpenters; electricians; painters (both construction and maintenance); glaziers; pipe layers; plumbers, pipe fitters and steamfitters; plasterers; roofers; elevator installers; earth drillers; derrick operators; oil and gas rotary drill operators; and blasters and explosive workers. This category also includes occupations related to the installation, maintenance and part replacement of equipment, machines, and tools, such as: automotive mechanics; aircraft mechanics; and electric and electronic equipment repairers. This category also includes some production occupations that are distinguished by the high degree of skill and precision to perform them, based on clearly defined task specifications, such as millwrights, etchers, and engravers; tool and die makers; and pattern makers.
- **Operatives:** Most jobs in this category include intermediate skilled occupations and include workers who operate machines or factory-related processing equipment. Most of these occupations do not usually require more than several months of training. Examples include textile machine workers; laundry and dry-cleaning workers; photographic process workers; weaving machine operators; electrical and electronic equipment assemblers; semiconductor processors; testers, graders, and sorters; bakers; and butchers and other meat, poultry, and fish processing workers. This category also includes occupations of generally intermediate skill levels that are concerned with operating and controlling equipment to facilitate the movement of people or materials, such as: bridge and lock tenders; truck, bus, or taxi drivers; industrial truck and tractor (forklift) operators; parking lot attendants; sailors; conveyor operators; and hand packers and packagers.
- **Laborers:** Jobs in this category include workers with more limited skills who require only brief training to perform tasks that require little or no independent judgment. Examples include production and construction worker helpers; vehicle and equipment cleaners; laborers; freight, stock, and material movers; service station attendants; construction laborers; refuse and recyclable materials collectors; septic tank services; and sewer pipe cleaners.
- **Service Workers:** Jobs in this category include food service, cleaning service, personal service, and protective service activities. Skill may be acquired through formal training, job-related training, or direct experience. Examples of food service positions include cooks; bartenders; and other food service workers. Examples of personal service positions include medical assistants and other healthcare support positions; hairdressers; ushers; and transportation attendants. Examples of cleaning service positions include cleaners; janitors; and porters. Examples of protective service positions include transit and railroad police and fire fighters; guards; private detectives and investigators.

C. Statement of Ownership

Is your firm currently certified as any of the following (check all that apply) and if so, please identify the certifying agency:

- Small Business Enterprise (SBE) certified by: Veteran owned business (VBE) certified by:
- Woman owned business (WBE) certified by: LGBTQIA+ owned business certified by:
- Minority owned business (MBE) certified by: HUBZone
- Disabled Veteran owned business (DVBE), certified by: Other:

Please check here if you believe you are eligible for any of the above certifications, and for WBE or MBE please voluntarily self-identify as follows and DEI staff will contact you with certification information:

Gender:	Ethnicity:	
<input type="checkbox"/> Woman	<input type="checkbox"/> Hispanic or Latino	<input type="checkbox"/> Native Hawaiian/Pacific Islander
<input type="checkbox"/> Male	<input type="checkbox"/> White	<input type="checkbox"/> American Indian/Alaska Native
<input type="checkbox"/> Nonbinary	<input type="checkbox"/> Black or African American	<input type="checkbox"/> Two or More Races

Type of Legal Business Structure: (check all that apply)

<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Corporation
<input type="checkbox"/> Limited Liability Partnership	<input type="checkbox"/> Limited Liability Company
<input type="checkbox"/> Partnership	<input type="checkbox"/> Privately Held
<input type="checkbox"/> Publicly Traded	<input type="checkbox"/> Other, please describe:

Identify the majority owner(s) of the firm:

Name/Title:	Address:	Email:	Phone:	% Owned:	Years Owned:

Certificate Of Completion

Envelope Id: 413CBC5BCACA4740ABB7271EAFD188DB	Status: Completed
Subject: Please DocuSign: Agreement 70-2022MA - Data Ticket Inc.	
Source Envelope:	
Document Pages: 56	Signatures: 3
Certificate Pages: 6	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Mark Adams
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	3165 Pacific Highway
	San Diego, CA 92101
	madams@portofsandiego.org
	IP Address: 207.215.153.162

Record Tracking

Status: Original 6/29/2022 2:55:46 PM	Holder: Mark Adams madams@portofsandiego.org	Location: DocuSign
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: San Diego Unified Port District	Location: DocuSign

Signer Events

Signer Events	Signature	Timestamp
Brook Westcott BWestcott@DataTicket.com Chief Operating Officer Data Ticket, Inc. Security Level: Email, Account Authentication (None)	<i>Brook Westcott</i> Signature Adoption: Pre-selected Style Using IP Address: 70.182.197.222	Sent: 6/29/2022 3:23:44 PM Viewed: 6/29/2022 4:06:24 PM Signed: 6/29/2022 4:06:32 PM

Electronic Record and Signature Disclosure:
Accepted: 6/29/2022 4:06:24 PM
ID: e67ba951-f87d-479f-b247-59f710ec9b7a
Company Name: San Diego Unified Port District

Mark Adams madams@portofsandiego.org Procurement Analyst I Port of San Diego Security Level: Email, Account Authentication (None)	Completed Using IP Address: 207.215.153.162	Sent: 6/29/2022 4:06:36 PM Viewed: 8/9/2022 3:49:01 PM Signed: 8/9/2022 3:49:07 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Rebecca Harrington rharrington@portofsandiego.org X Security Level: Email, Account Authentication (None)	<i>Rebecca Harrington</i> Signature Adoption: Pre-selected Style Using IP Address: 174.243.215.128 Signed using mobile	Sent: 8/9/2022 3:49:10 PM Viewed: 8/10/2022 9:20:44 AM Signed: 8/10/2022 9:21:02 AM
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Electronic Record and Signature Disclosure:
Accepted: 8/10/2022 1:02:32 PM
ID: 8a58ad17-479b-41fa-b418-97fcf66288c0
Company Name: San Diego Unified Port District

Ken Wallis kwallis@portofsandiego.org Director Security Level: Email, Account Authentication (None)	<i>Ken Wallis</i> Signature Adoption: Pre-selected Style Using IP Address: 207.215.153.162	Sent: 8/10/2022 9:21:05 AM Viewed: 8/10/2022 9:31:17 AM Signed: 8/10/2022 9:31:59 AM
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Electronic Record and Signature Disclosure:

Signer Events	Signature	Timestamp
Accepted: 4/29/2021 3:55:36 PM ID: 9f05c640-3951-4a87-9300-430e82187f40 Company Name: San Diego Unified Port District		
Gabby Livingston glivingston@portofsandiego.org Document Management Associate-ODC Port of San Diego Signing Group: ODCDocuSign Security Level: Email, Account Authentication (None)	Completed Using IP Address: 207.215.153.162	Sent: 8/10/2022 9:32:02 AM Viewed: 8/10/2022 2:55:57 PM Signed: 8/10/2022 2:59:09 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Liza Anderson landerso@portofsandiego.org Assistant Parking Manager-Port as a Service-Parking San Diego Unified Port District Security Level: Email, Account Authentication (None)	<div style="border: 2px solid blue; padding: 5px; display: inline-block;">COPIED</div>	Sent: 8/10/2022 2:59:12 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

DocuSign Core Notify Group DocuSign_Core_Notify@portofsandiego.org Security Level: Email, Account Authentication (None)	<div style="border: 2px solid blue; padding: 5px; display: inline-block;">COPIED</div>	Sent: 8/10/2022 2:59:12 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

OGC Incoming Docs ogcincomingdocs@portofsandiego.org Security Level: Email, Account Authentication (None)	<div style="border: 2px solid blue; padding: 5px; display: inline-block;">COPIED</div>	Sent: 8/10/2022 2:59:12 PM
Electronic Record and Signature Disclosure: Accepted: 8/3/2022 3:35:36 PM ID: e0c2451b-1ca9-4f3d-a458-1c8f9e3cf7cd Company Name: San Diego Unified Port District		

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	6/29/2022 3:23:45 PM
Certified Delivered	Security Checked	8/10/2022 2:55:57 PM
Signing Complete	Security Checked	8/10/2022 2:59:09 PM

Envelope Summary Events	Status	Timestamps
Completed	Security Checked	8/10/2022 2:59:12 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, San Diego Unified Port District (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact San Diego Unified Port District:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: rsanagus@portofsandiego.org

To advise San Diego Unified Port District of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at rsanagus@portofsandiego.org and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from San Diego Unified Port District

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to rsanagus@portofsandiego.org and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with San Diego Unified Port District

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to rsanagus@portofsandiego.org and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify San Diego Unified Port District as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by San Diego Unified Port District during the course of your relationship with San Diego Unified Port District.

RESOLUTION NO. 2023 -

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA WAIVING THE FORMAL BID PROCESS PURSUANT TO NATIONAL CITY MUNICIPAL CODE SECTION 2.60.260 REGARDING COOPERATIVE PURCHASING AND AUTHORIZING THE CITY TO PIGGYBACK ONTO SAN DIEGO UNIFIED PORT DISTRICT AGREEMENT #70-2022MA WITH DATA TICKET, INC., FOR PARKING CITATION PROCESSING SERVICES IN A NOT-TO-EXCEED AMOUNT OF \$70,000

WHEREAS, the City of National City desires to employ a Data Ticket to provide comprehensive parking citation processing services; and

WHEREAS, Data Ticket, Inc. has been determined to be a provider with expertise in parking management services, equipment and products that meet the City's parking management needs and is qualified by experience and ability having served approximately 400 agencies throughout the Unites States since 1989; and,

WHEREAS, the City Council of National City is authorized to waive the formal bid process pursuant to National City Municipal Code Section 2.60.260 regarding cooperative purchasing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1: That the City Council hereby authorizes the City Manager to enter into an Agreement between the City of National City and Data Ticket, Inc. for parking citation processing services per the scope of services, attached to the Agenda Report as Exhibit A.

Section 2. That the bid process with Data Ticket, Inc. is waived pursuant to National City Municipal Code Section 2.60.260 which allows the City of National City to piggyback onto San Diego Unified Port District Agreement #70-2022MA with Data Ticket, Inc.

Section 2: That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED and ADOPTED this 7th day of February, 2023.

Ron Morrison, Mayor

ATTEST:

Shelley Chapel, Acting City Clerk

APPROVED AS TO FORM:

Barry J. Schultz, City Attorney



AGENDA REPORT

Department: Library and Community Services
Prepared by: Joyce Ryan, Library & Community Services Director
Meeting Date: Tuesday, February 7, 2023
Approved by: Brad Raulston, City Manager

SUBJECT:

Approval of Agreement with EXOS Community Services LLC for Las Palmas Pool Operations

RECOMMENDATION:

Adopt a Resolution Entitled, "Resolution of the City Council of the City of National City, California, authorizing the Mayor to Execute a Service Agreement between the City of National City and EXOS Community Services, LLC, to provide Aquatic Programs and Services at Las Palmas Pool located at 1800 East 22nd Street."

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

EXOS Community Services, LLC has provided aquatics programs and services at Las Palmas Pool since 2015. They have continued in that role since then, with the exception of a short period of closure due to COVID.

On October 19, 2021, the City Council approved the emergency repairs to Las Palmas Pool. The pool widening project was approved on February 1, 2022, and the new Las Palmas Pool Wellness Center was approved at the February 15, 2022 meeting. During this time, EXOS staff have contributed valuable information and insight into pool operations, assisting staff and consultants with their knowledge.

The most recent agreement with EXOS Community Services LLC was approved by City Council on June 16, 2020 following a closure due to COVID. The First Amendment to the Agreement was approved by City Council on June 15, 2021 extending the term of the agreement to June 30, 2022. The Second Amendment to the Service Agreement approved by City Council on June 21, 2022 extended the term to December 31, 2022.

Staff are anticipating the reopening of the pool in Spring 2023. The continued service of EXOS will ensure a smooth transition to the new pool operation. Due to the pool widening, there are additional opportunities for programming and revenue generation. Staff are recommending a longer agreement as this allows EXOS to better serve the community by providing consistent programming and compete for lifeguard staff during a nationwide lifeguard shortage.

The proposed new agreement with EXOS includes a few modifications to the City's standard contract. These modifications include limiting EXOS's indemnity obligations to negligent performance of its obligations and the inclusion of a mutual liability cap. As EXOS provides world-class services on an international basis, and, as a much larger organization than it was in 2018,

it can no longer assume the risks it has historically assumed under the prior contract. Given that EXOS's scope of work is limited to programming and the City is responsible for maintenance of the public facility the proposed modifications are reasonable.

FINANCIAL STATEMENT:

Revenues and expenditures for pool operations were included in the FY23 budget.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Parks, Recreation and Library

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

Exhibit A – Service Agreement between City and EXOS Community Services

Exhibit B – EXOS Community Services – Las Palmas Pool Budget FY23

Exhibit C – Second Amendment to Service Agreement for City and EXOS Community Services
July 1, 2022 – December 31, 2022

Exhibit D – Resolution

**SERVICE AGREEMENT BY AND BETWEEN
THE CITY OF NATIONAL CITY AND
EXOS COMMUNITY SERVICES LLC**

This Service Agreement (this “Service Agreement”) is entered into by and between the CITY OF NATIONAL CITY, a municipal corporation (the “CITY”), and EXOS COMMUNITY SERVICES, LLC, a New Jersey limited liability company (“EXOS”).

RECITALS

- A. The CITY owns the real property commonly known as Las Palmas Pool, located at 1800 East 22nd Street, National City, California (the “Premises”) as depicted in Exhibit “A.”
- B. EXOS is a privately-held fitness and wellness management and consulting company in the business of designing, managing, and operating all aspects of mixed-use health, fitness and aquatics centers similar to Las Palmas Pool.
- C. The CITY wishes to have EXOS operate the Las Palmas Pool with EXOS programs serving the local community.
- D. The CITY is responsible for repair and maintenance of the Premises, which includes improvements, landscaping, facility maintenance, janitorial maintenance, chemical maintenance and information technology. The City desires to engage EXOS to operate the Premises, which includes, personnel, programming, events and operating procedures and policies.

NOW, THEREFORE, in consideration of the foregoing facts, and in consideration of the promises and covenants hereinafter set forth, the parties agree as follows:

ARTICLE 1
TERM OF AGREEMENT

1.1 Term. The term of this Service Agreement shall be for the period beginning January 1, 2023 (the “Commencement Date”) and terminating on June 30, 2027.

1.2 Option to Extend Term. If EXOS is not in default of any provision of this Agreement upon the expiration of the term described in Article 1.1, the City Council may extend the term upon mutual agreement between the parties. The CITY and EXOS may mutually agree to extend the term of this Service Agreement for up to two (2) additional five (5) year terms. The initial period, and any extension pursuant to this Article 1.2, shall collectively be referred to hereafter as the “Term.”

1.3 Transition Period. Should the CITY or EXOS not extend this Service Agreement pursuant to Article 1.2, EXOS will make every effort to transition operations to the CITY over the six (6) month period that precedes expiration of the Term.

ARTICLE 2 PREMISES AND PERSONAL PROPERTY

2.1 Facilities to be Operated. The CITY hereby engages EXOS to operate the Premises as of the Commencement Date. EXOS will operate the Premises for the benefit of the citizens of National City subject to the covenants and conditions set forth in this Service Agreement. Facilities to be operated include: (1) the Olympic-size pool; (2) the activity pool; (3) the locker rooms; (4) pump and storage rooms; (5) lobby; and (6) administrative offices (the “Facilities”). Upon completion of construction of the new proposed pool building, EXOS will operate the aquatic program and administration in the new building and may utilize sections of the old pool building as deemed appropriate by the CITY.

2.2 Ownership of Personal Property and Improvements. The rights and obligations of the parties regarding the ownership of personal property and improvements on the Premises shall be as follows:

2.2.1 Ownership of Personal Property. All of the CITY’s personal property not permanently affixed to the Premises, such as, but not limited to, furnishings, office equipment and supplies (“Personal Property”) shall remain the property of the CITY. All improvements existing on the Premises (“Improvements”), together with all fixtures permanently attached to the Premises (“Fixtures”), as of the Commencement Date shall remain the property of the CITY during the Term. EXOS shall not remove any Personal Property, Improvements, or Fixtures from the Premises, nor waste, destroy, or modify any Personal Property, Improvements, or Fixtures on the Premises. All new Improvements, together with all new Fixtures permanently attached to the Premises, after the Commencement Date shall remain the property of the CITY during the Term. EXOS shall not remove any of the CITY’s Personal Property, Improvements, or Fixtures from the Premises nor waste, destroy, or modify any Personal Property, Improvements, or Fixtures on the Premises.

2.2.2 Ownership of Improvements and Equipment. All of EXOS’s personal property not permanently affixed to the Premises shall remain the property of EXOS.

ARTICLE 3 PERMITTED USE

3.1 Permitted Uses. EXOS shall operate the Premises by providing for and facilitating the following proposed activities which may be amended or replaced periodically by agreement of the authorized representatives of the parties:

3.1.1 Open swim on Saturday and Sunday throughout the year and open swim seven (7) days a week during the months of June, July, and August. Open swim also during the National School District two (2) week fall break that occurs during September and October. In addition, consideration based on need will be given for an expanded open-swim schedule during the National School District two (2) week winter and spring breaks.

3.1.2 Learn to swim classes throughout the year based on community needs. The number of classes offered will increase during the months of June, July, and August. A variety of learn-to-swim classes for youth and adults with varying levels of experience will be offered. Cancellation of classes is permitted if enrollment is less than three (3) participants.

3.1.3 Aquatic exercise classes for various ages and abilities and offered based on community needs. Cancellation of classes is permitted if enrollment is less than five (5) participants.

3.1.4 Adult masters swim program with structured workouts provided by a certified coach.

3.1.5 Lap swimming offered, based on community needs.

3.1.6 Youth recreational and competitive swim program with structured workouts provided by a certified coach.

3.1.7 Facility rentals for athletic teams or clubs looking to use the Premises for practices or competitions. Facility rentals shall follow City Council Policy 801, Recreational Field and Sports Facility Rules and Regulations.

3.2 Hours of Service. EXOS may provide programming between the hours of 5:00 a.m. and 10:00 p.m. seven (7) days a week. Hours of service may be changed upon mutual, written agreement.

3.2 CITY Use. The City may use the Premises for special events, including National Night Out and Summer Movies in the Park. The CITY may use the Premises for up to ten (10) additional events or programs per year. Dates and times of such uses will be agreed upon by the CITY and EXOS.

3.3 Consideration. EXOS's performance under this Service Agreement shall serve as the sole consideration due to the CITY for EXOS's right to operate the Premises.

3.4 CITY Residents. Participants seeking day use of the Premises who prove to EXOS's satisfaction that they are residents of the CITY shall not be required to become members of EXOS and shall be offered reduced resident rates.

ARTICLE 4 SERVICES

4.1 EXOS shall render the management services listed below (the "Services") to the CITY for the on-site management and supervision of the Premises. The Services shall be performed in accordance with generally-accepted standards in the fitness and wellness management industry. The Services shall be performed in accordance with those requirements or restrictions as may be imposed by any governmental authority. EXOS shall provide the Services as follows:

4.1.1 EXOS shall formulate an annual budget in accordance with financial targets for net operating income/surplus and meeting agreed upon benchmarks. The budget shall be mutually agreed upon by the CITY and EXOS in February of each year.

4.1.2 EXOS shall endeavor to increase program participation through the development and execution of effective marketing and retention plans.

4.1.3 EXOS shall provide open swim, learn to swim classes, aquatic exercise classes, adult masters swim program, lap swim, facility rentals and other programs at affordable resident rates approved by the CITY.

4.1.4 EXOS shall endeavor to meet or exceed budgeted net operating income/surplus goals as set forth in the annual budget approved by the CITY. Financial results will be monitored by and reviewed with the CITY on a monthly, quarterly and annual basis.

4.1.5 EXOS shall provide annual reports to the City, each of which must contain the total number of (a) National City residents who participated in EXOS events; (b) all participants who participated in EXOS events; (c) events and programs coordinated; and (d) reservations and use by third parties, such as athletic teams, and any other pertinent statistics.

4.1.6 EXOS shall recruit, hire and employ, as employees of EXOS, all persons who will work at, or provide services to the Premises, managed by EXOS in furtherance of the CITY operations (all such persons being referred to herein, collectively as "Managed Personnel"). Salaries and other expenses of Managed Personnel will be charged to CITY as an operating expense only to the extent such Managed Personnel are actually employees of EXOS.

Both parties hereto in the performance of this Service Agreement will be acting in an independent capacity and not as agents, employees, partners, or joint venturers with one another. Neither EXOS nor, to EXOS'S knowledge, EXOS'S employees are employees of the CITY, and are not entitled to any of the rights, benefits, or privileges of the CITY'S employees, including but not limited to retirement, medical, unemployment, or workers' compensation insurance.

This Service Agreement contemplates the personal services of EXOS and EXOS'S employees, and it is recognized by the parties that a substantial inducement to the CITY for entering into this Service Agreement was, and is, the professional reputation and competence of EXOS and its employees. Neither this Service Agreement nor any interest herein may be assigned by EXOS without the prior written consent of the CITY. Nothing herein contained is intended to prevent EXOS from employing or hiring as many employees as EXOS may deem necessary for the proper and efficient performance of this Service Agreement. All agreements by EXOS with third parties shall require the third party to adhere to the applicable terms of this Service Agreement.

4.1.7 EXOS will manage personnel, facilities and programs/services in a manner consistent with the mission and values of the CITY. EXOS will provide personnel as it deems reasonably necessary to perform the Services set forth in this Service Agreement. Personnel will be trained by EXOS to properly perform the Services. When hiring for the general manager position, EXOS will present the CITY with general manager candidates for review prior to hiring. The CITY will have the right to disapprove of general manager candidates.

4.1.8 EXOS will establish and implement policies and procedures designed to operate the Premises in a manner that promotes safety, customer service and financial accountability.

4.1.9 EXOS will work closely with the CITY and the Community Services Department in designing and implementing effective and low cost program marketing campaigns, including community outreach to find programming opportunities. EXOS will develop and launch outdoor fitness and program initiatives.

4.1.9.1 Use by Others. EXOS may allow use of the Premises to other groups or organizations such as athletic teams and clubs. Any third party group users such as athletic teams and clubs shall be required to adhere to City Council Policy 801 Recreational Field and Sports Facility Rules and Regulations, to obtain a facility use permit from the CITY, and pay fees to the CITY for use of the Premises.

4.1.9.2 Social Media. EXOS shall be responsible for social media marketing for the Premises and will adhere to the City's Social Media Policy 01.13.

4.1.10 EXOS will develop and enhance measurement and analytics capabilities to help optimize revenue.

ARTICLE 5 EQUIPMENT

5.1 The CITY shall provide such items as office furniture and equipment, telephones, computers and software for the Premises. The CITY also agrees to, at its sole expense, maintain such equipment to the best of their ability. The CITY will consider the nature and priority of the maintenance and available funding to determine if and when such repairs and maintenance will be completed.

5.2 EXOS shall, provide general administrative supplies, marketing materials, and all aquatic-related exercise equipment, and safety and first aid equipment necessary for the operation of the Premises at the CITY'S sole cost and expense. The CITY shall pay for such supplies and materials within thirty (30) days of receipt of EXOS'S invoice therefor. EXOS shall prepare and distribute marketing materials and CITY shall assist with the distribution of marketing materials.

ARTICLE 6 UTILITIES

6.1 Utility Services. The CITY shall maintain utility services to the Premises. The CITY shall pay for all utilities costs necessary for EXOS' use and operation of the Premises during the Term. Utility services to the Premises include gas, water, electricity, trash, sewer charges and telephone. The CITY shall pay directly to the applicable utility company such charges, and EXOS shall have no obligation to pay for such utility services.

ARTICLE 7 REPAIRS; MAINTENANCE

7.1 CITY Repair and Maintenance Obligations. The CITY shall, at its own cost and expense, repair, maintain in good and tenable condition, ordinary wear and tear excepted, and replace, as necessary, the Premises. The CITY is responsible for all repair and maintenance including but not limited to, landscape maintenance, facility maintenance, and janitorial maintenance. The CITY shall work with EXOS to maintain public safety, hygiene and fire safety of the Premises. The CITY shall consider the nature and priority of the work and available funding to determine if and when such repairs and maintenance will be completed.

7.1.1 Landscape Maintenance. The CITY is responsible for all outdoor cleaning and landscape maintenance at the Premises.

7.1.2 Facility Maintenance. The CITY is responsible for all facility maintenance, including but not limited to, electrical, lighting, plumbing, pool chemicals, paint, flooring, HVAC systems, and heat and air conditioning.

7.1.3 Janitorial Maintenance. The CITY is responsible for all janitorial maintenance at the Premises, including but not limited to, routine cleaning of office, lobby, restrooms and locker rooms which includes waste removal, window cleaning, sweeping and mopping floors, and dusting and wiping counters and surfaces. The CITY will also stock janitorial items such as toiletries and cleaning supplies in all bathrooms located at the Premises. The CITY has the sole discretion to determine the frequency of janitorial maintenance and the amount of janitorial items stocked at the Premises.

7.1.4 Information Technology. The CITY is responsible for providing internet access, telephones and support services.

7.2 EXOS Repair and Maintenance Obligations. EXOS shall operate the Premises in a manner that promotes the safety and security of the public while EXOS personnel is on the Premises. Safety and security issues must be reported to the designated CITY contact promptly and EXOS personnel will endeavor to protect the safety and security of the public until the CITY can address the safety and/or security issue.

Except for normal wear and tear occurring in the ordinary course of business, EXOS agrees to repair or replace any damage or injury done to the Premises, or Personal Property, or any part thereof, caused by EXOS or EXOS'S agents or employees, at EXOS'S own cost and expense. If EXOS fails to make such repairs or replacements promptly, CITY may, at its option, make such repairs or replacements, and EXOS shall repay the cost thereof to the CITY within thirty (30) days of written demand. However, for any repair work, costing over Five Hundred and no/100 Dollars (\$500.00) to be performed by EXOS or EXOS's agents, EXOS shall not perform such repair work without the CITY's prior written consent. Any repairs or replacements in or to the Premises, other than repair work in emergency situations, which would require an expenditure exceeding Forty-Five Thousand and no/100 Dollars (\$45,000.00) and which constitute a "public project" under Section 20161 of the California Public Contract Code, shall be contracted for/by CITY and let to bid pursuant to those procedures described in National City Municipal Code Chapter 2.62.

7.3 CITY Right to Inspect. EXOS shall permit the CITY to enter the Premises at all times to inspect the Premises, provided, however, that such entry shall not unreasonably interfere with EXOS'S operation of the Premises. Nothing contained in this Article 7, however, shall be construed as creating any duty on the part of the CITY to do any work which, under any provision of this Service Agreement, EXOS may be required to do.

7.4 Prevailing Wages. EXOS shall pay prevailing wages if required by law for work performed on the Premises.

ARTICLE 8
FEES AND PAYMENT TERMS

8.1 Fees. The CITY shall pay EXOS a monthly base management fee, actual payroll and staffing expenses, and marketing and administrative costs as set forth in the annual budget approved by the CITY.

8.1.1 Base Management Fee. As compensation for the Services, the CITY shall pay EXOS a monthly base management fee (the “Base Management Fee”) for each month beginning January 1, 2023 in the amount of \$5,200 per month. Thereafter, the Base Management Fee shall increase by 5% at the beginning of each fiscal year. The Base Management Fee shall be invoiced on a monthly basis and shall be due thirty (30) days after receipt.

8.1.1.1 Learn to Swim Class. The Base Management Fee may increase by an amount not to exceed 10% of said fee during the five (5) months when the CITY provides the “Learn to Swim” classes to the National School District. Upon completion of the “Learn to Swim” classes the Base Management Fee will revert to the amount prior to commencement of the Learn to Swim classes.

8.1.2 Payroll and Staffing Expenses. EXOS shall recruit, hire and employ, as employees of EXOS, all persons who will work at, or provide services at the Premises. Monthly payroll and staffing expenses are estimated as set forth in the annual budget approved by the CITY and will be charged to the CITY as an operating expense only to the extent such Managed Personnel are actually employees of EXOS.

8.1.3 Marketing and Administrative Costs. EXOS shall provide such items as general administrative supplies and marketing materials necessary for the operation of the Premises. Monthly marketing and administrative costs are estimated as set forth in the annual budget approved by the CITY and the cost of the marketing materials and the administrative supplies shall be paid for by the City within thirty (30) days after receipt of an invoice setting forth the amount of such costs.

8.2 Payment Terms. At the end of each month during the Term, EXOS shall submit to the City an invoice for monthly operating expenses as agreed upon in the annual budget approved by the CITY.

8.2.1 Monthly Balance Payment. EXOS shall submit an invoice to the CITY after each month during which Services are rendered to the CITY. To the extent applicable, each

invoice will reflect the monthly Base Management Fee, actual payroll and staffing expenses, and actual marketing and administrative costs, together with all amounts payable to EXOS, as set forth in the annual budget approved by the CITY. EXOS shall also submit to the City supporting documents for payroll and staffing expenses, and marketing and administrative costs. Supporting documents may be, but are not limited to, copies of payroll and receipts for purchases.

8.5 Revenue Collected by EXOS. Revenue collected by EXOS for its programming of open swim, learn to swim, aquatic exercise classes, adult masters swim program, lap swim, youth recreational and competitive swim program, and facility rentals will be collected and handled by EXOS and deposited with the CITY. EXOS shall submit cash and credit card receipts to the CITY two (2) times per week or at any time the amount of cash at the Premises exceeds \$500.00.

8.6 Notwithstanding any other provision contained herein, in the event that CITY'S outstanding balance for fees and charges to EXOS is greater than ninety (90) days past due, EXOS will have the right to immediately and unilaterally terminate this Agreement.

8.7 The CITY shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by the CITY hereunder.

ARTICLE 9 TAXES

9.1 Definition. "Taxes" shall mean all taxes, governmental bonds, special assessments, charges, or transfer taxes, license and transaction fees, including, but not limited to, (a) any state, local, federal income tax, or any real or personal property tax, (b) increases in taxes attributable to EXOS's operation of the Premises, or (c) any taxes which are essentially payments to a governmental agency, other than the CITY, for the right to make improvements to the Premises. EXOS recognizes and agrees that this agreement may create a possessory interest subject to property taxation and that EXOS may be subject to the payment of taxes levied on such interest. EXOS agrees to pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises.

9.2 Responsibility for Payment of Taxes. The CITY shall not be obligated to pay any Taxes accruing against EXOS.

ARTICLE 10 INDEMNIFICATION, LIMITATION OF LIABILITY, AND INSURANCE

10.1 EXOS's Indemnity. EXOS agrees to defend, indemnify and hold harmless the City of National City, its officers, employees, and volunteers against and from any and all liability, loss, damages to property, injuries to, or death of any person or persons, and all claims, demands,

suits, actions, proceedings, reasonable attorneys’ fees, and defense costs, of any kind or nature, including workers’ compensation claims, brought by a third-party , resulting from or arising out of EXOS’ established negligence in its (a) performance of or (b) failure to uphold its other obligations under this Service Agreement; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the CITY, its agents, officers, employees or volunteers.

The indemnity, defense, and hold harmless obligations contained in this Article 10 shall survive the termination of this Service Agreement for any alleged or actual omission, act, or negligence under this Service Agreement that occurred during the term of this Service Agreement.

10.2 Limitation of Liability. NEITHER PARTY OR ITS AFFILIATES WILL HAVE ANY LIABILITY UNDER THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF ANY REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. NO ACTION ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY OR ON BEHALF OF A PARTY MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION FIRST AROSE. THE TOTAL LIABILITY OF EACH PARTY AND ITS AFFILIATES ARISING OUT OF THIS AGREEMENT WILL NOT EXCEED \$1,000,000; PROVIDED THAT FOR CLAIMS FOR INDEMNIFICATION UNDER SECTION 10.1, SUCH TOTAL LIABILITY WILL NOT EXCEED THE GREATER OF (A) SUCH AMOUNT AND (B) \$5,000,000. SUCH LIMITATIONS APPLY IN THE AGGREGATE TO ALL CLAIMS BY A PARTY AND ITS AFFILIATES, AGENTS AND PRINCIPALS. THE PARTIES ARE RELYING ON THE FOREGOING ALLOCATION OF RISK IN SIGNING THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 10.2, THE LIMITATIONS IN THIS SECTION 10.2 WILL NOT LIMIT THE RIGHT OF EXOS TO RECEIVE FEES PAYABLE UNDER THIS AGREEMENT.

10.3 Insurance. EXOS, at its sole cost and expense, shall purchase and maintain, and shall require its subcontractors, when applicable, to purchase and maintain throughout the term of this Service Agreement, the following checked insurance policies:

- A. If checked, **Professional Liability** Insurance (errors and omissions) with minimum limits of \$1,000,000 per occurrence.
- B. **Automobile Insurance** covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include non-owned, and hired vehicles. The policy shall name the CITY and its officers, agents and employees as additional insureds, and a separate additional insured endorsement shall be provided.
- C. **Commercial General Liability Insurance, (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and

completed operations, property damage, bodily injury and personal & advertising injury, with minimum limits of \$5,000,000 per occurrence and \$10,000,000 aggregate, covering all bodily injury and property damage arising out of its operations under this Service Agreement. The policy shall name the CITY and its officers, agents and employees as additional insureds, and a separate additional insured endorsement shall be provided. The general aggregate limit must apply solely to this “project” or “location”. The Commercial General Liability required by this Section must include Sexual Misconduct Liability coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. For the avoidance of doubt, the CITY understands that part of the coverage limits hereunder shall be satisfied by EXOS’s excess umbrella policy. EXOS represents to CITY that its excess umbrella policy does not exclude coverage for Sexual Misconduct Liability.

D. **Workers’ Compensation Insurance** in an amount sufficient to meet statutory requirements covering all of EXOS’S employees and employers’ liability insurance with limits of at least \$1,000,000 per accident. In addition, the policy shall be endorsed with a waiver of subrogation in favor of the City. Said endorsement shall be provided prior to commencement of work under this Service Agreement.

If EXOS has no employees subject to the California Workers’ Compensation and Labor laws, EXOS shall execute a Declaration to that effect. Said Declaration shall be provided to EXOS by CITY.

E. The aforesaid policies shall constitute primary insurance, at least as broad as ISO CG 20 01 04 13, as to the CITY, its officers, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. EXOS shall endeavor to provide for thirty (30) days, but in no event later than forty-five (45) days, prior written notice to the CITY’s Risk Manager, at the address listed in Article 10. 3(G) below, of cancellation or material change.

F. If required insurance coverage is provided on a “claims made” rather than “occurrence” form, the EXOS shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Service Agreement. In addition, the "retro" date must be on or before the date of this Service Agreement.

G. The Certificate Holder for all policies of insurance required by this Article 10. 3 shall be:

City of National City
c/o Risk Manager
1243 National City Boulevard
National City, CA 91950-4397

H. Insurance shall be written with only insurers authorized to conduct business in California that hold a current policy holder’s alphabetic and financial size category rating of not less than A VIII according to the current Best’s Key Rating Guide, or a company equal financial stability that is approved by the CITY’S Risk Manager. In the event coverage is provided by non-admitted “surplus lines” carriers, they must be included on the most recent California List of Eligible Surplus Lines Insurers (LESLI list) and otherwise meet rating requirements.

I. This Service Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY'S Risk Manager. If the EXOS does not keep all of such insurance policies in full force and effect at all times during the terms of this Service Agreement, the CITY may elect to treat the failure to maintain the requisite insurance as a breach of this Service Agreement and terminate the Service Agreement as provided herein.

J. All deductibles and self-insured retentions in excess of \$10,000 must be disclosed to and approved by the CITY. CITY reserves the right to modify the insurance requirements of this Article 10. 3, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

ARTICLE 11 TERMINATION

11.1 This Service Agreement may be terminated with or without cause by the CITY. Termination with or without cause shall be effected by delivery of written Notice of Termination to EXOS as provided for in this Service Agreement. Termination without cause shall be effective only upon 60-day's written notice to EXOS. EXOS shall perform all services in accordance with this Service Agreement during this 60-day period. This Service Agreement may also be terminated immediately, for cause, by the CITY in the event of:

- (a) a material breach of this Service Agreement;
- (b) a misrepresentation by EXOS in connection with the:
 - 1. formation of this Service Agreement;
 - 2. performance of services;
 - 3. the failure to perform services as directed by the CITY;
- (c) the filing of a petition in bankruptcy affecting EXOS;
- (d) a reorganization of EXOS for the benefit of creditors; or
- (e) a business reorganization, change in business name or change in business status of EXOS.

11.2 This Service Agreement may be terminated by EXOS by notice to the CITY, at any time if:

- (a) the CITY becomes insolvent or admits its inability to pay its debts generally as they become due;
- (b) the CITY becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven (7) days or is not discussed or vacated within forty-five (45) days after filing;
- (c) the CITY is dissolved or liquidated or takes any action for such purpose;

- (d) the CITY makes a general assignment for the benefit of creditors; or
- (e) the CITY has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

11.3 Within thirty (30) days of the termination of this Service Agreement, EXOS shall return to the CITY all property of the CITY, and EXOS shall remove from the Premises all property of EXOS at EXOS's sole cost and expense.

ARTICLE 12 HAZARDOUS MATERIALS

12.1 Hazardous Materials Laws-Definition. As used in this Article, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law") relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under, or about the Property, soil and ground water conditions, or other similar substances or conditions. The following legal authority is a non-exhaustive list of the legal authority that applies to the definition of the term "Hazardous Materials Laws":

- (a) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., Section 9601 *et seq.*)
- (b) the Hazardous Materials Transportation Act, as amended (49 U.S.C., Section 1801 *et seq.*), and
- (c) the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., Section 6901 *et seq.*)

12.2 Hazardous Materials - Definition. As used in this Section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:

12.2.1 is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;

12.2.2 is controlled, referred to, designated in or governed by any Hazardous Materials Laws;

12.2.3 gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws, or

12.2.4 is any other material or substance giving rise to any liability, responsibility or duty upon the CITY or EXOS with respect to any third person under any Hazardous Materials Law.

12.3 EXOS Representations and Warranties. EXOS represents and warrants that, during the Term or any extension thereof, EXOS shall comply with the following provisions of this Section unless otherwise specifically approved in writing by CITY, subject to the terms and conditions of EXOS maintenance obligations provided elsewhere in this Service Agreement:

12.3.1 EXOS shall not cause or authorize any Hazardous Materials to be brought, kept or used in or about the Premises by EXOS, its agents, employees, assigns, contractors or invitees, except as required by EXOS's permitted use of the Premises in the normal course of operations;

12.3.2 Any handling, transportation, storage, treatment or usage by EXOS of Hazardous Materials that is to occur on the Premises following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws;

12.3.3 Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials which may occur on the Premises following the Commencement Date shall be promptly reported in writing to CITY;

12.3.4 No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by EXOS in the Premises;

12.3.5 No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by EXOS on the Premises without CITY's prior written consent;

12.3.6 EXOS shall promptly supply the CITY with copies of all notices, reports, correspondence, and submissions made by EXOS to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws with respect to the Premises; and

12.3.7 EXOS shall promptly notify the CITY of any liens threatened or attached against the Premises pursuant to any Hazardous Materials' Law. If such a lien is filed against the Premises, then, within the earlier of (a) twenty (20) days following such filing, or (b) before any governmental authority commences proceedings to sell the Premises pursuant to the lien, EXOS shall either:

(a) pay the claim and remove the lien from the Premises, or

(b) furnish either:

- (1) a bond or cash deposit reasonably satisfactory to the CITY in an amount not less than the claim from which the lien arises, or;
- (2) other security satisfactory to the CITY in an amount not less than that which is sufficient to discharge the claim from which the lien arises.

12.3.8 At the end of this Agreement, EXOS shall surrender the Premises to the CITY free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Premises.

ARTICLE 13 ASSIGNMENT

13.1 CITY's Consent Required. EXOS shall not voluntarily or involuntarily assign or otherwise transfer all or any portion of its rights and duties under this Agreement without the CITY's prior written consent. Any attempted assignment or transfer without the CITY'S prior written consent shall be void.

ARTICLE 14 DEFAULTS BY EXOS OR BY CITY; REMEDIES

14.1 Events of Default; Remedies. The following sub-articles shall apply if either EXOS or the CITY neglects, fails to perform, or fails to observe any of their respective obligations under the terms, covenants, or conditions contained in this Agreement ("Default"):

14.1.1 Thirty-Day Correction of Default. If either EXOS or the CITY determines that the other party is in Default, then the non-defaulting party must provide the defaulting party written notice of the Default and thirty (30) days to correct the Default.

14.1.2 Extended Correction of Default. If the defaulting party determines that more than thirty (30) days is required to correct the Default, the defaulting party must provide the other party written notice of the reasons why additional time is required to correct such Default. The defaulting party must use diligent efforts to correct a Default under this Article 14.1.2 and, in any case, must correct such Default within ninety (90) days from the date of the written notice of default.

14.1.3 Remedies for Failure to Correct Default. If the defaulting party fails to comply with Article 14.1.1 or 14.1.2, then the non-defaulting party may immediately terminate

this Agreement. The defaulting party shall be liable to the non-defaulting party for any and all damages sustained by the non-defaulting party as a result of the defaulting parties' breach.

ARTICLE 15
DAMAGE OR DESTRUCTION

15.1 CITY Duty to Repair Casualty. If the Premises is damaged by fire, earthquake, or any other identifiable event of a sudden, unexpected, or unusual nature ("Casualty"), the CITY may, in sole discretion, repair any damages to the Premises. The CITY may also repair, restore, and replace any damaged or destroyed Fixtures, Improvements or Personal Property in response to any Casualty loss. If the City does not repair any damage, and such damage renders the Premises inoperable, the City may terminate this agreement as provided in Article 11 (Termination). Application of this Article 15 is subject to the terms and conditions of EXOS' maintenance obligations provided elsewhere in this Service Agreement.

15.2 No Abatement. In the event of reconstruction, replacement or repair, EXOS shall continue its operations on the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management, and in continuing compliance with applicable laws and regulations. EXOS shall not be entitled to any compensation or damages from the CITY for loss of use of the whole or any part of the Premises, EXOS's Personal Property, or any inconvenience or annoyance occasioned by such damage, reconstruction or replacement.

15.3 Major Destruction. Notwithstanding any of the foregoing provisions of this Article to the contrary, if, at any time after the Commencement Date, (a) the Improvements are damaged or destroyed to the extent of more than twenty-five percent (25%) of their replacement cost, or (b) the damage is such that the Improvements cannot be repaired and restored within one hundred and eighty (180) days after the Casualty, then EXOS shall have the right to terminate this Service Agreement upon thirty (30) day's prior written notice to CITY.

ARTICLE 16
EMINENT DOMAIN

16.1 Condemnation. EXOS may terminate this Agreement within twenty (20) days after the date that a condemning authority (by a party other than the CITY) takes possession of the Premises by delivery of written notice of such condemnation if:

- (a) If all of the Premises is taken under eminent domain proceedings; or
- (b) Less than all of the Premises is taken under such eminent domain proceeding and the part taken substantially impairs the ability of EXOS to use the remainder of the Premises for the purposes permitted by this Agreement.

In the absence of such written notice from a condemning authority, EXOS may terminate this Agreement within twenty (20) days after the condemning authority shall have taken possession.

16.2 Continuation of Service Agreement After Condemnation. If this Service Agreement is not terminated by EXOS, it shall remain in full force and effect as to any portion of the Premises remaining, and this Service Agreement will end as of the date possession of the part taken by the public entity as to the part of the Premises that is taken.

16.3 Award. All monies awarded in any condemnation shall belong to the CITY. The CITY shall have no liability to EXOS for any award not provided by the condemning authority.

ARTICLE 17 SALE OR MORTGAGE BY CITY

17.1 Sale or Mortgage. The CITY may, pursuant to existing and subsequently enacted CITY ordinances and State laws, at any time, and without the consent of EXOS, vacate, sell, purchase, exchange, transfer, assign, lease, encumber or convey the CITY's interest in whole or in part, in the Premises (collectively referred to in this Article as a "Sale"). CITY shall provide to EXOS written notice of CITY intent to a Sale pursuant to this Article at least ninety (90) days prior to said proposed transfer.

17.2 Release on Sale. From and after a Sale of the CITY's entire interest in the Premises, upon payment of all amounts due or owing to EXOS, the CITY shall be released from all liability to EXOS and EXOS successors and assigns arising from this Agreement because of any act, occurrence or omission of the CITY occurring after such Sale.

ARTICLE 18 SUBORDINATION; ATTORNMENT

18.1 Subordination. This Service Agreement is and shall be junior, subject, and subordinate to:

- (a) any existing or future permits or approvals issued by the United States of America or any local, State or federal agency affecting the control or operation of the Premises. EXOS shall be bound by the terms and provisions of any such permit or approval.
- (b) all mortgages, deeds of trust, and other security instruments of any kind covering the Premises, or any portion thereof, as of the Commencement Date of this Service Agreement.

This Article shall apply to the parties without the necessity of any other document being executed and delivered by EXOS.

ARTICLE 19
CITY'S RIGHT OF ACCESS

19.1 Right of Entry. CITY, its agents, employees, and contractors may enter the Premises at any time, with or without notice to EXOS, to:

- (a) respond to health and safety concerns;
- (b) inspect the Premises and Improvements;
- (c) determine whether EXOS is complying with its obligations in this Agreement (including its obligations with respect to compliance with Hazardous Materials Laws);
- (d) post notices of non-responsibility or similar notices;
- (e) inspect the progress of construction of any improvement;
- (f) make repairs that this Agreement requires or allows CITY to make; or
- (g) make repairs to any adjoining space or utility services, or make repairs, alterations, or improvements to any other portion of the Premises

All work enumerated in this Article 19 must be done as promptly as reasonably possible and so as to cause as little interference to EXOS as reasonably possible.

ARTICLE 20
NOTICES

20.1 Notices. Whenever in this Service Agreement it shall be required or permitted that notice or demand be given or served by either party to this Service Agreement to or on the other, such notice or demand shall be in writing, mailed or personally delivered to the other party at the addresses specified below. Mailed notices shall be sent by United States Postal Service, postage prepaid and shall be deemed to have been given, delivered and received three (3) business days after the date such notice or other communication is posted by the United States Postal Service. All other such notices or other communications shall be deemed given, delivered and received upon actual receipt. Either party may, by written notice delivered pursuant to this provision, at any time designate a different address to which notices shall be sent.

CITY: City of National City
 Attention: Brad Raulston, City Manager
 City of National City
 1243 National City Boulevard
 National City, CA 91950-4301

EXOS: EXOS
Attention: Dan Burns, Chief Executive Officer and
Marc Mandel
25 Hanover Road
Building A, Suite 104
Florham Park, New Jersey 07932

ARTICLE 21
NONDISCRIMINATION

21.1 Nondiscrimination. EXOS hereby covenants by and for itself, its successors, assigns and all persons claiming under or through it, that this Service Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, age, color, creed, religion, sex, sexual orientation, marital status, national origin, physical handicap, medical condition, or ancestry in the use, operation, or enjoyment of the Premises.

ARTICLE 22
RECORDS, ACCOUNTS AND AUDITS

22.1 EXOS Duty to Keep Records. EXOS shall, at all times during the Term, and for a period of five (5) years following expiration or earlier termination of this Service Agreement, keep or cause to be kept, true and complete, in all material respects, books, records and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted pursuant to the rights granted by this Agreement. The books, records and accounts must be supported by source documents such as sales slips, cash register tapes, purchase invoices or other pertinent documents.

22.2 CITY's Right to Audit. The CITY shall have the right, no more than two (2) times per year, at any reasonable time, upon reasonable notice, to examine and perform audits of EXOS's records pertaining to its operations on the Premises. The cost of said audits shall be borne by the CITY, except that EXOS shall provide to the CITY, at EXOS's expense, necessary data to enable CITY to fully comply with each and every requirement of the State of California or by the United States of America ("Regulatory Authority") for information or reports relating to this Service Agreement and to EXOS's use of the Premises. Notwithstanding anything to the contrary in this Article, EXOS must permit an audit of the records described in this Article if the CITY is required to perform such an audit at the direction of a Regulatory Authority.

ARTICLE 23

Service Agreement
October 18, 2022

Page 19 of 24

City of National City

and EXOS COMMUNITY SERVICES LLC

ADMINISTRATIVE PROVISIONS

23.1 Authority. EXOS represents and warrants that it has full power and authority to execute and fully perform its obligations under this Service Agreement pursuant to its governing instruments, without the need for any further action, and that the person executing this Service Agreement on behalf of EXOS is the duly designated agent of EXOS and is authorized to do so.

23.2 Captions. The captions and headings appearing in this Service Agreement are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Service Agreement.

23.3 CITY Approval. Except where stated herein to the contrary, the phrases “CITY approval,” and “CITY written approval” or such similar phrases shall mean approval of the City Manager or Deputy City Manager of National City or said person’s representative as authorized by said person in writing.

23.4 Compliance with Laws. EXOS, at its sole expense, shall procure, maintain and hold available for the CITY’s inspection, any governmental license or permit required for the proper and lawful conduct of EXOS operation of the Premises. The CITY shall pay all costs of the County of San Diego and the Department of Environmental Health to obtain any environmental health permits needed to operate a pool. EXOS shall not use the Premises for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations, orders or requirements of the State of California, the County of San Diego, the CITY, or of other lawful authorities. EXOS shall, at its expense, comply promptly with all applicable statutes, laws, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the Term, regulating the use by EXOS of the Premises.

23.4.1 Cannabis Cultivation Prohibited. Notwithstanding any other provision in this Agreement, or in this Article 23, EXOS shall neither: (a) cultivate; (b) allow the cultivation of; (3) sell; nor (4) allow the sale of cannabis at the Premises.

23.5 Cumulative Remedies. In the event of a default under this Service Agreement, each party’s remedies shall be limited to those remedies set forth in this Service Agreement. Any such remedies are cumulative and not exclusive of any other remedies under this Service Agreement to which the non-defaulting party may be entitled.

23.6 Entire Agreement. This Service Agreement, together with all addenda, exhibits and riders attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded.

23.7 Exhibits. All exhibits referred to herein are attached hereto and incorporated by reference:

Exhibit A: Depiction of Las Palmas Pool

23.8 Force Majeure. If either party is prevented or delayed from performing any act or discharging any obligation hereunder, because of any and all causes beyond either party's reasonable control, including unusual delays in deliveries, abnormally adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, civil commotion, acts of terrorism, and fire or other casualty, legal actions attacking the validity of this Service Agreement or the CITY or EXOS operations of the Premises, or any other casualties beyond the reasonable control of either party ("Force Majeure"), performance of such act shall be excused for the period of such delay, and the period for performance of such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability on the part of either party hereto.

23.9 Governing Law. This Service Agreement shall be governed, construed and enforced in accordance with the laws of the State of California.

23.10 Independent Contractor. EXOS acknowledges that it is an independent contractor; that it alone retains control of the manner of conducting its activities in furtherance of this Service Agreement; and that it, as well as any persons, contractors or agents it may employ, are not employees of CITY for any purpose.

23.11 Interpretation. The provisions of this Service Agreement shall be liberally construed to effectuate its purpose. The language of all parts of this Service Agreement shall be construed simply according to its plain meaning and shall not be construed for or against either party.

23.13 Modification. The provisions of this Service Agreement may not be modified, except by a written amendment signed by both parties.

23.14 Partial Invalidity. If any provision of this Service Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Service Agreement shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.

23.15 Successors & Assigns. This Service Agreement shall be binding on and inure to the benefit of the parties and their successors and assigns, except as may otherwise be provided herein. EXOS shall not assign this Service Agreement to any other party unless approved in writing by CITY.

23.16 Time of Essence. Time is of the essence of each and every provision of this Service Agreement.

23.17 Waiver. No provision of this Service Agreement or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed.

23.18 Alcohol. Consumption of alcohol on the Premises is prohibited.

IN WITNESS WHEREOF, the CITY and EXOS have duly executed this Service Agreement as of the day and year first above written.

{Signature page to follow.}

**CITY OF NATIONAL CITY
(CITY)**

By: _____
Ron Morrison, Mayor

APPROVED AS TO FORM:

Barry J. Schultz
City Attorney

**EXOS COMMUNITY SERVICES, LLC
(EXOS), a New Jersey limited liability
company**

*(Corporation – signatures of two corporate
officers required.)*

DocuSigned by:
By: Bill Bourque
BAE85FEDF6A0433...
(Name)

Bill Bourque

(Print)

Chief operations officer

(Title)

DocuSigned by:
By: Trevor Vigfusson
489AFE5A2BA245F...
(Name)

Trevor Vigfusson

(Print)

CFO - EXOS

(Title)

EXHIBIT A
DEPICTION OF THE PREMISES
(PRIOR TO CONSTRUCTION)



Las Palmas Pool Budget	2022	2022	2022	2022	2022	2022	2023	2023	2023	2023	2023	2023	Budget Q1/2 Fiscal 22/23
	July	August	September	October	November	December	January	February	March	April	May	June	Totals
Expenses													
Payroll and Staffing Expenses													
Salary-Managers	5,350.00	5,350.00	5,350.00	5,350.00	5,350.00	5,350.00	6,800.00	5,700.00	5,700.00	5,700.00	5,700.00	5,700.00	\$32,100.00
Wages-Guards for lap/recreational swim	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4,000.00	4,000.00	8,000.00	\$16,000.00
Wages-Administrative staff for recreational swim/public access	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3,000.00	3,000.00	3,000.00	\$9,000.00
Wages- Swim Lessons	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4,000.00	4,000.00	6,000.00	\$14,000.00
Wages- Masters	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	850.00	850.00	850.00	\$2,550.00
Wages-Swim Team	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Wages-Courses/Certification/Clinics	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	750.00	750.00	750.00	\$2,250.00
Wages-Guards for Sweetwater Unified High School District programs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,250.00	1,250.00	0.00	\$2,500.00
Wages-Guards for Rental Groups	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,400.00	1,400.00	1,400.00	\$4,200.00
Wages-Aquatic Group Exercise Classes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	850.00	850.00	850.00	\$2,550.00
Payroll Burden-24% of payroll	1,284.00	1,284.00	1,284.00	1,284.00	1,284.00	1,284.00	1,632.00	1,368.00	1,368.00	5,232.00	5,232.00	6,372.00	\$28,908.00
Sub-Total	6,634.00	6,634.00	6,634.00	6,634.00	6,634.00	6,634.00	8,432.00	7,068.00	7,068.00	27,032.00	27,032.00	32,922.00	\$114,058.00
Marketing and Administrative Costs													
Adv & Mktg-Other	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	50.00	300.00	300.00	300.00	\$950.00
Dues & Membership	215.00	215.00	215.00	215.00	215.00	215.00	215.00	300.00	300.00	200.00	200.00	200.00	\$2,705.00
Meeting Expense (manadatory monthly staff meetings)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,000.00	500.00	500.00	500.00	\$2,500.00
Uniforms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,000.00	0.00	0.00	0.00	0.00	\$1,000.00
Locker Room Supplies/Janitorial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	100.00	100.00	100.00	\$300.00
Office Supplies & Expenses	0.00	0.00	0.00	0.00	0.00	0.00	0.00	500.00	250.00	150.00	150.00	150.00	\$1,200.00
Travel-Mileage Reimbursement/Parking/Tolls	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	40.00	40.00	40.00	\$120.00
Program Supplies & Expenses	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	500.00	300.00	300.00	300.00	\$1,400.00
Sub-Total	215.00	215.00	215.00	215.00	215.00	215.00	215.00	1,800.00	2,100.00	1,590.00	1,590.00	1,590.00	\$10,175.00
Base Management Fee	1,365.00	1,365.00	1,365.00	1,365.00	1,365.00	1,365.00	1,365.00	5,200.00	5,200.00	5,200.00	5,200.00	5,200.00	\$35,555.00
Sub Total Expenses	8,214.00	8,214.00	8,214.00	8,214.00	8,214.00	8,214.00	10,012.00	14,068.00	14,368.00	33,822.00	33,822.00	39,712.00	\$195,088.00

July-December= 49,284.00 January-June= 145,804.00

Revenue Targets:	
Swim Lessons	\$25,000
Public Swim (Group Ex, Lap Swim, Rec Swim)	\$7,500
Red Cross Trainings	\$6,000
Rentals	\$12,000
Total Revenue Target	50,500.00

**SECOND AMENDMENT TO THE AGREEMENT
BY AND BETWEEN
THE CITY OF NATIONAL CITY
AND
EXOS COMMUNITY SERVICES, LLC.**

THIS SECOND AMENDMENT TO THE AGREEMENT is entered into this 21st day of June, 2022, by and between the CITY OF NATIONAL CITY, a municipal corporation ("CITY"), and EXOS Community Services, LLC, a New Jersey limited liability company (the "CONTRACTOR").

RECITALS

WHEREAS, the CITY and the CONTRACTOR (collectively referred to as the "parties") entered into an Agreement on July 18, 2020 ("the Agreement"), wherein the CONTRACTOR agreed to provide open swim, learn-to-swim classes, learn-to-swim classes for third grade students in the National School District, aquatic exercise classes, lap swimming, and facility rentals for athletic teams or clubs at Las Palmas Pool, located at 1800 East 22nd Street, National City, CA 91950; and

WHEREAS, originally Article 2, Length of the Agreement, established the term of the Agreement as July 18, 2020 through June 30, 2021; and

WHEREAS, on June 15, 2021, the parties agreed to the First Amendment of the Agreement ("First Amendment") allowing the parties to mutually agree to extend the Agreement for up to two (2) additional one-year terms. In the First Amendment, the parties agreed to use the first of the additional one-year terms to amend Article 2, Length of the Agreement to extend the term of the Agreement to July 1, 2021 through June 30, 2022; and

WHEREAS, the parties again desire to amend Article 2, Length of the Agreement, to extend the term of the Agreement to July 1, 2022 through December 31, 2022.

AGREEMENT

NOW, THEREFORE, the parties hereto agree that:

1. The City and EXOS hereby replace Exhibit B ("2021-2022 Las Palmas Pool Budget") to the Agreement, in its entirety, with the attached Exhibit B ("July 2022 – December 2022 Las Palmas Pool Budget"), which revises the payroll and staffing expenses, marketing and administrative costs, and monthly base management fee.

2. Length of Agreement. Pursuant to Article 2 of the First Amendment, the City and EXOS hereby agree to amend Article 2 of the Agreement to again extend the Agreement by six (6) months, through December 31, 2022.

3. Compensation. The CITY and the CONTRACTOR hereby agree that, effective as of the date of this Second Amendment to the Agreement, Section 3 of the Agreement is hereby amended as follows: The total compensation to CONTRACTOR for providing the services set forth herein shall not exceed a total cost of \$50,000. The compensation for CONTRACTOR'S Services shall be based upon and not exceed the rates set forth in Exhibit B ("2022-2023 Las Palmas Pool Budget"), which is attached hereto without prior written authorization from the CITY.

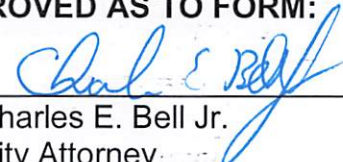
4. The parties further agree that, with the foregoing exceptions, each and every other term and provision of the July 18, 2020 Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to the Agreement on the date and year first above written.

CITY OF NATIONAL CITY

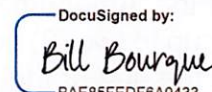
By: 
Alejandra Sotelo-Solis, Mayor

APPROVED AS TO FORM:

By: 
Charles E. Bell Jr.
City Attorney

EXOS COMMUNITY SERVICES, LLC

(Corporation – signatures of two corporate officers required)
(Partnership or Sole proprietorship – one signature)

By: 
BAE85EEDF6A0433...
(Name)

Bill Bourque
(Print)

chief operations officer
(Title)

By: 
F2B958B590D847A...
(Name)

Marc Mandel
(Print)

SVP, General Counsel
(Title)

Exhibit B
 July 2022 - December 2022
 Las Palmas Pool Budget

Las Palmas Pool Budget	2022	2022	2022	2022	2022	2022	Budget Q1/2 Fiscal 22/23
	July	August	September	October	November	December	Totals
Expenses							
<i>Payroll and Staffing Expenses</i>							
Salary-Managers	5,350.00	5,350.00	5,350.00	5,350.00	5,350.00	5,350.00	\$32,100.00
Wages-Guards for recreational swim and lessons*	0.00	0.00	0.00	0.00			\$0.00
Wages-Administrative staff for recreational swim/public access	0.00	0.00	0.00	0.00			\$0.00
Wages- Masters	0.00	0.00	0.00	0.00			\$0.00
Wages-Swim Team	0.00	0.00	0.00	0.00			\$0.00
Wages-Courses/Certification/Clinics	0.00	0.00	0.00	0.00			\$0.00
Wages-Guards for Sweetwater Unified High School District programs	0.00	0.00	0.00	0.00			\$0.00
Wages-Guards for Rental Groups	0.00	0.00	0.00	0.00			\$0.00
Wages-Aquatic Group Exercise Classes	0.00	0.00	0.00	0.00			\$0.00
Payroll Burden-24% of payroll	1,284.00	1,284.00	1,284.00	1,284.00	1,284.00	1,284.00	\$7,704.00
Sub-Total	6,634.00	6,634.00	6,634.00	6,634.00	6,634.00	6,634.00	\$39,804.00
<i>Marketing and Administrative Costs</i>							
Adv & Mktg-Other	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Dues & Membership	215.00	215.00	215.00	215.00	215.00	215.00	\$1,290.00
Meeting Expense (manadatory monthly staff meetings)	0.00	0.00	0.00	0.00			\$0.00
Uniforms	0.00	0.00	0.00	0.00			\$0.00
Locker Room Supplies/Janitorial	0.00	0.00	0.00	0.00			\$0.00
Office Supplies & Expenses	0.00	0.00	0.00	0.00			\$0.00
Travel-Mileage Reimbursement/Parking/Tolls	0.00	0.00	0.00	0.00			\$0.00
Program Supplies & Expenses	0.00	0.00	0.00	0.00			\$0.00
Sub-Total	215.00	215.00	215.00	215.00	215.00	215.00	\$1,290.00
<i>Base Management Fee</i>	1,365.00	1,365.00	1,365.00	1,365.00	1,365.00	1,365.00	\$8,190.00
Sub Total Expenses	8,214.00	8,214.00	8,214.00	8,214.00	8,214.00	8,214.00	\$49,284.00

RESOLUTION NO. 2023 -

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE A SERVICE AGREEMENT BETWEEN THE CITY OF NATIONAL CITY AND EXOS COMMUNITY SERVICES, LLC, TO PROVIDE AQUATIC PROGRAMS AND SERVICES AT LAS PALMAS POOL LOCATED AT 1800 EAST 22ND STREET IN NATIONAL CITY.

WHEREAS, EXOS Community Services, LLC, has provided aquatics programs and services at Las Palmas Pool since 2015; and

WHEREAS, Las Palmas Pool is undergoing extensive renovation and should be re-opened to National City residents in late Spring of 2023 with full aquatic programs and services; and

WHEREAS, EXOS Community Services LLC is prepared to create programming and enhance revenue generation due to opportunities provided by the widened pool; and

WHEREAS, the parties again wish to enter into an Agreement to provide aquatics programs and services by entering into a Service Agreement for the term from February 7, 2023 to June 30, 2027.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1: That the City Council hereby authorizes the Mayor to execute a Service Agreement between the City of National City and EXOS Community Services, LLC, to provide aquatic programs and services at Las Palmas Pool located at 1800 East 22nd Street, attached to the Agenda Report as Exhibit A.

Section 2: That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED and ADOPTED this _____ day of February, 2022

Ron Morrison, Mayor

ATTEST:

Shelley Chapel, Interim City Clerk

APPROVED AS TO FORM:

Barry J. Schultz, City Attorney



AGENDA REPORT

Department: Engineering/Public Works
Prepared by: Luca Zappiello, Assistant Engineer Civil
Meeting Date: Tuesday, February 7, 2023
Approved by: Brad Raulston, City Manager

SUBJECT:

Memorandum of Agreement between the California Department of Transportation and the City of National City for the preparation and approval of the environmental document for the I-5/SR-15/Harbor Drive 2.0 Connected Corridor project.

RECOMMENDATION:

Resolution of the City Council of the City of National City, California, Authorizing City Manager or Designee to Execute a Memorandum of Agreement between the California Department of Transportation and the City of National City for the Preparation and Approval of the Environmental Document for the I-5/SR-15/Harbor Drive 2.0 Connected Corridor Project.

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

The California Department of Transportation (Caltrans) desires to enter into a 5-year Memorandum of Agreement (MOA) with the City of National City (City) for the preparation and approval of the environmental document for the I-5/SR-15/Harbor Drive 2.0 Connected Corridor project in anticipation of future funding to be identified. The former Mayor of the City of National City, Alejandra Sotelo-Solis has expressed strong support for this project (see attachment).

This project proposes to introduce connected all-day and off-peak dedicated truck lanes and Intelligent Transportation Systems (ITS) technologies along Harbor Drive and connecting arterials to I-5 and SR-15 in San Diego and National City to address community concerns of truck traffic in residential communities while improving connections and travel times between the Working Waterfront, I-5 and SR-15, and intermodal freight facilities. The proposed ITS improvements will support the development of a connected and sustainable freight corridor, improve access and circulation, manage truck travel on designated routes, and expand transportation mobility options for the working waterfront.

The attached MOA outlines the terms and responsibilities of both parties where the City will participate as a member of the Project Development Team. Contribution from the City will be in the form of in-kind staff resources, as the MOA requires that the City actively participate in the entire process as a reviewer. Caltrans is also requesting that the City contribute to this project by issuing encroachment approvals.

Staff has reviewed the MOA, and is in agreement with the terms.

Staff recommends Council adopt the resolution authorizing City Manager or designee to execute MOA between Caltrans and the City of National City.

FINANCIAL STATEMENT:

No matching City funds required at this time.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Health, Environment, and Sustainability

ENVIRONMENTAL REVIEW:

This is a project under CEQA and requires the preparation of an Initial Study. CCR15063.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

Exhibit A - Agreement

Exhibit B – Letter of Support

Exhibit C - Resolution

Memorandum of Agreement
Between
the City of National City and
the California Department of Transportation

Subject: Preparation and Approval of the Environmental Document for the I-5/SR-15/Harbor Drive 2.0 Connected Corridor Project

I. Purpose

This AGREEMENT is entered into this ____ day of _____, 2023 by the City of National City and the California Department of Transportation (CALTRANS), (each as an “AGENCY” or a “LEAD AGENCY”).

This Memorandum of Agreement, and such supplements as may be agreed to, provides the basis for cooperative efforts between the City of National City and CALTRANS and through their respective activities in San Diego, California, in the development and completion of appropriate required California Environmental Quality Act (CEQA) (42 U.S.C. Section 4321 et seq.) and the National Environmental Policy Act (NEPA; 42 U.S.C 4321 et seq.) analysis and documentation, in support of the required environmental planning for the I-5/SR-15/Harbor Drive 2.0 Connected Corridor (Harbor Drive 2.0) Project.

Parties are authorized to enter into this agreement for improvements to the State Highway System per the California Streets and Highways Code sections 114 and 130. California Government Code 14030 allows Caltrans to assist other agencies with transportation improvements.

II. Background

Harbor Drive currently experiences high levels of congestion that slow down Port and Naval operations and produce downstream impacts on Portside Environmental Justice Neighborhoods. Neither Harbor Drive nor its connecting arterials currently have Intelligent Transportation System (ITS) technologies and signal prioritization installed. This has resulted in most intersections failing to clear vehicles during peak hour traffic. Additionally, equity and sustainability remain critical issues for Portside Environmental Justice Neighborhoods with emphasis on emissions, noise, and safety emanating from the Working Waterfront truck and vehicular traffic.

This project proposes to introduce connected all-day and off-peak dedicated truck lanes and Intelligent Transportation Systems technologies along Harbor Drive and connecting arterials to I-5 and SR-15 in San Diego and National City to address community concerns of truck traffic in residential communities while improving connections and travel times between the Working Waterfront, I-5 and SR-15, and intermodal freight facilities. The proposed ITS improvements will support the development of a connected and

sustainable freight corridor, improve access and circulation, manage truck travel on designated routes, and expand transportation mobility options for the working waterfront.

III. Responsibilities of the Federal Lead Agency

California participated in the "Surface Transportation Project Delivery Pilot Program" (Pilot Program) pursuant to 23 USC 327, for more than five years, beginning July 1, 2007 and ending September 30, 2012. Under the 2007 Pilot Program Memorandum Of Understanding (MOU), FHWA assigned, and Caltrans assumed, all of the USDOT Secretary's responsibilities under NEPA. The Caltrans 327 MOU is now renewable every 10 years. The most recent MOU under the permanent program is dated May 27, 2022.

CALTRANS, as a Federal Lead Agency, shall involve the public, state, tribal, and local governments, relevant agencies, and any applicants, to the extent practicable in the environmental review process. ~~The Lead Agency shall:~~

- A. NEPA encourages public participation. The degree of public participation and the means of soliciting public input are determined on a case specific basis, taking into consideration the results of public participation efforts at the planning and programming stages and the degree of public interest or controversy [23 CFR 771.119(b)]. The Lead Agency must also provide increased oversight in managing the process and resolving issues.
- B. Send letters to the appropriate Local Agencies inviting them to become Responsible Participating Agencies.
- C. Review and approve final technical studies and the draft Initial Study prior to public circulation.
- D. Use the environmental analysis and proposals of Responsible Agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as Lead Agency.
- E. Meet with a Responsible Agency at the latter's request.
- F. The Implementing Agency for a Project Component will coordinate, prepare, obtain, implement, renew, and amend any encroachment permits needed to complete work.

IV. Responsibilities of Local Responsible Agency

By definition, a Local Responsible Agency is any Local agency, other than the lead agency, that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposed project or project alternative. Responsible agencies have a higher degree of authority, responsibility, and involvement in the environmental review process.

The City of National City, as a Responsible Agency, shall

- A. Participate in the CEQA process at the earliest possible time.
- B. Participate in the scoping process.

- C. Make available staff support at the Lead Agency's request to enhance the latter's interdisciplinary capability.
- D. Normally use its own funds. The Lead Agency shall, to the extent available funds permit, fund those major activities or analyses it requests from responsible agencies. Potential Lead Agencies shall include such funding requirements in their budget request.
- E. Participate as a member of the Project Development Team (PDT), as resources internal to the City of National City permit, focusing its efforts on the development of the Initial Study under CEQA.
- F. The City of National City shall provide review and comment of the Draft Initial Study and the Final environmental document.
- G. The City of National City will issue upon proper application, the encroachment permits required for WORK within the City of National City's right-of-way. Contractors and or agents, and utility owners will not work within the City of National City's right-of-way without an encroachment permit issued in their name. The City of National City will provide encroachment permits to PARTIES, their contractors, consultants, and agents at no cost.

V. Schedule for Preparation of the Initial Study

The detailed tentative schedule has been set forth in "Attachment A" which is attached hereto and incorporated herein by this reference as through fully set forth in length.

VI. GENERAL AGREEMENTS (Modification and Termination)

- A. The City of National City and CALTRANS further agree to take whatever steps they deem necessary, including further agreements or amendments to this agreement, in order to fulfill the purpose of this agreement.
- B. Any inconsistencies identified by one party shall be brought to the other's attention in writing at the earliest opportunity.
- C. Changes deemed necessary by parties will be accomplished by a written amendment or revision to this MOA, prepared by the legal representatives identified at Section VII.
- D. The points of contact of the Agencies participating in this MOA must be informed and provided copies of any modifications or supplements to this MOA.
- E. CALTRANS shall maintain the original MOA and any modifications and/or supplements.

The agencies may terminate their participation in this Agreement upon thirty (30) days written notice served upon the other parties. The party electing to terminate the Agreement shall state in writing its reason for desiring the termination and provide such to the other parties. During the ensuing (30) day period, all parties shall actively attempt to resolve any disagreements so that the termination of this Agreement may be avoided.

VII. Agency Points of Contact for Memorandum of Agreement

CALTRANS Point of Contact:

Nikki Tiongco, Project Manager
CALTRANS District 11
4050 Taylor Street, MS-122
(619) 909-6308

Glenn Mueller, Assistant Chief Counsel
CALTRANS District 11
4050 Taylor Street, MS-130
San Diego, CA 92110
(619) 688-6122

Gustavo Dallarda, District Director
CALTRANS District 11
4050 Taylor Street
San Diego, CA 92110
(619) 688-6668

City of National City Point of Contact:

Roberto Yano
Director of Public Works/City Engineer
City of National City
(619) 336-4380

VIII. Other Provisions

- A. Any activities undertaken by the parties pursuant to this MOA are subject to the availability of appropriated funds and proper authorization under existing and future fiscal law authorities.
- B. If Hazardous Materials (HM) HM-1 or HM-2 is found, the discovering party will immediately notify all other parties.
- C. The City of National City, independent of the project, is responsible for any HM-1 found within the City of National City's right-of-way. The City of National City will undertake, or cause to be undertaken, HM-1 Management with minimum impact to the project schedule.
- D. If HM-1 is found within the project limits and outside the existing State Highway System right-of-way, responsibility for such HM-1 rests with the owner(s) of the parcel(s) on which the HM-1 is found. FHWA, in concert with the local agency having land use jurisdiction, will ensure that HM-1 Management is undertaken with minimum impact to project schedule.
- E. Nothing herein is intended to conflict with applicable law or the current directives of any participating Agency. If the terms of this MOA are inconsistent with applicable law or existing directives of either of the parties entering into the MOA, then those portions of the

MOA which are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by inconsistency shall remain in full force and effect.

- F. This agreement shall be reviewed by both parties three years after the date of execution for any modifications or additions.
- G. This agreement will expire five years after the date of execution. The parties may mutually agree to extend the date of the agreement prior to its natural expiration date.

IX. Execution of Agreement

A. This agreement is being executed in counterpart originals by these parties by their signature and date:

Gustavo Dallarda
District 11 Director

Roberto Yano
Director of Public Works/City Engineer, City of National City



October 4, 2022

Mr. Mitch Weiss
Executive Director
California Transportation Commission
1120 N Street, MS-52
P.O. Box 942873
Sacramento, CA 95814

Subject: Letter of Support for the Trade Corridor Enhancement Program Grant Application – Harbor Drive 2.0 Port Access Improvements - Enhancing Freight and Community Mobility in San Diego’s Working Waterfront

Dear Mr. Weiss:

I am writing to express support on behalf of The City of National City for the *Harbor Drive 2.0 Port Access Improvements - Enhancing Freight and Community Mobility in San Diego’s Working Waterfront (Project)*, which will be submitted by the California Department of Transportation (Caltrans) and San Diego Association of Governments (SANDAG) to the California Transportation Commission for funding consideration under the Trade Corridor Enhancement Program (TCEP).

The Harbor Drive Corridor is a Critical Urban Freight Corridor that provides first/last-mile connectivity for San Diego’s Working Waterfront. This goods movement gateway includes the Port of San Diego’s National City and Tenth Avenue Marine Terminals; Naval Base San Diego; commercial shipyards and industrial facilities; historical, cultural, and recreational sites; and residential communities (including AB-617 identified Portside Environmental Justice Neighborhood). The Project, with a combined total cost of over \$80 million, will implement improvements within the corridor to enable efficient movement of goods and people, improve multimodal access and circulation, and divert trucks from residential streets. The Project will enhance equity, sustainability, pedestrian and cyclist safety, reduce congestion, improve freight mobility and parking, and real-time information throughout this corridor.

The Project proposes to introduce all-day and off-peak truck only lanes; technologies including freight signal priority, freight queue jumps, new traffic signals, gate operating system, truck reservation system; geofencing to enable and enforce commercial vehicle preferred routes; infrastructure for zero-emission commercial vehicle charging; and upgrades to bicycle and pedestrian facilities. A bridge structure at Vesta Street is proposed to reconnect Naval Base San Diego and separate traffic from existing rail and transit routes. Additional improvements include freeway ramp widening in the corridor to improve access to the freeway network and rehabilitation of deteriorating pavement at freeway access locations.

Alejandra Sotelo-Solis, Mayor
1243 National City Boulevard, National City, CA 91950
Office: (619) 336-4283 | Fax: (619) 336-4239 | www.nationalcityca.gov | Email: asotelosolis@nationalcityca.gov

The City of National City would like to express our strong support for the *Harbor Drive 2.0 Port Access Improvements - Enhancing Freight and Community Mobility in San Diego's Working Waterfront Project*. Thank you for your leadership on the TCEP Program and for your consideration of this project.

Sincerely,



Alejandra Sotelo-Solis, Mayor

RESOLUTION NO. 2023 -

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, AUTHORIZING CITY MANAGER OR DESIGNEE TO EXECUTE A MEMORANDUM OF AGREEMENT BETWEEN THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND THE CITY OF NATIONAL CITY FOR THE PREPARATION AND APPROVAL OF THE ENVIRONMENTAL DOCUMENT FOR THE I-5/SR-15/HARBOR DRIVE 2.0 CONNECTED CORRIDOR PROJECT.

WHEREAS, the California Department of Transportation (Caltrans) desires to enter into a 5 year Memorandum Of Agreement (MOA) with the City of National City (City) for the preparation and approval of the environmental document for the I-5/SR-15/Harbor Drive 2.0 Connected Corridor project in anticipation of future funding to be identified; and

WHEREAS, the former Mayor of the City of National City, Alejandra Sotelo-Solis expressed strong support for this project; and

WHEREAS, this project proposes to introduce connected all-day and off-peak dedicated truck lanes and Intelligent Transportation Systems (ITS) technologies along Harbor Drive and connecting arterials to I-5 and SR-15 in San Diego and National City to address community concerns of truck traffic in residential communities while improving connections and travel times between the Working Waterfront, I-5 and SR-15, and intermodal freight facilities; and

WHEREAS, the proposed ITS improvements will support the development of a connected and sustainable freight corridor, improve access and circulation, manage truck travel on designated routes, and expand transportation mobility options for the working waterfront; and

WHEREAS, the attached MOA outlines the terms and responsibilities of both parties where the City will participate as a member of the Project Development Team; and

WHEREAS, contribution from the City will be in the form of in-kind staff resources, as the MOU requires that the City actively participate in the entire process as a reviewer; and

WHEREAS, Caltrans is also requesting that the City contribute to this project by issuing encroachment approvals; and

WHEREAS, staff has reviewed the MOA, and is in agreement with the terms; and

WHEREAS, staff recommends Council adopt the resolution authorizing City Manager or designee to execute MOA between Caltrans and the City of National City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1: That the City Council hereby authorizes the City Manager or designee to execute a Memorandum of Agreement between the California Department of Transportation and the City of National City, attached to the Agenda Report as Exhibit A for the preparation and approval of the environmental document for the I-5/SR-15/Harbor Drive 2.0 Connected Corridor project.

Section 2: That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED and ADOPTED this 7th day of February, 2023.

Ron Morrison, Mayor

ATTEST:

Shelley Chapel, Interim City Clerk

APPROVED AS TO FORM:

Barry J. Schultz, City Attorney



AGENDA REPORT

Department: Engineering/Public Works
Prepared by: Roberto Yano, Director of Public Works/City Engineer
Meeting Date: Tuesday, February 7, 2023
Approved by: Brad Raulston, City Manager

SUBJECT:

Acceptance of a Grant of Easement and Right-of-Way from National Plaza LLC and Plaza Blvd LLC for the private street commonly known as a portion of N Avenue, for the installation of bicycle lanes and other improvements associated with the Central Community Mobility Enhancements

RECOMMENDATION:

Adopt a Resolution Entitled, "Resolution of the City Council of the City of National City, California, Accepting and Authorizing the City Manager to Sign a Grant of Easement and Right-of-Way from National Plaza LLC, and Plaza Blvd LLC, for the private street commonly known as a portion of N Avenue, for the installation of bicycle lanes and other improvements associated with the Central Community Mobility Enhancements Project, CIP No. 19-23."

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

On July 2018, staff submitted a Cycle 4 Active Transportation Program (ATP) grant application to the California Department of Transportation (Caltrans) for the Central Community Mobility Enhancements Project. The project will provide approximately 1.7 miles of bicycle facilities providing north-south connections through the Central, Olivewood and Las Palmas neighborhoods in National City (see Exhibit 1), including N Avenue north of Plaza Boulevard for pedestrian and emergency vehicle, which currently does not exist. On January 30, 2019, the California Department of Transportation (Caltrans) awarded a \$1,286,000 State Active Transportation Program (ATP) grant for the Central Community Mobility Enhancements Project and in March 2020, Caltrans provided the agreement to the City for execution.

On October 6, 2022, Caltrans issued an Authorization Letter allocating \$148,000 (\$104,000 for the Plans, Specifications, and Estimate (PS&E) phase, and \$44,000 for the Right-of-Way (R/W) phase) with a local match of \$22,000 (\$16,000 PS&E phase, and \$6,000 R/W phase). City Council Appropriated the Funds for this work on November 15, 2022. Once the PS&E and R/W phases are complete, staff will return to the City Council for the appropriation of the Construction fund.

The project corridor is located on L Avenue (30th Street to 16th Street), N Avenue (16th Street to Plaza Boulevard), and M Avenue (Plaza Boulevard to 4th Street). Currently, a portion of N Avenue within the project limits exists as a private street – through the retail area commercially known as "Bay Plaza Shopping Center" located at 1130-1302 East Plaza Boulevard – under the ownership of two private entities, Plaza Blvd LLC and National Plaza LLC. In order to complete the project, the City has negotiated with the private owners to obtain an easement for the private street commonly known as a portion of N Avenue. The Grant Easement and Right-of-Way (see Exhibit

2) contains the graphical depiction and legal description of the area. The Easement will be granted in perpetuity and at no cost; the City agrees to undertake all repair and maintenance of the street, operating as a public right of way. The scope of the CCME project, and the associated ATP funds awarded, includes the initial improvements to this portion of N Avenue.

Staff recommends accepting and approving the recordation of the Grant of Easement and Right-of-Way.

FINANCIAL STATEMENT:

No matching City funds required.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Transportation Choices and Infrastructure

ENVIRONMENTAL REVIEW:

This is a project under CEQA subject to a Categorical Exemption. Existing Facilities. CCR 15301(c).

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

1. Project Improvement Map
2. Easement and Right of Way Agreement
3. Resolution

Project Improvement Map



Central Community Mobility Enhancements



RECORDING REQUESTED BY
City of National City
1243 National City Blvd.
National City, Ca. 91950

WHEN RECORDED MAIL THIS DEED AND,
UNLESS OTHERWISE SHOWN BELOW,
MAIL TAX STATEMENT TO:

SAME AS ABOVE

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §27383

APNs 557-322-09-00 and 557-322-11

The undersigned grantor(s) declare(s):

Document transfer tax is \$ NONE

GRANT OF EASEMENT AND RIGHT OF WAY

This Grant of Easement and Right of Way ("**Agreement**") is made effective as of _____, 2023 ("**Effective Date**") by and between National Plaza LLC, a California Limited Liability Company and Plaza Blvd LLC, a California Limited Liability Company (collectively "**Grantor**") and the City of National City, a California municipal corporation ("**Grantee**") with respect to the following facts:

Recitals

A. National Plaza LLC is the owner of that certain real property in the City of National City, County of San Diego, State of California, identified as Assessor's Parcel No. ("**APN**") 557-322-09-00 (the "**NP Property**").

B. Plaza Blvd LLC is the owner of that certain real property in the City of National City, County of San Diego, State of California, identified as APN 557-322-11-00 (the "**PB Property**").

C. The NP Property and the PB Property are collectively referred to as the "**Property**."

D. The predecessors in interest to National Plaza LLC and Plaza Blvd LLC entered into that certain Supplement to Declaration and Agreement Establishing Protective Covenants, Conditions, and Restrictions and Grant of Easements dated May 24, 1983, and recorded July 1, 1983, as document no. 83-225836 in San Diego County, California ("**Declaration Supplement**"), which contains certain covenants and easements with respect to the Property.

E. National Plaza LLC and certain third parties entered into to that certain Access Easement and Maintenance Agreement dated January 13, 2015, and recorded February 9, 2015, as document no. 2015-0055333 in San Diego County, California ("**Access Agreement**"), which contains certain covenants and easements with respect to the Property.

F. The private street commonly known as a portion of N Avenue and landscaped areas with improvements runs through the Property ("**N Avenue**").

G. Grantee is in the process of obtaining grant funding for its Central Mobility Project ("**Project**") from the California Department of Transportation pursuant to that certain Program Supplement No. U52 to Administering Agency-State Agreement for State Funded Projects No. 00013S, effective March 26, 2020. The Project consists generally of installing a bike path, signage and irrigation and converting N Avenue from a private street into a public street.

H. Grantee desires to acquire an easement over a portion of the Property including N Avenue for use in the Project and Grantor desires that Grantee assume all maintenance and repair obligations over such easement area on the terms and conditions described herein.

NOW THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee covenant and agree as follows:

1. Grant of Perpetual Easement. Grantor hereby grants and conveys to Grantee a non-exclusive, perpetual easement and right of way (the “**Easement**”) for street and landscaping purposes, including, but not limited to, pedestrian and bike paths, signage, irrigation and such other similar facilities as may be required by law, but specifically not including any underground utilities, with the right to enter upon the Easement Area (defined below) at any time for the installation, construction, removal, replacement, repair, use, operation, inspection, maintenance, or undertaking similar activities, as the Grantee may see fit, for use in connection therewith or appurtenant thereto, in, over, under, along and across that portion of Grantor’s Property more particularly described and/or depicted as follows (the collectively, “**Easement Area**”):

- a. With respect to the NP Property, the Easement Area is more particularly described in Exhibit A and depicted in Exhibit B, both attached hereto and incorporated herein fully by reference; and
- b. With respect to the PB Property, the Easement Area is more particularly described in Exhibit C and depicted in Exhibit D, both attached hereto and incorporated herein fully by reference.

Said Easement Area includes the adjacent curbs and gutters but does not include the sidewalk and retaining wall. The Easement shall not be used in a manner that will unreasonably disrupt or restrict ingress, egress, parking, access, visibility, or business to the shopping center located at 1130-1302 East Plaza Boulevard, in National City, California.

The perpetual Easement includes the right of ingress to, and egress from the Easement Area, and the right at all times to enter in, over and upon the Easement Area and every part thereof to perform the actions stated above by the Grantee and its employees, agents, invitees and contractors with vehicles and equipment.

Grantor reserves from the grant of the Easement the right to continued and unlimited access and use of N Avenue as a road. Grantor and Grantee acknowledge and agree that the foregoing does not conflict with the Easement granted by this Agreement or conflict with or affect the Project.

2. Prior Easement Agreements. Grantor and Grantee acknowledge and agree that this Agreement has no effect on any easements granted or existing pursuant to the Access Agreement or the Declaration Supplement, and that any binding covenants and easements in the Access Easement or the Declaration Supplement shall remain in effect; provided, however, that to the extent any terms and provisions in the Access Easement or the Declaration Supplement are inconsistent with or contrary to any terms or provisions of this Agreement related to maintenance and repair, sharing of costs, insurance, or indemnity, this Agreement shall prevail and supersede. Grantor and Grantee hereby agree that there shall be no barriers between Parcels 5 and 11 of Parcel Map 12079, and that there shall be a free flow of vehicular and pedestrian traffic between said Parcel 5, Parcel 11, and Parcels 1 through 8 of Parcel Map 12079.

3. Grantor's Responsibilities. The Grantor and the Grantor’s heirs, successors, and assigns shall not place nor permit to be placed on the Easement Area any building, structure, landscaping or other improvement, nor do or allow to be done anything that may interfere with the full enjoyment by the Grantee of the rights herein granted. Prior to Grantee removing any building, structure, landscaping or other improvement that Grantee believes interferes with its full enjoyment of the rights herein granted, Grantee shall provide Grantor notice and a reasonable time to cure the interference. In the event Grantor does not reasonably cure the interference, Grantee may remove, at Grantor’s sole and reasonable expense, any such building, structure, landscaping or other improvement that may interfere with the Project or

any of the rights herein granted. Notwithstanding the foregoing, Grantee accepts the Easement Area in its current as is condition.

4. Grantee's Responsibilities. Grantee shall undertake, at Grantee's sole expense, all construction and installation work in the Easement Area. At Grantee's sole expense, Grantee shall maintain, repair and replace all street section, road surface, road striping, markings, signage, landscaping, irrigation, gutters, curbs, and related improvements in the landscape portions of Easement Area identified in the Exhibit E and Exhibit F, both attached hereto and incorporated herein fully by reference. This easement excludes the sidewalks and retaining wall identified on the Exhibit D. Grantee shall maintain the Easement Area in clean and safe condition, and in at least the same or better condition as the rest of the Property, and shall have the right to install trees, plants, shrubbery, groundcover, landscaping and irrigation within the Easement Area, which shall be maintained at Grantee's sole expense.

5. Title and Lease Warranty. Each Grantor for itself only, represents and warrants that such Grantor is not under contract with any other party for the sale or other conveyance of the Property owned by such party, that there are no oral or written leases in effect with respect to any portion of the Property owned by such party, except those set forth below:

- i. As to the NP Property,
 - a. That certain Lease by and between National Plaza, LLC and Smart & Final Stores LLC, dated June 30, 2009 concerning approximately 40,822 rentable square feet of space located at the NP Property (the "Leased Premises"), as amended by that First Amendment to Lease dated March 6, 2013 and the Second Amendment to Lease dated January 1, 2022; and
 - b. That certain Sublease Agreement by and between Smart & Final Stores LLC and DVA Renal Healthcare, Inc. dated October 9, 2020 concerning approximately 18,270 rentable square feet of space located within the Leased Premises, as supplemented by that certain Commencement Date Memorandum dated January 12, 2021 and as amended by the First Amendment to Sublease dated September 2, 2021 and the Second Amendment to Sublease Re: Access Ramps and Trash Enclosure dated January 1, 2022.

Plaza Blvd LLC represents and warrants that (a) it is the sole fee owner of the PB Property, (b) Olive APT. L.P. has no right, title or interest in the PB Property and (c) there are no property interests, liens, encumbrances or clouds against title except as identified in the amended title report for the PB Property issued by Commonwealth Land Title Company dated November 7, 2022, Amendment Date November 11, 2022. National Plaza LLC represents and warrants that it is the sole fee owner of the NP Property and, to its knowledge, there are no property interests, liens, encumbrances or clouds against title except as identified in the title report for the NP Property issued by Commonwealth Land Title Company dated October 17, 2022. Each Grantor agrees to indemnify, defend (with counsel reasonably approved by Grantee), hold harmless and reimburse Grantee and Grantee's elected and appointed officials, officers, representatives, agents and employees from and against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation reasonable attorneys' fees, incurred as a result of the failure of any of such Grantor's representations or warranties contained in this section to be correct. The provisions of this Section 5 shall survive any close of escrow and recordation of this Agreement.

6. Indemnification by Grantee. Grantee shall hold harmless, defend (with counsel reasonably acceptable to Grantor) and indemnify Grantor, and Grantor's principals, members, managers, and agents (including any manager or director of the Property common areas under the Declaration Supplement) (collectively "Indemnitees"), from and against all claims, losses, injuries, damages, fines, penalties, costs, proceedings, and attorney fees, arising out of or relating to the Easement and/or the Easement Area and/or the use, maintenance, repair and improvement of the Easement and/or Easement Area, except to the extent caused by the gross negligence or willful misconduct of any Indemnitee.

7. Waiver. Grantor, for itself, its heirs, successors and assigns, hereby waives any and all claims for severance damages which may accrue to the Property by reason of this grant

of Easement. Grantor acknowledges for itself, its heirs, successors and assigns, that it has been advised to seek advice of counsel on the issue of waiver of severance damages and has either done so or has chosen not to do so despite being given such advice.

8. Miscellaneous.

a. Notices. All notices to be sent pursuant to this Agreement shall be made in writing, and sent to the parties at their respective addresses specified below or to such other address as a party may designate by written notice delivered to the other party in accordance with this Section.

Grantor:

National Plaza LLC
PO Box 4089
Los Altos, Ca 94024
Emails: roskouy@yahoo.com,
Rasoul@OskouyGroup.com

Attention: Rasoul Oskouy

Grantor:

Plaza Blvd LLC
9819 Mira Mesa Boulevard
San Diego, CA 92131
allpropertyman@yahoo.com

Attention: Nicole Shah

Grantee:

City Hall, City of National City
Department of Public Works and Engineering
1234 National City Boulevard
National City, CA 91950
Attention: City Engineer

b. Entire Agreement. This Agreement constitutes the entire understanding of Grantor and Grantee with respect to the subject matter hereof and supersedes all prior oral or written communications with respect thereto.

c. Amendment. This Agreement may be terminated or modified only by the written consent of the Grantor and Grantee or their successors or assigns, evidenced by a document that has been fully executed, acknowledged and recorded in the Official Records of County of San Diego County, California ("**Official Records**").

d. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held by a court of competent jurisdiction, 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.

e. Runs with the Land. The covenants herein shall run with the land and insure to the benefit of and be binding upon heirs, successors and assigns. Following execution by all parties, this Agreement shall be recorded in the Official Records.

f. Assignment. Subject to Grantor's prior written consent not to be unreasonably withheld or delayed, Grantee may assign its rights and obligations hereunder to any third party. Any such assignment may, at the election of the assignee, be evidenced by an assignment document, which may be recorded in the Official

Records. Grantor consents to any approved subsequent assignment recorded against the Property to reflect such assignment by Grantee.

g. Further Assurances. The parties agree to execute, acknowledge and deliver to the other such other documents and instruments, and to undertake such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

h. Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of San Diego County, California and Grantor hereby waives any rights to removal under Code of Civil Procedure section 394.

i. Captions. The section headings used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained.

j. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

k. Attorney Fees and Costs. In any legal action, dispute, lawsuit, arbitration or other proceeding between or among any parties to this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and costs, including with respect to any appeal.

l. Signatory Authority. Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity that it purports to bind and that all actions have been taken to provide that authority. Each person executing this Agreement shall defend and indemnify the parties should the foregoing representation and warranty be false.

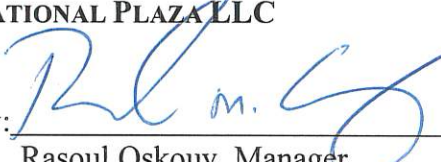
IN WITNESS WHEREOF, the duly authorized representatives of the Grantor and Grantee have executed this Agreement as of the date first written above.

GRANTOR

GRANTEE

NATIONAL PLAZA LLC


CITY OF NATIONAL CITY

By: 
Rasoul Oskouy, Manager

By: _____
Brad Raulston, City Manager

PLAZA BLVD LLC

APPROVED AS TO FORM:

By: 
~~Nicole Shah~~, Manager
Alex Shah

By: _____
Barry Schultz, City Attorney

ATTEST:

By: _____
Shelley Chapel, Interim City Clerk

[NOTARIZATION CERTIFICATES ATTACHED]

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed above is hereby accepted by order of the City Council of the City of National City pursuant to City Council Resolution No. _____ dated _____, 2022 and the Grantee consents to recordation thereof by its duly authorized officer.

CITY OF NATIONAL CITY,
a California municipal corporation

By: _____
Brad Raulston, City Manager

Dated: _____

STATE OF CALIFORNIA)

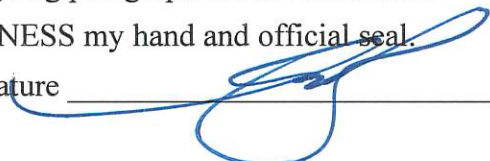
COUNTY OF San Diego)

On 11/29, 2022, before me, A Ramirez Tillman, (here insert name and title of the officer), personally appeared Alex Shah, 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)



STATE OF CALIFORNIA)

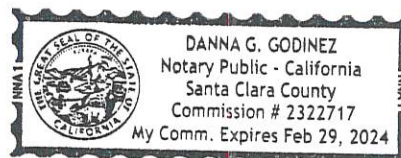
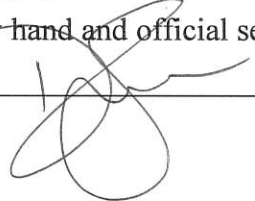
COUNTY OF Santa Clara)

On 12/19, 2022, before me, Danna G. Godinez, notary public, (here insert name and title of the officer), personally appeared Rasoul Mirzazadeh Oskouy, 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)



STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, 20__, before me, _____, (here insert name and title of the officer), 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 EASEMENT FOR STREET RIGHT OF WAY

ALL THAT PORTION OF PARCELS 5 AND 7, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARCEL MAP NO. 12079, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY APRIL 27, 1982, AS FILE NO. 82-124159, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF PARCEL 7 OF SAID PARCEL MAP NO. 12079 SAID POINT BEING IN THE SOUTHERLY LINE OF PLAZA BOULEVARD HAVING A HALFWIDTH OF 52.00 FEET;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 7 AND THE SOUTHERLY LINE OF PLAZA BOULEVARD, NORTH 78°46'51" WEST (RECORD NORTH 79°46'05" WEST) A DISTANCE OF 36.51 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 30.67 FEET, A RADIAL TO SAID POINT BEARS NORTH 56°14'25" EAST, THENCE SOUTHEASTERLY, SOUTHERLY AND SOUTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 24.11 FEET THROUGH A CENTRAL ANGLE OF 45°02'40";

THENCE SOUTH 11°17'05" WEST A DISTANCE OF 146.27 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 392.43 FEET, A RADIAL TO SAID POINT BEARS SOUTH 78°42'55" EAST, THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 34.47 FEET THROUGH A CENTRAL ANGLE OF 05°02'00" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE WESTERLY HAVING A RADIUS OF 132.48 FEET, A RADIAL TO SAID POINT BEARS SOUTH 73°40'55" EAST, THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 49.33 FEET THROUGH A CENTRAL ANGLE OF 21°20'08" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 64.72 FEET, A RADIAL TO SAID POINT BEARS SOUTH 52°20'48" EAST, THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 20.82 FEET THROUGH A CENTRAL ANGLE OF 18°25'38";

THENCE SOUTH 56°04'51" WEST A DISTANCE OF 68.90 FEET;

THENCE SOUTH 63°05'07" WEST A DISTANCE OF 39.14 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 202.00 FEET, A RADIAL TO SAID POINT BEARS NORTH 26°54'52" WEST, THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 104.35 FEET THROUGH A CENTRAL ANGLE OF 29°35'52"; TO A POINT OF A REVERSE CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 12.18 FEET, A RADIAL TO SAID POINT BEARS SOUTH 56°30'44" EAST, THENCE SOUTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 6.25 FEET THROUGH A CENTRAL ANGLE OF 29°24'51";

THENCE SOUTH 18°58'52" WEST A DISTANCE OF 58.46 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 17.00 FEET, A RADIAL TO SAID POINT BEARS NORTH 66°15'40" EAST, THENCE SOUTHEASTERLY, SOUTHERLY AND SOUTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 9.18 FEET THROUGH A CENTRAL ANGLE OF 30°57'04"; TO A POINT OF A REVERSE CURVE;

CONCAVE EASTERLY HAVING A RADIUS OF 278.00 FEET, A RADIAL TO SAID POINT BEARS NORTH 82°47'16" WEST, THENCE SOUTHWESTERLY, SOUTHERLY AND SOUTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 96.87 FEET THROUGH A CENTRAL ANGLE OF 19°57'54";

THENCE SOUTH 12°45'11" EAST A DISTANCE OF 424.67 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL 5 SAID POINT BEING IN THE NORTHERLY LINE OF "L" AVENUE AS SHOWN ON PARCEL MAP NO. 12079;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 5 NORTH 72°06'46" EAST (RECORD NORTH 71°07'32" EAST) A DISTANCE OF 21.76 FEET;

THENCE LEAVING SAID SOUTHERLY LINE OF SAID PARCEL 5 AND NORTHERLY LINE OF "L" AVENUE NORTH 12°47'20" WEST A DISTANCE OF 424.36 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 255.00 FEET, A RADIAL TO SAID POINT BEARS SOUTH 77°12'40" WEST, THENCE NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 65.59 FEET THROUGH A CENTRAL ANGLE OF 14°44'13"; TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 168.00 FEET, A RADIAL TO SAID POINT BEARS NORTH 85°32'07" WEST, THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 171.85 FEET THROUGH A CENTRAL ANGLE OF 58°36'29";

THENCE NORTH 63°04'22" EAST A DISTANCE OF 109.63 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 156.50 FEET, A RADIAL TO SAID POINT BEARS SOUTH 26°55'38" EAST, THENCE NORTHEASTERLY AND NORTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 141.51 FEET THROUGH A CENTRAL ANGLE OF 51°48'32";

THENCE NORTH 11°15'50" EAST A DISTANCE OF 148.35 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 29.50 FEET, A RADIAL TO SAID POINT BEARS NORTH 78°44'10" WEST, THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 26.36 FEET THROUGH A CENTRAL ANGLE OF 51°11'55" TO A POINT IN THE NORTHERLY LINE OF SAID PARCEL 5 AND THE SOUTHERLY LINE OF PLAZA BOULEVARD;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 5, NORTH 78°46'51" WEST (RECORD NORTH 79°46'05" WEST) A DISTANCE OF 38.89 FEET TO THE POINT OF BEGINNING.

EASEMENT AREA: 34,070 SF

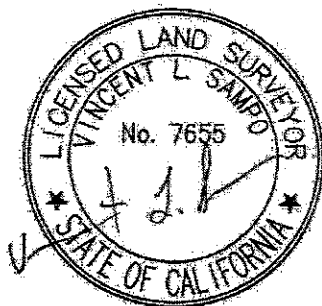
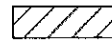


EXHIBIT "B"

EASEMENT FOR STREET RIGHT-OF-WAY

SHEET 1 OF 1

LEGEND:



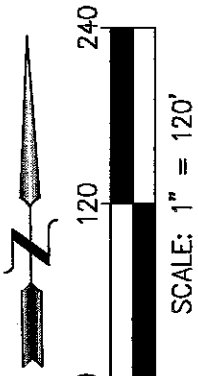
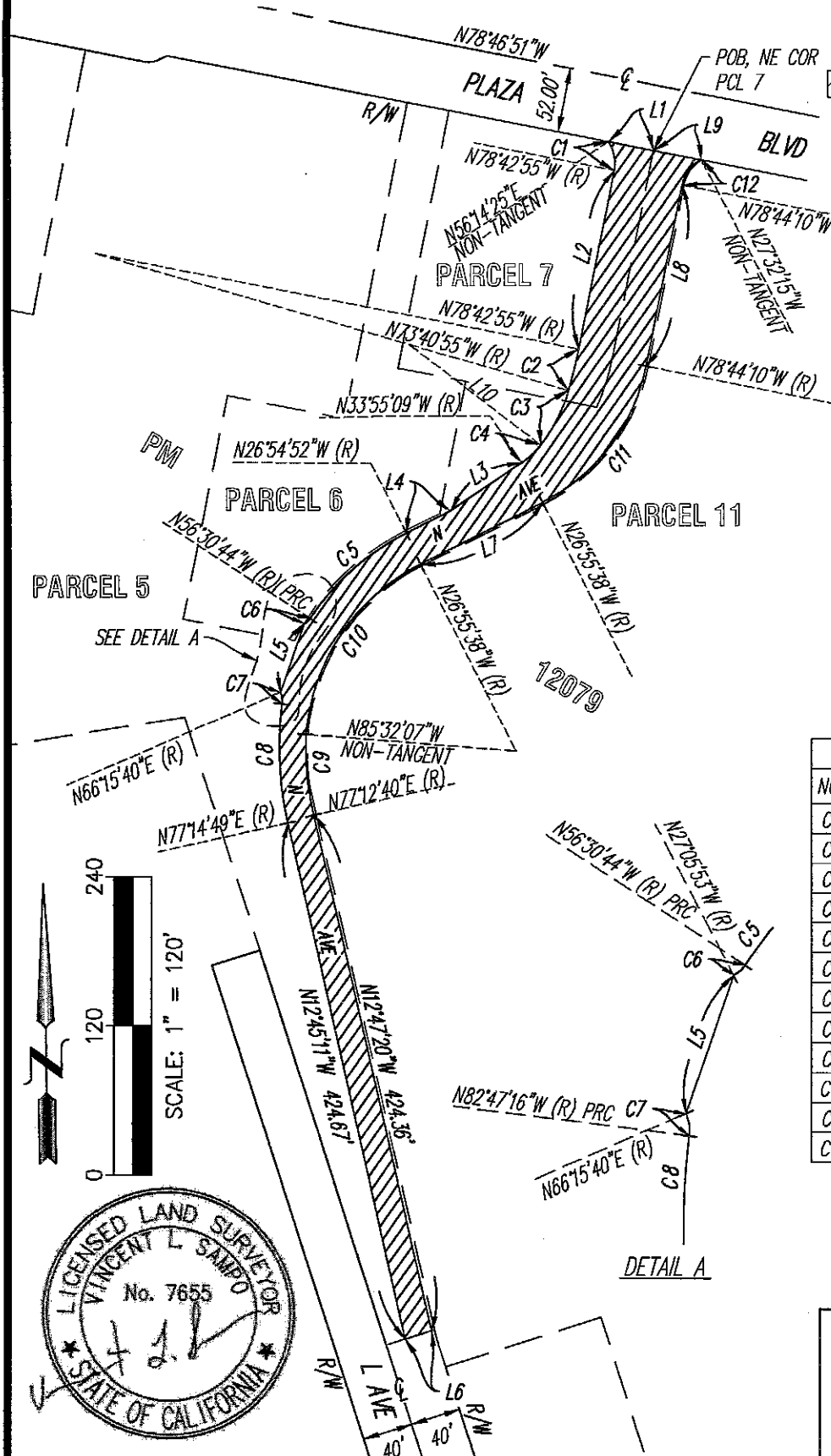
EASEMENT FOR STREET RIGHT OF WAY GRANTED TO THE CITY OF NATIONAL CITY HEREDON. AREA: 34,070 SF

NOTES:

1. BASIS OF BEARINGS IS THE CALIFORNIA COORDINATE SYSTEM NAD83, ZONE 6 BETWEEN POINT NUMBERS 1236 AND 1237 AS SHOWN ON ROS 14492. EPOCH 1991.35

LINE DATA TABLE		
NO.	BEARING	LENGTH
L1	N78°46'51"W	L=36.51'
L2	N11°17'05"E	L=146.27'
L3	N56°04'51"E	L=68.90'
L4	N63°05'07"E	L=39.14'
L5	N18°58'52"E	L=58.46'
L6	N72°06'46"E	L=21.76'
L7	N63°04'22"E	L=109.63'
L8	N11°15'50"E	L=148.35'
L9	N78°46'51"W	L=38.89'
L10	N52°20'48"W	-

CURVE DATA TABLE			
NO.	Δ/BEARING	RADIUS	LENGTH
C1	Δ=45°02'40"	R=30.67'	24.11'
C2	Δ=05°02'00"	R=392.43'	34.47'
C3	Δ=21°20'08"	R=132.48'	49.33'
C4	Δ=18°25'38"	R=64.72'	20.82'
C5	Δ=29°35'52"	R=202.00'	104.35'
C6	Δ=29°24'51"	R=12.18'	6.25'
C7	Δ=30°57'04"	R=17.00'	9.18'
C8	Δ=19°57'54"	R=278.00'	96.87'
C9	Δ=14°44'13"	R=255.00'	65.59'
C10	Δ=58°36'29"	R=168.00'	171.85'
C11	Δ=51°48'32"	R=156.50'	141.51'
C12	Δ=51°11'55"	R=29.50'	26.36'



JN: 11-118 10-20-21

SAMPO
ENGINEERING, INC.

171 SAXONY ROAD, SUITE 213, ENCINITAS, CA 92024
TEL: (760) 436-0660 FAX: (760) 436-0659

EXHIBIT "C"

EASEMENT AREA FOR LANDSCAPING

ALL THAT PORTION OF PARCELS 5, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARCEL MAP NO. 12079, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY APRIL 27, 1982, AS FILE NO. 82-124159, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY SOUTHWEST CORNER OF PARCEL 5 OF SAID PARCEL MAP NO. 12079; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 5, NORTH 72°06'46" EAST A DISTANCE OF 14.58 FEET;

THENCE LEAVING SAID SOUTHERLY LINE, NORTH 12°45'11" WEST A DISTANCE OF 293.76 FEET;

THENCE SOUTH 77°14'49" WEST A DISTANCE OF 4.80 FEET;

THENCE NORTH 12°45'11" WEST A DISTANCE OF 197.61 FEET;

THENCE NORTH 77°14'49" EAST A DISTANCE OF 12.86 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 279.20 FEET, A RADIAL TO SAID POINT BEARS NORTH 88°57'17" WEST;

THENCE NORTHERLY AND NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 29.12 FEET THROUGH A CENTRAL ANGLE OF 5°58'36", TO A POINT OF A REVERSE CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 19.00 FEET, A RADIAL TO SAID POINT BEARS NORTH 82°58'41" WEST

THENCE NORTHEASTERLY, NORTHERLY, NORTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 34.23 FEET THROUGH A CENTRAL ANGLE OF 103°13'26";

THENCE SOUTH 83°47'53" WEST A DISTANCE OF 63.49 FEET;

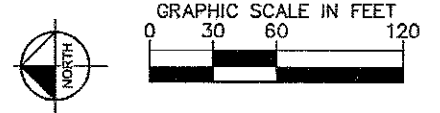
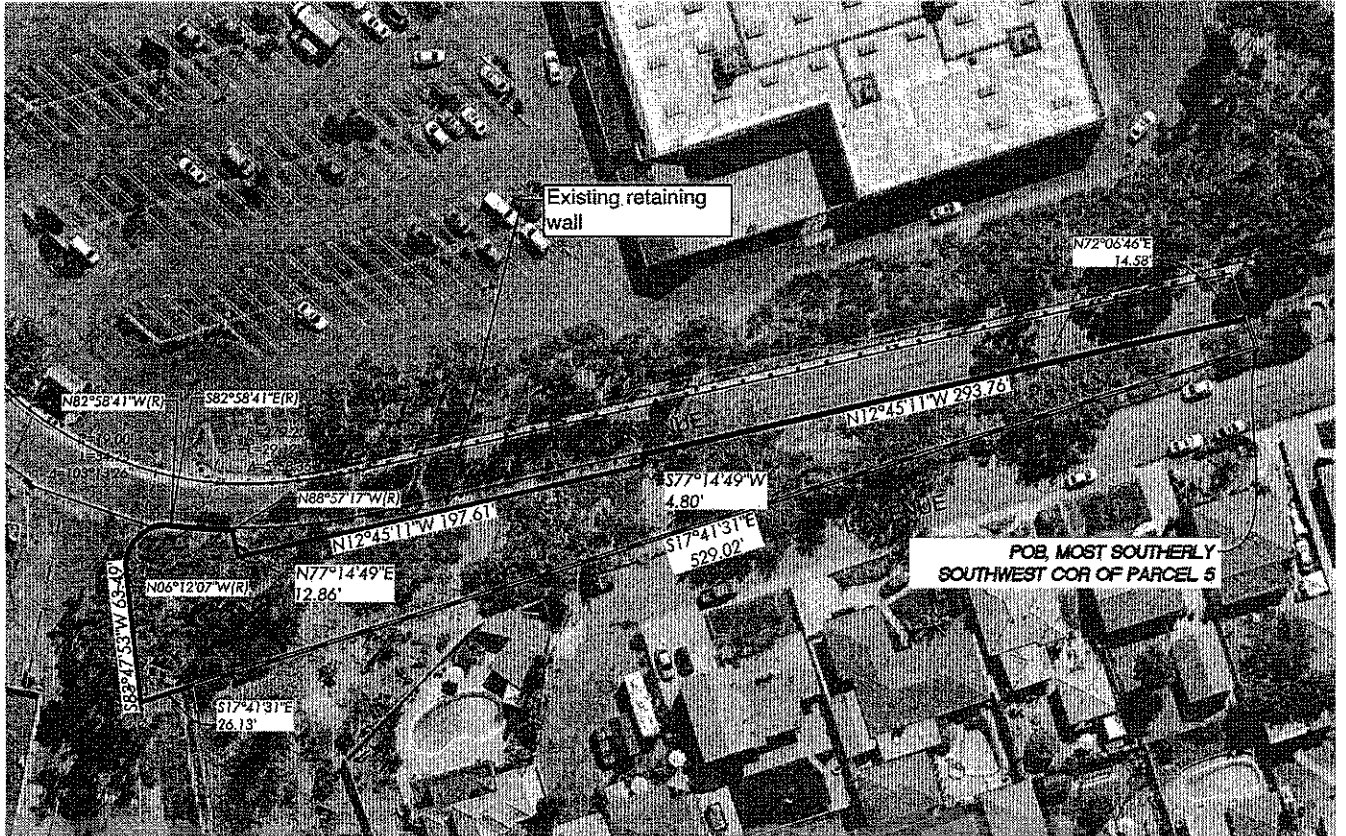
THENCE SOUTH 17°41'31" EAST A DISTANCE OF 26.13 FEET TO AN ANGLE POINT IN THE SOUTHWESTERLY LINE OF SAID PARCEL 5;

THENCE CONTINUING SOUTH 17°41'31" EAST A DISTANCE OF 529.02 FEET TO THE **POINT OF BEGINNING**;

THE DESCRIBED AREA CONTAINS 20,771 SF MORE OR LESS

EXHIBIT "D"
LANDSCAPE AREA - DIAGRAM

EXHIBIT "D"



RESOLUTION NO. 2023 -

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, ACCEPTING AND AUTHORIZING THE CITY MANAGER TO SIGN A GRANT OF EASEMENT AND RIGHT-OF-WAY FROM NATIONAL PLAZA LLC AND PLAZA BLVD LLC FOR THE PRIVATE STREET COMMONLY KNOWN AS A PORTION OF N AVENUE FOR THE INSTALLATION OF BICYCLE LANES AND OTHER IMPROVEMENTS ASSOCIATED WITH THE CENTRAL COMMUNITY MOBILITY ENHANCEMENTS PROJECT, CIP NO. 19-23.

WHEREAS, in July 2018, staff submitted a Cycle 4 Active Transportation Program (ATP) grant application to the California Department of Transportation (Caltrans) for the Central Community Mobility Enhancements Project (“Project”); and

WHEREAS, the Project will provide approximately 1.7 miles of bicycle facilities providing north-south connections through the Central, Olivewood and Las Palmas neighborhoods in National City; and

WHEREAS, on January 30, 2019, the California Department of Transportation (Caltrans) awarded a \$1,286,000 State Active Transportation Program (ATP) grant for the Central Community Mobility Enhancements Project; and

WHEREAS, on March 26, 2020, Caltrans provided the agreement to the City for execution; and

WHEREAS, on June 2, 2020, the City Council authorized the Mayor to execute Program Supplement Agreement (PSA) No. U52 with the State of California Department of Transportation (Caltrans) for the Central Community Mobility Enhancements Project to allow for reimbursement of up to \$43,000 in eligible project expenditures through the State Active Transportation Program (ATP) and authorized the establishment of an Engineering Grant Funds appropriation of \$43,000 and corresponding revenue budget; and

WHEREAS, on October 6, 2022, Caltrans issued an Authorization Letter allocating \$148,000 (\$104,000 for the Plans, Specifications, and Estimate (PS&E) phase, and \$44,000 for the Right-of-Way (R/W)) with a local match of \$22,000 (\$16,000 PS&E phase, and \$6,000 R/W phase); and

WHEREAS, on November 15, 2022, the City Council accepted of Federal Active Transportation Grant funds for the Plans, Specifications, and Estimate (PS&E) and Right-of-Way (R/W) phases, for the Central Community Mobility Enhancements Project; and established a revenue and expenditure account in the amount of \$148,000; and appropriated funds in the amount of \$22,000; and

WHEREAS, once the PA&ED and PS&E phases are complete, staff will return to the City Council for the appropriation of the Construction funds; and

WHEREAS, the Project corridor is located on L Avenue (30th Street to 16th Street), N Avenue (16th Street to Plaza Boulevard), and M Avenue (Plaza Boulevard to 4th Street); and

WHEREAS, a portion of N Avenue within the Project limits exists as a private street under the ownership of two private entities, Plaza Blvd LLC and National Plaza LLC; and

WHEREAS, the City has negotiated with the private owners to obtain an easement for the private street commonly known as a portion of N Avenue, which is described in the Grant of Easement and Right-of-Way; and

WHEREAS, the Easement will be granted in perpetuity and at no cost, and the City agrees to undertake all repair and maintenance of the street, operating as a public right-of-way.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1: That the City Council hereby adopt the Resolution accepting and authorizing the City Manager to sign a Grant of Easement and Right-of-Way from National Plaza LLC and Plaza Blvd LLC, attached to the Agenda Report as Exhibit 2, for the private street commonly known as a portion of N Avenue, for the installation of bicycle lanes and other improvements associated with the Central Community Mobility Enhancements Project, CIP No. 19-23.

Section 2: That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED and ADOPTED this 7th day of February, 2023.

Ron Morrison, Mayor

ATTEST:

Shelley Chapel, Interim City Clerk

APPROVED AS TO FORM:

Barry J. Schultz, City Attorney



AGENDA REPORT

Department: City Clerk's Office
Prepared by: Shelley Chapel, Interim City Clerk
Meeting Date: Tuesday, February 7, 2023
Approved by: Brad Raulston, City Manager

SUBJECT:

Semi-Annual Report – Boards, Commissions, and Committee Attendance Report – Includes Fourth Quarter and Full Calendar Year 2022

RECOMMENDATION:

Receive and file.

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

On November 16, 2021, the City Council adopted updates to City Council Policy #107 Appointments to Boards, Commissions, and Committees (BCC). Section D, 14 Resignations, Attendance, Training and Removals provides for the City Clerk to prepare a report to Council on the attendance of BCC members. This report of attendance is prepared in February and August prior to the end of term rotation and expirations. The attendance is evaluated as follows:

1. A Commissioner or Member of a BCC with unexcused absences from three (3) consecutive regularly scheduled meetings.
2. A Commissioner or Member of a BCC misses more than 25% of the advisory body's meetings in a calendar year.
3. A Commissioner or Member of a BCC must be present at least one hour, or 50% of the entire meeting, whichever is less, to be counted as present for purposes of attendance.

Excused Absences are considered under certain circumstances.

FINANCIAL STATEMENT:

Not applicable.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Not Applicable

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

Exhibit A – Attendance Report

Exhibit B – City Council Policy No. 107

EXPLANATION

On November 16, 2021, the City Council adopted Updates to City Council Policy #107 Appointments to Boards, Commissions, and Committees (BCC). Section D, 14 Resignations, Attendance, Training and Removals provides for the City Clerk to prepare a report to Council on the attendance of BCC members.

Attendance is evaluated as follows:

1. A Commissioner or Member of a BCC with unexcused absences from three consecutive regularly scheduled meetings.
2. A Commissioner or Member of a BCC misses more than 25% of the advisory body's meetings in a calendar year.
3. A Commissioner or Member of a BCC must be present at least one hour, or 50% of the entire meeting, whichever is less, to be counted as present for purposes of attendance.

Excused Absences are considered under certain circumstances.

SUMMARY OF BCC ATTENDANCE **Fourth Quarter and Calendar Year Totals**

Civil Service Commission consists of 5 members (Currently one (1) vacancy). Their meetings are held the Second Wednesday of every other month at 5:30 p.m. in the Large Conference Room at City Hall.

Fourth Quarter of 2022 the Commission scheduled a total of 8 meetings, with seven (7) of those being Special Meetings. One (1) meeting was cancelled due to lack of agenda items.

Members:	Fourth Quarter Present	Fourth Quarter Absent	2022 Meetings Present	2022 Meetings Absent
Paul Wapnowski, Chair	7	0	17	0
Rafael Courtney, Vice-Chair	7	0	17	0
Leslie Coyote	7	0	13	4
Thomas Luna	7	0	15	2

Community & Police Relations Committee consists of eight (8) members with one (1) being a staff member. Their meetings are held the Third Thursday of February, May, August and November at 6:00 p.m. in the Council Chamber at City Hall.

Fourth Quarter of 2022 the Committee scheduled one (1) meeting.

Members:	Fourth Quarter Present	Fourth Quarter Absent	2022 Meetings Present	2022 Meetings Absent
Michael Lesley, Chair	1	0	4	0
Marianne Delatorre, Vice-Chair	1	0	2	2
Zachary Francisco-Gomez	1	0	4	0
Emiliano Nunez	0	1	2	2
Daniel Orth	1	0	4	0
William Phillips (Appointed March 2022)	1	0	3	0
Andy Y. Sanchez	1	0	4	0

Board of Library Trustees consists of five (5) members, and one (1) alternate (currently two vacancies). Their meetings are held the First Wednesday of every month at 5:30 p.m. via Zoom.

Fourth Quarter of 2022 the Board scheduled three (3) meetings, one (1) meeting was cancelled due to a lack of quorum.

Members:	Fourth Quarter Present	Fourth Quarter Absent	2022 Meetings Present	2022 Meetings Absent
Margaret Godshalk - President	2	0	12	0
H. Bradley Bang, Vice-President	2	0	12	0
Coyote Moon	2	0	11	1
Anzueth G. Zambrano	2	0	10	2

Park, Recreation & Senior Citizens Advisory Committee consists of seven (7) members. Their meetings are held the Third Thursday of every month at 4:00 p.m. via Zoom.

Fourth Quarter of 2022 the Committee scheduled two (2) meetings, both meetings were cancelled due to a lack of quorum.

Members:	Fourth Quarter Present	Fourth Quarter Absent	2022 Meetings Present	2022 Meetings Absent
Nora McMains, Chair	0	0	2	2
Florina Arce	0	0	4	0
Liliana Armenta	0	0	3	1
Joseph Crawford	0	0	4	0
Reuben Felizardo	0	0	4	0
Jennelyn Luna (Appointed Sept 2022)	0	0	0	0
Ignacio Navarro Jr.	0	0	2	2

Planning Commission consists of seven (7) members (Currently One (1) vacancy). Their meetings are held the First and Third Monday of every month at 6:00 p.m. via Zoom.

Fourth Quarter of 2022 the Commission scheduled five (5) meetings, two (2) meetings were cancelled.

Members:	Fourth Quarter Present	Fourth Quarter Absent	2022 Meetings Present	2022 Meetings Absent
Ricardo Sanchez, Vice-Chair	2	1	7	4
Randi Marie Castle (Appointed March 2022)	3	0	8	1
Richard Martin Miller (Appointed March 2022)	3	0	8	1
Luis Natividad	1	2	8	3
William J. Sendt	3	0	11	0
Claudia E. Valenzuela	3	0	9	2

Public Art Committee consists of five (5) members and one (1) alternate (Alternate is Vacant). Their meetings are held the Fourth Tuesday of January, April, July and October at 3:00 p.m. via Zoom.

Fourth Quarter of 2022 the Committee scheduled one (1) meetings.

Members:	Fourth Quarter Present	Fourth Quarter Absent	2022 Meetings Present	2022 Meetings Absent
William A. Virchis, Chair	1	0	5	0
Ryan Johnson (Appointed Sept. 2022)	1	0	1	0
Jose A Lopez	1	0	5	0
Charles Reilly (Appointed Feb. 2022)	1	0	3	1
Jacqueline Schliapnik	0	1	4	1

Traffic Safety Committee consists of five (5) members. Their meetings are held the Second Wednesday of every month at 1:00 p.m. via Zoom.

Fourth Quarter of 2022 the Committee scheduled three (3) meetings, two (2) meetings were cancelled due to lack of items.

Members:	Fourth Quarter Present	Fourth Quarter Absent	2022 Meetings Present	2022 Meetings Absent
Ryan Whipple, Chair	1	0	4	0
Christopher Coyote	1	0	4	0
Kelly Piper (Appointed Sept. 2022)	1	0	2	0
Cynthia Fuller Quinonez (Appointed Sept. 2022)	1	0	2	0
Marisa Rosales	1	0	4	0

Housing Advisory Committee consists of nine (9) members of the Planning Commission (Currently one (1) Vacancy) and two (2) additional members. Their meetings are held the Third Monday of every month at 6:00 p.m. via Zoom.

Fourth Quarter of 2022 the Committee scheduled two (2) meetings, one (1) meeting was cancelled due to a lack of agenda items.

Members:	Fourth Quarter Present	Fourth Quarter Absent	2022 Meetings Present	2022 Meetings Absent
Ricardo Sanchez, Vice-Chair	1	0	1	0
Randi Marie Castle (Appointed March 2022)	1	0	2	0
Richard Martin Miller (Appointed March 2022)	1	0	1	0
Luis Natividad	1	0	2	0
Damian Alexander Roman	1	0	2	0
William J. Sendt	1	0	2	0
Mayra A. Valadez (Appointed March 2022)	1	0	1	0
Claudia E. Valenzuela	1	0	2	0

CITY COUNCIL POLICY CITY OF NATIONAL CITY

TITLE: Appointments to Boards, Commission and Committees	POLICY # 107
ADOPTED: June 17, 1986	AMENDED: November 16, 2021

PURPOSE

To establish a procedure to serve as a guide in making appointments to various City Boards, Commissions, and Committees. The City currently has the following Boards, Commissions, and Committees to which this Policy applies:

Mayor's Appointments:

1. Board of Library Trustees
2. Community and Police Relations Commission
3. Park, Recreation, and Senior Citizens Advisory Committee
4. Public Art Committee
5. Sweetwater Authority
6. Traffic Safety Committee
7. Veterans and Military Families Advisory Committee

City Council Appointments:

1. Civil Service Commission
2. Planning Commission
3. Housing Advisory Committee including Ex-Officio Members
4. Port Commission

POLICY

Appointment Process

- A. Opportunity to apply. All interested individuals shall be given an opportunity to submit applications for vacancies on City Boards, Commissions, and Committees. Incumbent Appointees are not automatically re-appointed but are required to fill out an abbreviated application provided by the City Clerk, indicating their interest in continuing to serve.
- B. Unexpired terms. If an incumbent Appointee was appointed to fill an unexpired term and the Appointee serves for less than one year in that position, the Council may re-appoint the incumbent without considering other applicants.
- C. Vacancies. When vacancies occur, the following procedure shall be followed:
 1. Schedule vacancy. When a term is expiring or expires, public notice of the vacancy shall be made, inviting interested individuals to submit applications for the vacancy on a form provided by the City Clerk on the City website.

Unscheduled vacancy. An unscheduled vacancy shall be filled according to

CITY COUNCIL POLICY CITY OF NATIONAL CITY

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Government Code Section 54974, which generally provides as follows: Whenever an unscheduled vacancy occurs, whether due to resignation, death, termination, or other causes, a special vacancy notice shall be posted in the Office of the City Clerk, the City website, outside City Hall on the Bulletin Board, and on City social media platforms not earlier than twenty (20) days before or not later than twenty (20) days after the vacancy occurs. The City Council shall not make a final appointment for at least ten (10) working days after posting the notice in designated locations. The notice's posting and application period shall be thirty (30) calendar days. However, if it finds that an emergency exists, the City Council may, fill the unscheduled vacancy immediately. According to this section, a person appointed to fill the vacancy shall serve only on an interim basis until the final appointment.

The end of term for the members of Boards, Commissions, and Committees generally occurs in an annual rotation during the months of March and September. Appointments will be considered at those times unless a vacancy resulting from a resignation results in the lack of a Quorum on the Board, Commission, or Committee, in which case the appointment could occur at the time of the unscheduled vacancy in accordance with the procedure set out above.

3. Government Code Section 40605, and National City Municipal Code Title 16, grants the Mayor, with the City Council's approvals, the authority to make all appointments unless otherwise explicitly provided by statute. The exceptions are:
 1. Civil Service Commission
 2. Planning Commission
 3. Housing Advisory Committee including Ex-Officio Members
 4. Planning Commission

The City Council fills vacancies on these bodies.

- D. Implementation. Implementation of Council policy for appointment to Boards, Commissions, and Committees requires the following:
 1. Per Government Code Section 54972, on or before December 31 of each year, the City Council shall prepare a list of appointments of all regular and ongoing Boards, Commissions, and Committees appointed by the City Council. The City Clerk will prepare the list of all regular and ongoing Boards, Commissions, and Committees appointed by the Mayor or the City Council. The list shall contain a list of all terms that will expire during the next calendar year, the incumbent appointee's name, the appointment date, the term's expiration date, and the position's necessary qualifications. It shall also include a list of all

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Boards, Commissions, and Committees whose members serve at the City Council's pleasure and the qualifications required for each position. This Local Appointments List shall be made available to the public on the City website.

2. Notice. A public notice for vacancies must be placed in the newspaper of general circulation within the City, on the City's website, City Hall Bulletin Boards, and City social media platforms.
3. Expiration of term. All appointees will receive a letter as their terms expire asking if they would like to re-apply for the position.
4. Applications. Applications shall be available on the City website and in the City Clerk's Office. Submissions must be received before the advertised deadline for consideration for the appointment. All applications will be retained in the City Clerk's Office for one year from the date the application was submitted. During the one-year retention period of the application, an applicant shall be considered for other vacancies on Boards, Commissions, and Committees. The City Clerk's Office will notify the applicant being considered for an appointment to confirm that they are still interested in volunteering.
5. A member may only serve on one (1) Board, Commission, or Committee at a time. If an applicant applies for another position on a different Board, Commission, or Committee, that applicant will forfeit the prior seat and a vacancy will occur per policy.
6. Interviews:
 - a. Mayor Appointments: Interviews for Mayoral appointments will be conducted by the Mayor outside of the public meeting and scheduled by the Mayor's Office.
 - b. City Council Appointments: Interviews for the four (4) Civil Service Commission, Planning Commission, Housing Advisory Committee, and Port Commission who serve at the City Council's pleasure and are appointed by the City Council as a body will be interviewed in the public forum at a City Council Meeting as described below.
7. Mayoral Appointments:

The Mayor will make the motion to appoint (naming the appointee) and Councilmembers may second the motion. The City Clerk will then take a roll call

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vote of the City Council. A majority vote of the City Council will be required for the appointment. If the majority of the City Council choose to deny the proposed appointment, the Mayor shall either propose an alternative candidate from the current application pool or choose to reopen the application period and return to the City Council at a future City Council Meeting with a different applicant for consideration. If a Mayoral Appointment is not approved by the majority of the City Council by confirmation, that applicant is removed from the pool for that seat. The Mayor will return to a future meeting with a substitute Mayoral appointment.

8. For City Council Appointments, the Interview Process is as follows:
 - a. The City Clerk will provide an overview of the Board, Commission, or Committee(s) with current vacancy (ies). The Mayor will introduce the applicant and two (2) questions will be asked of each applicant on behalf of the City Council.
 - b. Each applicant is given two (2) minutes to make a brief introduction of themselves and their qualifications to the City Council.
 - c. Mayor and City Councilmembers will ask questions of each applicant. All applicants must be asked the same questions.
 - d. Total time per applicant is five (5) timed minutes with time allowed for clarification at the discretion of the City Council, not to exceed ten (10) minutes total per applicant.
 - e. All appointments and interviews before the City Council will be scheduled as needed to fill unexpected vacancies, with every effort to be made before an individual's term expires. Interviews may take place at one meeting, with appointments made at a subsequent meeting.

9. Vacancies for City Council Appointed Positions. If the vacancy is for a City Council appointed position, and there is more than one (1) applicant for a given position, the voting process will proceed as follows: Once the interviews are complete, each Councilmember votes for their choice via a written ballot provided by the City Clerk. Each Councilmember shall print and sign their name on the ballot. All ballots shall be considered a public record and be open to inspection by the public. The ballots are passed to the City Clerk who announces the number of votes for each candidate.

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If the appointment process is conducted via a virtual meeting the process is the same except the ballot/vote process. The City Clerk's Office will provide a Vote Sheet (a piece of paper electronically) with the name of each applicant to be considered. The Mayor will count to three (3) and the Council will hold their vote sheet up in front of their face to make sure it is captured on the camera during the live virtual meeting. The City Clerk will tally the votes and will then confirm the votes with a verbal roll call. The applicant with the most votes is appointed.

In the event of a tie, each Councilmember votes again until one (1) candidate has the majority vote and is declared to be the newly-appointed member of the Board, Commission, or Committee.

10. Re-appointment beyond two terms. Anyone wishing to be re-appointed to any Board, Commission, or Committee and has served two or more full terms already must be approved by a four-fifths vote of the City Council. If all five members of the City Council are not present, or if one member abstains or recuses their vote, the four-fifths requirement shall be changed to require only a simple majority.

11. Report to Council:

All applications received for vacancies, whether Mayoral Appointment or City Council Appointment, will be attached to the staff report to Council. All applications will have private personal information redacted (name, street numbers and name of street address, and phone number). This redacted information is in alignment with Government Code Section 6255(a) because the public interest served by not disclosing the applicant's personal, private information and protection of the applicant's right to privacy outweighs the public interest served by disclosing that information.

12. An automatic vacancy upon becoming a Non-Resident. An unscheduled vacancy automatically occurs when a resident holding an appointment position on a City Board, Committee, or Commission becomes a non-resident by moving out of National City limits. When an unscheduled vacancy occurs due to a resident becoming a non-resident, the unscheduled vacancy may be filled as follows:

- a. A special vacancy notice shall be posted in the Office of the City Clerk, and in other places as directed by the City Council, not earlier than 20 days before or not later than 20 days after the vacancy occurs. Final Appointment at a City Council Meeting shall not be made by the Appointing Authority for at least 10 working days after the posting of the notice in the City Clerk's Office.

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- b. The Appointing Authority may appoint the former resident to a Non-Residential position if a Non-Residential position is vacant.

However, the Appointing Authority may, if it finds that an emergency exists, fill the unscheduled vacancy immediately. A person appointed to fill the vacancy shall serve only on an acting basis until the final appointment is made pursuant to this section.

- 13. Only City Residents may be elected to Chair and Vice-Chair positions. To be eligible to be elected as the Chairperson of a City Board, Committee, or Commission, the member must be a resident of the City.
- 14. Resignations, Attendance, Training, and Removals

Resignation:

If a Commissioner or Member of a Board, Committee, or Commission is unable to continue serving because of health, business requirements, or personal reasons, a letter of resignation shall be submitted to the City Clerk, who will present to the City Council.

Attendance:

Regular attendance at meetings is critical to be effective operation of City Boards, Commissions, and Committees. The City Council relies on the advice of the City's Boards, Commissions, and Committees, which is the result of discussions among appointed members. The City Council anticipates that members of Boards, Committees, and Commissions shall make every reasonable effort to attend all regular and special meetings of their respective Boards, Commissions, and Committees, and to be prepared to discuss matters on their respective agendas.

A Commissioner or Member of a Board, Committee, or Commission shall be considered removed from any advisory board under the following conditions:

- 1. A Commissioner or Member of a Board, Committee, or Commission with unexcused absences from three consecutive regularly scheduled meetings.
- 2. A Commissioner or Member of a Board, Committee, or Commission misses more than 25% of the advisory body's meetings in a calendar year.

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3. A Commissioner or Member of a Board, Committee, or Commission must be present at least one hour, or 50% of the entire meeting, whichever is less, to be counted as present for purposes of attendance.

Excused Absences:

An “excused absence” is only granted when absolutely necessary and pre-approved if at all possible. The City Council encourages Boards, Commissions, and Committees to refrain from scheduling meetings on cultural and religious holidays in order to encourage full participation by all Commissioners, Board Members, and the public. The pre-approval of excused absences will be by the body as a whole and documented in the meeting minutes.

Excused absences are listed as follows:

1. Illness of the Commissioner or Member of the Board, Committee, or Commission, their family member, or their personal friend;
2. Business commitment of the Commissioner or Member of the Board, Committee, or Commission that interferes with the attendance at a meeting;
3. Attendance of the Commissioner or Member of the Board, Committee, or Commission at a funeral, religious service or ceremony, wedding, or other similarly-significant event; or
4. Other reason for which the Commissioner or Member of the Board, Committee, or Commission has given notice to the Chairperson or Secretary of their unavailability fifteen (15) days in advance, as long as the unavailability is not expected to last longer than 30 days.

Removal:

The Secretary or Lead of each Board, Commission, or Committee will report the attendance to the Office of the City Clerk on a monthly basis. If the attendance or absences fall within these guidelines, the Office of the City Clerk will prepare a report to City Council for review and possible removal of the Commissioner, Member, or Alternate sitting on the Board, Committee, or Commission. Any Commissioner, Member, or Alternate sitting on a Board, Committee, or Commission may be removed from office at any time by a simple majority vote of the City Council at a regularly scheduled Council meeting with or without cause.

Mandatory Training and Filing Requirements:

Commissioners and Members of Board, Committee, or Commission, as appointed by the legislative body, are entrusted with certain responsibilities and

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concomitant training and reporting. The following are requirements of Commissioners and Members of Boards, Commissions, and Committees. This training is required to be completed within 30 days of appointment or notification.

1. Oath of Office (Article XX of the California Constitution, and California Government Code Section 36507)
2. Fair Political Practices Commission (FPPC) Statement of Economic Interest Form 700 Filing (California Government Code Section 87100 et seq)
3. AB1234 Ethics Training (California Government Code Section 53235.1(b))
4. Sexual Harassment Training
5. Brown Act Training
6. Social Media Training
7. Any training required by State Law, Federal Law, or City Policies.

All training is offered in a variety of formats including in person, via Zoom, training website/software, and pre-recorded video. Currently, these are all requirements of the Mayor and City Council, and City staff.

Removal:

Failure to complete any of these requirements within 30 days of the appointment date or date of notification is cause for automatic removal.

Related Policy References

Government Code Section 40605

Government Code Section 54970, et seq.

Article XX of the California Constitution, and California Government Code Section 36507

California Government Code Section 53235(b)

California Government Code Section 87100 et seq

National City Municipal Code Title 16 (pending)

Prior Policy Amendments:

February 2, 2021 (Resolution No. 2021-08)

May 19, 2020 (Resolution No. 2020-95)

November 9, 1993 (Resolution No. 93-173)

June 11, 2013 (Revised – No Resolution – Refer to Meeting Minutes)

October 8, 2013 (Resolution No. 2013-147)

May 19, 2020 (Resolution No. 2020-20)



AGENDA REPORT

Department: Community Development - Neighborhood Services
Prepared by: Sarah Esendencia, Executive Secretary
Meeting Date: Tuesday, February 7, 2023
Approved by: Brad Raulston, City Manager

SUBJECT:

Temporary Use Permit – Circus Vargas event sponsored by Circus Vargas from February 17, 2023 to February 27, 2023 at the Westfield Plaza Bonita Mall with no waiver of fees.

RECOMMENDATION:

Approve the application for a Temporary Use Permit subject to compliance with all conditions of approval with no waiver of fees.

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

This is a request from Circus Vargas to conduct the Circus Vargas event at Westfield Plaza Bonita Mall from February 17, 2023 to February 27, 2023. Set up for this event will commence at 9:00 a.m. February 15, 2023 on the west side parking lot of Plaza Bonita Mall. The show times will vary on dates from 12:30 p.m., 1 p.m., 4:00 p.m., 6:30 p.m., 7:00 p.m., and 7:30 p.m. Each show lasts approximately 1 ½ hours.

This is a completely self-contained event in a traditional big top circus with concessions. There are no performing animals, no rides, no games, no outside vendors and no alcohol. Vehicles are used for transportation of operations. There will be eight internal Security Guards and sufficient parking is available at the mall. Food will be prepared on-site in a trailer. Clean-up will be performed after each show.

This event will end with its last show on Monday, February 27, 2023 at 6:30 p.m. and will begin breakdown after the show. This event was approved by Council in 2018, 2019, & 2020 with no waiver of fees.

FINANCIAL STATEMENT:

City fee of \$312.00 for processing the Temporary Use Permit, plus \$1,924.00 for the Fire Department and \$433.86 for Building Division.

Total fees: \$2,669.86

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Not Applicable

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378;
PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

Exhibit A – TUP Circus Vargas 2023

Exhibit B – Conditions of Approval Circus Vargas 2023



City of National City ■ Neighborhood Services Department
 1243 National City Boulevard ■ National City, CA 91950
 (619) 336-4364 ■ fax (619) 336-4217
 www.nationalcityca.gov

Special Event Application

Type of Event

- Fair/Festival
 Parade/March
 Walk or Run
 Concert/Performance
 TUP
 Sporting Event
 Other (specify) _____

Event Name & Location

Event Title Circus Vargas
 Event Location (list all sites being requested) Plaza Bonita Mall, 3030 Bonita rd. National City

Event Times

Set-Up Starts
 Date 02/15/2023 Time 9 am Day of Week wednesday
 Event Starts
 Date 02/17/2023 Time 7 pm Day of Week Friday
 Event Ends
 Date 02/27/2023 Time 9 pm Day of Week Monday
 Breakdown Ends
 Date 02/28/2023 Time 4 pm Day of Week tuesday



Applicant Information

Applicant (Your name) Katya Arata Quiroga Sponsoring Organization Tabares Entertainment, Inc
 Event Coordinator (if different from applicant) _____
 Mailing Address 7545 Irvine Cemter drive 200
 Day Phone 702-466-4873 After Hours Phone 702-513-9767 Cell 702-466-4873 Fax _____
 Public Information Phone 877-GOT-FUN1 E-mail nqtabares@circusvargas.com

Applicant agrees to investigate, defend, indemnify and hold harmless the City, its officers, employees and agents from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges, expense (including attorney's fees) and causes of action of any character which the City, its officers, employees and agents may incur, sustain or be subjected to on account of loss or damage to property or the loss of use thereof and for bodily injury to or death of any persons (including but not limited to the employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected to the occupancy, enjoyment and use of any City premises under this agreement to the extent permitted by law.

Applicant understands this TUP/special event may implicate fees for City services, which will have to be paid in the City's Finance Department 48 hours prior to the event set-up. The undersigned also understands and accepts the City's refund policy for application processing and facility use and that fees and charges are adjusted annually and are subject to change.

Signature of Applicant: Katya A. Quiroga Date 1/24/23

Special Event Application (continued)

Please complete the following sections with as much detail as possible since fees and requirements are based on the information you provide us.

Fees/Proceeds/Reporting

Is your organization a "Tax Exempt, nonprofit" organization? Yes No

Are admission, entry, vendor or participant fees required? Yes No

If YES, please explain the purpose and provide amount (s):

\$_____Estimated Gross Receipts including ticket, product and sponsorship sales from this event.

\$_____Estimated Expenses for this event.

\$_____What is the projected amount of revenue that the Nonprofit Organization will receive as a result of this event?

Description of Event

First time event Returning Event include site map with application

Note that this description may be published in our City Public Special Events Calendar:

Estimated Attendance

Anticipated # of Participants: _____ Anticipated # of Spectators: _____

Traffic Control, Security, First Aid and Accessibility

Requesting to close street(s) to vehicular traffic? Yes No

List any streets requiring closure as a result of the event (provide map): _____

Date and time of street closure: _____ Date and time of street reopening: _____

Other (explain) _____

Requesting to post "no parking" notices? Yes No

Requested "No Parking" on city streets and/or parking lots (list streets/parking lots) (provide map):

Other (explain) _____

Security and Crowd Control

Depending on the number of participants, your event may require Police services.

Please describe your procedures for both Crowd Control and Internal Security: _____

Have you hired Professional Security to handle security arrangements for this event?

Yes No If YES, name and address of Security Organization _____

Security Director (Name): _____ Phone: _____

If using the services of a professional security firm and the event will occur on City property, please provide a copy of its insurance certificate, evidencing liability with limits of at least \$1 Million dollars per occurrence/\$2 Million dollars aggregate, as well as and additional insured endorsement naming the City of National City, its officers, employees, and agents as additional insureds. Evidence of insurance must be provided by the vendor or its insurer to the Neighborhood Services Department at the time of submission. .

Is this a night event? Yes No If YES, please state how the event and surrounding area will be illuminated to ensure safety of the participants and spectators: _____

First Aid

Depending on the number of participants, your event may require specific First Aid services. First aid station to be staffed by event staff? **Yes** **No** First aid/CPR certified? **Yes** **No**

First aid station to be staffed by professional company. ▶ Company _____

If using the services of a professional medical organization/company and the event will occur on City property, please provide a copy of its insurance certificate, evidencing liability with limits of at least \$1 Million dollars per occurrence/\$2 Million dollars aggregate, as well as and additional insured endorsement naming the City of National City, its officers, employees, and agents as additional insureds. Evidence of insurance must be provided by the vendor or its insurer to the Neighborhood Services Department at the time of submission.

Accessibility

Please describe your Accessibility Plan for access at your event by individuals with disabilities:

Elements of your Event

Setting up a stage? **Yes** **No**

Requesting City's PA system

Requesting City Stage; if yes, which size? Dimensions (13x28) Dimensions (20x28)

Applicant providing own stage ▶ _____(Dimensions)

Setting up canopies or tents?

_____ # of canopies size _____

_____ # of tents size _____

No canopies/tents being set up

Using lighting equipment at your event? Yes No

Bringing in own lighting equipment

Using professional lighting company ▶ Company Name _____

Address

City/State

Phone Number

Using electrical power? Yes No

Using Kimball Park Bowl
Lighting (from _____ to _____)

Using on-site electricity

For sound and/or lighting

For food and/or refrigeration

Bringing in generator(s)

For sound and/or lighting

For food and/or refrigeration

Vendor Information

PLEASE NOTE: You may be required to apply for a temporary health permit if food or beverages are sold or given away during your special event. Also see 'Permits and Compliance' on page 8 in the Special Event Guide. For additional information on obtaining a temporary health permit, please contact the County of San Diego Environmental Health at (619) 338-2363.

Having food and non-alcoholic beverages at your event? Yes No

Vendors preparing food on-site ▶ # _____ ▶ Business License # _____

If yes, please describe how food will be served and/or prepared: _____

If you intend to cook food in the event area please specify the method:

GAS ELECTRIC CHARCOAL OTHER (Specify): _____

Vendors bringing pre-packaged food ▶ # _____ ▶ Business License # _____

Vendors bringing bottled, non-alcoholic beverages (i.e., bottled water, can soda, etc.) ▶ # _____

Vendors selling food # _____ ▶ Business License #(s) _____

Vendors selling merchandise # _____ ▶ Business License #(s) _____

Food/beverages to be handled by organization; no outside vendors

Vendors selling services # _____ ▶ Business License #(s) _____

▶ Explain services _____

Vendors passing out information only (no business license needed) # _____

▶ Explain type(s) of information _____

No selling or informational vendors at event

Having children activities? Yes No

PLEASE NOTE: In the event inflatable jumps are provided at the event, The City of National City requires commercial liability insurance with limits of at least \$1 Million dollars per occurrence/\$2 Million dollars aggregate. In addition, the City of National City must be named as an Additional Insured pursuant to a separate endorsement, which shall be provided by the vendor or its insurer to the City's Risk Manager, along with the Certificate of Insurance, for approval prior to the event. The application should be filed out at least one week prior to the event. For questions or to obtain a copy of the "Facility Use Application", please contact the Engineering/Public Works Department at (619) 336-4580.

Inflatable bouncer house # _____ Rock climbing wall Height _____

Inflatable bouncer slide # _____ Arts & crafts (i.e., craft making, face painting, etc.)

Carnival Rides _____ Other _____

Having fireworks or aerial display? Yes No

Vendor name and license # _____

Dimensions _____ Duration _____

Number of shells _____ Max. size _____

PLEASE NOTE: In the event fireworks or another aerial display is planned for your event, The City of National City requires commercial liability insurance with limits of at least \$2 Million dollars per occurrence/ \$4 Million dollars aggregate. In addition, the City of National City must be named as an Additional Insured pursuant to a separate endorsement, which shall be provided by the vendor or its insurer to the City's Risk Manager, along with the Certificate of Insurance, for approval prior to the event. Depending on the size and/or nature of the fireworks display, the City reserves the right to request higher liability limits. The vendor must also obtain a fireworks permit from the National City Fire Department and the cost is \$602.00

Arranging for media coverage? Yes No

Yes, but media will not require special set-up

Yes, media will require special set-up. Describe _____

Event Signage

PLEASE NOTE: For City sponsored or co-sponsored events, banners publicizing the event may be placed on the existing poles on the 1800 block and 3100 block of National City Boulevard. The banners must be made to the City's specifications. Please refer to the City's Special Event Guidebook and Fee Schedule for additional information.

Are you planning to have signage at your event? **Yes** **No**

Yes, we will post signage # _____ Dimensions _____

Yes, having inflatable signage # _____ ▶ (complete Inflatable Signage Request form)

Yes, we will have banners # _____

What will signs/banners say? _____

How will signs/banners be anchored or mounted? _____

Location of banners/signage _____

Waste Management

PLEASE NOTE: One toilet for every 250 people is required, unless the applicant can show that there are sufficient facilities in the immediate area available to the public during the event.

Are you planning to provide portable restrooms at the event? **Yes** **No**

If yes, please identify the following:

▶ Total number of portable toilets: _____

▶ Total number of ADA accessible portable toilets: _____

Contracting with portable toilet vendor. ▶ _____

▶ Load-in Day & Time _____ ▶ Load-out Day & Time _____
Company Phone

Portable toilets to be serviced. ▶ Time _____

Set-up, Breakdown, Clean-up

Setting up the day before the event?

Yes, will set up the day before the event. ▶ # of set-up day(s) _____

No, set-up will occur on the event day

Requesting vehicle access onto the turf?

Yes, requesting access onto turf for set-up and breakdown (complete attached Vehicle Access Request form)

No, vehicles will load/unload from nearby street or parking lot.

NPDES-Litter Fence

- City to install litter fence
- Applicant to install litter fence
- N/A

Breaking down set-up the day after the event?

- Yes, breakdown will be the day after the event. ► # of breakdown day(s) _____
- No, breakdown will occur on the event day.

How are you handling clean-up?

- Using City crews
- Using volunteer clean-up crew during and after event.
- Using professional cleaning company during and after event.

Miscellaneous

Please list anything important about your event not already asked on this application:

**Please make a copy of this application for your records.
We do not provide copies.**



Special Events

Pre-Event Storm Water Compliance Checklist

I. Special Event Information

Name of Special Event: _____	
Event Address: _____	Expected # of Attendees: _____
Event Host/Coordinator: _____	Phone Number: _____

II. Storm Water Best Management Practices (BMPs) Review

	YES	NO	N/A
Will enough trash cans provided for the event? Provide number of trash bins: _____			
Will enough recycling bins provided for the event? Provide number of recycle bins: _____			
Will all portable toilets have secondary containment trays? (exceptions for ADA compliant portable toilets)			
Do all storm drains have screens to temporarily protect trash and debris from entering?			
Are spill cleanup kits readily available at designated spots?			

* A Post-Event Storm Water Compliance Checklist will be completed by City Staff.

City of National City

PUBLIC PROPERTY USE HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

Persons requesting use of City property, facilities or personnel are required to provide a minimum of \$1,000,000 combined single limit insurance for bodily injury and property damage which includes the City, its officials, agents and employees named as additional insured and to sign the Hold Harmless Agreement. Certificate of insurance must be attached to this permit. The insurance company issuing the insurance policy must have a A.M. Best's Guide Rating of A:VII and that the insurance company is a California admitted company; if not, then the insurance policy to the issuance of the permit for the event. The Certificate Holder must reflect:

City of National City
Risk Management Department
1243 National City Boulevard
National City, CA 91950

Organization: _____

Person in Charge of Activity: _____

Address: _____

Telephone: _____ Date(s) of Use: _____

HOLD HARMLESS AGREEMENT

As a condition of the issuance of a temporary use permit to conduct its activities on public or private property, the undersigned hereby agree(s) to defend, indemnify and hold harmless the City of National City and the Parking Authority and its officers, employees and agents from and against any and all claims, demands, costs, losses, liability or, for any personal injury, death or property damage, or both, or any litigation and other liability, including attorney's fees and the costs of litigation, arising out of or related to the use of public property or the activity taken under the permit by the permittee or its agents, employees or contractors.

Signature of Applicant: *Katya Arata Quiroga*

Official Title: _____ Date: _____

For Office Use Only

Certificate of Insurance Approved _____ Date _____

City of National City BUSINESS TAX CERTIFICATE



2023

**TO BE POSTED IN A CONSPICUOUS PLACE
AND
NOT TRANSFERABLE OR ASSIGNABLE**

"For Services Provided in National City, California Only"

Business Name CIRCUS VARGAS
Business Location 3030 PLAZA BONITA RD (PARKING LOT)
NATIONAL CITY, CA 91950
Business Owner(s) NELSON QUIROGA

Business Type Amusement - Other
Account Number 09005803
Effective Date January 01, 2023
Expiration Date December 31, 2023

TABARES ENTERTAINMENT
CIRCUS VARGAS
7455 ARROYO CROSSING PKWY STE 220
LAS VEGAS, NV 89113-4088

City Manager

**NOTE: IT IS YOUR OBLIGATION TO RENEW THIS
CERTIFICATE WHETHER OR NOT YOU RECEIVE A
RENEWAL NOTICE**

For all inquiries regarding this certificate, contact HdL
Business Tax Support Center at (619) 382-2596.

**THIS BUSINESS TAX CERTIFICATE DOES NOT PERMIT A BUSINESS
THAT IS OTHERWISE PROHIBITED.**

CIRCUS VARGAS

Thank you for your payment on your National City Business Tax Certificate. **ALL CERTIFICATES MUST BE AVAILABLE FOR INSPECTION UPON REQUEST.** If you have questions concerning your business license, contact the Business Support Center via email at: NationalCity@HdLgov.com or by telephone at: (619) 382-2596

Keep this portion for your license separate in case you need a replacement for any lost, stolen, or destroyed license. A fee may be charged for a replacement or duplicate certificate.

This certificate does not entitle the holder to conduct business before complying with all requirements of the National City Municipal code and other applicable laws, nor to conduct business in a zone where conducting such business violates law.

If you have a fixed place of business within the National City, please display the Business Tax Certificate below in a conspicuous place at the premises. Otherwise, every Business Tax Certificate holder not having a fixed place of business in the City shall keep the Business Tax Certificate upon his or her person, or affixed in plain view any cart, vehicle, van or other movable structure or device at all times if required by the Collector.

Starting January 1, 2021, Assembly Bill 1607 requires the prevention of gender-based discrimination of business establishments. A full notice is available in English or other languages by going to: <https://www.dca.ca.gov/publications/>



BUSINESS TAX SUPPORT CENTER
8839 N CEDAR AVE #212
FRESNO, CA 93720-1832



City of National City BUSINESS TAX CERTIFICATE

TABARES ENTERTAINMENT
CIRCUS VARGAS
7455 ARROYO CROSSING PKWY STE 220
LAS VEGAS, NV 89113-4088

Account Number: 09005803
Date of Issue: 01/01/2023

December 12, 2022

City of National City
Attention: Vianey Rivera
Neighborhood Service Division
1243 National City Boulevard
National City, California 91950-4301

Re: Temporary Use Permit
Circus Vargas (Tabares Entertainment, Inc.)- Westfield Plaza Bonita

To whom it may concern:

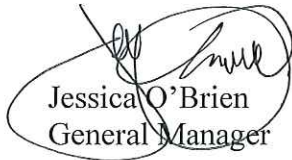
I hereby authorize Katya Quiroga, acting as representative of Tabares Entertainment, Inc. to operate a business known as Circus Vargas in parking lot #1 at Westfield Plaza Bonita during the dates of February 14, 2023 – February 27, 2023.

Katya Quiroga has permission to install temporary power to poles in parking lot #1 to provide power during the temporary use time if adequate power is not already in place.

Katya Quiroga will obtain all necessary permits from National City for occupancy at Westfield Plaza Bonita.

Please feel free to call me if you have any questions at 619.267.2850.

Thank you,


Jessica O'Brien
General Manager

Westfield PLAZA BONITA
3030 Plaza Bonita Road #2075
National City, CA 91950



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/17/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER McGowan Allied Specialty 140 Fountain Parkway North #570 Saint Petersburg OH 33716	CONTACT NAME: Stephanie Moore PHONE (A/C No. Ext): 7275473121 E-MAIL ADDRESS: swmoore@mcgowancompanies.com	FAX (A/C, No):
	INSURER(S) AFFORDING COVERAGE	
License#: 973 CIRCVAR-01	INSURER A: Houston Specialty Insurance Company	NAIC # 12936
INSURED Tabares Entertainment, Inc dba Circus Vargas 7455 Arroyo Crossing Pkwy, Suite 220 Las Vegas NV 89113	INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 219595663

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			ESB-HS-GL-0000871-00	2/1/2023	2/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ Not Covered PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ Included \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Event Dates: 02/14/2023-02/29/2023

Additional Insured: City of National City and the Parking Authority and its officers, employees and agents as respects to the negligence of the named insured only.

CERTIFICATE HOLDER**CANCELLATION**

City of National City
 Risk Management Department
 1243 National City Blvd
 National City CA 91950

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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**Circus Vargas 2023 Advance Permit Event Packet
National City @ Westfield Plaza Bonita**



Location	Schedule Dates	Event Management Contacts Information
Ronnie Warmuth ronnie.warmuth@urw.com 3030 Plaza Bonita Road, Suite #2075, National City, CA 91950 / USA	Feb 14 th to Feb 27 th , 2023 4 Set Up Days 10 Performing Days	Nelson Quiroga (Owner) 702-513-9767 Nqtabares@Circusvargas.com Katya Quiroga (Owner) 702-466-4873 kqtabares@circusvargas.com

Showtimes

Day	Date	Schedule Notation	Showtimes
Tuesday	Feb 14 th	Will enter property at 1:00 a.m.	No Performance
Wednesday	Feb 15 th	Setup Day	No Performance
Thursday	Feb 16 th	Setup Day	No Performance
Friday	Feb 17 th	Opening Night	7:30 p.m.
Saturday	Feb 18 th		1:00–4:00 & 7:30 p.m.
Sunday	Feb 19 th		12:30–3:30 & 7:00 p.m.
Monday	Feb 20 th		6:30 p.m.
Tuesday	Feb 21 st		No Performance
Wednesday	Feb 22 nd		7:00 p.m.
Thursday	Feb 23 rd		7:00 p.m.
Friday	Feb 24 th		7:30 p.m.
Saturday	Feb 25 th		1:00–4:00 & 7:30 p.m.
Sunday	Feb 26 th		12:30–3:30 & 7:00 p.m.
Monday	Feb 27 th	Teardown of the circus will begin after the show.	6:30 p.m.
Tuesday	Feb 28 th	<ul style="list-style-type: none"> - Circus will vacate property before 4:00 p.m. - The cleanup crew will finish cleaning the lot around 3:00 p.m. - All rented equipment, e.g., restrooms, fencing and dumpster, will be picked up before 3:00 p.m. 	No Performance

Tabares Entertainment, Inc. 7455 Arroyo Crossing Pkwy. Suite 220 Las Vegas, NV 89113
 Nelson R Quiroga - Phone: 702-513-9767 E-Mail: Nqtabares@Circusvargas.com
 Katya Quiroga – Phone: 702-466-4873 E-Mail: kqtabares@circusvargas.com



Circus Vargas 2023 Advance Permit Event Packet
National City @ Westfield Plaza Bonita
Tent setup area for 2023



Tabares Entertainment, Inc. 7455 Arroyo Crossing Pkwy. Suite 220 Las Vegas, NV 89113
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**Circus Vargas 2023 Advance Permit Event Packet
National City @ Westfield Plaza Bonita**



Circus Vargas Big Top



Tabares Entertainment, Inc. 7455 Arroyo Crossing Pkwy. Suite 220 Las Vegas, NV 89113
Nelson R Quiroga - Phone: 702-513-9767 E-Mail: Nqtabares@Circusvargas.com
Katya Quiroga – Phone: 702-466-4873 E-Mail: kqtabares@circusvargas.com



**Circus Vargas 2023 Advance Permit Event Packet
National City @ Westfield Plaza Bonita**



Tabares Entertainment, Inc. 7455 Arroyo Crossing Pkwy. Suite 220 Las Vegas, NV 89113
Nelson R Quiroga - Phone: 702-513-9767 E-Mail: Nqtabares@Circusvargas.com
Katya Quiroga – Phone: 702-466-4873 E-Mail: kqtabares@circusvargas.com



Circus Vargas 2023 Advance Permit Event Packet
National City @ Westfield Plaza Bonita
Show Information

LENGTH OF SHOW: Approximately one hour and forty-five minutes

EXPECTED ATTENDANCE: 300–500 per show

AVERAGE VEHICLE CAPACITY PER SHOW: 125 vehicles (based on 500 people)

SEATING CAPACITY OF TENT: 998

- **NO GAME OF CHANCE**
- **NO MECHANICAL RIDES**
- **NO PERFORMING ANIMALS**
- **NO PYRO OR OPEN FLAME USED DURING THE SHOW**
- **NO ALCOHOL SOLD OR SERVED**
- **NO OUTSIDE CONTRACTED VENDORS**

Circus management provides in-house security guards. Management carries radios and cell phones in case of a 911 emergency.

Circus Vargas is completely self-contained. The show has a two-generator system with an emergency battery backup. If the main generator shuts down, the backup generator will be turned on, but all emergency lighting will remain running via the battery backup system.

A source of water is usually provided to the circus by the venue on which the circus conducts business; if not, the circus will rent a water meter from the city.

Circus Vargas rents restrooms from local sanitation companies.

Circus Vargas crew will perform daily cleanups to keep the circus area clean of any trash.

Circus Vargas rents a dumpster for all trash produced by the circus activities.

Circus Vargas is a family show and attracts primarily families; in-house security is normally sufficient to provide appropriate crowd control. The security personnel use radios to communicate with each other and can use cell phones to contact local law enforcement if the need exists.

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Circus Vargas 2023 Advance Permit Event Packet National City @ Westfield Plaza Bonita

Circus Vargas Covid-19 Response

Circus Vargas takes the safety of its patrons as well as its performers very seriously. It is in the best interest of our production to ensure the safety of everyone who enters the Big Top.

Circus Vargas will adhere to all public capacities set forth by Covid-19 regulations.

- Use of face coverings is mandatory throughout the circus grounds, unless actively eating and/or drinking at a designated area.
- Performers actively performing in the ring will be fully vaccinated and keep a minimum distance of 6ft from all patrons seeing the show.
- There will be a minimum of one hour between events to allow ample time for disinfecting seating area and omit the crossing of attendees from previous performances.
- Assigned seating of at least 6 feet between people from different households for those patrons who do not provide proof of vaccination. All patron with proof of vaccination will be in a different seating area.
- Seating will be modified on our ticketing system to allow for social distancing.
- Information regarding Circus Vargas Covid-19 protocol for attendees will placed on our website and our ticketing system stating Requirements set forth by Local and State CDC Guidelines.
- Capacity levels will be controlled not only through our ticketing system, but we also have staff at the entrance with a clicker.
- Circus Vargas will have visual aids to direct the public as to path of flow, hand wash stations and have hand sanitizer readily available throughout.
- All personnel are required to wear face masks when the public is present and during working hours when social distancing is not possible.

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Circus Vargas 2023 Advance Permit Event Packet National City @ Westfield Plaza Bonita

- All personnel traveling with the show are encouraged to be fully vaccinated. For individuals who are not fully vaccinated will be required to test every 7days.
- Hand wash stations are available for public use in the midway area.
- Hand Sanitizer is readily available for public use throughout the Big Top.
- Added ventilation inside the Big Top, public areas and in the seating areas.
- Area for food consumption with social distancing will be provided and proper signage in place.

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Circus Vargas 2023 Advance Permit Event Packet
National City @ Westfield Plaza Bonita
Circus Vargas: Cleanup & Recycling Plan

Circus Vargas does not hire or contract with outside vendors or temporary workers. All staffing will be with workers that travel with the show. The staff is trained on current proper sanitary and cleanup procedures. There is a staff of twenty-five people, and while some staff members are working throughout the day, all of them are present from one hour before the first show of the day until after the last show [as applicable] is over and cleanup is completed.

Since the nature of a circus limits the areas in which the public can access, the majority of the cleanup will be in a limited area. Plus, there are a very limited number of food items sold.

Staff continuously cleans up the entrance area throughout the time the show is open to the public, so trash does not remain on the ground. Trash is cleaned up inside the tent after each performance; and once each day, trash will be picked up in the parking area, which is expected to be minimal, since most people consume items early in the show and are unlikely to bring trash back to their cars.

A trash dumpster will be contracted for placement on the grounds. Several trash cans are available for public use in the circus entrance area. We will also have bins in which people can put recyclable items. However, due to the nature of our operation, most people buy their food products and take them immediately into the tent, where they sit down. They normally let their trash fall through the bleachers, where we clean it up after each show.

Since sodas and water are served in plastic bottles and cans, our staff will put those, along with appropriate paper products, into the recycle bins and transport them to an appropriate recycling facility or make arrangements with the dumpster company for their removal.

I hope that I have provided you with all the information needed to approve this plan. If you have any questions, please call me at 702-513-9767 and I will be happy to assist you.

Tabares Entertainment, Inc. 7455 Arroyo Crossing Pkwy. Suite 220 Las Vegas, NV 89113
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Circus Vargas 2023 Advance Permit Event Packet
National City @ Westfield Plaza Bonita
Circus Vargas Security Plan

Since Circus Vargas is a family show and attracts primarily families, in-house security has been sufficient to provide appropriate crowd control. As the only thing to see is the show itself, there are no people just loitering in the area. Crowds come at show time, enter the enclosed midway area and take their seats. After the show, there is nothing else to see, so they exit to their cars.

Many of the things that attract or encourage trouble or the necessity for police intervention will not be present at Circus Vargas. Alcohol will not be sold or served, and there are no games of chance or mechanical rides. While a carnival attracts ages 12 to 22, Circus Vargas primarily attracts children of elementary school ages or younger, along with their parents and grandparents.

Circus Vargas has its own security team comprising eight uniformed (unarmed) security Personnel (includes one head of security). The uniforms consist of matching Circus Vargas shirts and pants. This low-key approach to security maintains the atmosphere of family fun.

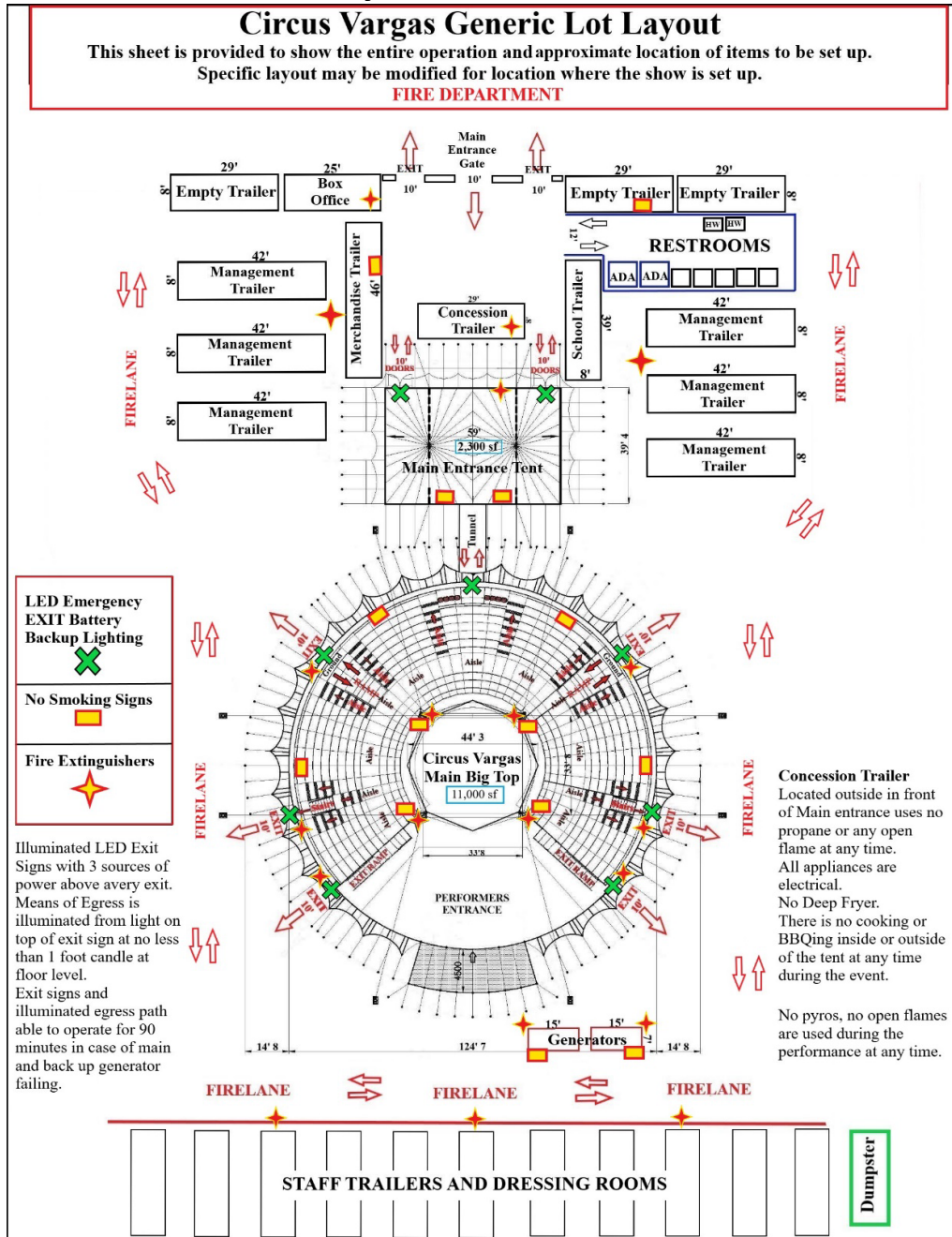
All security personnel will be scheduled one hour before each performance and will stay thirty minutes after the performance. Security personnel will be stationed both inside and outside the tent as well as next to the ticket booth.

Security personnel have access to walkie-talkies for communications between themselves, in addition to cell phones that can be used to call additional personnel as well as local police or firefighters if it becomes necessary.

In addition to the security officers, a closed-circuit video security system monitors the inside of the ticket booth, where money is handled, as well as the midway area and the area in front of the ticket booth. This video system is attached to a recording device that can be used to keep a digital record of events.



Circus Vargas 2023 Advance Permit Event Packet National City @ Westfield Plaza Bonita

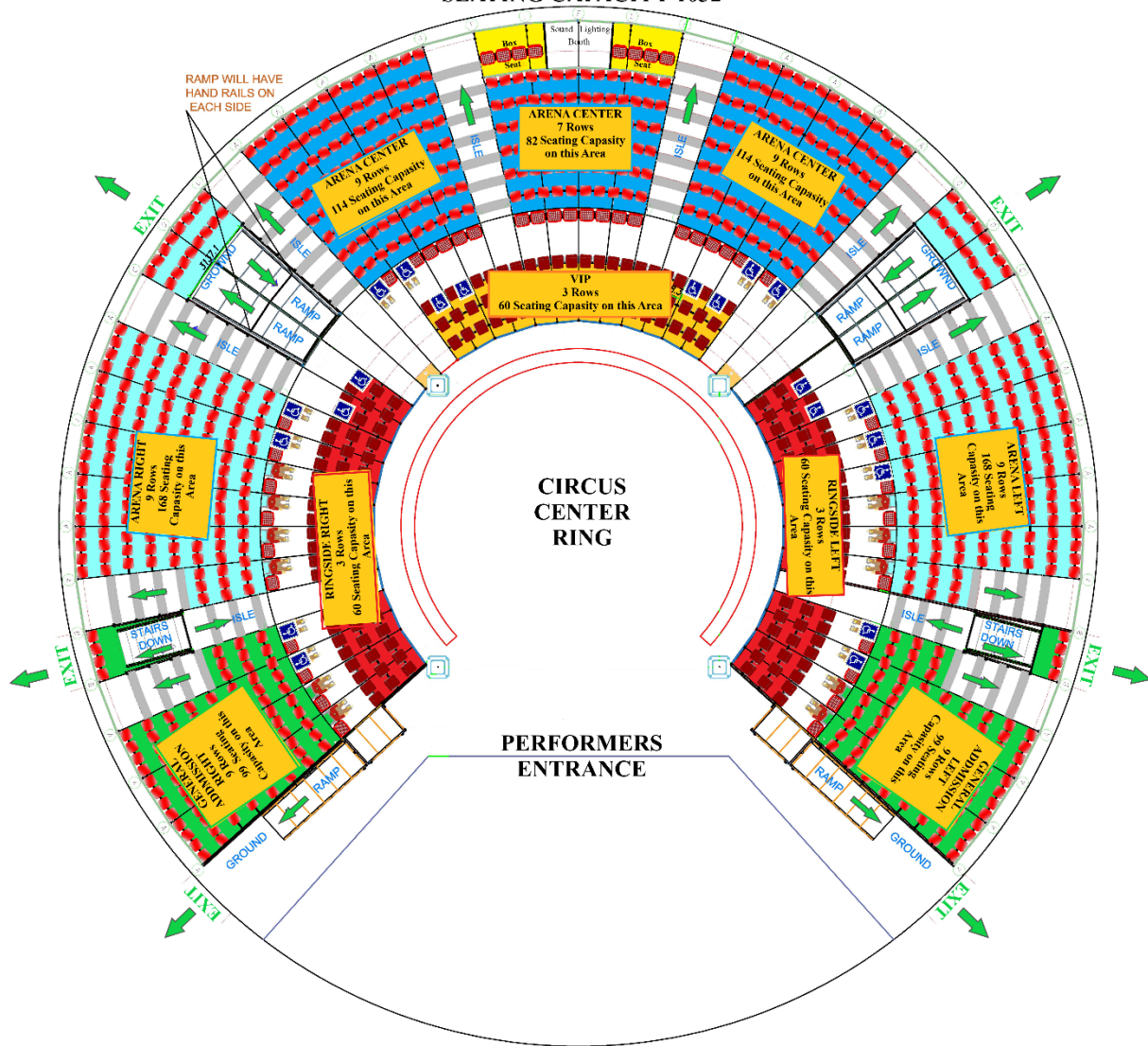


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**Circus Vargas 2023 Advance Permit Event Packet
National City @ Westfield Plaza Bonita**

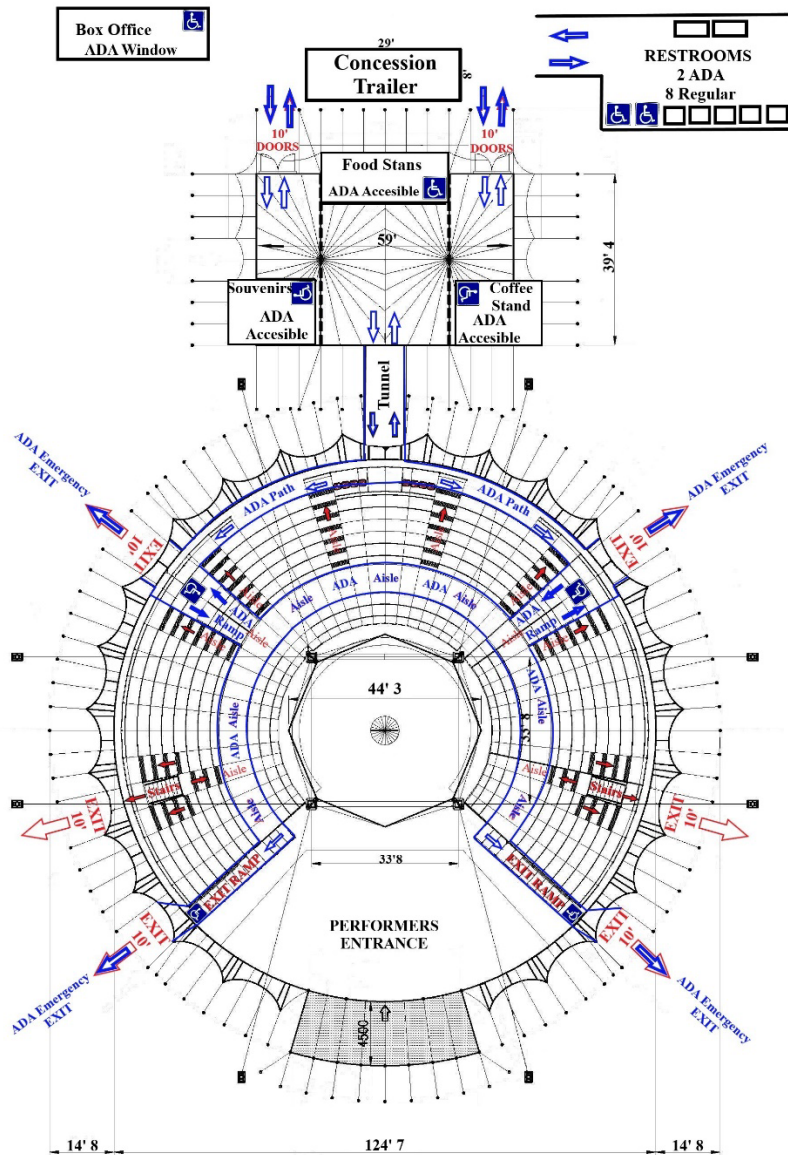
**CIRCUS VARGAS
SEATING CHART AND EGRESS PLAN
SEATING CAPACITY 1032**



Tabares Entertainment, Inc. 7455 Arroyo Crossing Pkwy. Suite 220 Las Vegas, NV 89113
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Circus Vargas 2023 Advance Permit Event Packet National City @ Westfield Plaza Bonita

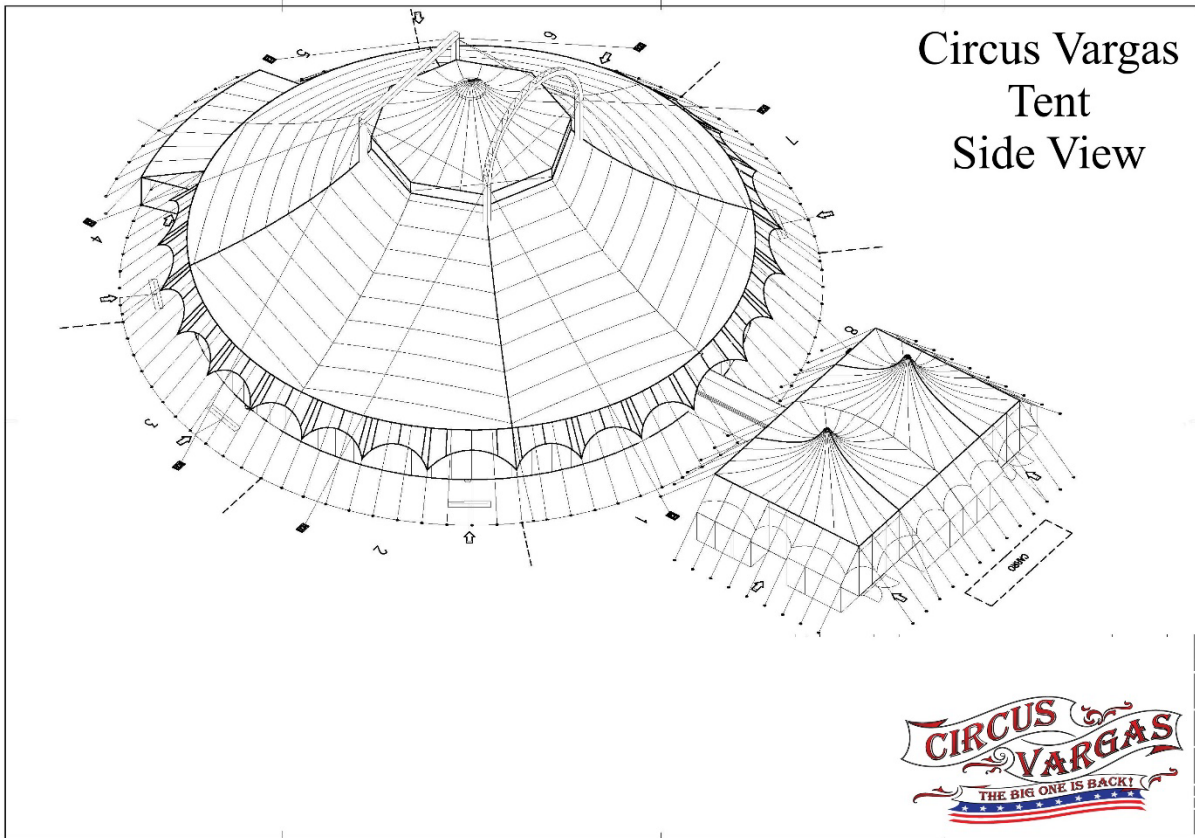


Circus Vargas ADA ACCESSIBILITY Layout and path
 Blue lines and Blue arrows are path for ADA Wheel Chairs
 Every seating Section has ADA avilibility with a total of 20 avaliabe ADA
 seating and 40 additional seats for ADA Companions.
 Total Maximun Seating Capacity 1032

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**Circus Vargas 2023 Advance Permit Event Packet
National City @ Westfield Plaza Bonita**



CALIFORNIA DEPARTMENT OF FORESTRY and FIRE PROTECTION
OFFICE OF THE STATE FIRE MARSHAL

REGISTERED FLAME RESISTANT PRODUCT

Product:
PRECONSTRAINT 702, 392

Registration No.
F-44402

Product Marketed By:
SERGE FERRARI
1460 SW 6TH COURTH
POMPANO BEACH, FL 33069

This product meets the minimum requirements of flame resistance established by the California State Fire Marshal for products identified in Section 13115, California Health and Safety Code.

The scope of the approved use of this product is provided in the current edition of the CALIFORNIA APPROVED LIST OF FLAME RETARDANT CHEMICALS AND FABRICS, GENERAL AND LIMITED APPLICATIONS CONCERNS published by the California State Fire Marshal.

Deputy State Fire Marshal

Expire: 12/31/2023

FR-8

Tabares Entertainment, Inc. 7455 Arroyo Crossing Pkwy. Suite 220 Las Vegas, NV 89113
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**CITY OF NATIONAL CITY
NEIGHBORHOOD SERVICES DEPARTMENT
APPLICATION FOR A TEMPORARY USE PERMIT
CONDITIONS OF APPROVAL**

SPONSORING ORGANIZATION: Circus Vargas

EVENT: Circus Vargas

DATE OF EVENT: February 17, 2023 through February 27, 2023.

APPROVALS:

COMMUNITY SERVICES	YES [x]	NO []	SEE CONDITIONS []
RISK MANAGER	YES [x]	NO []	SEE CONDITIONS []
PUBLIC WORKS	YES [x]	NO []	SEE CONDITIONS []
FINANCE	YES [x]	NO []	SEE CONDITIONS []
FIRE	YES [x]	NO []	SEE CONDITIONS [x]
POLICE	YES [x]	NO []	SEE CONDITIONS [x]
ENGINEERING	YES [x]	NO []	SEE CONDITIONS []
COMMUNITY DEVELOPMENT	YES [x]	NO []	SEE CONDITIONS [x]

CONDITIONS OF APPROVAL:

PUBLIC WORKS (619) 366-4580

No involvement.

POLICE DEPARTMENT

Request for extra patrol for the officers on the event days. No other comments.

ENGINEERING

No comments received.

COMMUNITY SERVICES

No involvement.

FINANCE

Circus Vargas has current Business License. No other comments.

COMMUNITY DEVELOPMENT

Planning

No comments.

Building

Building Comments for Temporary Use Permit for Circus Vargas

A Building permit will be required for the Circus Vargas tent and generator.

In order to properly process the Building Permit provide a clear detailed plan minimum size 30" X 24". The plans should include all the details for the following:

1. **Complete** – Plans and details for the tent structures and canopies, include Flame Retardant Certificate and distances between them.
2. **Stages**
3. **ADA** - Complete accessibility details.
4. **Generator** - Details of size and number of generators (with grounding details).
5. **Electrical** - What will the generators provide power for? Load Calcs., cable/trip protection.
6. **Site Plan Including Lighting**
7. **Exiting** - We need all details for exiting, including exit distances, fencing, lighting, total area in square feet of fenced areas.
8. **Maximum total attendance (Occupants)** - Include all employees and staff. This will determine number of bathrooms, hand wash stations and exits.
9. **Show all extinguishers on site plan**
10. **Permit/Plan Check Fees** Plan check fees are **\$154.86 hourly (1HR), inspection fees \$151.00 a Generator \$64 Each**
11. **Seating**

Many of these items are in the TUP Application and also need to be submitted for the permit.

Neighborhood Services

Neighborhood Notifications – Events are required to notify residents and/or businesses of the surrounding impacted areas by the event. The notice shall include the name of the event, name and phone number of the company/organization producing the event, the dates and times of the event (including set-up and breakdown) and a detailed description of how the residents and/or businesses may be affected, such as by street closures, "No Parking" signs being posted, music at the event, etc.

Display of banners – Banners are allowed on site for event but must be removed immediately thereafter event completion. If you wish to place banners in any location other than on-site, you must get approval from the property/business owner where you intend to display the banner.

RISK MANAGER (619) 336-4370

No additional insurance requirements are necessary for the permit issuance. Applicant properly executed the Hold Harmless and Indemnification Agreement when the Special Event Application was submitted.

FIRE (619) 336-4550

INSPECTION REQUIRED

Total fee amount for all Fire Department permits is, (\$962.00) dollars. Tents \$751, Places of Assembly \$211. Fees can only be waived by City Council.

Stipulations required by the Fire Department for this event are as follows:

- 1) Access to the Circus Vargas to be maintained at all times.
- 2) Fire Department access into and through the booth areas are to be maintained at all times. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet and an unobstructed vertical clearance of not less than 14 feet.
- 3) Exit signs shall be provided at all required exits. Exit signs shall be green in color (National City Municipal Code) and either self-illuminating or electrical with a 90 minute back-up power.
- 4) Fire Hydrants shall not be blocked or obstructed.
- 5) Participants on foot are to move immediately to the sidewalk upon approach of emergency vehicle(s).
- 6) Vehicles in roadway are to move immediately to the right upon approach of emergency vehicle(s).
- 7) If tents or canopies are used, tents having an area in excess of 200 square feet and or canopies in excess of 400 square feet or multiple tents and or canopies placed together equaling or greater than the above stated areas, are to be used, they shall be flame-retardant treated with an approved California State Fire Marshal seal attached. A ten feet separation distance must be maintained between tents and canopies. A permit from the Fire Department must be obtained. **Cooking shall not be permitted under tents or canopies unless the tents or canopies meet "State Fire Marshal approval for cooking.** Fees can only be waived by the City Council.

Canopies:

0 – 400 sf -	\$0
401 – 500 sf -	\$391.00
501 – 600 sf -	\$436.00
601 – 700 sf -	\$571.00

Tents:

0 –200 sf -	\$391.00
201 – (+) sf -	\$751.00

- 8) Concession stands utilized for cooking shall have a minimum of 10 feet of clearance on two sides and shall not be located within 10 feet of amusement rides or devices.
- 9) All cooking booths or areas to have one 2A:10BC. If grease or oil is used in cooking a 40:BC or class "K" fire extinguisher will be required. All fire extinguishers to have a current State Fire Marshal Tag attached.
- 10) Fire extinguishers to be mounted in a visible location between 3½'to 5' from the floor to the top of the extinguisher. Maximum travel distance from an extinguisher shall not be more than 75 feet travel distance. **All fire extinguisher to have a current State Fire Marshal Tag attached.**
- 11) Emergency generators and standby power systems shall be installed, tested, and maintained in accordance with [NFPA 110](#) and NFPA 101, *Standard for Emergency and Standby Power Systems*.
- 12) A fire safety inspection is to be conducted by the Fire Department prior to operations of the carnival to include all rides, cooking areas, game booths, etc. Required inspections taking place, after hours, holidays, and weekends will be assessed a minimum of two hundred (\$211.00) dollars. Fee is to be paid to the Fire Department Administration offices under separate permit. **Fee is to be paid prior to event.**
- 13) No smoking signs to be posted.
- 14) Any electrical power used is to be properly grounded and approved. Extension cords shall be used as "Temporary Wiring" only.
- 15) Fees can only be waived by City Council.
- 16) **There shall be trained Crowd Managers or crowd manager/supervisors at a ratio of one crowd manager/supervisors for every 250 occupants, as approved in addition to the security. Please provide the current Crowd Manager certification to NCFD prior to the event.**

Fees can only be waived by City Council



AGENDA REPORT

Department: Finance
Prepared by: Karla Apalategui, Sr. Accounting Assistant
Meeting Date: Tuesday, February 7, 2023
Approved by: Brad Raulston, City Manager

SUBJECT:

Warrant Register #23 for the period of 12/2/22 through 12/8/22 in the amount of \$715,173.08.

RECOMMENDATION:

Ratify Warrants Totaling \$715,173.08

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

Per Government Section Code 37208, below are the payments issued for period 12/2/22 – 12/8/22. Consistent with Department of Finance’s practice, listed below are all payments above \$50,000.

<u>Vendor</u>	<u>Check/Wire</u>	<u>Amount</u>	<u>Explanation</u>
Bureau Veritas N America	361098	\$ 74,333.07	Plan Review Services
Kaiser Foundation HP	361135	\$214,459.65	Group No. 104220- Jan 2023
Adminsure Inc	659427	\$ 75,946.89	WC’s Account Replenishment

FINANCIAL STATEMENT:

Warrant total \$715,173.08

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Not Applicable

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

Warrant Register No. 23



**WARRANT REGISTER # 23
12/8/2022**

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
4 IMPRINT INC	4IMPRINT/OFFICE SUPPLIES/FY23	361060	12/5/2022	563.98
ALLSTATE SECURITY	INVICTA/ALLSTATE/GUARD SERVICES SEPT./LIB	361061	12/5/2022	8,891.28
ALLSTATE SECURITY	INVCITA DBA ALLSTATE/SECURITY SERVICES/LIB	361062	12/5/2022	3,607.45
AMAZON	AMAZON/CRAFTS/FY23	361063	12/5/2022	676.50
AMAZON	AMAZON/OFFICE SUPPLIES/SCANNER/FY23	361064	12/5/2022	82.64
BAKER & TAYLOR	BAKER & TAYLOR/BOOKS/FY23	361066	12/5/2022	6,092.31
BUREAU VERITAS N AMERICA INC	BUILDING/BUREAU VERITAS	361067	12/5/2022	7,197.86
BUREAU VERITAS N AMERICA INC	BUILDING/BUREAU VERITAS	361068	12/5/2022	4,433.27
CALIFA GROUP	RFW- CALIFA/MEMBERSHIP/FY23	361069	12/5/2022	400.00
DEMCO INC	DEMCO/BOOK COVERS, LABELS/FY23	361070	12/5/2022	1,286.68
GRAINGER	MOP 65179 GENERAL SUPPLIES- PW	361071	12/5/2022	2,062.32
HOME DEPOT CREDIT SERVICES	GENERAL SUPPLIES AS NEEDED FOR BUILDINGS	361072	12/5/2022	3,546.45
JANWAY COMPANY	JANWAY/PARKS PASS/BACKPACKS AND PENS/FY23	361073	12/5/2022	682.26
LASER SAVER INC	MOP HP MT51 BLACK & CYAN OEM TONER CART	361074	12/5/2022	2,774.62
LITERACYWORKS	RFW- LITERACY WORKS/LITERACY/FY23	361075	12/5/2022	10,000.00
MIDWEST TAPE, LLC	MIDWEST TAPE/DVDS/FY23	361076	12/5/2022	1,540.40
MOBILE CITIZEN, LLC	MOBILE CITIZEN/10 HOT SPOTS/CIRCULATION/LIB	361077	12/5/2022	2,280.00
PALMA	REIMBURSEMENT FOR TRAINING	361078	12/5/2022	30.45
PRO BUILD COMPANY	MOP 45707 GENERAL SUPPLIES- PW	361079	12/5/2022	2,895.06
PRUDENTIAL OVERALL SUPPLY	MOP 45742 LAUNDRY SERVICES- PW	361080	12/5/2022	74.29
SMART SOURCE OF CALIFORNIA LLC	SMART SOURCE/BUSINESS CARDS/MMARTINEZ	361081	12/5/2022	44.98
STAPLES BUSINESS ADVANTAGE	BUILDING/STAPLES	361082	12/5/2022	628.94
STAPLES BUSINESS ADVANTAGE	NSD/STAPLES	361083	12/5/2022	63.88
THE STAR NEWS	PLANNING/STAR NEWS	361084	12/5/2022	307.50
T-MOBILE MOBILE USA INC.	RFW- T-MOBILE/HOT SPOTS/OCT23	361085	12/5/2022	448.50
WSP USA INC	PLANNING/WSP	361086	12/5/2022	387.84
ABORQUI DIGGS	SUPPLY REIMBURSEMENT	361087	12/8/2022	99.98
ADMINSURE INC	WORKERS' COMPENSATION CLAIMS - DECEMBER	361088	12/8/2022	8,353.00
ALDEMCO	FOOD / NUTRITION CENTER	361089	12/8/2022	4,973.73
ALL FRESH PRODUCTS	FOOD / NUTRITION CENTER	361090	12/8/2022	622.02
AMEDEE	REIMBRSMT-MMASC CONF / FIRE	361091	12/8/2022	915.16
ANDERSON	2022 NORTH AMERICAN HUMAN TRAFFICKING	361092	12/8/2022	394.28
AT&T	AT&T & SBC ANNUAL PHONE SERVICE FOR FY23	361093	12/8/2022	14,974.73
AUDIO ASSOCIATES	VOTELYNX STATION REPLACED	361094	12/8/2022	841.94
AZTEC APPLIANCE INC	FREESTANDING REFRIGERATOR	361095	12/8/2022	3,069.80
BADGE FRAME, INC	PERPETUAL PLAQUES	361096	12/8/2022	2,260.08
BNSF RAILWAY COMPANY	ENGINEERING SUPPORT FOR SEGMENT 5 OF BAY	361097	12/8/2022	18,034.51
BUREAU VERITAS N AMERICA INC	PLAN REVIEW SERVICES	361098	12/8/2022	74,333.07
CALIFORNIA PARK & REC	CPRS MEMBERSHIP RENEWALS ED & JC	361099	12/8/2022	290.00
CAMACHO	SUICIDE PREVENTION AND INTERVENTION TRAINING	361100	12/8/2022	184.68
CAMARGO	49TH ANNUAL CLEARS TRAINING - CYNTHIA CA	361101	12/8/2022	1,071.71
CASTILLO	A KIMBALL HOLIDAY DJ/MC ENTERTAINMENT	361102	12/8/2022	1,850.00
CITRIX SYSTEMS INC	CITRIX VPX 200 RENEWAL 12/05/22-12/04/23	361103	12/8/2022	1,100.00
CONCENTRA MEDICAL CENTERS	PRE-EMPLOYMENT PHYSICALS	361104	12/8/2022	2,290.00
CORDOVA	REIMBURSEMENT CACEO CORDOVA / NSD	361105	12/8/2022	162.60
CORODATA RECORDS	CORODATA - RECORD STORAGE	361106	12/8/2022	52.50
COUNTY OF SAN DIEGO	HAZARDOUS WASTE FACILITY PERMIT FEES	361107	12/8/2022	821.00
COUNTY OF SAN DIEGO	NEXTGEN REGIONAL COMMUNICATIONS SYSTEM	361108	12/8/2022	8,037.00



**WARRANT REGISTER # 23
12/8/2022**

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
COUNTY OF SAN DIEGO - DEH	FOOD FACILITY PERMIT RENEWAL	361109	12/8/2022	465.00
COX COMMUNICATIONS	COX DATA, VIDEO SERVICES FY23	361110	12/8/2022	218.26
COZZINI BROS., INC.	KNIFE/DELI SLICER/CAN OPENER SHARPENING	361111	12/8/2022	36.00
CPOA	SWORN STAFF MEMBERSHIP FY 23	361112	12/8/2022	1,500.00
CURVATURE LLC	ETHERNET SWITCH NETWORKING MODULES	361113	12/8/2022	6,911.62
CYRACOM INTERNATIONAL, INC	TRANSLATION SERVICE	361114	12/8/2022	98.80
DATEL SYSTEMS INCORPORATED	BARRACUDA SPAM FILTER 11/16/22-11/15/23	361115	12/8/2022	22,206.25
DELGADO	RFW EMPLOYEE REIMBURSEMENT	361116	12/8/2022	350.00
DEPARTMENT OF JUSTICE	NEW EMPLOYEE FINGERPRINT TEST RESULTS -	361117	12/8/2022	320.00
DEPASCALE	SHERMAN BLOCK SLI-2 TRAINING / PD	361118	12/8/2022	111.30
DEPMT OF PESTICIDE REGULATION	PESTICIDE LICENSE RENEWAL / ACOSTA / PARK	361119	12/8/2022	60.00
ERGOMETRICS	POLICE CORPORAL & SERGEANT ASSESSMENT	361120	12/8/2022	12,672.47
ESGIL LLC	PLAN REVIEW SERVICES	361121	12/8/2022	10,844.21
FASTSIGNS	COMMUNICATIONS AND SIGNAGE SERVICES FY23	361122	12/8/2022	54.38
FEDEX	POLICE RECRUIT TESTING MATERIALS	361123	12/8/2022	127.43
FIATOA JR	LICENSE REIMBURSEMENT	361124	12/8/2022	200.00
FIRE ETC	90950 SURVIVOR X ORANGE ALKALINE/FIRE	361125	12/8/2022	1,656.19
FRIEDMAN IMAGING	BUILDING/FRIEDMAN IMAGING SCANNING	361126	12/8/2022	3,530.81
GARCIA	REIMBURSEMENT - PEDRO GARCIA	361127	12/8/2022	70.00
GONZALES	SLI SHERMAN BLOCK SUPERVISORY - SESSION	361128	12/8/2022	48.06
GRAINGER	MOP 65179 GENERAL SUPPLIES- PW	361129	12/8/2022	1,693.11
GUERRO	LUNCH/DINNER FOR STAFF DURING A KIMBALL	361130	12/8/2022	520.00
HAAKER EQUIPMENT COMPANY	VALVE, M/B ELEV, ROT	361131	12/8/2022	9,837.38
HAWK	TRAIN ADV SUB COMPOSITE CLASS	361132	12/8/2022	1,193.83
HEALTH NET INC	GRP.#57135A - DECEMBER 2022	361133	12/8/2022	1,289.72
JAIME GARCIA, JR,	HAND WASHING STATIONS FOR A KIMBALL HOLIDAY	361134	12/8/2022	475.00
KAISER FOUNDATION HEALTH PLAN	GROUP N0. 104220 - JANUARY 2023	361135	12/8/2022	214,459.65
LASER SAVER INC	MOP 04840 TONER PD	361136	12/8/2022	978.31
LIEBERT CASSIDY WHITMORE	PERSONNEL MATTER	361137	12/8/2022	1,069.50
MAN K9 INC	WEEKLY TRAINING / PD	361138	12/8/2022	1,376.00
MARTINEZ	TRAVEL REIMBURSEMENT	361139	12/8/2022	830.10
MARTINEZ	REIMB / COFFEE MACHINES/ CULTURE CLUB	361140	12/8/2022	1,372.64
PARADISE VALLEY HOSPITAL	COVID19 TESTING	361141	12/8/2022	180.50
PARTS AUTHORITY METRO	MOP 75943 AUTO SUPPLIES- PW	361142	12/8/2022	78.57
PENSKE FORD	R&M CITY VEHICLES FY 2023	361143	12/8/2022	30.67
POLICE AND FIRE PSYCHOLOGY	PRE PSYCH EXAMS	361144	12/8/2022	1,050.00
PRO BUILD COMPANY	MOP 45707 GENERAL SUPPLIES- PW	361145	12/8/2022	1,223.96
PROFESSIONAL SEARCH GROUP LLC	TEMPORARY PLACEMENT- CARLEE BATTLE - PW	361146	12/8/2022	1,312.50
PRUDENTIAL OVERALL SUPPLY	LAUNDRY SERVICES AND SUPPLIES / NUTRITION	361147	12/8/2022	2,434.16
REEDER	TRAVEL REIMBURSEMENT	361148	12/8/2022	49.45
SAFETY-KLEEN SYSTEMS, INC	PART #100030 RECOVERY FEE	361149	12/8/2022	244.18
SAN DIEGO ICE MACHINES COMPANY	40 TONS OF SNOW FOR A KIMBALL HOLIDAY	361150	12/8/2022	9,913.00
SAN DIEGO MECHANICAL ENERGY	REPAIRS TO HVAC SYSTEMS	361151	12/8/2022	513.00
SAN DIEGO UNION TRIBUNE	CIP 22-06 MLK COMMUNITY CENTER ADVERTISE	361152	12/8/2022	722.80
SDG&E	GAS AND ELECTRIC FOR FACILITIES FOR FY23	361153	12/8/2022	7,273.39
SEAPORT MEAT COMPANY	FOOD / NUTRITION CENTER	361154	12/8/2022	279.00
SHARP ELECTRONICS CORPORATION	MAINTENANCE 20 SHARP COPIERS FOR FY23	361155	12/8/2022	3,186.18
SHEPHARD	REIMB SHIPPING COSTS TO AZ	361156	12/8/2022	119.70



**WARRANT REGISTER # 23
12/8/2022**

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
SMART & FINAL	MOP 45756 CASA YOUTH SNACKS	361157	12/8/2022	669.48
SMART SOURCE OF CALIFORNIA LLC	PARKING VIOLATION NOTICE PD-220	361158	12/8/2022	7,636.50
SMART SOURCE OF CALIFORNIA LLC	MOP 24302 PRINTING PD	361159	12/8/2022	276.62
SORIANO	CACEO REIMBURSEMENT SORIANO / NSD	361160	12/8/2022	212.39
SOUTH COAST EMERGENCY	VEHICLE INTERNAL DAMAGE REPAIR / EQUIP. MAINT.	361161	12/8/2022	4,424.83
SOUTHERN CALIF TRUCK STOP	MOP 45758 GENERAL AUTO SUPPLIES- PW	361162	12/8/2022	110.59
SOUTHWEST CONSTRUCTION SERVICE	CIP 20-07 CAMACHO REC CENTER HVAC REPLAC	361163	12/8/2022	13,371.91
STAPLES BUSINESS ADVANTAGE	MOP OFFICE SUPPLIES/HED	361164	12/8/2022	446.00
STAPLES BUSINESS ADVANTAGE	MOP 45704 STAPLES ADVANTAG	361165	12/8/2022	12.96
SWEETWATER AUTHORITY	WATER BILL FOR FACILITIES FY 2023~SEPT-N	361166	12/8/2022	14,819.22
SYSCO SAN DIEGO INC	FOOD / NUTRITION CENTER	361167	12/8/2022	3,118.36
THE COUNSELING TEAM INTERNATIO	EMPLOYEE SUPPORT SVCS, 2 PEOPLE/FIRE	361168	12/8/2022	225.00
THE STAR NEWS	STAR NEWS - PUBLIC NOTICE	361169	12/8/2022	240.88
VERIZON WIRELESS	VERIZON CELLULAR SERVICES FOR FY23	361170	12/8/2022	10,178.76
VISTA PAINT	MOP 68834 PAINT SUPPLIES / NSD	361171	12/8/2022	349.07
VORTEX INDUSTRIES INC	CITYWIDE ON-SITE SERVICE, REPAIRS	361172	12/8/2022	600.00
WARFIGHTER CONCEPTS LLC	TRAINING TUITION INHOUSE SWAT NCPD	361173	12/8/2022	42,000.00
WEST PAYMENT CENTER	INVESTIGATIONS SOFTWARE	361174	12/8/2022	660.75
WETMORES	UNIV DUAL PURPOSE	361175	12/8/2022	615.80
WILLY'S ELECTRONIC SUPPLY	MOP 45763 ELECTRIC SUPPLIES- PW	361176	12/8/2022	253.62
FLORES	REIMBURSEMENT RFLORES FOR BOOT LIFT FY23	361177	12/8/2022	85.00
			A/P Total	631,226.07
WIRED PAYMENTS				
U S BANK	COMMUNITY DEVELOPMENT/US BANK STATEMENT	438931	12/7/2022	799.64
U S BANK	CREDIT CARD EXPENSES / CITY MANAGER	438931	12/7/2022	3,008.65
ADMINSURE INC	WORKERS' COMPENSATION ACCOUNT REPLENISHM	659427	12/2/2022	75,946.89
U S BANK	MOP 19657 CC MACHACDO	663310	12/8/2022	4,191.83
	GRAND TOTAL			\$ 715,173.08



AGENDA REPORT

Department: Administrative Services - Finance
Prepared by: Karla Apalategui, Sr. Accounting Assistant
Meeting Date: Tuesday, February 7, 2023
Approved by: Brad Raulston, City Manager

SUBJECT:

Warrant Register #24 for the period of 12/9/22 through 12/15/22 in the amount of \$3,727,077.84

RECOMMENDATION:

Ratify Warrants Totaling \$3,727,077.84

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

Per Government Section Code 37208, below are the payments issued for period 12/9/22 – 12/15/22. Consistent with Department of Finance’s practice, listed below are all payments above \$50,000.

<u>Vendor</u>	<u>Check/Wire</u>	<u>Amount</u>	<u>Explanation</u>
California Commercial Pool	361189	\$63,395.76	Las Palmas Pool Renovation / Eng
Haaker Equipment Company	361207	\$450,554.74	Vactor 2110 Plus Sewer Cleaner
Luth and Turley Inc	361212	\$62,649.44	Liability Claim Cost
State of California HCD	361233	\$70,433.02	Assessment for Fiscal Year
Tri-Group Construction & Dev	361239	\$729,265.29	Safe Routes to School – Eng/PW
Manuel Luis Ramirez	361246	\$100,000.00	Liability Claim Cost
City of San Diego	361260	\$212,600.16	Fire & Emergency Med Dispatch
SDG&E	361309	\$60,265.43	Gas & Electric for Facilities FY23
Public Emp Ret System	221209	\$270,695.22	Service Period 11/15/22 – 11/28/22

FINANCIAL STATEMENT:

Total Warrant Register \$3,727,077.84

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Not Applicable

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

Warrant Register No. 24



**WARRANT REGISTER # 24
12/15/2022**

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
4 IMPRINT INC	BREW DESK MUG / CULTURE CLUB	361178	12/13/2022	2,086.28
ADDICTION MEDICINE	DOT DRUG AND ALCOHOL TESTING PROGRAM	361179	12/13/2022	1,100.00
AEP CALIFORNIA LLC	OUTFITTING FOR FY23 POLICE DETECTIVE EXP	361180	12/13/2022	20,364.04
AETNA BEHAVIORAL HEALTH	EMPLOYEE ASSISTANCE PROGRAM - DECEMBER	361181	12/13/2022	732.72
AIRGAS USA LLC	MOP 45714 SAFETY SUPPLIES- PW	361182	12/13/2022	93.96
ALDEMCO	FOOD / NUTRITION CENTER	361183	12/13/2022	2,227.99
ALTA LANGUAGE SERVICES INC	EMPLOYEE BILINGUAL TESTING	361184	12/13/2022	132.00
BOOT WORLD	MOP 64096 SAFETY WEARING APPAREL- PW	361186	12/13/2022	1,095.42
BURKE WILLIAMS & SORENSEN LLP	LEGAL SERVICES	361187	12/13/2022	3,070.90
BURKE WILLIAMS & SORENSEN LLP	LEGAL SERVICES	361188	12/13/2022	2,574.70
CALIFORNIA COMMERCIAL POOL	CIP 22-01 LAS PALMAS POOL RENOVATION - ENG	361189	12/13/2022	63,395.76
CASTILLO	AGE FRIENDLY SENIOR SOCIALS DANCE DJ/MC	361190	12/13/2022	2,450.00
CHRISTENSEN & SPATH LLP	LEGAL SERVICE / CDC-HA AGREEMENT	361191	12/13/2022	585.00
CONCENTRA MEDICAL CENTERS	PRE-EMPLOYMENT PHYSICALS	361192	12/13/2022	729.00
COZZINI BROS., INC.	KNIFE/DELI SLICER/CAN OPENER SHARPENING	361193	12/13/2022	36.00
DEAN GAZZO ROISTACHER LLP	LIABILITY CLAIM COST	361194	12/13/2022	4,021.03
DEAN GAZZO ROISTACHER LLP	LIABILITY CLAIM COST	361195	12/13/2022	1,093.91
DELGADO	SUPPLY REIMBURSEMENT	361196	12/13/2022	729.60
DEPASCALE	TRAINING SLI 3	361197	12/13/2022	468.00
DEPASCALE	TRAINING SLI 4	361198	12/13/2022	468.00
ESGIL LLC	PLAN CHECKS FOR FIRE DEPT, FY 2023	361199	12/13/2022	3,406.50
FACTORY MOTOR PARTS	MOP 82766 AUTO SUPPLIES- PW	361200	12/13/2022	392.03
FERRERA, JR	LIABILITY CLAIM COST	361201	12/13/2022	256.46
FIRE ETC	MODEL 19 WILDLAND GLOVES /FIRE	361202	12/13/2022	1,060.31
FLORES	FINAL MEETING PERFORMANCE	361203	12/13/2022	500.00
G2SOLUTIONS, INC	NEW EMPLOYEE FINGERPRINT TESTING	361204	12/13/2022	8.25
GOMEZ	REFUND FOR STUDENT FORGRUPO FOLKLORICO	361205	12/13/2022	60.00
GRAINGER	MOP# 65179, BATTERY ALKALINE AA/FIRE	361206	12/13/2022	68.94
HAAKER EQUIPMENT COMPANY	VACTOR 2110 PLUS SEWER CLEANER	361207	12/13/2022	450,554.74
HOME DEPOT CREDIT SERVICES	GENERAL SUPPLIES AS NEEDED FOR BUILDING	361208	12/13/2022	424.63
JERRYS PHOTO BOOTH	AGE FRIENDLY SENIOR SOCIALS DANCE	361209	12/13/2022	998.00
LIEBERT CASSIDY WHITMORE	PERSONNEL MATTER	361210	12/13/2022	4,023.50
LINARES	EMPLOYEE CHRISTMAS PARTY - CATERING	361211	12/13/2022	3,249.12
LUTH AND TURLEY INC.	LIABILITY CLAIM COST	361212	12/13/2022	62,649.44
MES CALIFORNIA	#15780103 AKRON NOZZLES /FIRE	361214	12/13/2022	3,113.23
MOSSY NISSAN	SERVICE REQUEST #4--EQUIPMENT	361215	12/13/2022	664.92
NATIONAL CITY CHAMBER OF	ECONOMIC DEVELOPMENT	361216	12/13/2022	810.00
NATIONAL CITY TROPHY	MOP 66556 OFFICE SUPPLIES- PW	361217	12/13/2022	172.70
NV5 INC	SERVICES - STAFF/COUNTER SUPPORT / ENG	361218	12/13/2022	40,036.25
O'REILLY AUTO PARTS	MOP 75877 AUTO SUPPLIES- PW	361219	12/13/2022	220.66
PARTS AUTHORITY METRO	MOP 75943 AUTO SUPPLIES- PW	361220	12/13/2022	486.78
PARTS AUTHORITY METRO	MOP 75943 AUTO SUPPLIES- PW	361221	12/13/2022	23.63
PENSKE FORD	R&M CITY VEHICLES FY 2023- EQUIPMENT MAINT	361222	12/13/2022	911.31
PORTES	REIMBURSEMENT FOR SUPPLIES	361223	12/13/2022	152.69
PRO BUILD COMPANY	MOP 45707 GENERAL SUPPLIES- PW	361224	12/13/2022	552.40
PRUDENTIAL OVERALL SUPPLY	LAUNDRY SERVICES FOR NUTRITION STAFF	361225	12/13/2022	771.83
SAM'S ALIGNMENT	WHEEL ALIGNMENT SERVICE FOR CITY FY 23	361226	12/13/2022	70.00
SAN DIEGO HYDRAULICS	MOP 85005 AUTO SUPPLIES- PW	361227	12/13/2022	69.75



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<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
SEAPORT MEAT COMPANY	FOOD / NUTRITION CENTER	361228	12/13/2022	375.20
SHRED-IT	NOVEMBER- SERVICE FOR SECTION 8	361229	12/13/2022	130.75
SOUTHWEST BOULDER & STONE INC	20024- SUPREME WALK ON BARK	361230	12/13/2022	466.54
STAPLES BUSINESS ADVANTAGE	MOP# 45704 TEMPUR-PEDIC 6450 / FIRE	361231	12/13/2022	584.86
STAPLES BUSINESS ADVANTAGE	MOP 45704 PLANNING/CHAIR	361232	12/13/2022	246.42
STATE OF CALIFORNIA HCD	ASSESSMENT FOR FISCAL YEAR	361233	12/13/2022	70,433.02
SWEETWATER AUTHORITY	WATER BILL FOR PARKS DIVISION FY 2023	361234	12/13/2022	20,557.30
SYSCO SAN DIEGO INC	FOOD / NUTRITION CENTER	361235	12/13/2022	4,732.40
TERMINIX INTERNATIONAL	CITY OWNED FACILITIES ONGOING PEST- OCT	361237	12/13/2022	1,148.00
THOMSON REUTERS WEST	SUBSCRIPTIONS	361238	12/13/2022	578.54
TRI-GROUP CONSTRUCTION AND DEV	CIP 19-04 SAFE ROUTES TO SCHOOL - ENG/PW	361239	12/13/2022	729,265.29
U S BANK	MONTHLY CREDIT CARD STATEMENT - NOVEMBER	361240	12/13/2022	1,865.22
VELOCITY TRUCK CENTERS	ENGINE AND TRANSMISSION A/C COOLANT	361241	12/13/2022	163.74
VULCAN MATERIALS COMPANY	ASPHALT, TACK, 3/8 SHEET FY 2023~~ STREETS	361242	12/13/2022	1,469.65
WAXIE SANITARY SUPPLY	JANITORIAL SUPPLIES FOR FIRE STATIONS	361243	12/13/2022	1,489.91
WILLY'S ELECTRONIC SUPPLY	MOP 45763 ELECTRIC SUPPLIES- PW	361244	12/13/2022	259.78
WRIGHT CONSTRUCTION	CIP 19-35 PARADISE CREEK MITIGATION AT K	361245	12/13/2022	21,280.00
MANUEL LUIS RAMIREZ	LIABILITY CLAIM COST	361246	12/14/2022	100,000.00
24 HOUR ELEVATOR INC	CITY WIDE ELEVATOR SERVICE AND REPAIRS	361247	12/15/2022	36,000.00
ACADEMI TRAINING CENTER LLC	TRAINING SHOOT 11/29/22	361248	12/15/2022	1,077.29
ACE UNIFORMS & ACCESSORIES INC	OFFICER WYATT UNIFORM	361249	12/15/2022	2,965.10
ALDEMCO	FOOD / NUTRITION CENTER FOR	361250	12/15/2022	1,314.73
ALL FRESH PRODUCTS	FOOD / NUTRITION CENTER	361251	12/15/2022	1,137.93
ALLSTATE SECURITY	INVICTA/ALLSTATE/NOVEMBER SECURITY SERVI	361252	12/15/2022	2,878.43
ARROWHEAD FORENSIC PRODUCTS	PE SUPPLIES	361253	12/15/2022	486.11
AT&T	AT&T & SBC ANNUAL PHONE SERVICE FOR FY23	361254	12/15/2022	2,109.42
AT&T	AT&T & SBC ANNUAL PHONE SERVICE FOR FY23	361255	12/15/2022	91.17
BNSF RAILWAY COMPANY	ENGINEERING SUPPORT- SEGMENT 5 BAYSHORE	361256	12/15/2022	4,111.34
BURKE WILLIAMS & SORENSEN LLP	LEGAL SERVICES / CAO	361257	12/15/2022	4,664.00
CHEN RYAN ASSOCIATES INC	CIP 21-25 WEST 19TH ST GREENWAY - ENG/PW	361258	12/15/2022	17,888.00
CITY OF NATIONAL CITY	PETTY CASH REPLENISHMENT	361259	12/15/2022	148.56
CITY OF SAN DIEGO	FIRE&EMERGNCY MED DISPATCH SVCS FY22-23,	361260	12/15/2022	212,600.16
COSTAR REALTY INFORMATION INC	COSTAR REAL ESTATE TRANSACTION RESEARCH	361261	12/15/2022	5,750.04
COUNTY OF LOS ANGELES	GSR KITS #2106132	361262	12/15/2022	922.00
COX COMMUNICATIONS	COX DATA, VIDEO SERVICES FY23	361263	12/15/2022	2,614.47
CYRACOM INTERNATIONAL, INC	TRANSLATIONA SVCS	361264	12/15/2022	35.75
DATA DETECTION GROUP	DATA CONVERSION	361265	12/15/2022	2,571.25
DEAN GAZZO ROISTACHER LLP	LIABILITY CLAIM COST	361266	12/15/2022	1,320.00
DEAN GAZZO ROISTACHER LLP	LIABILITY CLAIM COST	361267	12/15/2022	360.00
DELL MARKETING L P	DELL R350 SERVERS	361268	12/15/2022	12,113.85
DEPARTMENT OF JUSTICE	NEW EMPLOYEE FINGERPRINT TEST RESULTS -	361269	12/15/2022	352.00
DEPT OF JUSTICE	DOJ FINGERPRINTING	361270	12/15/2022	322.00
DEXON COMPUTER INC	C9300-48U-A~	361271	12/15/2022	22,568.00
DISCOUNT SPECIALTY CHEMICALS	GOOP OFF QUARTS 12 X 1 PER CASE	361272	12/15/2022	745.02
D-MAX ENGINEERING INC	CIP 19-04 SAFE ROUTES TO SCHOOL - ENG/PW	361273	12/15/2022	2,031.88
EXOS WORKS, INC	EXOS/ POOL MANAGEMENT FEES	361274	12/15/2022	9,783.31
EXPERIAN	CREDIT CHECKS	361275	12/15/2022	34.16
FACTORY MOTOR PARTS	MOP 82766 AUTO SUPPLIES- PW	361276	12/15/2022	137.23



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<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
FERGUSON ENTERPRISES 1350	MOP 45723 GENERAL SUPPLIES- PW	361277	12/15/2022	551.59
GEOSYNTEC CONSULTANTS INC	CIP 20-00 HAZARDOUS MATERIAL MANAGEMENT/	361278	12/15/2022	1,390.49
GIL	REIMB RANGE SUPPLIES	361279	12/15/2022	181.96
GRAINGER	INV 9510659874. P&E SUPPLIES / PD	361280	12/15/2022	360.71
HAAKER EQUIPMENT COMPANY	SHOP SUPPLIES/ENV CHARGES	361281	12/15/2022	194.03
HDR ENGINEERING, INC.	CIP 22-55 WASTEWATER MASTER PLAN UPDATE	361282	12/15/2022	8,994.00
HOME DEPOT CREDIT SERVICES	GENERAL SUPPLIES AS NEEDED FOR BUILDING	361283	12/15/2022	439.15
HRTM CONSULTING	TELESTAFF TRAINING	361284	12/15/2022	800.00
KIMLEY HORN AND	CIP 20-09 NC EASTSIDE I-805 COMMUNITY GR	361285	12/15/2022	31,179.91
KTUA	CIP 19-44 8TH AND ROOSEVELT ATP CALTRANS	361286	12/15/2022	5,069.65
LANGUAGE LINE SERVICES	TRANSLATION SERVICES	361287	12/15/2022	55.77
LASER SAVER INC	MOP 45725 INK CARTRIDGES FOR EL TOYON	361288	12/15/2022	544.62
MAN K9 INC	MONTHLY MAINT TRAINING CANINES	361289	12/15/2022	1,376.00
MEGLA MANUFACTURING INC	INV# 2973 -PW/EQUIPMENT MAINTENANCE	361290	12/15/2022	3,107.00
MEYERS, NAVE, RIBACK, SILVER	PROFESSIONAL SERVICES / CAO	361291	12/15/2022	26,844.40
MIDWEST TAPE, LLC	MIDWEST TAPE/BLU-RAYS/FY23	361292	12/15/2022	621.47
MIDWEST TAPE, LLC	MIDWEST TAPE/BLU-RAYS/FY23	361293	12/15/2022	435.16
MOTOROLA SOLUTIONS INC	RADIO MICS	361294	12/15/2022	4,665.70
MUNISERVICES	ACFR-DIRECT & OVERLAPPING DEBT REPORT	361295	12/15/2022	660.00
NATIONAL BUSINESS FURNITURE	GUEST CHAIRS	361296	12/15/2022	1,211.83
NATIONAL CITY CAR WASH	CARWASH SERVICES FOR FLEET FY 2023	361297	12/15/2022	598.99
NATIONAL CITY TROPHY	MOP 66556 OFFICE SUPPLIES- PW	361298	12/15/2022	186.23
NEOGOV	GOVERNMENTJOBS.COM SUBSCRIPTION	361299	12/15/2022	1,676.27
PACIFIC STATES PETROLEUM INC	HYDRAULIC OIL, ENGINE OIL, AND VEHICLE	361300	12/15/2022	1,399.21
PLANETBIDS INC	PLANETBIDS RENEWAL 10/13/21-10/12/22	361301	12/15/2022	4,581.84
POLICE AND FIRE PSYCHOLOGY	PSYCH EVAL NORIE	361302	12/15/2022	525.00
POWERSTRIDE BATTERY CO INC	AUTO BATTERIES TO REPLENISH STOCK	361303	12/15/2022	1,359.76
PRO BUILD COMPANY	MOP 45707 MOVIES NIGHTS	361304	12/15/2022	1,572.34
PROFORCE LAW ENFORCEMENT	TAR CARTRIDGES	361305	12/15/2022	7,244.98
RADY CHILDREN'S HOSPITAL SAN D	SART EXAM	361306	12/15/2022	550.00
SAN DIEGO MECHANICAL ENERGY	REPAIRS TO HVAC SYSTEMS- PW/FACILITIES	361307	12/15/2022	25,862.51
SASI	INVOICE#120515 / INVOICE DATE 12/01/2022	361308	12/15/2022	58.00
SDG&E	GAS AND ELECTRIC FOR FACILITIES FOR FY23	361309	12/15/2022	60,265.43
SEAPORT MEAT COMPANY	FOOD/NUTRITION CENTER	361310	12/15/2022	358.43
SIRCHIE ACQUISITION COMPANY	PE SUPPLIES	361311	12/15/2022	142.27
SITEONE LANDSCAPE SUPPLY LLC	MOP 69277 LANDSCAPE SUPPLIES- PW	361312	12/15/2022	279.66
STAPLES BUSINESS ADVANTAGE	10 CHAIRS FOR RECORDS	361313	12/15/2022	2,369.65
SWEETWATER AUTHORITY	WATER BILL FOR PARKS DIVISION FY 2023	361314	12/15/2022	210.32
SYMBOLARTS, LLC	BADGES BADGE REPAIRS	361315	12/15/2022	1,724.21
SYSCO SAN DIEGO INC	FOOD / NUTRITION CENTER	361316	12/15/2022	4,280.01
TECHNOLOGY INTEGRATION GROUP	MIS EQUIP	361317	12/15/2022	1,305.00
THE COUNSELING TEAM	FAMILY DAY TRAINING	361318	12/15/2022	512.50
THE SHERWIN WILLIAMS CO	MOP 77816 PAINTING SUPPLIES- PW	361319	12/15/2022	155.73
T-MOBILE MOBILE USA INC.	RFW/T-MOBILE/LIBRARY/NOVEMBER 22	361320	12/15/2022	528.50
T-MOBILE MOBILE USA INC.	GPS LOCATE CASE 223448	361321	12/15/2022	25.00
TOPECO PRODUCTS	MOP 63849 AUTO SUPPLIES- PW	361322	12/15/2022	8.73
TREJO	REIMBURSEMENT DECOR / NSD	361323	12/15/2022	253.01
U S BANK	US BANK PAYMENT FY23	361324	12/15/2022	5,007.44



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<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
ULINE	PE SUPPLIES	361325	12/15/2022	4,232.88
UNDERGROUND SERVICE ALERT	UNDERGROUND SERVICE ALERT FY 2023	361326	12/15/2022	408.08
VULCAN MATERIALS COMPANY	3/4IN CL 2 BASE	361327	12/15/2022	677.08
VWR	PAWS TOWELETTES	361328	12/15/2022	69.64
WEST PAYMENT CENTER	INVESTIGATIONS SOFTWARE	361329	12/15/2022	659.00
WETMORES	MOP 80333 AUTO SUPPLIES- PW	361330	12/15/2022	68.24
WHENTOWORK INC	RFW WHEN TO WORK YEARLY SUBSCRIPTION	361331	12/15/2022	360.00
WILLY'S ELECTRONIC SUPPLY	MOP 45763 ELECTRIC SUPPLIES- PW	361332	12/15/2022	293.49
MOLINA	REIMBURSEMENT CONFERENCE EXPENSE	361333	12/15/2022	1,031.54
			A/P Total	2,206,866.61
WIRED PAYMENTS				
PUBLIC EMP RETIREMENT SYSTEM	SERVICE PERIOD 11/15/2022-11/28/2022	221209	12/9/2022	270,695.22
CITY NATIONAL BANK	LEASE PAYMENT #51 W/OPTION TO PURCHASE #	606126	12/14/2022	43,101.10
ARCO BUSINESS SOLUTIONS	FUEL FOR CITY FLEET FY 23~ NOV	737635	12/9/2022	48,369.35
U S BANK	TRAINING CREDIT CARD	739873	12/13/2022	2,730.89
SECTION 8 HAPS	Start Date	End Date		
	12/9/2022	12/15/2022		32,734.37
PAYROLL				
Pay period	Start Date	End Date	Check Date	
25	11/29/2022	12/12/2022	12/21/2022	1,122,580.30
			GRAND TOTAL	<u>3,727,077.84</u>



AGENDA REPORT

Department: Community Development
Prepared by: Armando Vergara, Director
Meeting Date: Tuesday, February 7, 2023
Approved by: Brad Raulston, City Manager

SUBJECT:

Public Hearing and Introduction of Multiple Ordinances Amending the National City Municipal Code Chapters 15.08, 15.14, 15.20, 15.24, 15.28, 15.75, 15.78, and 15.79 related to California Codes for Fire, Electrical, Energy, Building, Plumbing, Mechanical,

RECOMMENDATION:

Introduce the Ordinances for the 2022 California Fire Code and the National Fire Protection Association Standards; the 2022 California Building Code; the 2022 California Electrical Code and 2020 National Electrical Code; the 2022 California Energy Code; Appendix J of the 2022 California Building Code, and Amending Chapter 15.70 (Grading) of the National City Municipal Code; the 2022 California Green Building Standards Code; the 2022 California Mechanical Code; the 2022 California Plumbing Code; and the 2022 California Residential Code and all Appendices related to these Codes; receive public input; and schedule for the meeting of February 21, 2023, for consideration and adoption.

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

The purpose of this Public Hearing is to introduce Ordinances for the 2022 California Fire Code and the National Fire Protection Association Standards; the 2022 California Building Code; the 2022 California Electrical Code and 2020 National Electrical Code; the 2022 California Energy Code; Appendix J of the 2022 California Building Code, and Amending Chapter 15.70 (Grading) of the National City Municipal Code; the 2022 California Green Building Standards Code; the 2022 California Mechanical Code; the 2022 California Plumbing Code; and the 2022 California Residential Code and all Appendices related to these Codes. Adoption of these model codes by reference is authorized by Government Code Sections 50022.2 through 50022.4, and Section 6066.

State law requires that the City of National City adopt the same model codes as the State of California and limit technical amendments to those necessitated due to local topographical, geographical or climatic conditions. Specific findings regarding local technical amendments must be made by the local jurisdiction and filed with the Department of Housing and Community Development. State law does not restrict local amendments to the administrative provisions of the codes. In order to simplify construction in National City, staff is recommending that the model codes be adopted with minimal revisions.

FINANCIAL STATEMENT:

Not applicable.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Housing and Community Development

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378;
PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.
Published in The Star News, on City Website and Posted on Bulletin Boards at City Hall.

ORDINANCE:

First Reading and Adoption

EXHIBITS:

- Exhibit A – Ordinance 2022 California Mechanical Code
- Exhibit B – Ordinance 2022 California Building Code
- Exhibit C – Ordinance 2022 California Electrical & 2020 National Electrical Code
- Exhibit D – Ordinance 2022 California Energy Code
- Exhibit E – Ordinance 2022 California Green Buildings Standards Code
- Exhibit F – Ordinance 2022 California Plumbing Code
- Exhibit G – Ordinance 2022 California Residential Code
- Exhibit H – Ordinance 2022 California Fire Code

ORDINANCE NO. 2023-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADOPTING THE 2022 CALIFORNIA MECHANICAL CODE, INCLUDING APPENDIX CHAPTERS A, B, C, D, E, F AND G, AMENDING CERTAIN SECTIONS OF THAT CODE, AND AMENDING CHAPTER 15.14 OF THE NATIONAL CITY MUNICIPAL CODE

The City Council of the City of National City does ordain as follows:

Section 1. The City Council of the City of National City adopts the 2022 California Mechanical Code, including Appendix Chapters A, B, C, D, E, F and G, except as amended in Chapter 15.14 of the National City Municipal Code.

Section 2. The City Council of the City of National City deletes, add, or modifies certain provisions of the 2022 California Mechanical Code.

Section 3. The City Council of the City of National City amends Chapter 15.14 of the National City Municipal Code to read as follows:

CHAPTER 15.14 CALIFORNIA MECHANICAL CODE

Sections:

- | | |
|-----------|--|
| 15.14.005 | 2022 California Mechanical Code - Adopted. |
| 15.14.015 | Chapter 1, Division II, "Administration" – Adopted and Amended. |
| 15.14.020 | Chapter 1, Division II, Section 103 "Powers and Duties of the Authority Having Jurisdiction," Subsection 103.4 "Right of entry" – Amended. |
| 15.14.025 | Chapter 1, Division II, Section 107 "Board of Appeals," Subsection 107.1 "General" – Amended. |
| 15.14.030 | Chapter 1, Division II, Section 106 "Violations and Penalties," Subsection 106.1 "General" – Amended. |
| 15.14.035 | Chapter 1, Division II, Section 104 "Permits," Subsection 104.4.3 "Expiration" – Amended. |
| 15.14.040 | Chapter 1, Division II, Section 104 "Permits," Subsection 104.4.7 "Permit denial" – Added. |
| 15.14.045 | Chapter 1, Division II, Section 104.5 "Fees" – Amended. |
| 15.14.050 | Chapter 1, Division II, Table 104.5 "Mechanical permit fees" – Deleted. |
| 15.14.060 | Chapter 1, Division II, Section 104 "Permits," Subsection 104.3.2 "Plan review fees" – Amended. |

- 15.14.065 Chapter 1, Division II, Section 104.5 "Fees," Subsection 104.5.2 "Investigation Fees" — Amended.
- 15.14.070 Chapter 1, Division II, Section 105 "Inspections and Testing," Subsection 105.2.6 "Re-inspections" – Amended.
- 15.14.075 Appendix Chapters A, B, C, D, E, F and G – Adopted.

15.14.005 2022 California Mechanical Code – Adopted. The City Council adopts and incorporates herein as the National City Mechanical Code, for the purpose of prescribing in the City of National City, regulations governing the erection, installation, alteration, repair, relocation, replacement, addition to, use or maintenance of any heating, ventilating, cooling, refrigeration system, incineration or other miscellaneous heat producing appliance, in or on any building or structure or outdoors on any premises or property, the 2022 California Mechanical Code, including Appendix Chapters A, B, C, and D, California Code of Regulations Title 24, Part 4, except such portions as are deleted, added, or amended by this chapter. The City Council does specifically and expressly find and declare that the nature and uniqueness of the dry Southern California climate, and the geographical and topographical conditions in the City of National City, including the age and concentration of structures, and differences in elevation throughout the City, do reasonably necessitate and demand specific changes in and variations from the 2022 California Mechanical Code. Copies of all codes are filed in the office of the building official and are adopted and incorporated as if fully set out in this chapter, and the provisions thereof shall be controlling within the city limits.

15.14.015 Chapter 1, Division II, "Administration" – Adopted and Amended. Chapter 1, Division II "Administration," of the 2022 California Mechanical Code is adopted subject to the additions, amendments and deletions provided in this Chapter.

15.14.020 Chapter 1, Division II, Section 103 "Powers and Duties of the Authority Having Jurisdiction," Subsection 103.4 "Right of entry" – Amended. Section 103.4 of the 2022 California Mechanical Code is amended to read as follows:

103.4 *Right of entry.* When necessary to make inspections to enforce any provision of this code, or when the Building Official has reasonable cause to believe that there exists in any building or upon any premises a condition or code violation which makes such building or premises unsafe, dangerous or hazardous, the Building Official, or designee, may request entry as specified in Chapter 1.12 of the National City Municipal Code.

15.14.025 Chapter 1, Division II, Section 107 "Board of Appeals," Subsection 107.1 "General" – Amended. Section 107.1 of the 2022 California Mechanical Code is amended to read as follows:

107.1 *General.* In order to hear and decide appeals of orders, decisions, or determinations made by the Building Official relative to the application and interpretation of this code, the City Council shall appoint an ad hoc Board of Appeals consisting of three (3) members who are qualified by experience and training to pass upon matters pertaining to mechanical system design, construction, and maintenance and the public health aspects of mechanical systems and who are not employees of the City. Board members shall serve at the pleasure of the City Council. The Board shall comply with Rosenberg's Rules of Order in conducting their business and shall render written decisions and findings to the appellant with a copy to the Building Official. The Building Official shall take immediate action in

accordance with the decision of the Board, unless such decision is appealed to the City Council. Decisions of the Board may be appealed to the City Council by the appellant or by the Building Official within thirty (30) days of the decision of the Board, by the filing of a written notice of appeal with the Director of Community Development stating the reasons for the appeal. The appellant and the opposing party shall be given at least ten (10) days' notice of the time and place of the hearing on the appeal.

15.14.030 Chapter 1, Division II, Section 106 "Violations and Penalties," Subsection 106.1 "Violations" - Amended. Section 106.1 of the 2022 California Mechanical Code is amended to read as follows:

106.1 General. Violations of any provision of this code shall be punishable as a misdemeanor and shall carry the penalties as prescribed in Chapter 1.20 of the National City Municipal Code.

15.14.035 Chapter 1, Division II, Section 104 "Permits," Subsection 104.3 "Expiration" - Amended. Section 104.3 of the 2022 California Mechanical Code is amended to read as follows:

104.4.3 Expiration. Every permit issued by the Building Official under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within twelve calendar months from the date of such permit, or if the building or work authorized by such permit is stopped at any time after work has commenced for a period of six calendar months, or if the building or work authorized by such permit exceeds three calendar years from the issuance date of the permit. Work shall be presumed to have commenced if the permittee has obtained a required inspection approval of work authorized by the permit by the Building Official within twelve calendar months of the date of permit issuance.

Work shall be presumed to be stopped if the permittee has not obtained a required inspection approval of work by the Building Official within each six months period upon commencement of work authorized by such permit.

Before such work can be recommenced, a new permit or renewal permit is obtained, as specified below, shall first be obtained.

1. Permits where work was not commenced. For permits for which work has not commenced in the first twelve calendar months from the date of issuance, a renewal permit may be obtained provided that:
 - A. No changes have been made or will be made in the original plans and specifications for such work;
 - B. The expiration has not exceeded three years from the original issuance date;
 - C. The same edition of the adopted codes is in effect as used in the initial plan check;

- D. A fee equal to one-half the amount required for a new permit is paid, and
- E. The renewal permit shall expire three calendar years from the date of the initial permit issuance.

Where later editions of the California codes have been adopted than used in the initial plan check, such applications for renewal shall be considered as a new plan check submittal. Accordingly, plans shall reflect the requirements of the current codes in effect, a full new plan check is required, and a full new plan check fee shall be paid. Upon completion of the new plan check, the permit may be renewed upon payment of a permit fee equal to one-half the amount required for a new permit.

- 2. Permit where work was commenced. For permits where work was commenced and was subsequently stopped as defined herein, a renewal permit may be obtained provided that:
 - A. No changes have been made or will be made in the original plans and specifications for such work ;
 - B. The expiration has not exceeded three years from the original issuance date;
 - C. A fee equal to one-half the amount required for a new permit is paid, except that where construction has progressed to the point of requiring only a final inspection, a fee equal to one-quarter of the amount required for new permit shall be paid; and
 - D. A renewal permit shall expire three calendar years from the date of the initial permit issuance.
- 3. Permits that have exceeded three years. For permits that have exceeded three years beyond the issuance date, a renewed permit may be obtained, provided that:
 - A. Construction in reliance upon the building permit has been commenced and has been approved;
 - B. No changes have been made or will be made in the original plans and specifications for such work; and
 - C. A fee equal to the full amount required for a new permit is paid, except that where the Building Official determines that construction has progressed to the point that a lesser fee is warranted, such lesser fee shall be paid.

The maximum life of a permit renewal in accordance with sub-section 15.14.035.3 shall be one calendar year from the date of renewal. The permit may be renewed each calendar year thereafter provided that all requirements of Subsection A, B and C as stated in sub-section 15.14.035.3 are met.

- 4. Extension of an unexpired permit. For an extension of an unexpired permit, the permittee may apply for an extension of time within which work under that permit may be continued when for good and satisfactory reasons, as determined by the Building Official in his or

her sole discretion, the permittee is unable to continue work within the time required by section 15.14.035. The Building Official may extend the time for action by the permittee for a period not exceeding six calendar months beyond the expiration date in effect at the time of the extension application, upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action being taken.

5. Permits issued where the permittee has been deployed to a foreign country may be held in abeyance until six months after the return of the permittee from his/her deployment if necessary, upon application for such relief by the permittee.

15.14.040 Chapter 1. Division II. Section 104 "Permits." Subsection 104.4.7 "Permit denial" – Added. Section 104.4.7 of the 2019 California Mechanical Code is added to read as follows:

104.4.7 Permit denial. The Building Official may deny the issuance of a building permit on any property where there exists an unsafe or a substandard building as provided in Chapter 15.10 and 15.16 of the National City Municipal Code, or where there exists unlawful construction, or where there exists a violation of the National City Municipal Code.

15.14.045 Chapter 1. Division II, Section 104.5 "Fees" – Amended. Section 104.5 of the 2022 California Mechanical Code is amended as follows:

104.5 Fees. Fees shall be assessed in accordance with the current City of National City Fee Schedule.

15.14.050 Chapter 1. Division II, Table 104.5 "Mechanical permit fees" – Deleted. Table 104.5 of the 2022 California Mechanical Code, "Mechanical Permit Fees," is deleted.

15.14.060 Chapter 1, Division II. Section 104.0 "Permits." Subsection 104.3.2 "Plan review fees" – Amended. Section 104.3.2, of the 2022 California Mechanical Code is amended as follows:

Section 104.3.2 Plan review fees. When plans are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged in accordance with the current City of National City Fee Schedule.

15.14.065 Chapter 1, Division II. Section 104.5 "Fees," Subsection 104.5.2 "Investigation Fees" – Amended. Section 104.5.2 of the 2019 California Mechanical Code is amended to read as follows:

Section 104.5.2 Investigation Fees. Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to an administrative penalty equal to the inspection fee portion the permit fee that would be required by this code if a permit were to be issued. The administrative penalty is in addition

to a permit fee.

When a plan review is required for issuance of such permit, the plan review fee portion will not be subject to said penalty. The payment of such administrative penalty shall not exempt any person from compliance with all other provisions of this code or from any penalty prescribed by law.

15.14.070 Chapter 1, Division II, Section 105 "Inspections and Testing," Subsection 105.2.6 "Re-inspections" – Amended. Subsection 105.2.6 of the 2022 California Mechanical Code is amended to read as follows:

Section 105.2.6 Re-inspections. To obtain a re-inspection, the permittee shall pay the re-inspection fee in accordance with the current City of National City Fee Schedule. In instances where a re-inspection fee has been assessed, no further inspections shall be performed until the fees have been paid.

15.14.075 Appendix Chapters A, B, C, D, E, F and G – Adopted. Appendix Chapters A, B, C, D, E, F and G of the 2019 California Mechanical Code are adopted.

INTRODUCED at Regular Meeting of 7th day of February, 2023.

PASSED and ADOPTED this day of February, 2023.

Ron Morrison, Mayor

ATTEST:

Shelley Chapel, MMC
Interim City Clerk

APPROVED AS TO FORM:

Barry J. Schultz,
City Attorney

ORDINANCE NO. 2023-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADOPTING VOLUMES I AND II AND APPENDICES B, C, D, F, G, H, I, J, K, L, M, N AND O OF THE 2022 CALIFORNIA BUILDING CODE, AMENDING CERTAIN SECTIONS OF THAT CODE, AND AMENDING CHAPTER 15.08 OF THE NATIONAL CITY MUNICIPAL CODE

Section 1. The City Council of the City of National City hereby adopts Volumes I and 11, and Appendices B, C, D, F, G, H, I, J, K, L, M, N, AND O of the 2022 California Building Code, except as amended in Chapter 15.08 of the National City Municipal Code.

Section 2. The City Council of the City of National City consistent , with their findings adopted in 2013 under Ordinance No. 2013-2392 , which are incorporated herein by reference, hereby deletes, adds, or modifies certain provisions of the 2022 California Building Code based on local climatic , topographic , or geological conditions that justify deviating from that code.

Section 3. The City Council of the City of National City amends Chapter 15.08 of the National City Municipal Code to read as follows:

**CHAPTER 15.08
CALIFORNIA BUILDING CODE**

Sections:

- ~~15.08.010 — 2022 California Building Code - Adopted.~~
- ~~15.08.020 — Chapter 2, Definitions - Amended.~~
- ~~15.08.025 — Chapter 1, Division II, Section 104 "Duties and Powers of Building Official", Subsection 104.6 "Right of entry" - Amended.~~
- ~~15.08.030 — Chapter 1, Division II, Section 105 "Permits", Subsection 105.2 "Work exempt from permit - Building" - Amended .~~
- 15.08.040 Chapter 1, Division II, Section 105 "Permits", Subsection 105.5 "Expiration" - Amended.
- 15.08.045 Chapter 1, Division II, Section 105 "Permits", Subsection 105.7 "Placement of permit" - Amended.
- 15.08.050 Chapter 1, Division II, Section 105 "Permits", Subsection 105.8 "Permit denial" - Added.
Chapter 1, Division II, Section 109 "Fees", Subsection 109.2 "Schedule of permit fees" - Amended.
Chapter 1, Division II, Section 109 "Fees," Subsection 109.7 "Plan review fees" - Added.
- 15.08.060 Chapter 1, Division II, Section 109 "Fees", Subsection 109.4 "Work commencing before permit issuance" - Amended.
- 15.08.065 Chapter 1, Division II, Section 110 "Inspections", Subsection 110.3.8.1 "Re-inspections" - Added.
- 15.08.070 Chapter 1, Division 11, Section 111 "Certificate of Occupancy", Subsection 111.3 "Temporary occupancy" - Amended.
- 15.08 .075 Chapter 1, Division II, Section 113 "Board of Appeals ", Subsection 113.1 "General" - Amended.
- 15.08.080 Chapter 1, Division 11, Section 114 "Violations", Subsection 114.1 "Unlawful acts" - Amended.
- 15.08.085 Section 501 "General", Subsection 501.2 "Address identification" - Amended.
- 15.08.087 Survey required

- 15.08.090 Table 1505.1 "Minimum roof covering classification for types of construction" - Amended.
Chapter 18, Division II, Section 1803 "Geotechnical Investigations", Subsection 18.1.1.1 – Added.
Chapter 31, Division II, Section 3109 Swimming Pool Enclosures and Safety Devices, Subsection 3109.4.4.8 "Construction requirements for building a pool or spa" - Amended.
- 15.08.095 Appendix Chapters B, C, D, F, G, H, I, J, K, L, M, N, and O - Adopted.

15.08.010 2022 California Building Code - Adopted. The City Council adopts, for the purpose of prescribing regulations governing the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, use, height, area, fire resistance and maintenance of all buildings and/or structures, Volumes I and II of the 2022 California Building Code, including both Administration Divisions I and II, published in the California Building Standards Commission 2022 Edition, based on the International Building Code 2021 Edition, California Code of Regulations, Title 24, Part 2, Part 2.5 of Division 13 of the California Health and Safety Code beginning with section 18901, and Appendices B, C, D, F, G, H, I, J, K, L, M, N, and O, save and except such portions as are deleted, added, or modified. The City Council does specifically and expressly find and declare that the nature and uniqueness of the dry Southern California climate, and the geographical and topographical conditions in the City of National City, including the age and concentration of structures, and differences in elevation throughout the City, do reasonably necessitate and demand changes in and variations from the 2022 California Building Code. Copies of all the codes are filed in the office of the building official and are adopted and incorporated as fully set out in this chapter, and the provisions thereof shall be controlling within the city limits.

15.08.020 Chapter 2. Definitions - Amended. Section 202 "Building, Existing" of the 2022 California Building Code is amended by amending the following definition

202 Building, Existing. An "existing building" is a building erected prior to the adoption of the 2022 California Building Code, or one for which a legal building permit has been issued. If more than fifty-percent of a structural roof or more than fifty-percent of all exterior walls are removed as part of a project, the building is not an existing building.

15.08.025 Chapter 1. Division II, Section 104 "Duties and Powers of Building Official", Subsection 104.6 "Right of Entry" - Amended. Subsection 104.6 of the 2022 California Building Code is amended to read as follows:

104.6 Right of Entry. When necessary to make an inspection to enforce any of the provisions of this code, or when the Authority Having Jurisdiction has reasonable cause to believe that there exists a condition that makes such building or premises unsafe, dangerous or hazardous, the Authority Having Jurisdiction, or designee, may request entry as specified in Chapter 1.12 of the National City Municipal Code.

15.08.030 Chapter 1. Division II, Section 105 "Permits, "Subsection 105.2" Work Exempt from Permit - Building" - Amended. Subsection 105.2 Building: Item 4 of the 2022 California Building Code is amended to read as follows:

(Items 1 - 3 unchanged)

4. Permits for retaining walls shall be as specified in the National City Municipal Code, Chapter 15.70.

(Items 5 - 13 unchanged)

Subsection 105.2 "Work exempt from permit - Building" of the 2022 California Building Code is amended by adding the following Subsections 14 through 17:

14. Playground, gymnastic and similar equipment and structures used

for recreation and athletic activities accessory to Group R Division 3 structures.

15. Repairs to lawfully existing Group R Division 3 structures and Group U occupancy structures accessory to Group R Division 3 structures constructed pursuant to a building permit which involves only the replacement of component parts or existing work completed with similar materials only for the purpose of maintenance and do not affect any structural components or plumbing, mechanical or electrical installations. Repairs exempt from permit requirements shall not include any addition, change, or modification in construction, exit facilities or permanent fixtures or equipment. Specifically exempt from permit requirements are:

- 1) Painting and decorating including refinishing Exterior stucco finishes.
- 2) Of Installation of floor covering.
- 3) Cabinet Work
- 4) Outside paving on private property not within the public right-of-way.

16. Ground mounted satellite antennas not exceeding ten feet in diameter and roof mounted satellite antennas not exceeding eight feet in diameter.

17. Painted wall signs and Styrofoam or other foam mounted wall signs.

15.08.040 Chapter 1. Division II, Section 105 "Permits". Subsection 105.5 "Expiration" - Amended. Subsection 105.5 of the 2022 California Building Code is amended to read as follows:

105.5 Expiration. Every permit issued by the Authority Having Jurisdiction under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within twelve calendar months from the date of such permit, or if the building or work authorized by such permit is stopped at any time after the work is commenced for a period of six calendar months, or if the building or work authorized by such permit exceeds three calendar years from the issuance date of the permit. Work shall be presumed to have commenced if the permittee has obtained a required inspection approval of work authorized by the permit by the Authority Having Jurisdiction within six calendar months of the date of permit issuance.

Work shall be presumed to be stopped if the permittee has not obtained a required inspection approval of work by the Authority Having Jurisdiction ion within each six-month period upon the initial commencement of work authorized by such permit.

Before such work can be recommenced, a new permit, or a renewal permit as specified below, shall be first obtained.

1. Permits where work has not commenced. For permits for which work has not commenced in the first twelve calendar months from the date of issuance, a renewal permit may be obtained provided that:

- A. No changes have been made or will be made in the original plans and specifications for such work;
- B. The expiration has not exceeded three years from the original issuance date;
- C. The same edition of the California codes is in effect as used in the initial plan check;
- D. A fee equal to one-half the amount required for a new permit is paid; and
- E. The renewal permit shall expire three calendar years

from the date of initial permit issuance.

Where later editions of the California codes have been adopted than used in the initial plan check, such applications for renewal shall be considered as a new plan check submittal. Accordingly, plans shall reflect the requirements of the current codes in effect, a full new plan check is required, and a full new plan check fee shall be paid. Upon completion of a new plan check, the permit may be renewed upon payment of a permit fee equal to one-half the amount required for a new permit.

1. Permits where work has commenced. For permits where work has commenced and was subsequently stopped as defined herein, a renewal permit may be obtained provided that:

A. No changes have been made or will be made in the original plans and specifications for such work;

B. The expiration has not exceeded three years from the original issuance date;

C. A fee equal to one-half the amount required for a new permit is paid, except that where construction has progressed and has been approved to the point of requiring only a final inspection, a fee equal to one quarter the amount required for a new permit shall be paid; and

D. A renewal permit shall expire three calendar years from the date of initial permit issuance.

2. Permits that have exceeded three years. For permits that have exceeded three years beyond the issuance date, a renewal permit may be obtained provided that:

A. Construction in reliance upon the building permit has commenced and has been approved;

B. No changes have been made or will be made in the original plans and specifications for such work; and

C. A fee equal to the full amount required for a new permit is paid except that where the Authority Having Jurisdiction determines that construction has progressed to the point that a lesser fee is warranted, such lesser fee shall be paid.

The maximum life of a permit renewal in accordance with subsection 15.08.040(3) shall be one calendar year from the date of renewal. The permit may be renewed for each calendar year thereafter provided that all requirements of Subsections A, B, and C, as stated in subsection 15.08.040(3), are met.

3. Extension of an unexpired permit. For an extension of an unexpired permit, the permittee may apply for an extension of the time within which work under that permit may be continued when, for good and satisfactory reasons as determined by the Authority Having Jurisdiction in his or her sole discretion, the permittee is unable to continue work within the time required by section 15.08.040. The Authority Having Jurisdiction may extend the time for action by the permittee for a period not exceeding six calendar months beyond the expiration date in effect at the time of the extension application, upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken.

Permits issued where the permittee has been deployed to a foreign country, may be held in abeyance until six months after the return of the permittee from his/her deployment if necessary, upon application for such relief by the permittee.

15.08.045 Chapter 1, Division II, Section 105 "Permits", Subsection 105.7 "Placement of Permit" - Amended. Subsection 105.7 of the 2022 California Building Code is amended to read as follows:

105.7 Placement of Permit. The building permit or a copy, the inspection record, and the approved plans shall all be kept on site until the completion of the project. The inspection record is to be kept on the job unless removed by the building official.

15.08.050 Chapter 1, Division II, Section 105 "Permits", Subsection 105.8 "Permit Denial" - Added. Subsection 105.8 is added to the 2022 California Building Code to read as follows:

105.8 Permit Denial. The Authority having jurisdiction may deny the issuance of a building permit on any property where there exists an unsafe or a substandard building as provided in Chapter 15.10 and 15.16 of the National City Municipal Code, or where there exists unlawful construction, or where there exists a violation of the National City Municipal Code.

15.8.55 Chapter 1, Division II, Section 109 "Fees", Subsection 109.2 "Schedule of Permit Fees" - Amended. Subsection 109.2 of the 2022 California Building Code is amended to read as follows:

109.2 Schedule of Permit Fees. Permit fees, including plan review fees, shall be assessed in accordance with the current City of National City Fee Schedule.

15.8.55 Chapter 1, Division II, Section 109 "Fees." Subsection 109.7 "Plan Review Fees" - Added. Subsection 109.7 is added to the 2022 California Building Code to read as follows

109.7 Plan Review Fees. When plans are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged in accordance with the current City of National City Fee Schedule.

15.08.060 Chapter 1, Division II, Section 109 "Fees", Subsection 109.4 "Work commencing before permit issuance" - Amended. Subsection 109.4 of the 2022 California Building Code is amended to read as follows:

109.4 Work Commencing before permit issuance. Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to an administrative penalty equal to the inspection fee portion the permit fee that would be required by this code if a permit were to be issued. The administrative penalty is in addition to a permit fee.

When a plan review is required for issuance of such permit, the plan review fee portion will not be subject to said penalty. The payment of such administrative penalty shall not exempt any person from compliance with all other provisions of this code or from any penalty prescribed by law.

15.08.065 Chapter 1, Division II, Section 110 "Inspections". Subsection 110.3.8.1 "Re-inspections" - Added. Subsection 110.3.8.1 is added to the 2022 California Building Code to read as follows:

110.3.8.1 Re-inspections. A re-inspection fee may be assessed for each inspection or re-inspection when any of the following occurs:

1. The portion of work for which the inspection was called is not complete or the corrections previously required and called for are not made;
2. Calling for an inspection before the job is ready for such inspection or re-inspection;
3. The inspection record card or the approved plans are not posted or otherwise available to the inspector;
4. Failure to provide access on the date for which the inspection is requested; or
5. Deviating from the approved plans when such deviation or change required approval of the building official.

To obtain a re-inspection, the permittee shall file an application in writing on a form provided for that purpose and pay the re-inspection fee in accordance with the current City of National City Fee Schedule. In instances where a re-inspection fee has been assessed, no further inspections shall be performed until the fees have been paid.

15.08.070 Chapter 1. Division II, Section 111 "Certificate of Occupancy", Subsection 111.3 "Temporary Occupancy"- Amended. Subsection 111.3 of the 2022 California Building Code is amended to read as follows:

111.3 Temporary Certificate of Occupancy. Where a project or a major portion thereof is substantially complete and can be safely occupied, but practical difficulties delay completion of work , the building official may issue a Temporary Certificate of Occupancy for the use of a portion or portions of the building or structure prior to the completion of the entire project.

Prior to issuance of a Temporary Certificate of Occupancy, the premises shall be inspected by all affected city departments who shall prepare a list of work required to be completed and shall forward the list along with a recommendation for approval or disapproval of the issuance of a Temporary Certificate of Occupancy to the building official.

Upon receipt of a recommendation for approval from all affected City departments, the building official may prepare a Temporary Certificate of Occupancy granting temporary occupancy that shall include the following:

1. Work yet to be completed;
 2. Maximum time allotted for completion of said work;
1. Property owner's signature and the signature of the contractor agreeing to complete the work within the prescribed time or vacate the premises upon order of the building official until such work is completed;
 2. Evidence that a faithful performance bond has been posted if required by any affected city department; and
 3. A copy of the Temporary Certificate of Occupancy granting temporary occupancy shall be provided to all affected city departments.

15.08.075 Chapter 1. Division II, Section 113 "Means of Appeals ", Subsection 113.1 "General" - Amended. Subsection 113.1 of the 2022 California Building Code is amended to read as follows:

113.1 Means of Appeals. In order to hear and decide appeals of orders, decisions, or determinations of the Building Official relative to the application and interpretation of this code, the City Council shall appoint an ad hoc Board of Appeals comprised of three (3) members who are qualified by experience and

training to pass upon matters pertaining to building construction and who are not employees of the City. Board members shall serve at the pleasure of the City Council. The board shall comply with Rosenberg's Rules of Order in conducting their business, and shall render written decisions and findings to the appellant with a copy to the Building Official. Decisions of the Board may be appealed to the City Council by the appellant or by the Building Official within thirty (30) days of the decision of the Board, by the filing of a written notice of appeal with the Director of Community Development stating the reasons for the appeal. The person filing the appeal and the opposing party shall be given at least ten (10) days' written notice of the time and place of the hearing on the appeal.

15.08.080 Chapter 1, Division II, Section 114 "Violations ", Subsection 114.1 "Unlawful acts" – Amended. Subsection 114.1 of the 2022 California Building Code is amended to read as follows:

114.1 Unlawful Acts. It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this code.

Violation of any provision of this code shall be punishable as a misdemeanor and shall carry the penalties as prescribed in Chapter 1.20 of the National City Municipal Code.

15.08.085 Section 501 "General", Subsection 501.2 "Address identification" - Amended. Subsection 501.2 of the 2022 California Building Code is amended to read as follows:

501.2 Address identification. Every principal building or structure within the incorporated limits of the City of National City shall be identified by a designated street number as issued by the Engineering Department.

Approved numbers or addresses shall be placed on all new and existing buildings, adjacent to the principal entrance to the premises or at a point that is highly visible and legible from the street. If necessary, directional signs shall be posted showing proper access to the given address from a point where the Fire Department access roadway leaves the dedicated street, to the entrance of each addressed building. All such numbers shall be Arabic numerals or alphabetical letters and shall be a minimum of 4 inches (102mm) high with a minimum stroke width of 0.5 inches (12.7mm), and shall be placed on a contrasting background.

15.08.087 Survey required.

When any proposed building will be constructed up to the minimum front, side, or rear yard setback, and no monuments exist, a survey from a State of California licensed surveyor shall be required as part of the plan review submittal.

15.08.090 Table 1505.1 "Minimum roof covering classification for types of construction" - Amended. Table 1505.1 of the 2022 California Building Code is amended to read as follows:

Due to climatic and geographical conditions within the City of National City, Table 1505.1 is amended as follows:

Table 1505.1
Minimum Roof Covering
Classification for Types of Construction

IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
B	B	B	B	B	B	B	B	B

15.8.92 Chapter 18, Division II, Section 1803 "Geotechnical Investigations", Subsection 1803.1.1.1 - Added. Subsection 1803.1.1.1 is added to the 2022 California Building Code to read as follows:

1803.1.1.1 A geotechnical investigation shall be submitted with each application for a building permit for a new building or addition 500 square feet and larger. The investigation and report shall comply with the requirements of Section 1803.

15.8.93 Chapter 31, Division II, Section 3109 "Swimming Pools, Spas, and Hot Tubs," Subsection 3109.1 "Construction requirements for building a pool or spa" - Amended. Subsection 3109.1 of the 2022 California Building Code is amended to read as follows:

3109.1 Construction requirements for building a pool or spa. Whenever any building permit is issued and there is an existing swimming pool, toddler pool or spa, the permit shall require that the suction outlet of the existing swimming pool, toddler pool or spa be updated so as to be equipped with an anti-entrapment cover meeting current standards of the American Society for Testing and Materials (ASTM) or the American Society of Mechanical Engineers (ASME).

15.08.095 Appendix Chapters B, C, D, F, G, H, I, J, K, L, M, N and O - Adopted. Appendix Chapters B, C, D, F, G, H, I, J, K, L, M, N and O of the 2019 California Building Code are adopted.

INTRODUCED Regular Meeting of the 7th day of February, 2023.

PASSED and ADOPTED this day of February, 2023.

Ron Morrison, Mayor

ATTEST:

Shelley Chapel, MMC
Interim City Clerk

APPROVED AS TO FORM:

Barry J. Schultz,
City Attorney

ORDINANCE NO. 2023-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADOPTING THE 2022 CALIFORNIA ELECTRICAL CODE, INCLUDING ANNEX H, AND THE 2020 ELECTRICAL CODE, AND AMENDING CERTAIN SECTIONS OF THOSE CODES, AND AMENDING CHAPTER 15.24 OF THE NATIONAL CITY MUNICIPAL CODE.

The City Council of the City of National City does ordain as follows:

Section 1. The City Council of the City of National City adopts the 2022 California Electrical Code, Annex H of the 2022 California Electric Code, California Code of Regulations, Title 24, Part 3, including all Annexes, and the 2020 National Electrical Code except as amended in Chapter 15.24 of the National City Municipal Code.

Section 2. The City Council of the City of National City deletes, adds, or modifies certain provisions of the 2022 California Electrical Code and Annex H of the 2022 California Building Code, consistent with their findings adopted in 2013 under Ordinance No. 2013-2386, which findings are incorporated herein by reference.

Section 3. The City Council of the City of National City amends Chapter 15.24 of the National City Municipal Code to read as follows:

CHAPTER 15.24 CALIFORNIA ELECTRICAL CODE

Sections:

- 15.24.005 2019 California Electrical Code, Annex H of the 2022 California Electrical Code and the 2020 National Electrical Code – Adopted and amended.
- 15.24.010 Annex H, Administration and enforcement - Adopted and amended.
- 15.24.015 Annex H, Section 80.13 "Authority", Subsection 80.13(7) "Right of entry" - Amended.
- 15.24.020 Annex H, Section 80.13 "Authority", Subsection 80.13(17) "Electric Fences Prohibited" - Added.
- 15.24.025 Annex H, Section 80.19 "Permits and Approvals", Subsection 80.19(0) "Annual permits" - Deleted.
- 15.24.030 Annex H, Section 80.19 "Permits and Approvals", Subsection 80.19(E) "Fees" - Amended.
- 15.24.035 Annex H, Section 80.23 "Notice of Violations, Penalties," Subsection 80.23(8)(4) "Work commencing before permit issuance" – Added.
- 15.24.040 Annex H, Section 80.19 "Permits and Approvals", Subsection 80.19(F) "Inspection and approvals" - Amended.
- 15.24.045 Annex H, Section 80.19 "Permits and Approvals", Subsection 80.19(H) "Applications and extensions" - Amended.

- 15.24.050 Annex H, Section 80.19 "Permits and Approvals", Subsection 80.19(1) "Permit denial" – Added.
- 15.24.055 Annex H, Section 80.23 "Notice of violations, penalties" - Amended.
- 15.24.060 Annex H, Section 80.25 "Connection to electrical supply", Subsection 80.25(C) "Notification" - Deleted.
- 15.24.065 Annex H, Section 80.27 "Inspector's qualifications" - Deleted.
- 15.24.070 Annex H, Section 80.29 "Liability for damages" - Deleted.
- 15.24.075 Annex G, "Supervisory Control and Data Acquisition (SCADA)" - Deleted.
- 15.24.080 Article 89 "General Code Provisions", Subsection 89.108.8 "Appeals Board" - Amended.

15.24.005 2019 California Electrical Code, Annex H of the 2019 California Electrical Code and the 2017 National Electrical Code – Adopted and amended. The City Council adopts 2022 California Electrical Code, Annex H of the 2022 California Electric Code, California Code of Regulations, Title 24, Part 3, including all Annexes, and the 2020 National Electrical Code, for the purpose of prescribing in the City of National City, regulations governing the inspection of installations, investigation of fires caused by electrical installations, the review of construction plans, drawings, and specifications for electrical systems, the design, alteration, modification, construction, maintenance, and testing of electrical systems and equipment, the regulation and control of electrical installations at special events including but not limited to exhibits trade shows, amusement parks, and other similar special occupancies, in or on any building or structure, or outdoors on any premises or property. The City Council amends, deletes, or adds certain sections of the 2022 Electrical Code, Annex H of the 2022 Electrical Code, and the 2020 National Electrical Code, based on local climatic, topographic or geological conditions that justify deviating from said Codes. The City Council does specifically and expressly find and declare that the nature and uniqueness of the dry Southern California climate, and the geological and topographical conditions in the City of National City, including the age and concentration of structures, and the differences in elevation throughout the City, do reasonably necessitate and demand changes in and variations from the 2022 California Electrical Code. Copies of these codes are filed in the office of the building official, and are adopted and incorporated as if fully set out in this chapter, and the provisions thereof shall be controlling within the city limits.

15.24.010 Annex H. Administration and enforcement – Adopted and amended. ANNEX H to the 2022 California Electrical Code entitled "Administration and Enforcement", is adopted subject to the following additions, amendments and deletions contained in this chapter.

15.24.015 Annex H, Section 80.13 "Authority", Subsection 80.13(7) "Right of entry" – Amended. Section 80.13(7) of Annex H of the 2022 California Electrical Code is amended to read as follows:

80.13(7) *Right of entry.* When necessary to make inspections to enforce any provision of this code, or when the Building Official has reasonable cause to believe that there exists in any building or upon any premises a condition or code violation which makes such building or premises unsafe, dangerous or hazardous, the Building Official, or designee, may request entry as specified in Chapter 1.12 of the National City Municipal Code.

15.24.020 Annex H, Section 80.13 "Authority", Subsection 80.13(17) "Electric Fences Prohibited" – Added. Section 80.13 (17) is added to Annex H of the 2022 California Electrical Code as follows:

80.13(17) *Electrical Fences Prohibited.* No electrical fence should be constructed maintained or operated within the City of National City. Electric fences as used herein, include all fences which in any way use electrical energy as an additional deterrent or have wires charged

with electricity which are not covered with adequate insulation to protect persons and animals coming in contact therewith.

15.24.025 Annex H, Section 80.19 "Permits and Approvals". Subsection 80.19(0) "Annual Permits" - Deleted. Section 80.19(0) of Annex H of the 2022 California Electrical Code is deleted.

15.24.030 Annex H, Section 80.19 "Permits and Approvals", Subsection 80.19(E) "Fees" - Amended. Section 80.19(E) of Annex H of the 2022 California Electrical Code is amended to read as follows:

80.19(E) Fees. Fees shall be assessed in accordance with the current City of National City Fee Schedule.

15.24.035 Annex H, Section 80.23 "Notice of Violations, Penalties," Subsection 80.23(8)(4) "Work commencing before permit issuance" - Added. Subsection 80.23(8)(4) is added to Annex H of the 2022 California Electrical Code as follows:

80.23(8)(4) Work commencing before permit issuance. Any person who commences any work on a building-structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to an administrative penalty equal to the inspection fee portion the permit fee that would be required by this code if a permit were to be issued. The administrative penalty is in addition to a permit fee.

When a plan review is required for issuance of such permit, the plan review fee portion will not be subject to said penalty. The payment of such administrative penalty shall not exempt any person from compliance with all other provisions of this code or from any penalty prescribed by law.

15.24.040 Annex H, Section 80.19 "Permits and Approvals". Subsection 80.19(F) "Inspection and approvals" - Amended. Section 80.19(F) of Annex H of the 2022 California Electrical Code is amended to read as follows:

80.19(F) Inspection and approvals

- 1) All electrical systems and equipment for which a permit is required by this code shall be subject to inspection by the Building Official, and the electrical system shall remain accessible and exposed for inspection purposes until approved by the Building Official.

It shall be the duty of the permittee to cause the electrical system to remain accessible and exposed for inspection purposes. Neither the Building Official, nor the City of National City shall be liable for the expense entailed in the removal or replacement of any material required to permit inspection. When the installation of an electrical system and equipment is complete, an additional and final inspection shall be made. Electrical systems and equipment regulated by this code shall not be connected to the energy source until authorized by the Building Official.

Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other

ordinances of the City of National City. Inspections presuming to give authority to violate or cancel provisions of this code or other ordinances of the City of National City shall not be valid.

- 2) Inspection requests. It shall be of the duty of the permittee to notify the Building Official that such work is ready for inspection. The Building Official may require that every request for inspection be filed at least one working day before such inspection is desired. Such request may be in writing or by telephone at the option of the Building Official.

It shall be the duty of the permittee to provide access to and means for inspection of such work.

- 3) Operation of Electrical Equipment. The requirements of section 15.24.040 shall not be construed to prohibit the operation of any electrical system or equipment installed to replace existing equipment. The request for inspection of such equipment must have been with the Building Official not more than forty-eight hours after such replacement work is completed and before any portion of such electrical system is concealed by any permanent portion of the building.
- 4) Re-inspections. A re-inspection fee may be assessed for each inspection or re-inspection when any of the following occurs:
 - A. The portion of the work for which the inspection was called is not complete or the corrections previously required are not made;
 - B. Calling for an inspection before the job is ready for such inspection or re-inspection;
 - C. The inspection record card or the approved plans are not posted or otherwise available to the inspector;
 - D. Failure to provide access on the date for which the inspection is requested; or
 - E. Deviating from the approved plans when such deviation or change required approval of the Building Official.

To obtain a re-inspection, the permittee shall file an application in writing on a form provided for that purpose and pay the re-inspection fee in accordance with the current City of National City Fee Schedule. In instances where re-inspection fees have been assessed, no further inspections shall be performed until the fees have been paid.

15.24.45 Annex H, Section 80.19 "Permits and Approvals". Subsection 80.19(H) "Applications and extensions"– Amended. Section 80.19(H) of Annex H of the 2019 California Electrical Code is amended to read as follows:

80.19(H) Application and Extensions. Every permit issued by the Building Official under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within twelve calendar months from the date of such permit, or if the building or work authorized by such permit is stopped at any time after the work is

commenced for a period of six calendar months, or if the building or work authorized by such permit exceeds three calendar years from the issuance date of the permit. Work shall be presumed to have commenced if the permittee has obtained a required inspection approval of work authorized by the permit by the Building Official within twelve calendar months of the date of permit issuance.

Work shall be presumed to be stopped if the permittee has not obtained a required inspection approval of work by the Building Official within each six month period upon the initial commencement of work authorized by such permit.

Before such work can be recommenced, a new permit, or a renewal permit as specified below, shall be first obtained.

1. Permits where work has not commenced. For permits for which work has not commenced in the first twelve calendar months from the date of issuance, a renewal permit may be obtained provided that:

- A. No changes have been made or will be made in the original plans and specifications for such work;
- B. The expiration has not exceeded three years from the original issuance date;
- C. The same edition of the California codes is in effect as used in the initial plan check;
- D. A fee equal to one-half the amount required for a new permit is paid; and
- E. The renewal permit shall expire three calendar years from the date of initial permit issuance.

Where later editions of the California codes have been adopted than used in the initial plan check, such applications for renewal shall be considered as a new plan check submittal. Accordingly, plans shall reflect the requirements of the current codes in effect, a full new plan check is required, and a full new plan check fee shall be paid. Upon completion of a new plan check, the permit may be renewed upon payment of a permit fee equal to one-half the amount required for a new permit.

2. Permits where work has commenced. For permits where work has commenced and was subsequently stopped as defined herein, a renewal permit may be obtained provided that:

- A. No changes have been made or will be made in the original plans and specifications for such work;
- B. The expiration has not exceeded three years from the original issuance date;
- C. A fee equal to one-half the amount required for a new permit is paid, except that where construction has progressed and has been approved to the point of requiring only a final inspection, a fee equal to one quarter the amount required for a new permit shall be paid; and
- D. A renewal permit shall expire three calendar years from the date of initial permit issuance.

3. Permits that have exceeded three years. For permits that have exceeded three years beyond the issuance date, a renewed permit may be obtained provided that:

A. Construction in reliance upon the building permit has commenced and has been approved;

B. No changes have been made or will be made in the original plans and specifications for such work;

C. A fee equal to the full amount required for a new permit is paid except that here the Building Official determines that construction has progressed to the point that a lesser fee is warranted, such lesser fee shall be paid.

The maximum life of a permit renewal in accordance with subsection 15.24.045.3 shall be one calendar year from the date of renewal. The permit may be renewed for each calendar year thereafter provided that all requirements of Subsections A, B and C as stated in subsection 15.24.045.3 are met.

4. Extension of an unexpired permit. For an extension of an unexpired permit, the permittee may apply for an extension of the time within which work under that permit may be continued when for good and satisfactory reasons as determined by the Building Official in his or her sole discretion, the permittee is unable to continue work within the time required by section 15.24.045. The Building Official may extend the time for action by the permittee for a period not exceeding six calendar months beyond the expiration date in effect at the time of the extension application, upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken.

5. Permits issued where the permittee has been deployed to a foreign country, may be held in abeyance until six months after the return of the permittee from his/her deployment if necessary, upon application for such relief by the permittee.

15.24.050 Annex H. Section 80.19 "Permits and Approvals", Subsection 80.19(1) "Permit denial" – Added. Subsection 80.19(1) is added to Annex H of the 2022 California Electrical Code to read as follows:

80.19(1) *Permit Denial.* The Building Official may deny the issuance of a building permit on any property where there exists an unsafe or substandard building as provided in Chapter 15.10 and 15.16 of the National City Municipal Code, or where there exists unlawful construction or a violation of the National City Municipal Code.

15.24.055 Annex H. Section 80.23 "Notice of violations, penalties" – Amended. Section 80.23 of Annex H of the 2022 California Electrical Code is amended to read as follows:

80.23 Violations, Penalties. It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this code.

Violations of any provisions of this code may be punishable as a misdemeanor and shall carry the penalties as prescribed in Chapter 1.20 of the National City Municipal Code.

15.24.060 Annex H. Section 80.25 "Connection to electrical supply", Subsection 80.25(C) "Notification ion" – Deleted. Subsection 80.25(C) of Annex H of the 2019 California Electrical Code is deleted.

15.24.065 Annex H. Section 80.27 "Inspector's qualifications" – Deleted. Section 80.27 of Annex H of the 2019 California Electrical Code is deleted.

15.24.070 Annex H. Section 80.29 "Liability for damages" – Deleted. Section 80.29 of Annex H of the 2019 California Electrical Code is deleted.

15.24.075 Annex G. Supervisory Control and Data Acquisition (SCADA) – Deleted. Annex G of the 2019 California Electrical Code is deleted.

15.24.080 Article 89 "General Code Provisions". Subsection 89.108.8 "Appeals Board" – Amended. Subsection 89.108.8 of Article 89 the 2022 California Electrical Code is amended to read as follows:

Section 107.1. Board of Appeals. In order to hear and decide appeals of orders, decisions, or determinations of the Building Official relative to the application and interpretation of this code, the City Council shall appoint an ad hoc Board of Appeals comprised of three (3) members who are qualified by experience and training to pass upon matters pertaining to building codes, regulations, and ordinances, and who are not employees of the City. Board members shall serve at the pleasure of the City Council. The Board shall comply with Rosenberg's Rules of Order in conducting their business, and shall render written decisions and findings to the appellant with a copy to the Building Official. Decisions of the Board may be appealed to the City Council by the appellant or by the Building Official within thirty (30) days of the Decision of the Board by filing of a written notice of appeal with the Director of Community Development stating the reasons for the appeal. The person filing the appeals and the opposing party shall be given at least ten days' written notice of the time and place of the hearing on the appeal.

INTRODUCED at Regular Meeting of 7th day of February, 2023.

PASSED and ADOPTED this day of February, 2023.

Ron Morrison, Mayor

ATTEST:

Shelley Chapel, MMC
Interim City Clerk

APPROVED AS TO FORM:

Barry J. Schultz,
City Attorney

ORDINANCE NO. 2023-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADOPTING THE 2022 CALIFORNIA ENERGY CODE, AND AMENDING SECTION 15.75.010 OF THE NATIONAL CITY MUNICIPAL CODE

The City Council of the City of National City does ordain as follows:

Section 1. The City Council of the City of National City hereby adopts the 2022 California Energy Code, California Code of Regulations, Title 24, Part 6, establishing regulations for the installation, maintenance, and alteration of energy systems within the city.

Section 2. The City Council of the City of National City amends Section 15.75.010 of the National City Municipal Code to read as follows:

15.75 .010 - 2022 California Energy Code - Adopted. The City Council adopts and incorporates herein, for the purpose of prescribing regulations for the conservation of energy, the, 2022 California Energy Code, California Code of Regulations, Title 24, Part. 6. Except as otherwise provided by this chapter, all construction of buildings where energy will be utilized shall be in conformance with the 2022 California Energy Code.

INTRODUCED at Regular Meeting of the 7th of February, 2023.

PASSED and ADOPTED this day of February, 2023.

ATTEST:

Ron Morrison,
Mayor

Shelley Chapel,
Interim City Clerk

APPROVED AS TO FORM:

Barry J. Schultz,
City Attorney

ORDINANCE NO. 2023-

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY
ADOPTING THE 2022 CALIFORNIA GREEN BUILDING STANDARDS CODE, AND
AMENDING SECTION 15.78.010 OF THE NATIONAL CITY MUNICIPAL CODE**

The City Council of the City of National City does ordain as follows:

Section 1. The City Council of the City of National City hereby adopts the 2022 California Green Building Standards Code, California Code of Regulations Title 24, Part 11, establishing regulations to enhance building design and construction within the city.

Section 2. The City Council of the City of National City amends Section 15.78.010 of the National City Municipal Code to read as follows:

15.78.010 2022 California Green Building Standards Code – Adopted. The City Council adopts and incorporates herein for the purpose of prescribing regulations for the reduction of negative impacts or increasing positive environmental impacts and encouraging sustainable construction practices, the 2022 California Green Building Standards Code, California Code of Regulations Title 24, Part 11. All construction of buildings shall be in conformance with the 2022 California Green Building Standards Code, except as otherwise provided by this chapter.

INTRODUCED at Regular Meeting of 7th day of February, 2023.

PASSED and ADOPTED this day of February, 2023

Ron Morrison,
Mayor

ATTEST:

Shelley Chapel, MMC
Interim City Clerk

APPROVED AS TO FORM:

Barry J. Schultz,
City Attorney

ORDINANCE NO. 2023-

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY
ADOPTING THE 2022 CALIFORNIA PLUMBING CODE AND TABLE 2902.1 OF THE
2022 CALIFORNIA BUILDING CODE, AMENDING CERTAIN SECTIONS OF THOSE
CODES, AND AMENDING CHAPTER 15.20 OF THE NATIONAL CITY MUNICIPAL
CODE**

The City Council of the City of National City does ordain as follows:

Section 1. The City Council of the City of National City adopts the 2022 California Plumbing Code and Table 2902.1 of the 2022 California Building Code, except as amended in Chapter 15.20 of the National City Municipal Code.

Section 2. The City Council of the City of National City deletes, adds, or modifies certain provisions of the 2019 California Plumbing Code and Table 2902.1 of the 2022 California Building Code.

Section 3. The City Council of the City of National City amends Chapter 15.20 of the National City Municipal Code to read as follows:

CHAPTER 15.20

CALIFORNIA PLUMBING CODE

Sections:

- 15.20.005 2022 California Plumbing Code - Adopted.
- 15.20.015 Chapter 1, Divisions I and II - Adopted and amended.
- 15.20.020 Chapter 1, Division II, Section 103 "Duties and Powers of the Authority Having Jurisdiction", Subsection 103.4 "Right of Entry" - Amended.
- 15.20.024 Chapter 1, Division II, Section 107 "Board of Appeals", Subsection 107.1 "General" - Amended.
- 15.20.025 Chapter 1, Division II, Section 102 "Organization and Enforcement", Subsection 102.5 "Penalties" - Amended.
- 15.20.027 Chapter 1, Division II, Section 104.5 "Fees", Subsection 104.5.1 "Work Commencing Before Permit Issuance" - Amended.
- 15.20.030 Chapter 1, Division II, Section 104 "Permits", Subsection 104.4.3 "Expiration" - Amended.
- 15.20.035 Chapter 1, Division II, Section 104 "Permits," Subsection 103.3.4 "Permit denial" - Added.
- 15.20.040 Chapter 1, Division II, Section 104 "Permits," Subsection 103.5 "Fees" - Amended.

- 15.20.042 Chapter 1, Division II, Section 104 "Permits," Subsection 104.6 "Placement of Permit – Added.
- 15.20.045 Chapter 1, Division II, Section 104 "Permits," Subsection 104.3.2 "Plan review fees" – Amended.
- 15.20.050 Chapter 1, Division II, Section 105 "Inspections and Testing." Subsection 105.2.6 "Re-inspection's" - Amended.
- 15.20.060 Chapter 1, Division II, Table 104.5 "Plumbing permits fees" – Deleted.
- 15.20.065 Chapter 1, Division II, Table 422.1 "Minimum plumbing facilities" - Deleted.
- 15.20.070 Table 2902.1 "Minimum number of required plumbing fixtures of the 2022 California Building Code" – Adopted.

15.20.005 2022 California Plumbing Code – Adopted. The City Council adopts, and incorporates herein as the city plumbing code, except as amended, deleted, or added by this chapter, for the purpose of prescribing in the City of National City, regulations governing the erection, installation, alteration, repair, relocation, replacement, addition to, use or maintenance of any plumbing, gas, or drainage piping and systems or water heating or treating equipment in or on any building or structure or outdoors on any premises or property, the 2022 California Plumbing Code, including Administration Divisions I and II, California Code of Regulations Title 24, Part 5, and Table 2902.1 of the 2022 California Building Code. The City Council does specifically find and declare that the nature and uniqueness of the dry Southern California climate, and the geographical and topographical conditions in the City of National City, including the age and concentration of structures, and differences in elevation throughout the City do reasonably necessitate and demand specific changes in and variations from the 2022-California Plumbing Code. Copy of all codes are filed in the office of the building official and are adopted and incorporated as if fully set forth in this chapter, and the provisions shall be controlling within the city limits.

15.20.015 Chapter 1. Divisions I and II – Adopted and Amended. Chapter 1, Division I, "Administration" is adopted. Chapter 1, Division 11, "Administration" is adopted, subject to the additions, amendments, and deletions contained in this chapter.

15.20.020 Chapter 1. Division II. Section 103 "Duties and Powers of the Authority Having Jurisdiction" Subsection 103.4 "Right of Entry" – Amended. Subsection 103.4 of the 2022 California Plumbing Code is amended to read as follows:

103.4 *Right of Entry.* When necessary to make an inspection to enforce any of the provisions of this code, or when the Building Official has reasonable cause to believe that there exists in any building or upon any premises a condition or code violation which make such building or premises unsafe, dangerous or hazardous, the Building Official, or designee, may request entry as specified in Chapter 1.12 of the National City Municipal Code.

15.20.24 Chapter 1, Division II, Section 107 "Board of Appeals, Subsection 107.1 "General" - Amended. Subsection 107.1 of the 2022 California Plumbing Code is amended to read as follows:

107.1 *General*. In order to hear and decide appeals of orders, decisions, or determinations of the Building Official relative to the application and interpretation of this code, the City Council shall appoint an ad hoc Board of Appeals comprised of three (3) of members who are qualified by experience and training to pass upon matters pertaining to plumbing design, construction, and maintenance, and the public health aspects of plumbing systems and who are not employees of the City. Board members shall serve at the pleasure of the City Council. The Board shall comply with Rosenberg's Rules of Order in conducting their business and shall render written decisions and findings to the appellant with a copy to the Building Official. Decisions of the Board may be appealable to the City Council by the appellant or by the Building Official within thirty (30) days of the decision of the Board, by the filing of a written notice of appeal with the Director of Community Development stating the reasons for the appeal. The person filing the appeal and the opposing party shall be given at least ten (10) days' written (?) notice of the time and place of the hearing on the appeal.

15.20.024 Chapter 1, Division II, Section 106 "Violations and Penalties" Subsection 106.3 "Penalties" - Amended. Subsection 106.3 of the 2022 California Plumbing Code is amended to read as follows:

106.3 *Penalties*. Violation of any provision of this code shall be punishable as a misdemeanor and shall carry the penalties as prescribed in Chapter 1.20 of the National City Municipal Code.

15.20.027 Chapter 1, Division II, Section 104.5 "Fees", Subsection 104.5.1 "Work Commencing Before Permit Issuance - Amended. Subsection 104.5.1 of the 2022 California Plumbing Code is amended to read as follows:

104.5.1 *Work Commencing Before Permit Issuance*. Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to an administrative penalty equal to the inspection fee portion the permit fee that would be required by this code if a permit were to be issued. The administrative penalty is in addition to a permit fee. When a plan review is required for issuance of such permit, the plan review fee portion will not be subject to said penalty. The payment of such administrative penalty shall not exempt any person from compliance with all other provisions of this code or from any penalty prescribed by law.

15.20.030 Chapter 1, Division II, Section 104 "Permits," Subsection 104.4.3. "Expiration" - Amended. Subsection 104.4.3 of the 2022 California Plumbing Code is amended to read as follows:

104.4.3 Expiration. Every permit issued by the Building Official under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within twelve calendar months from the date of such permit, or if the building or work authorized by such permit is stopped at any time after the work is commenced for a period of six calendar months, or if the building or work authorized by such permit exceeds three calendar years from the issuance date of the permit. Work shall be presumed to have commenced if the permittee has obtained a required inspection approval of work authorized by the permit by the Building Official within twelve calendar months of the date of permit issuance.

Work shall be presumed to be stopped if the permittee has not obtained a required inspection approval of work by the Building Official within each six-month period upon the initial commencement of work authorized by such permit.

Before such work can be recommenced, a new permit, or a renewal permit as specified below, shall be first obtained.

1. Permits where work has not commenced. For permits for which work has not commenced in the first six calendar months from the date of issuance, a renewal permit may be obtained provided that:

A. No changes have been made or will be made in the original plans and specifications for such work;

B. The expiration has not exceeded three years from the original issuance date;

C. The same edition of the California codes is in effect as used in the initial plan check;

D. A fee equal to one-half the amount required for a new permit is paid; and

E. The renewal permit shall expire three calendar years from the date of initial permit issuance.

Where later editions of the California codes have been adopted than used in the initial plan check, such applications for renewal shall be considered as a new plan check submittal. Accordingly, plans shall reflect the requirements of the current codes in effect, a full new plan check is required, and a full new plan check fee shall be paid. Upon completion of a new plan check, the permit may be renewed upon payment of a permit fee equal to one-half the amount required for a new permit.

2. Permits where work has commenced. For permits where work has commenced and was subsequently stopped as defined herein, a renewal permit may be obtained provided that:

A. No changes have been made or will be made in the original plans and specifications for such work;

B. The expiration has not exceeded three years from the original issuance date;

C. A fee equal to one-half the amount required for a new permit is paid, except that where construction has progressed and has been approved to the point of requiring only a final inspection, a fee equal to one quarter the amount required for a new permit shall be paid; and

D. A renewal permit shall expire three calendar years from the date of initial permit issuance.

3. Permits that have exceeded three years. For permits that have exceeded three years beyond the issuance date, a renewed permit may be obtained provided that:

A. Construction in reliance upon the building permit has commenced and has been approved;

B. No changes have been made or will be made in the original plans and specifications for such work;

C. A fee equal to the full amount required for a new permit is paid except that where the Building Official determines that construction has progressed to the point that a lesser fee is warranted, such lesser fee shall be paid.

The maximum life of a permit renewal in accordance with subsection 15.20.030.3 shall be one calendar year from the date of renewal. The permit may be renewed for each calendar year thereafter provided that all requirements of Subsections A, B, and C as stated in subsection 15.20.030.3 are met.

4. Extension of an unexpired permit. For an extension of an unexpired permit, the permittee may apply for an extension of the time within which work under that permit may be continued when for good and satisfactory reasons, as determined by the Building Official in his or her sole discretion, the permittee is unable to continue work within the time required by section 15.20.030. The Building Official may extend the time for action by the permittee for a period not exceeding six calendar months beyond the expiration date in effect at the time of the extension application, upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken.

5. Permits issued where the permittee has been deployed to a foreign country, may be held in abeyance until six months after the return of the permittee from his/her deployment, if necessary, upon application for such relief by the permittee.

15.20.035 Chapter 1. Division II, Section 104 "Permits". Subsection 104.3.4 "Permit denial"
- Added. Subsection 104.3.4 is added to the 2022 California Plumbing Code is to read as follows

104.3.4 *Permit Denial.* The Building Official may deny the issuance of a plumbing permit on any property where there exists an unsafe or a substandard building as provided in the Chapters 15.10 and 15.16 of the National City Municipal Code, or where there exists

unlawful construction, or where there exists a violation of the National City Municipal Code.

15.20.040 Chapter 1, Division II, Section 104 "Permits", Subsection 104.5 "Fees" - Amended. Subsection 104.5 of the 2022 California Plumbing Code is amended to read as follows: Section 104.5 Fees. Fees shall be assessed in accordance with the current City of National City Fee Schedule.

15.20.042 Chapter 1, Division II, Section 104 "Permits," Subsection 104.6 "Placement of Permit" - Added. Subsection 104.6 is added to the 2022 California Plumbing Code to read as follows:

The building permit or a copy, the inspection record, and the approved plans shall all be kept on site until the completion of the project. The inspection record is to be kept on the job unless removed by the building official.

15.20.045 Chapter 1, Division II, Section 104 "Permits", Subsection 104.3.2 "Plan review fees" – Amended. Subsection 104.3.2 of the 2022 California Plumbing Code is amended to read as follows:

104.3.2 Plan Review Fees. When a plan or other data are required to be submitted by 104.3.1, a plan review fee shall be paid at the time of submitting plans and specifications for review. The plan review fees for plumbing work shall be assessed in accordance with the current City of National City Fee Schedule. When plans are incomplete or changed so as to require an additional plan review fee, the fee shall be assessed in accordance with the current City of National City Fee Schedule.

15.20.050 Chapter 1, Division II, Section 105 "Inspections and Testing", Subsection 105.2.6 "Re-inspection's" – Amended. Subsection 105.2.6 of the 2022 California Plumbing Code is amended to read as follows:

105.2.6 Re-inspections. A re-inspection fee may be assessed for each inspection or re-inspection when any of the following occurs:

1. The portion of work for which the inspection was called is not complete or the corrections previously required and called for are not made;
2. Calling for an inspection before the job is ready for such inspection or re-inspection;
3. The inspection record card or the approved plans are not posted or otherwise available to the inspector;
4. Failure to provide access on the date for which the inspection is requested; or,
5. Deviating from the approved plans when such deviation or change required approval of the building official.

To obtain a re-inspection, the permittee shall file an application in writing on a form provided for that purpose and pay the re-inspection fee in accordance with the current City of National City Fee Schedule. In instances where a re-inspection fee has been assessed, no further inspections shall be performed until the fees have been paid.

15.20.060 Chapter 1, Division II, Table 104.5 "Plumbing permits fees" - Deleted. Table 104.5 of Chapter 1, Division II of the 2022 California Plumbing Code, entitled "Plumbing Permit Fees", is deleted.

15.20.065 Table 422 .1 "Minimum plumbing facilities" - Deleted. Table 422.1 of Chapter 4, of the 2022 California Plumbing Code, entitled "Minimum Plumbing Facilities", is deleted.

15.20.070 Table 2902.1 "Minimum number of required plumbing fixtures of the 2022 California Building Code" - Adopted. Table 2902.1 of the 2022 California Building Code is adopted. Plumbing fixtures shall be provided for the type of occupancy and in the minimum number shown in Table 2902 .1. Types of occupancies not shown in Table 2902.1 shall be considered individually by the Building Official. The number of occupants shall be determined by this code. Occupancy classification shall be determined in accordance with Chapter 3 of the 2022 California Building Code.

INTRODUCED at Regular Meeting of February 7th, 2023

PASSED and ADOPTED this day of February, 2023.

Ron Morrison,
Mayor

ATTEST:

Shelley Chapel, MMC
Interim City Clerk

APPROVED AS TO FORM:

Barry J. Schultz,
City Attorney

ORDINANCE NO. 2023-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADOPTING THE 2022 CALIFORNIA RESIDENTIAL CODE, AMENDING CERTAIN SECTIONS OF THAT CODE, AND AMENDING CHAPTER 15.79 OF THE NATIONAL CITY MUNICIPAL CODE

The City Council of the City of National City does ordain as follows:

Section 1. The City Council of the City of National City hereby adopts the 2022 California Residential Code, California Code of Regulations, Title 24, Part 2.5 except as amended in Chapter 15.79 of the National City Municipal Code.

Section 2. The City Council of the City of National City hereby amends, adds and deletes certain sections of the 2022 California Residential Code consistent with their findings in 2013, under Ordinance No. 2013-2393.

Section 3. The City Council of the City of National City amends Chapter 15.79 of the National City Municipal Code to read as follows:

CHAPTER 15.79

CALIFORNIA RESIDENTIAL CODE

Sections:

- 15.79.010 2022 California Residential Code adopted.
- 15.79.025 Chapter 1, Division II, Section R104 "Duties and Powers of the Building Official", Subsection R104.6 "Right of entry" - Amended.
- 15.79.030 Chapter 1, Division II, Section R105 "Permits", Subsection R105.2 "Work exempt from permit - Building" - Amended.
- 15.79.040 Chapter 1, Division II, Section R105 "Permits", Subsection R105.5 "Expiration" - Amended.
- 15.79.045 Chapter 1, Division II, Section R105 "Permits", Subsection R105.7 "Placement of permit" - Amended.
- 15.79.050 Chapter 1, Division II, Section R105 "Permits", Subsection R105.8.1 "Permit denial" – Added.
- 15.79.055 Chapter 1, Division II, Section R108 "Fees", Subsection R108.2 "Schedule of permit fees" - Amended.
- 15.79.060 Chapter 1, Division II, Section R108 "Fees", Subsection R108.6 "Work commencing before permit issuance" - Amended15.79.065
- 15.79.065 Chapter 1, Division II, Section R109 "Inspections", Subsection 109.3.1 "Re-inspections" - Added.
- 15.79.070 Chapter 1, Division II, Section R110 "Certificate of Occupancy", Subsection R110.4 "Temporary occupancy" - Amended.

- 15.79.075 Chapter 1, Division II, Section R112 "Board of Appeals", Subsection R112.1 "General" - Amended.
- 15.79.076 Chapter 1, Division II, Section 112 "Board of Appeals," Subsection 112.4 "Administration" – Added
- 15.79.080 Chapter 1, Division II, Section R113 "Violations ", Subsection R113.1 "Unlawful acts" - Amended.
- 15.79.082 Section 202 Definitions "Building Existing" - Amended.
- 15.79.085 Chapter 1, Division II, Section R319 "Site Addresses ", Subsection R319.1 "Address identification" - Amended.
- 15.72.090 Chapter 1, Division II, Section R902 "Fire Classification", Subsection R902.1.3 "Roofing coverings in all other areas" - Amended.
- 15.79.095 Plan review fees.

15.79 .010 California Residential Code adopted. The City Council adopts, for the purpose of prescribing regulations governing the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, use, height, area, fire resistance and maintenance of one- and two-family dwellings and townhouses not more than three stories above grade, the 2022 California Residential Code, published by the California Building Standards Commission based on the International Residential Code 2021 Edition, including specified Appendices, including Administration Divisions I and II, California Code of Regulations Title 24, and Part 2.5 of the California Health and Safety Code beginning with Section 18901, and save and except such portions as are deleted , added, or modified based on the climatic, topographic, or geologic conditions. The City Council does specifically and expressly find and declare that the nature and uniqueness of the dry Southern California climate, and the geological and topographical conditions in the City of National City, including the age and concentration of structures, and differences in elevation throughout the City, do necessitate and demand specific changes in and variations from the 2022 California Residential Code. Copies of the codes are filed in the office of the building official, and are adopted and incorporated as fully set out in this chapter, and the provisions thereof shall be controlling within the city limits.

15.79.025 Chapter 1, DIVISION II, Section R-104 "Duties and powers of the "Building Official", Subsection R104.6 "Right of entry" - Amended. Subsection R104.6 of the 2022 California Residential Code is amended to read as follows:

R104.6 Right of Entry. When necessary to make an inspection to enforce any of the provision of this code, or when the Authority Having Jurisdiction has reasonable cause to believe that there exists in any building or upon any premises a condition or code violation which make such building or premises unsafe, dangerous or hazardous, the Authority Having Jurisdiction, or designee, may request entry as specified in Chapter 1.12 of the National City Municipal Code

15.79.30 Chapter 1. DIVISION II, Section R105 "Permits", Subsection R105.2 "Work exempt from permit - Building" - Amended. Chapter 1, DIVISION II, Subsection R105.2 of the 2022 California Residential Code is amended by adding the following Subsections 11 through 14:

- 11. Playground, gymnastic and similar equipment and structures used for recreation and athletic activities accessory to Group R Division 3 structures.
- 12. Repairs to lawfully existing Group R Division 3 structures and Group U occupancy structures accessory to Group R Division 3 structures constructed pursuant to a building permit which involves only the replacement of component parts on existing work completed with similar materials only

for the purpose of maintenance and do not affect any structural components or plumbing, mechanical or electrical installations. Repairs exempt from permit requirements shall not include any addition, change, or modification in construction, exit facilities or permanent fixtures or equipment. Specifically exempt from permit requirements are:

- A. Painting and decorating including refinishing of exterior stucco finishes.
 - B. Installation of floor covering.
 - C. Cabinet work.
 - D. Outside paving on private property not within the public right-of-way.
 - E. Replacement of existing windows with no structural modification of the existing window opening.
13. Ground mounted satellite antennas not exceeding ten feet in diameter and roof mounted satellite antennas not exceeding eight feet in diameter.
14. Painted wall signs and styrofoam or other foam mounted wall signs.

15.79.040 Chapter 1, DIVISION II, Section R105 "Permits", Subsection R105.5 "Expiration" - Amended. Subsection R105.5 of the 2022 California Residential Code is amended to read as follows:

R105.5 Expiration. Every permit issued by the Authority Having Jurisdiction under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within twelve calendar months from the date of such permit, or if the building or work authorized by such permit is stopped at any time after the work is commenced for a period of six calendar months, or if the building or work authorized by such permit exceeds three calendar years from the issuance date of the permit. Work shall be presumed to have commenced if the permittee has obtained a required inspection approval of work authorized by the permit by the Authority Having Jurisdiction within twelve calendar months of the date of permit issuance.

Work shall be presumed to be stopped if the permittee has not obtained a required inspection approval of work by the Authority Having Jurisdiction within each six-month period upon the initial commencement of work authorized by such permit.

Before such work can be recommenced, a new permit, or a renewal permit as specified below, shall be first obtained.

1. Permits where work has not commenced. For permits for which work has not commenced in the first twelve calendar months from the date of issuance, a renewal permit may be obtained provided that:
 - A. No changes have been made or will be made in the original plans and specifications for such work;
 - B. The expiration has not exceeded three years from the original issuance date;
 - C. The same edition of the California codes is in effect as used in the initial plan check;
 - D. A fee equal to one-half the amount required for a new permit is paid; and
 - E. The renewal permit shall expire three calendar years from the date of initial permit issuance.
 - F. Where later editions of the California codes have been adopted than used in the initial plan check, such applications for renewal shall be considered as a new plan check submittal. Accordingly, plans shall reflect the requirements of the current codes in effect, a full new plan check is required, and a full new plan check fee shall be paid. Upon completion of a new plan check, the permit may be renewed upon payment of a permit fee equal to one-half the amount required for a new permit.
2. Permits where work has commenced. For permits where work has commenced and was subsequently stopped as defined herein, a renewal permit may be obtained provided that:
 - A. No changes have been made or will be made in the original plans and specifications for such work;

- B. The expiration has not exceeded three years from the original issuance date;
 - C. A fee equal to one-half the amount required for a new permit is paid, except that where construction has progressed and has been approved to the point of requiring only a final inspection, a fee equal to one quarter the amount required for a new permit shall be paid;
 - D. A renewal permit shall expire three calendar years from the date of initial permit issuance.
3. Permits that have exceeded three years. For permits that have exceeded three years beyond the issuance date, a renewed permit may be obtained provided that:
- A. Construction in reliance upon the building permit has commenced and has been approved;
 - B. No changes have been made or will be made in the original plans and specifications for such work;
 - C. A fee equal to the full amount required for a new permit is paid except that where the Authority Having Jurisdiction determines that construction has progressed to the point that a lesser fee is warranted, such lesser fee shall be paid.

The maximum life of a permit renewal in accordance with subsection 15.70.040.3 shall be one calendar year from the date of renewal. The permit may be renewed for each calendar year thereafter provided that all requirements of A, B, and C as stated in subsection 15.70.040.3 are met.

- 4. Extension of an unexpired permit. For an extension of an unexpired permit, the permittee may apply for an extension of the time within which work under that permit may be continued when for good and satisfactory reasons, as determined by the Authority Having Jurisdiction , in his or her sole discretion , the permittee is unable to continue work within the time required by section 15.79.040. The Authority Having Jurisdiction may extend the time for action by the permittee for a period not exceeding six calendar months beyond the expiration date in effect at the time of the extension application, upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken.
- 5. Permits issued where the permittee has been deployed to a foreign country, may be held in abeyance until six months after the return of the permittee from his/her deployment if necessary, upon application for such relief by the permittee.

15.79.045 Chapter 1, DIVISION II. Section R105 "Permits". Subsection R105.7 "Placement of permit" - Amended. Subsection R105.7 of the 2022 California Residential Code is amended to read as follows:

R105.7 Placement of permit. The building permit or a copy, the inspection record, and the approved plans shall all be kept on site until the completion of the project. The inspection record is to be kept on the job unless removed by the building official.

15.79.050 Chapter 1. DIVISION II, Section R105 "Permits", Subsection R105.8.1 "Permit denial" - Added. Subsection R105.8.1 is added to the 2022 California Residential Code to read as follows:

R105.8.1 Permit denial. The Authority Having Jurisdiction may deny the issuance of a building permit on any property where there exists an unsafe or a substandard building as provided in the Chapters 15.10 and 15.16 of the National City Municipal Code, or where there exists unlawful construction, or where there exists a violation of the National City Municipal Code.

15.79.055 Chapter 1. DIVISION II. Section R108 "Fees". Subsection R108.2 - "Schedule of permit fees" - Amended. Subsection R108.2 of the 2022 California Residential Code is amended to read as follows:

R108.2 Schedule of permit fees. Permit fees, including plan review fees, shall be assessed in accordance with the current City of National City Fee Schedule.

15.79.060 Chapter 1. DIVISION II. Section R108 "Fees". Subsection R108.6 "Work commencing before permit issuance" - Amended. Subsection R108.6 of the 2019 California Residential Code is amended to read as follows:

R108.6 Work commencing before permit issuance. Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to an administrative penalty equal to the inspection fee portion the permit fee that would be required by this code if a permit were to be issued. The administrative penalty is in addition to a permit fee. When a plan review is required for issuance of such permit, the plan review fee portion will not be subject to said penalty. The payment of such administrative penalty shall not exempt any person from compliance with all other provisions of this code or from any penalty prescribed by law.

15.79.65 Chapter 1. DIVISION II, Section R109 "Inspections", Subsection 109.3.1 "Re-inspections" - Added. Subsection R109.3.1 is added to the 2022 California Residential Code to read as follows:

R109.3.1 Re-inspections. A re-inspection fee may be assessed for each inspection or re-inspection when any of the following occurs:

1. The portion of work for which the inspection was called is not complete or the corrections previously required and called for are not made;
2. Calling for an inspection before the job is ready for such inspection or re-inspection;
3. The inspection record card or the approved plans are not posted or otherwise available to the inspector;
4. Failure to provide access on the date for which the inspection is requested; or,
5. Deviating from the approved plans when such deviation or change required approval of the building official.
6. To obtain a re-inspection, the permittee shall file an application in writing on a form provided for that purpose and pay the re-inspection fee in accordance with the current City of National City Fee Schedule. In instances where a re-inspection fee has been assessed, no further inspections shall be performed until the fees have been paid.

15.79.070 Chapter 1. DIVISION II, Section R110 "Certificate of Occupancy". Subsection R110.4 "Temporary occupancy" - Amended. Subsection R110.4 of the 2019 California Residential Code is amended to read as follows:

R110.4. Temporary Certificate of Occupancy. Where a project or a major portion thereof is substantially complete and can be safely occupied, but practical difficulties delay completion of work, the building official may issue a Temporary Certificate of Occupancy for the use of a portion or portions of the building or structure prior to the completion of the entire project.

Prior to issuance of a Temporary Certificate of Occupancy, the premises shall be inspected by all affected city departments who shall prepare a list of work required to be completed and shall forward the list along with a recommendation for approval or disapproval of the issuance of a Temporary Certificate of Occupancy to the building official.

Upon receipt of a recommendation for approval from all affected city departments. The building official may prepare a Temporary Certificate of Occupancy granting temporary occupancy that shall include the following:

1. Work yet to be completed;
2. Maximum time allotted for completion of said work;
3. Property owner's signature and the signature of the contractor agreeing to complete the work within the prescribed time or vacate the premises upon order of the building

- official until such work is completed;
4. Evidence that a faithful performance bond has been posted if required by any affected city department; and
 5. A copy of the Temporary Certificate of Occupancy granting temporary occupancy shall be provided to all affected city departments.

15.79.75 Chapter 1. DIVISION II. Section R112 "Board of Appeals ". Subsection R112.1 "General" - Amended. Subsection R112.1 of the 2022 California Residential Code is amended to read as follows:

R112.1 Board of Appeals. In order to hear and decide appeals of orders, decisions , or determinations of the Building Official relative to the application and interpretation of this code, the City Council shall appoint an ad hoc Board of Appeals comprised of three (3) members who are qualified by experience and training to pass judgment on matters pertaining to construction , and who are not employees of the City. Board members shall serve at the pleasure of the City Council. The Board shall comply with Rosenberg's Rules of Order in conducting their business, and shall render written decisions and findings to the appellant, with a copy to the Building Official. Decisions of the Board may be appealed to the City Council by the appellant or by the Building Official within thirty (30) days of the decision of the Board by the filing of a written notice of appeal with the Director of Community Development stating the reasons for the appeal. The person filing the appeal and the opposing party shall be given at least ten (10) days' written notice of the time and place of the hearing on the appeal.

15.79.76 Chapter 1, Division II, Section 112 "Board of Appeals." Subsection R112.4 "Administration" - Added. Subsection R112.4 of the 2022 California Residential Code is added to read as follows

R112.4 Administration. The Building Official shall take immediate action in accordance with the decision of the board, unless such decision is appealed to the City Council.

15.79.080 Chapter 1. DIVISION II, Section R113 "Violations ", Subsection R113.1 "Unlawful acts" - Amended. Subsection R113.1 of the 2022 California Residential Code is amended to read as follows:

R113.1 Unlawful acts. It shall be unlawful for any person, firm or corporation to erect, construct , enlarge , alter, repair, move, improve, remove, convert or demolish, equip, use occupy or maintain any building or structure or cause or permit the same to be done in violation of this code.

Violation of any provision of this code shall be punishable as a misdemeanor and shall carry the penalties as prescribed in Chapter 1.20 of the National City Municipal Code.

15.79.082 Section R202 "Definitions," "Building Existing" - Amended. Section R202 Definitions "Building, Existing" of the 2019 California Residential Code is amended to read:

R202 Building, Existing. An "existing building" is a building erected prior to the adoption of the 2022 California Residential Code, or one for which a legal building permit has been issued. If more than fifty-percent of a structural roof or more than fifty-percent of all exterior walls are removed as part of a project, the building is not an existing building.

15.79.085 Chapter 1, DIVISION II, Section R319 "Site Addresses ", Subsection R319.1 "Address Identification" - Amended. Subsection R319.1 of the 2022 California Residential Code is amended to read as follows:

R319.1 Address Identification. Every principal building or structure within the incorporated limits of the City of National City shall be identified by a designated street number as issued by the National City Fire Department. Page 266 of 363

Approved numbers or addresses shall be placed on all new and existing buildings, adjacent to the principal entrance to the premises or at a point that is highly visible and legible from the street. If necessary, directional signs shall be posted showing proper access to the given address from a point where the Fire Department access roadway leaves the dedicated street to the entrance of each addressed building. All such numbers shall be Arabic numerals or alphabetical letters and shall be a minimum of 4 inches (102mm) high with a minimum stroke width of 0.5 inches (12.7mm), and shall be placed on a contrasting background.

15.72.090 Chapter 1, DIVISION II, Section R902 "Fire Classification", Subsection R902.1.3 "Roof Coverings in all other areas" - Amended. Subsection R902.1.3 of the 2022 California Residential Code is amended to read as follows:

R902.1.3 Roof Coverings in all other areas. The entire roof covering of every existing structure where more than fifty percent (50%) of the total roof area is replaced within any one-year period, the entire roof covering of every new structure, and any roof covering applied in the alteration, repair or replacement of the roof of every existing structure, shall be a fire-retardant roof covering that is at least Class B.

15.79.095 Plan review fees. When plans are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged in accordance with the current City of National City Fee Schedule.

INTRODUCED At Regular Meeting of 7th day of February, 2023.

PASSED and ADOPTED this day of February, 2023.

Ron Morrison
Mayor

ATTEST:

Shelley Chapel, MMC
Interim City Clerk

APPROVED AS TO FORM:

Barry J. Schultz,
City Attorney

ORDINANCE NO. 2023-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADOPTING THE 2022 CALIFORNIA FIRE CODE AND THE APPENDICES THERETO, ADOPTING THE 2022 CALIFORNIA BUILDING STANDARDS CODE (TITLE 24, PART 9 OF THE CALIFORNIA CODE OF REGULATIONS), ADOPTING THE NATIONAL FIRE PROTECTION ASSOCIATION STANDARDS, AND AMENDING CHAPTER 15.28 OF THE NATIONAL CITY MUNICIPAL CODE

The City Council of the City of National City does ordain as follows:

Section 1. The City Council of the City of National City hereby adopts the 2022 California Fire Code, the 2022 California Building Standards Code (Title 24, Part 9 of the California Code of Regulations), and the Appendices thereto, and the National Fire Protection Association Standards except as amended in Chapter 15.28 of the National City Municipal Code.

Section 2. The City Council finds that, consistent with their findings adopted in 2013 under Ordinance No. 2019-2467, which findings are incorporated herein by reference, the amendments being made in this Chapter 15.28 are reasonably necessary because of local climatic, geological, or topographical conditions: namely, that the age of structures, separation and density create an increased risk of conflagration meriting more stringent standards. A copy of this ordinance shall be filed with the Office of the State Fire Marshal and the State Building Standards Commission. This action is taken pursuant to Health and Safety Code sections 17958.7 and 18941.5.

Section 3. The City Council of the City of National City hereby amends and deletes certain sections of the 2022 California Fire Code, based on local climatic, topographic, or geological conditions that justify deviating from that Code.

Section 4. The City Council of the City of National City hereby amends Title 15, Chapter 15.28 of the National City Municipal Code to read as follows:

**CHAPTER 15.28
CALIFORNIA FIRE CODE**

Sections:

- 15.28.002 Findings and declarations.
- 15.28.010 2022 California Fire Code - Adopted and Amended.
- 15.28.020 Establishment and duties of fire prevention bureau.
- 15.28.030 Definitions.
- 15.28.035 Chapter 55 "Cryogenic Fluids," Section 5504 "Storage," Subsection 5504.3 "Outdoor storage" - Amended.

- 15.28.040 Chapter 57 "Flammable and Combustible Liquids," Section 5704 "Storage," Subsections 5704.2.9.6.1 and 5706.2.4.4 "Locations where above-ground tanks are prohibited" - Amended.
- 15.28.050 Chapter 61 "Liquefied Petroleum Gases," Section 6104 Location of LP-Gas Containers," Subsection 6104.2 "Maximum capacity within established limits" - Amended.
- 15.28.060 Chapter 56 "Explosives and Fireworks," Section 5601 General" - Amended.
- 15.28.070 (Reserved)
- 15.28.080 Chapter 1 "Scope and Administration," Division II" Administration," Section 102.7 "Referenced Codes and Standards" - Amended.
- 15.28.085 Chapter 3 "General Requirements," Section 307 "Open Burning, Recreational Fires and Portable Outdoor Fireplaces, Subsection 307.4.1 "Bonfires" - Amended.
- 15.28.090 Chapter 3 "General Requirements," Section 307 "Open Burning, Recreational Fires and Portable Outdoor Fireplaces," Subsection 307.4.2 "Recreational Fires" - Amended.
- 15.28.100 Chapter 10 "Means of Egress," Section 1013 "Exit Signs," Subsection 1013.6.1 "Graphics" - Amended.
- 15.28.110 Chapter 57 "Flammable and Combustible Liquids," Section 5704 "Storage," Subsection 5704.3.3.9 "Idle Combustible Pallets" - Amended.
- 15.28.120 Chapter 5 "Fire Service Features," Section 503 "Fire Apparatus Access Roads," Subsection 503.2.7 "Grade," and Appendix Section D103.2 "Minimum Specifications," Subsection D103.2 "Grade" - Amended.
- 15.28.130 Chapter 5 "Fire Service Features," Section 503 "Fire Apparatus Access Roads," Subsection 503.6 "Security gates" - Amended.
- 15.28.140 Chapter 1 "Scope and Administration," Division II "Administration," Section 109, "Board of Appeals", Subsection 109.1, "Board of Appeals established" - Amended
- 15.28.150 New materials, processes or occupancies, which may require permits.
- 15.28.160. Chapter 1 "Scope and Administration, " Division II "Administration," Section 105 "Permits," Subsection 105.3.1 "Expiration" - Amended
- 15.28.170 Penalties.

15.28.002 Findings and declarations. The City Council of the City of National City, does specifically and expressly find and declare that the nature and uniqueness of the dry Southern California climate, and the geographical and topographical conditions in the City of National City do reasonably necessitate and demand specific changes in and variations from the 2022 California Fire Code, which are noted in and made part of this chapter as authorized by Health and Safety Code Sections 17958.7 and 18941.5. These conditions result from the age and concentration of structures and the increased risk of conflagration spread as a result.

15.28.010 2022 California Fire Code - Adopted and amended. There is adopted by the City Council of the City of National City for the purpose of prescribing regulations governing conditions hazardous to life and property from fire, hazardous materials or explosion and establishing a fire prevention bureau, the 2022 California Fire Code, and the appendices thereto , including both Administration Divisions I and II, published by the International Code Council and the California Building Standards Commission, and the National Fire Protection Association Standards (current edition) published by the National Fire Protection Association , save and except such portions as are hereinafter deleted, added, or amended . Within this chapter, those codes may be collectively referred to as the California Fire Code. One copy of this adopted code is on file in the office of the fire marshal of the City of National City. The code is adopted and incorporated as fully as if set out as length herein, and from the date on which this chapter shall take effect, shall be controlling within the limits of the City of National City.

A.28.20 Establishment and duties of fire prevention bureau.

- A. The California Fire Code shall be enforced by the fire prevention bureau in the fire department in the City of National City, which is established and shall be operated under the supervision of the chief of the fire department.
- B. The battalion chief/fire marshal in charge of the fire prevention bureau shall be appointed by the chief of the fire department of the City of National City.
- C. The director of emergency services may detail members of the fire department as inspectors as shall from time to time be necessary. The chief of the fire department shall recommend to the city manager of National City the employment of technical inspectors, who, when such authorization is made, shall be selected through an examination to determine their fitness for the same position.

15.28.030 Definitions.

- A. The word "jurisdiction" used in the 2022 California Fire Code means the City of National City.
- B. Whenever the words "chief of the bureau of fire prevention" are used in the California Fire Code, they shall be held to mean the fire marshal of the City of National City.
- C. Where reference to the Uniform Building Code, or Building Code, or any Nationally Recognized Standard is made, it means the currently adopted edition.
- D. Where the word "Administrator" is used in the California Fire Code, it shall be held to mean the city council of the City of National City. Whenever the term "City" is used, it means the City of National City.
- E. Where the term "corporation counsel" is used in the California Fire Code, it shall be held to mean the city attorney for the City of National City.
- F. "Fire authority having jurisdiction (FAHJ)" means the designated entity providing enforcement of fire regulations as they relate to planning, construction, and development. This entity may also provide fire suppression and other emergency services.
- G. Whenever the term "this code" is used, it means the 2022 California Fire Code as modified by the City of National City with the deletions, amendments, and additions contained in this chapter.
- H. Whenever the terms "chief", "fire chief", "chief of the fire department" are used, they mean the "director of the department of emergency services ".

15.28.035 Chapter 55 "Cryogenic Fluids," Section 5504 "Storage," Subsection 5504.3 "Outdoor storage" – Amended. Subsection 5504.3 of the 2022 California Fire Code is amended to read as follows:

5504.3 The Establishment of Limits for Storage of Flammable Cryogenic Fluids. The storage of flammable cryogenic fluids is prohibited in all areas within the City limits of National City, except within the following zones as established by the National City Land Use Code: MM and IM; Medium Manufacturing; MH and IH; Heavy Manufacturing ; MT-Tidelands Manufacturing .

15.28.040 Chapter 57 "Flammable and Combustible Liquids," Section 5704 "Storage," Subsections 5704.2.9.6.1 and 5706.2.4.4 "Locations where above-ground tanks are prohibited" - Amended. Subsections 5704.2 .9.6.1 and 5706 .2.4.4 of the 2022 California Fire Code are amended to read as follows:

5704.2.9.6.1, 5706.2.4.4 All areas within the city limits of the City of National City except for those areas zoned commercial or manufacturing, as established, defined, and set under the zoning regulations in Title 18 of the National City Municipal Code.

15.28.050 Chapter 61 "Liquefied Petroleum Gases," Section 6104 "Location of LP- Gas Containers." Subsection 6104.2 "Maximum capacity within established limits" – Amended. Subsection 6104.2 of the 2022 California Fire Code is amended to read as follows:

6104.2 All areas within the city limits of the City of National City, except for those areas zoned commercial or manufacturing, as established, defined, and set under zoning regulations in Title 18 of the National City Municipal Code.

15.28.060 Chapter 56 "Explosives and Fireworks," Section 5601 - Amended. Section 5601 of the 2019 California Fire Code is amended to read as follows:

5601 The permanent storage of explosives and/or fireworks shall be strictly prohibited within the city limits of the City of National City. Temporary storage may be allowed, by permit, during setup for excavation, demonstration, or other use, when in the opinion of the fire marshal, there are significant measures in place to ensure public safety.

15.28.070 (Reserved)

15.28.080 Chapter 1 "Scope and Administration," Division II "Administration," Subsection 102.7 "Referenced Codes" and Standards" - Amended. Subsection 102.7 of the 2022 California Fire Code is amended to read as follows:

102.7 The codes, standards, and publications adopted and set forth in this code, including other codes, standards and publications referred to therein are, by title and their most current edition, hereby adopted as standard reference documents of this code. When this code does not specifically cover any subject related to building design and construction, recognized fire engineering practices shall be employed. The National Fire Codes and the Fire Protection Handbook of the National Fire Protection Association are permitted to be used as authoritative guides in determining recognized fire-prevention engineering practices.

15.28.085 Chapter 3 "General Requirements," Section 307 "Open Burning, Recreational Fires and Portable Outdoor Fireplaces," Subsection 307.4.1 "Bonfires" - Amended. Subsection 307.4.1 of the 2022 California Fire Code is amended to read as follows:

307.4.1 Bonfires. Bonfires are strictly prohibited within the City Limits.

15.28.090 Chapter 3 "General Requirements." Section 307 "Open Burning, Recreational Fires and Portable Outdoor Fireplaces," Subsection 307.4.2 "Recreational Fires" - Amended. Subsection 307.4.2 of the 2022 California Fire Code is amended to read as follows:

307.4.2 Recreational Fires. Recreational Fires are strictly prohibited within the City limits.

15.28.100 Chapter 10 "Means of Egress," Section 1013 "Exit Signs." Subsection 1013.6.1 "Graphics" - Amended. Subsection 1013.6.1 of the 2022 California Fire Code is amended to read as follows:

1013.6 .1 Graphics. Every exit sign and directional exit sign shall have plainly legible letters not less than 6 inches (152 mm) high with the principal strokes of the letters not less than 0.75 inch (19.1 mm) wide. The word "EXIT" shall have letters having a width not less than 2 inches (51 mm) wide, except the letter "I," and the minimum spacing between letters shall not be less than 0.375 inch (9.5 mm). Signs larger than the minimum established in this section shall have letter widths, strokes, and spacing in proportion to the height.

The word "EXIT" shall be green in color and in high contrast with the background and shall be clearly discernible when the means of exit sign illumination is or is not energized. If a chevron directional indicator is provided as part of the exit sign, it shall be green in color, the construction shall be such that the direction of the chevron directional indicator cannot be readily changed.

15.28.110 Chapter 57 "Flammable and Combustible Liquids," Section 5704 "Storage," Subsection 5704 .3 .3 .9 "Idle Combustible Pallets" - Amended. Subsection 5704.3 .3.9 of the 2022 California Fire Code is amended to read as follows:

Idle Combustible Pallets. The storage of empty wooden or plastic pallets is prohibited, except as follows:

1. Outdoor Storage. Pallets may be stored outside of a building or in a detached building. Pallets shall not be stacked closer than 5 feet from any building.
2. Indoor Storage. Pallets shall not be stored indoors unless the premises are protected with an automatic fire sprinkler system in accordance with NFPA Standard 13, section titled Protection of Idle Pallets, except when both of the following conditions are met:
 - a. Pallets are stored no higher than 6 feet.
 - b. Each pallet pile of no more than 4 stacks shall be separated from other pallet piles by at least 8 feet of clear space and 25 feet from any commodity.

15.28.120 Chapter 5 "Fire Service Features," Section 503 "Fire Apparatus Access Roads," Subsection 503.2 .7 "Grade." and Appendix Section 0103.2 "Minimum Specifications." Subsection 0103.2 "Grade" – Amended. Subsection 503.2.7 and Appendix Subsection 0103.2 of the 2022 California Fire Code are amended to read as follows:

503.2 .7 and Appendix Subsection 0103 .2 Grade. The maximum permitted gradient for a fire apparatus access road shall not exceed 15%.

15.28.130 Chapter 5 "Fire Service Features." Section 503 "Fire Apparatus Access

Roads," Subsection 503 .6 "Security Gates" - Amended. Subsection 503.6 of the 2022 California Fire Code is amended as follows:

503.6 All gates or other structures or devices which could obstruct fire access roadways or otherwise hinder emergency operations are prohibited unless they meet standards approved by the Chief and receive Specific Plan Approval.

All automatic gates across fire access roadways and driveways shall be equipped with an approved key-operated switches overriding all command functions and opening the gate(s). Gates accessing more than four residences or residential lots, or gates accessing hazardous institutional, educational or assembly occupancy group structures, shall also be equipped with an approved emergency traffic control-activating strobe light sensor(s), or other devices approved by the Chief, which will activate the gate on the approach of emergency apparatus with a battery back-up or manual mechanical disconnect in case of power failure.

All automatic gates must meet fire department policies deemed necessary by the Chief for rapid, reliable access.

15.28.140 Chapter 1 "Scope and Administration." Division II "Administration." Section 111. "Means of Appeals", Section 111. 1. "Means of Appeals established" - Amended. Subsection 111.1 of the 2022 California Fire Code is amended as follows:

111.1 In order to hear and decide appeals of orders, decisions, or determinations made by the Fire Marshal relative to the application and interpretation of this code, the City Council shall appoint an ad hoc Board of Appeals consisting of three (3) members who are qualified by experience and training to pass judgment on matters pertaining to hazards of fire, explosions, hazardous conditions and/or fire protection systems, and are not employees of the City. Board members shall serve at the pleasure of the City Council.

The board shall comply with Rosenberg's Rules of Order in conducting their business and shall render written decisions and findings to the appellant with a copy to the Fire Marshal. The Fire Marshal shall take immediate action in accordance with the decision of the Board, unless such decision is appealed to the City Council. Decisions of the board may be appealed to the City Council by the appellant or by the Fire Marshal within thirty (30) days of the decision of the Board, by the filing of a written notice of appeal with the Director of Emergency Services stating the reasons for the appeal. The person filing the appeal and the opposing party shall be given at least ten (10) days' written notice of the time and place of the hearing on the appeal.

15.28.150 New materials. Processes or occupancies. Which may require permits. The building and safety director, the chief of the fire department and the fire marshal shall act as a committee to determine and specify, after giving effected persons an opportunity to be heard, any new materials, processes or occupancies which shall require permits in addition to those now enumerated in said code. The fire marshal shall post such list in a conspicuous place in his/her office and distribute copies thereof to interested parties.

15.28.160 Chapter 1 "Scope and Administration." Division II "Administration," Section 105 "Permits". Subsection 105.3.1 "Expiration" - Amended. Subsection 105.3.1 of the 2022 Fire Code is amended as follows:

105.3.1 Expiration. Every permit issued by the Fire Authority Having Jurisdiction under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within twelve calendar months from the date of such permit, or if the building or work authorized by such permit is stopped at any time after the work is commenced for a period of six calendar months, or if the building or work authorized by such permit exceeds three calendar years from the issuance date of the permit. Work shall be presumed to have commenced if the permittee has obtained a required inspection approval of work authorized by the permit by the Fire Authority Having Jurisdiction within six calendar months of the date of permit issuance.

Work shall be presumed to be stopped if the permittee has not obtained a required inspection of work by the Fire Authority Having Jurisdiction within each six-month period upon the initial commencement of work authorized by such permit.

Before such work can be recommenced, a new permit, or renewal permit as specified below, shall be first obtained.

1. Permits where work has not commenced. For permits for which work has not commenced in the first six calendar months from the date of issuance, a renewal permit may be obtained provided that:
 - A. No changes have been made or will be made in the original plans and specifications for such work.
 - B. The expiration has not exceeded three years from the original issuance date;
 - C. The same edition of the California codes is in effect as used is in the initial plan check;
 - D. A fee equal to one-half the amount required for a new permit is paid;
 - E. The renewal permit shall expire three calendar years from the date of initial permit issuance.

Where later editions of the California codes have been adopted than used in the initial plan check, such applications for renewal shall be considered as a new plan check submittal. Accordingly, plans shall reflect the requirements of the current codes in effect, a full new plan check is required, and a full new plan check fee shall be paid. Upon completion of a new plan check, the permit may be renewed upon payment of a permit fee equal to one-half the amount required for a new permit.

2. Permits where work has commenced. For permits where work has commenced and was subsequently stopped as defined herein, a renewal permit may be obtained provided that:
 - A. No changes have been made or will be made in the original plans and specifications for such work;
 - B. The expiration has not exceeded three years from the original issuance date;
 - C. A fee equal to one-half the amount required for a new permit is paid, except that where construction has progressed and has been approved to the point of requiring only a final inspection, a fee equal to one-quarter the amount required for a new permit shall be paid; and
 - D. A renewal permit shall expire three calendar years from the date of initial permit issuance.
3. Permits that have exceeded three years. For permits that have exceeded three years beyond the issuance date, a renewal permit may be obtained provided that:
 - A. Construction in reliance upon the building permit has commenced and has

- been approved;
- B. No changes have been made or will be made in the original plans and specifications for such work; and
- C. A fee equal to the full amount required for a new permit is paid except that where the Fire Authority Having Jurisdiction determines that construction has progressed to the point that a lesser fee is warranted, such lesser fee shall be paid.

The maximum life of a permit renewal in accordance with subsection 15.28.160(3) shall be one calendar year from the date of renewal. The permit may be renewed for each calendar year thereafter provided that all requirements of subsections A., B., and C., as stated in subsection 15.28.160(3), are met.

- 4. Extension of an unexpired permit. For an extension of an unexpired permit, the permittee may apply for an extension of time within which work under that permit may be continued when, for good and satisfactory reasons as determined by the Fire Authority Having Jurisdiction in his or her sole discretion, the permittee is unable to continue work within the time required by section 15.28 .160. The Fire Authority Having Jurisdiction may extend the time for action by the permittee for a period not exceeding six calendar months beyond the expiration date in effect at the time of the extension application, upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken.
- 5. Permits issued where the permittee has been deployed to a foreign country, may be held in abeyance until six months after the return of the permittee from his/her deployment, if necessary, upon application for such relief by the permittee.

15.28.170 Penalties. Any person who shall violate any of the provisions of the 2022 California Fire Code adopted, or any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved is guilty of a misdemeanor.

INTRODUCED At Regular Meeting of 7th day of February, 2023.

PASSED and ADOPTED this day of February, 2023.

Ron Morrison
Mayor

ATTEST:

Shelley Chapel, MMC
Interim City Clerk

APPROVED AS TO FORM:

Barry J. Schultz,
City Attorney



AGENDA REPORT

Department: City Attorney's Office
Prepared by: Barry J. Schultz, City Attorney
Meeting Date: Tuesday, February 7, 2023
Approved by: Brad Raulston, City Manager

SUBJECT:

Public Hearing and Introduction of an Ordinance of the City Council of the City of National City, California Establishing the Compensation of the Mayor and City Council.

RECOMMENDATION:

Introduce an ordinance adjusting Mayor and City Council compensation in accordance with City Council direction.

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

As an election has occurred and resulted in elected officials beginning new terms of office, the City Council at its January 17th meeting discussed changes to their compensation. In accordance with *Government Code section 36516.5* changes to compensation must coincide with elections at which members begin a new term in office. Changes made to compensation outside this window will not be effective until the following term in office (in two years).

The last salary adjustment for Mayor and City Council occurred on February 21, 2017. The last salary adjustment set the base salary of the City Council at \$1,189.78 per month and the base salary of the Mayor at \$4,532.13 per month.

Compensation increases cannot exceed 5% per calendar year from the date of the last increase in compensation, *Government Code Section 36516(a)(4)*. An elected mayor, pursuant to *Government Code Section 36516.1*, may be provided with additional compensation to that which he/she receives as a councilmember. There are no limitations imposed on the amount of the Mayor's compensation.

The City Council, in a 4 to 1 vote¹, directed staff to prepare an ordinance increasing their compensation by 30%. The 30% increase would increase City Council compensation to \$1,546.71 per month and the Mayor's compensation to \$5,891.77 per month. A proposed ordinance is attached increasing the salaries of the Mayor and City Council by 30% and is being submitted for introduction. Increasing the compensation of City Council and the Mayor will also require a budget appropriation for the remainder of fiscal year 2023.

Should the City Council wish to amend the ordinance's provisions, any proposed revisions should be included in a motion introducing the ordinance. Once the ordinance is adopted any additional changes will require re-introduction, with final adoption to occur at a later meeting. Delaying final

¹ Mayor Morrison voted against.

adoption of the ordinance in this manner may raise issues regarding the timeliness of the action under applicable state law.

FINANCIAL STATEMENT:

An increase at the maximum 30% allowable by law will add approximately \$36,500 of new expenditures to the General Fund.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Not Applicable

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

First Reading

EXHIBITS:

Exhibit A - Ordinance

ORDINANCE NO. 2023 –

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA ESTABLISHING THE COMPENSATION OF THE MAYOR AND CITY COUNCIL

BE IT ORDAINED by the City Council of the City of National City as follows:

Section 1. That the base monthly compensation for the City Council is established at \$1,546.71 per month, pursuant to the provisions of Sections 36516 and 36516.5 of the California Government Code.

Section 2. That the base monthly compensation for the Mayor is established at \$5,891.77 per month, pursuant to the provisions of Sections 36516.1 of the California Government Code.

PASSED and ADOPTED this ____ day of _____, 2023.

Ron Morrison, Mayor

ATTEST:

Shelley Chapel, MMC, Interim City Clerk

APPROVED AS TO FORM:

Barry J. Schultz, City Attorney



AGENDA REPORT

Department: Library and Community Services
Prepared by: Joyce Ryan, Library & Comm Svcs Director
Meeting Date: Tuesday, February 7, 2023
Approved by: Brad Raulston, City Manager

SUBJECT:

Senior Nutrition Infrastructure Grant Acceptance

RECOMMENDATION:

Adopt a Resolution Entitled, "Resolution of the City Council of the City of National City, California, authorizing the Mayor to execute an amendment to the agreement between the City of National City and the County of San Diego to accept the Senior Nutrition Infrastructure Grant and establish grant fund appropriations of \$198,815 and corresponding revenue budget."

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

The City of National City entered into an agreement with the County of San Diego on January 29, 2020 to provide Senior Meals, congregate and home-delivered, to local residents. The agreement (Contract No. 561763) provides funding from the Older Americans Act through San Diego County's Aging & Independence Services (AIS) department to provide hot, nutritious lunches during the week, for adults age 60 and older. The program integrates nutritional standards into their meals, available Monday through Friday for lunch.

The Senior Nutrition Program at the George H. Waters Nutrition Center provides approximately 30,000 hot, nutritious meals to local seniors per year. Although some equipment is relatively new, there are additional pieces of older equipment and two service vehicles. The Senior Nutrition Infrastructure Grant will fund two new hotshot vehicles for meal delivery, along with needed kitchen equipment.

FINANCIAL STATEMENT:

Approval of the Resolution authorizes the establishment of a grant fund appropriation of \$198,815 and a corresponding revenue budget.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Health, Environment, and Sustainability

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

Exhibit A – 561763-09 Amendment - NC Nutrition Center

Exhibit B – County Contract Number 561763

Exhibit C – Resolution – Senior Nutrition Infrastructure Grant

**COUNTY OF SAN DIEGO – DEPARTMENT OF PURCHASING AND CONTRACTING
AMENDMENT**

CONTRACT 561763, MODIFICATION 09

Effective Date: Date signed by Department of Purchasing and Contracting

Contractor: City of National City

Agreement Title: Senior Nutrition Program

Contractor and County of San Diego (“County”) enter into this amendment (“Amendment”) to modify the above-referenced contract (“Agreement”) as described herein.

1. Agreement Terms and Work remain unchanged.
2. Compensation: As a result of this amendment, Contractor’s compensation is increased by an amount of \$198,815, resulting in a new Maximum Agreement Amount of \$1,675,770.27.
 - 2.1. Add Exhibit C-3 – Senior Nutrition Infrastructure Grant.
3. Term of Agreement: The contract term remains unchanged, February 1, 2020 through June 30, 2023.

All other terms and conditions remain in effect.

IN WITNESS WHEREOF, County and Contractor have executed this Amendment effective as of the Effective Date set forth above. This Amendment is not valid unless signed by Contractor and County Contracting Officer.

CONTRACTOR:

By:

Name:

Title:

Email:

Date:

By electronically signing this document, all parties accept the use of electronic signatures.

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAA2wKhx7rWDFRNUTr1ITTA6cLRDPteTJM3

COUNTY OF SAN DIEGO:

Department Review and Recommended Approval:

By: Jana Jordan
Jana Jordan (Jan 12, 2023 16:15 PST)

Name: Jana Jordan

Title: Principal Administrative Analyst

Dept. Aging & Independence Services

Date: Jan 12, 2023

APPROVED:

JOHN M. PELLEGRINO, Director
Department of Purchasing and Contracting

By:

Name:

Title:

Date:

COUNTY CONTRACT NUMBER 561763
COUNTY OF SAN DIEGO HEALTH AND HUMAN SERVICES
AGREEMENT WITH THE CITY OF NATIONAL CITY FOR
SENIOR NUTRITION PROGRAM
EXHIBIT C-3 – SENIOR NUTRITION INFRASTRUCTURE GRANT

1. Cost Reimbursement:

- 1.1 Contractor may be reimbursed for items purchased below under this agreement.
- 1.2 Contractor shall provide a log of purchases made during the billing period and provide with an invoice for reimbursement. Contractor shall also provide proof of purchase order, receipt or similar. Information provided shall include:
- 1.2.1 Description of item purchased
 - 1.2.2 Total Price of items(s) purchased
 - 1.2.3 Date of items(s) purchased

Equipment Description	Unit Cost	Number of Units	Total Cost
Commercial Immersion Blender	\$660.00	1	\$660.00
Menu Board	\$275.00	1	\$275.00
Griddle	\$3,300.00	1	\$3,300.00
Food Slicer	\$3,850.00	1	\$3,850.00
Ice Machine	\$5,500.00	1	\$5,500.00
Warming Drawer/Cabinet with Worktable	\$16,500.00	1	\$16,500.00
Hot Shot Truck	\$84,365.00	2	\$168,730.00
TOTAL NOT TO EXCEED:			\$198,815.00

COUNTY CONTRACT NUMBER 561763
AGREEMENT WITH THE CITY OF NATIONAL CITY FOR SENIOR NUTRITION PROGRAM

This agreement ("Agreement") is made and entered into effective as of the date of the last signature on the signature page by and between the County of San Diego, a political subdivision of the State of California ("County") and The City of National City, 1415 D Avenue, National City, CA 91950 ("Contractor"), with reference to the following facts:

RECITALS

- A. The County, by action of the Board of Supervisors on October 10th, 2017 Minute Order No. 05 authorized the Director of Purchasing and Contracting, to award a contract for Senior Nutrition Services.
- B. Contractor is specially trained and possesses certain skills, experience, education and competency to perform these services.
- C. The Chief Administrative Officer made a determination that Contractor can perform the services more economically and efficiently than the County, pursuant to Section 703.10 of the County Charter.
- D. The Agreement shall consist of this document, Exhibit A and A-1 Statement of Work, Exhibit B Insurance Requirements, Exhibit B-1 Vehicle Usage Agreement and Exhibit C, Pricing Schedule. In the event that any provision of the Agreement or its Exhibits, A, A-1, B, B-1 or C, conflicts with any other term or condition, precedence shall be: First (1st) the Agreement; Second (2nd) Exhibit B; Third (3rd) Exhibit A; Fourth (4th) Exhibit C; fifth (5th) Exhibit A-1, and sixth (6th) Exhibit B-1.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1
PERFORMANCE OF WORK

- 1.1 **Standard of Performance.** Contractor shall, in good and workmanlike manner and in accordance with the highest professional standards, at its own cost and expense, furnish all of the labor, technical, administrative, professional and all other personnel, all supplies and materials, equipment, printing, transportation, training, facilities, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by County, necessary or proper to perform and complete the work and provide the services required of Contractor by this Agreement.
- 1.2 **Contractor's Representative.** The person identified on the signature page ("Contractor's Representative") shall ensure that Contractor's duties under this Agreement shall be performed on behalf of the Contractor by qualified personnel; Contractor represents and warrants that (1) Contractor has fulfilled all applicable requirements of the laws of the State of California to perform the services under this Agreement and (2) Contractor's Representative has full authority to act for Contractor hereunder. Contractor and County recognize that the services to be provided by Contractor's Representative pursuant to this Agreement are unique: accordingly, Contractor's Representative shall not be changed during the Term of the Agreement without County's written consent. County reserves the right to terminate this Agreement pursuant to Clause 7.1 "Termination for Default", if Contractor's Representative should leave Contractor's employ, or if, in County's judgment, the work hereunder is not being performed by Contractor's Representative.
- 1.3 **Contractor as Independent Contractor.** Contractor is, for all purposes of this Agreement, an independent contractor, and neither Contractor nor Contractor's employees or subcontractors shall be deemed to be employees of the County. Contractor shall perform its obligations under this Agreement according to the Contractor's own means and methods of work, which shall be in the exclusive charge and under the control of the Contractor, and which shall not be subject to control or supervision by County except as to the results of the work. County hereby delegates to Contractor any and all responsibility for the safety of Contractor's employees, which shall include inspection of property to identify potential hazards. Neither Contractor nor Contractor's employees or subcontractors shall be entitled to any benefits to which County employees are entitled, including without limitation, overtime, retirement benefits, workers' compensation benefits and injury leave.
- 1.4 **Contractor's Agents and Employees or Subcontractors.** Contractor shall obtain, at Contractor's expense, all agents, employees and subcontractors required for Contractor to perform its duties under this Agreement, and all such services shall be performed by Contractor's Representative, or under Contractor's Representatives' supervision, by persons authorized by law to perform such services. Retention by Contractor of any agent, employee or subcontractor shall be at Contractor's sole cost and expense, and County shall have no obligation to pay Contractor's agents, employees or subcontractors; to support any such person's or entity's claim against the Contractor; or to defend Contractor against any such claim.

Any subcontract or consultant agreement that is in excess of fifty thousand dollars (\$50,000) or twenty five percent (25%) of the value of the contract, whichever is less, or a combination of subcontracts or consultant agreements to the same individual or firm for the agreement period, or any subcontract or consultant agreement for professional medical or mental health services, regardless of value, must have prior concurrence of the Contracting Officer's Representative ("COR"). Contractor shall provide Contracting Officer Representative with copies of all other subcontracts relating to this Agreement entered into by Contractor within 30 days after the effective date of the subcontract. Such subcontractors of Contractor shall be notified

COUNTY CONTRACT NUMBER 561763
AGREEMENT WITH THE CITY OF NATIONAL CITY FOR SENIOR NUTRITION PROGRAM

of Contractor's relationship to County. "Subcontractor" means any entity, other than County, that furnishes to Contractor services or supplies relevant to this Agreement other than standard commercial supplies, office space, and printing services.

- 1.4.1 Contractor Responsibility. In the event any subcontractor is utilized by Contractor for any portion of the project, Contractor retains the prime responsibility for carrying out all the terms of this Agreement, including the responsibility for performance and insuring the availability and retention of records of subcontractors in accordance with this Agreement.
- 1.4.2 Mandated Clause. All subcontracts shall include the Standard Terms and Conditions required of Contractor Articles 3, 7, 8, 9, 10, 11, 12, 13, 14 and 16 herein.
- 1.4.3 County Approval. As identified above, all subcontracts under this Agreement shall have prior written approval of the Contracting Officer Representative.
- 1.5 Off Shore Prohibition. Except where Contractor obtains the County's prior written approval, Contractor shall perform the work of this Agreement only from or at locations within the United States. Any County approval for the performance of work outside of the United States shall be limited to the specific instance and scope of such written approval, including the types of work and locations involved. Notwithstanding the foregoing, this Section shall not restrict the country or countries of origin of any assets purchased to provide the work hereunder; provided that when such assets are used to provide the work, such assets shall be used only from or at locations within the geographic boundaries of the United States.

ARTICLE 2
SCOPE OF WORK

- 2.1 Statement of Work. Contractor shall perform the work described in the "Statement of Work" attached as Exhibit "A" to this Agreement, and by this reference incorporated herein, except for any work therein designated to be performed by County.
- 2.2 Right to Acquire Equipment and Services. Nothing in this Agreement shall prohibit the County from acquiring the same type or equivalent equipment and/or service from other sources, when deemed by the County to be in its best interest.
- 2.3 Responsibility for Equipment. For cost reimbursement agreements, County shall not be responsible nor be held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by Contractor or any of Contractor's employees, even though such equipment may be furnished, rented, or loaned to Contractor by County. The acceptance or use of any such equipment by Contractor or Contractor's employees shall be construed to mean that Contractor accepts full responsibility for and agrees to exonerate, indemnify and hold harmless County from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment, whether such damage be to the employee or property of Contractor, other Contractors, County, or other persons. Equipment includes, but is not limited to material, computer hardware and software, tools, or other things.
- 2.3.1 Contractor shall repair or replace, at Contractor's expense, all County equipment or fixed assets that are damaged or lost as a result of Contractor negligence.
- 2.4 Non-Expendable Property Acquisition. County retains title to all non-expendable property provided to Contractor by County, or which Contractor may acquire with funds from this Agreement if payment is on a cost reimbursement basis, including property acquired by lease purchase Agreement. Contractor may not expend funds under this Agreement for the acquisition of non-expendable property having a unit cost of \$5,000 or more and a normal life expectancy of more than one year without the prior written approval of Contracting Officer Representative. Contractor shall maintain an inventory of non-expendable equipment, including dates of purchase and disposition of the property. Inventory records on non-expendable equipment shall be retained, and shall be made available to the County upon request, for at least three years following date of disposition. Non-expendable property that has value at the end of the Agreement (e.g. has not been depreciated so that its value is zero), and to which the County may retain title under this paragraph, shall be disposed of at the end of the Agreement as follows: At County's option, it may: 1) have Contractor deliver to another County contractor or have another County contractor pick up the non-expendable property; 2) allow the contractor to retain the non-expendable property provided that the contractor submits to the County a written statement in the format directed by the County of how the non-expendable property will be used for the public good; or 3) direct the Contractor to return to the County the non-expendable property.

ARTICLE 3
DISENTANGLEMENT

3.1 General Obligations.

At County's discretion, Contractor shall accomplish a complete transition of the services as set forth in Exhibit A and A-1 to this Agreement (for purposes of this Article 3.1, these shall be referred to as the "Disentangled Services") being terminated from Contractor and the Subcontractors to County, or to any replacement provider designated by County, without any

COUNTY CONTRACT NUMBER 561763
AGREEMENT WITH THE CITY OF NATIONAL CITY FOR SENIOR NUTRITION PROGRAM

interruption of or adverse impact on the Disentangled Services or any other services provided by third parties. This process shall be referred to as the Disentanglement. Contractor shall fully cooperate with County and any new service provider and otherwise promptly take all steps, including, but not limited to providing to County or any new service provider all requested information or documentation, required to assist County in effecting a complete Disentanglement. Contractor shall provide all information or documentation regarding the Disentangled Services or as otherwise needed for Disentanglement, including, but not limited to, data conversion, client files, interface specifications, training staff assuming responsibility, and related professional services. Contractor shall provide for the prompt and orderly conclusion of all work required under the Agreement, as County may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to County or the County's designee of the Disentangled Services. All Contractor work done as part of the Disentanglement shall be performed by Contractor and will be reimbursed by the County at no more than Contractor's costs, up to the total amount of this Agreement. Contractor shall not receive any additional or different compensation for the work otherwise required by the Agreement. Contractor's obligation to provide the Services shall not cease until the earlier of the following: 1) The Disentanglement is satisfactory to County, including the performance by Contractor of all asset-transfers and other obligations of Contractor provided in this Paragraph, has been completed to the County's reasonable satisfaction or 2) twelve (12) months after the Expiration Date of the Agreement.

3.2 Disentanglement Process.

The Disentanglement process shall begin on any of the following dates: (i) the date County notifies Contractor that no funds or insufficient funds have been appropriated so that the Term shall be terminated pursuant to the Agreement, Article 7; (ii) the date designated by County not earlier than sixty (60) days prior to the end of any initial or extended term that County has not elected to extend pursuant to the Agreement's, Signature Page, Agreement Term; or (iii) the date any Termination Notice is delivered, if County elects to terminate any or all of the Services pursuant to the Agreement, Article 7. Subject to Exhibit A and A-1 Contractor's obligation to perform Disentangled Services, and County's obligation to pay for Disentangled Services, shall expire: (A) when funds appropriated for payment under this Agreement are exhausted, as provided in this Agreement, Article 7; (B) at the end of the initial or extended term set forth in this Agreement's, Signature Page, Agreement Term; or (C) on the Termination Date, pursuant to this Agreement, Article 7 (with the applicable date on which Contractor's obligation to perform the Services expires being referred to herein as the "Expiration Date"). Contractor and County shall discuss in good faith a plan for determining the nature and extent of Contractor's Disentanglement obligations and for the transfer of the Disentangled Services in process provided, however, that Contractor's obligation under this Agreement to provide all Disentangled Services shall not be lessened in any respect.

3.3 Specific Obligations.

The Disentanglement shall include the performance of the following specific obligations:

3.3.1 No Interruption or Adverse Impact

Contractor shall cooperate with County and all of the County's other service providers to ensure a smooth transition at the time of Disentanglement, with no interruption of Disentangled Services or other work required under the Agreement, no adverse impact on the provision of Disentangled Services or other work required under the Agreement or County's activities, no interruption of any services provided by third parties, and no adverse impact on the provision of services provided by third parties.

3.3.2 Third-Party Authorizations

Without limiting the obligations of Contractor pursuant to any other clause in Exhibit A and A-1 herein, Contractor shall, subject to the terms of any third-party agreements, procure at no charge to County any third-party authorizations necessary to grant County the use and benefit of any third-party agreements between Contractor and third-party contractors used to provide the Disentangled Services, pending their assignment to County. Similarly, at County's direction, Contractor shall obtain all legally necessary client consents or authorizations legally necessary to transfer client data to County or any new service provider.

3.3.3 Reserved

3.3.4 Return, Transfer and Removal of Assets.

3.3.4.1 Contractor shall return to County all County assets in Contractor's possession, pursuant to Paragraph 2.4 of the Agreement.

3.3.4.2 County shall be entitled to purchase at net book value those Contractor assets used for the provision of Disentangled Services to or for County, other than those assets expressly identified by the Parties as not being subject to this provision. Contractor shall promptly remove from County's premises, or the site of

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the work being performed by Contractor for County, any Contractor assets that County, or its designee, chooses not to purchase under this provision.

3.3.5 Transfer of Leases, Licenses, and Agreements.

Contractor, at its expense, shall convey or assign to County or its designee such fully-paid leases, licenses, and other agreements used by Contractor, County, or any other Person in connection with the Disentangled Services, as County may select, when such leases, licenses, and other agreements have no other use by Contractor. Contractor's obligation described herein, shall include Contractor's performance of all obligations under such leases, licenses, and other agreements to be performed by it with respect to periods prior to the date of conveyance or assignment and Contractor shall reimburse County for any losses resulting from any claim that Contractor did not perform any such obligations.

3.3.6 Delivery of Documentation.

Contractor shall deliver to County or its designee, at County's request, all documentation and data related to County, including, but not limited to, the County Data and client files, held by Contractor, and Contractor shall destroy all copies thereof not turned over to County, all at no charge to County. Notwithstanding the foregoing, Contractor may retain one (1) copy of the documentation and data, excluding County Data, for archival purposes or warranty support.

3.4 Findings Confidential. Any reports, information, data, etc., given to or prepared or assembled by Contractor under this Agreement that the County requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

3.5 Publication, Reproduction or Use of Materials. No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The County shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement. All reports, data and other materials prepared under this Agreement shall be the property of the County upon completion of this Agreement.

ARTICLE 4
COMPENSATION

The Pricing Schedule, and/or budget are in Exhibit C and the compensation is on the Signature page. County will pay Contractor the agreed upon price(s), pursuant to Exhibit C for the work specified in Exhibit A and A-1, Statement of Work. The County is precluded from making payments prior to receipt of services (advance payments). Contractor shall provide and maintain an accounting and financial support system to monitor and control costs to assure the Agreements completion. Invoices are subject to the requirements below.

4.1 Fiscal for Provisional Rate, or Fixed Price Contracts with Cost Reimbursement Elements (Rev. 7/1/17)

4.1.1 General Principles. Contractor shall, comply with generally accepted accounting principles and good business practices, including all applicable cost principles published by the Federal Office of Management and Budget (OMB), including 2 CFR 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS "The Uniform Guidance", which can be viewed at https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl. Contractor shall comply with all federal, State and other funding source requirements. Contractor shall, at its own expense, furnish all cost items associated with this Agreement except as herein otherwise specified in the budget or elsewhere to be furnished by County. Contractor shall submit annually to the County a cost allocation plan in accordance with The Uniform Guidance.

If the pricing schedule and budget are segregated, the Pricing Schedule is in Exhibit C-1 and the budget for cost reimbursement elements is in Exhibit C-2. Invoices are subject to the requirements of Paragraph 4.2 below.

4.1.2 Agreement Budget for Cost Reimbursement Elements. In no event shall the Agreement budget total be increased or decreased prior to County approved Agreement amendment. Some budget line item adjustments require County review and approval. Adjustments requiring County review and approval are listed in Exhibit C-2 "Contractor's Budget."

4.1.3 Administrative Adjustment. The COR may make administrative Agreement adjustments to change or modify the budget as long as the total Agreement amount or Agreement term is not modified.

4.1.4 Agreement Amendment. An Agreement amendment signed by the Contracting Officer is required to modify the total Agreement amount or Agreement term.

4.1.5 Maximum Price. During the performance period of this Agreement, the maximum price for the same or similar items and/or services shall not exceed the lowest price at which Contractor then offers the items and/or services to its most favored customer.

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4.2 Invoices and Payment

- 4.2.1 **Invoices.** County agrees to pay Contractor in arrears only after receipt and approval of properly completed monthly invoices by the Contracting Officer's Representative ("COR") for the work performed in the prior month. Invoices shall be detailed and itemized referencing the Agreement number and a detailed listing of each pay point target, accomplishment, unit price and/or percentages, and showing the appropriate calculation for each, or cost of each line item in the budget, and a progress report documenting the status and accomplishments of Contractor during the billing period pursuant to Exhibit C, documenting the total invoiced amount by Contractor. Contractor's monthly invoices shall include a statement certifying whether it is in compliance with Paragraph 8.16 of this Agreement
- 4.2.2 **Provisional Rates / Cost Reimbursement Elements.** For provisional rates, or cost reimbursement elements, Contractor shall maintain records of its actual costs, as required herein, for those services paid under a provisional rate or as cost reimbursement. Contractor's last payment each fiscal year shall be withheld until after County and Contractor reconcile Contractor's actual costs with the amount paid from the provisional rates, if any. If County has paid Contractor more than their actual costs, Contractor shall refund County the excess amount paid in accordance with Paragraph 4.2.3. If Contractor's actual costs are more than the amount paid by County, County will pay Contractor the difference, up to, but not to exceed the annual contract amount identified in the Signature Page, in accordance with Paragraph 4.2.3 County's obligation to pay is also subject to the other requirements of this Agreement.
- 4.2.3 **Payments.** Payment for the services performed under this Agreement shall be in accordance with Exhibit C, unless other payment methodologies are negotiated and agreed to by both Contractor and County. Contractor shall maintain supporting documentation of expenses as specified in Articles 11 and 13 for provisional rates or cost reimbursement elements. Payments will be made in arrears after receipt of properly completed invoice approved by the COR. Payment shall be NET 30 days from receipt and approval of invoice unless otherwise stated.

For Provisional Rates, County will reimburse the good faith estimate of the actual allowable, allocable and reasonable costs incurred associated with the work performed during the month of service. Contractor shall maintain supporting documentation of expenses as specified in Articles 11 and 13.

- 4.2.3.1 This monthly invoice shall reflect a good faith estimate of the actual allowable, allocable and reasonable costs incurred associated with the work performed during the month of service. This good faith estimate shall be based on the budgeted net unit cost for each service category, hereafter known as provisional rates, multiplied by the units provided.
- 4.2.3.2 **Reconciliation of Good Faith Estimates to Actual Allowable Expenses.** Contractor shall submit a cost report to complete a reconciliation of the actual allowable, allocable and reasonable expenses incurred associated with the work performed under this agreement twice annually at a minimum; the COR may require them more frequently. Cost reports submitted by Contractor shall include the actual allowable cumulative year to date expenses by service category for the period. Upon receipt of each cost report, County will reconcile year to date payments with year to date actual allowable, allocable and reasonable expenses and adjust the next monthly invoice for under payments or overpayments in excess of \$100. Cost reports shall also include total amounts over paid by the County to Contractor or under paid by the County to the Contractor for each month of service. At the end of each fiscal year, Contractor shall complete an annual reconciliation of the actual allowable expenses incurred associated with the work performed under this agreement for that fiscal year. Overpayments and underpayments will be adjusted during the fiscal year and at the end of the fiscal year as instructed by the COR.
- 4.2.3.3 **Final Fiscal Year End Settlements.** Contractor shall submit the final cost report reflecting the actual costs for reimbursement for services performed during the County fiscal year by the final fiscal year settlement date, which will be established by each program. This settlement date shall be no more than 60 calendar days from the end of the County fiscal year. Upon receipt of the fiscal year end cost report, County will reconcile year to date payments with fiscal year end actual allowable, allocable and reasonable expenses. County will reimburse Contractor for underpayments and will recoup overpayments from Contractor. County may, in its sole discretion, choose to not process invoices for reimbursement for services performed during that fiscal year after this date. The County fiscal year shall be defined as July 1, through June 30, unless otherwise defined in this Agreement. ||
- 4.2.3.4 **Final Agreement Settlement Date.** Contractor shall submit the final invoice for reimbursement for services performed during the final fiscal year of the contract by the final contract settlement date, which shall be no more than 60 calendar days from the final date of the contract services. County may, in its sole discretion, choose to not process invoices for reimbursement for services performed during the final fiscal year of the contract after the final Agreement settlement date.

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4.2.4 Full Compensation. Pending any adjustments by the COR and except as otherwise provided for in the cost reports submitted by Contractor to County if Provisional Rates are utilized, each invoice approved and paid shall constitute full and complete compensation to Contractor for all work completed during the billing period pursuant to Exhibit A and A-1 and Exhibit C. This Agreement constitutes the entire Agreement between Contractor and County. Contractor shall be entitled only to payment and, if Provisional Rates or Reimbursable elements are included in this Agreement, reimbursement for allowable, allocable and reasonable costs, associated with services pursuant to Exhibit A and A-1.

4.2.5 Prompt Payment for Vendors and Subcontractors

4.2.5.1 Prompt payment for vendors and subcontractors.

4.1.5.1.1. Unless otherwise set forth in this paragraph, Contractor shall promptly pay its vendors and subcontractor(s) for satisfactory performance under its subcontract(s) to this Agreement. Such prompt payment shall be no later than thirty (30) days after Contractor receives payment for such services from County and shall be paid out of such amounts as are paid to Contractor under this Agreement.

4.1.5.1.1.1. Contractor shall include a payment clause conforming to the standards set forth in Paragraph 4.1.5.1.1 of this Agreement in each of its subcontracts, and shall require each of its subcontractors to include such a clause in their subcontracts with each lower-tier subcontractor or supplier.

4.2.5.2 If Contractor, after submitting a claim for payment to County but before making a payment to a vendor or subcontractor for the goods or performance covered by the claim, discovers that all or a portion of the payment otherwise due such vendor or subcontractor is subject to withholding from the vendor or subcontractor in accordance with the vendor or subcontract agreement, then the Contractor shall:

4.1.5.1.1.1. Furnish to the vendor or subcontractor and the COR within three (3) business days of withholding funds from its vendor or subcontractor a notice stating the amount to be withheld, the specific causes for the withholding under the terms of the subcontract or vendor agreement; and the remedial actions to be taken by the vendor or subcontractor in order to receive payment of the amounts withheld.

4.1.5.1.1.1. Contractor shall reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph 4.1.5.1.1 of this Agreement and Contractor may not claim from the County this amount until its subcontractor has cured the cause of Contractor withholding funds;

4.1.5.1.1.1. Upon the vendor's or subcontractor's cure of the cause of withholding funds, Contractor shall pay the vendor or subcontractor as soon as practicable, and in no circumstances later than ten (10) days after the Contractor claims and receives such funds from County.

4.2.5.3 Contractor shall not claim from County all of or that portion of a payment otherwise due to a vendor or subcontractor that Contractor is withholding from the vendor or subcontractor in accordance with the subcontract agreement where Contractor withholds the money before submitting a claim to County. Contractor shall provide its vendor or subcontractor and the COR with the notice set forth in Paragraph 4.2.5.24.1.5.1.13 of this Agreement and shall follow Paragraph 4.2.5.24.1.5.1.13 of this Agreement when vendor or subcontractor cures the cause of Contractor withholding its vendors or subcontractor's funds.

4.2.5.4 Overpayments. If Contractor becomes aware of a duplicate contract financing or invoice payment or that County has otherwise overpaid on a contract financing or invoice payment, Contractor shall immediately notify the COR and request instructions for disposition of the overpayment.

4.2.6 Availability of Funding. The County's obligation for payment of any Agreement beyond the current fiscal year is contingent upon the availability of funding from which payment can be made. No legal liability on the part of the County shall arise for payment beyond June 30 of the calendar year unless funds are designated by the County and are made available for such performance.

County shall, in its sole discretion, have the right to terminate or suspend this Agreement or reduce compensation and service levels proportionately upon thirty (30) days' written notice to Contractor in the event that Federal, State or County funding for this Agreement ceases or is reduced prior to the ordinary expiration of the term of this Agreement. In the event of reduction of funding for the Agreement, County and Contractor shall meet within ten (10) days of written notice to renegotiate this Agreement based upon the modified level of funding. In this case if no Agreement is reached between County and Contractor within 10 days of the first meeting, either party shall have the right to terminate this Agreement within ten (10) days written notice of termination.

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In the event of termination of this Agreement in accordance with the terms of this Section, Contractor shall be entitled to retain all sums paid as of the effective date of such termination, subject to any payment offset to which County may be entitled, for damages or otherwise, under the terms of this Agreement. In the event of termination of this Agreement pursuant to this Section, in no event shall Contractor be entitled to any loss of profits on the portion of this Agreement so terminated, or to other compensation, benefits, reimbursements or ancillary services other than as herein expressly provided.

- 4.2.7 Conditions Prerequisite To Payments. County may elect not to make a particular payment if any of the following exists:
- 4.2.7.1 Misrepresentation. Contractor, with or without knowledge, made any misrepresentation of substantial and material nature with respect to any information furnished to County.
 - 4.2.7.2 Unauthorized Actions by Contractor. Contractor took any action pertaining to this Agreement, which required County approval, without having first received said County approval.
 - 4.2.7.3 Default. Contractor was in default under any terms and conditions of this Agreement.
 - 4.2.7.4 Fees for Service. Contractor implemented a schedule of fees to be charged to clients or third party client representatives without prior County approval, unless authorized elsewhere in this Agreement.
- 4.2.8 Withholding Of Payment. County may withhold reimbursement until reports, data, audits, or other information required for Agreement administration or to meet County, State, Federal or other funding source reporting or auditing requirements are received and approved by COR or designee. County may also withhold payment if, in County's opinion, Contractor is in noncompliance with this Agreement.
- 4.2.9 Interpretation of Claim Provisions. As used in this Article 4, the term "claim" refers to a claim filed pursuant to San Diego County Code of Administrative Ordinances Article V-A, "Processing and Certification of Routine Claims." The term "claim" as used in this Article 4 does not refer to a claim filed pursuant to San Diego County Code of Administrative Ordinances, Article X, "Claims against the County."
- 4.2.10 Severability Limits. Severability pertains only to those Agreements that originate in one fiscal year and end in another fiscal year. This Agreement is severable for and limited to the amounts in the attached budget. In no event shall Contractor exceed the Severability Limits.
- 4.2.11 Disallowance. In the event Contractor receives payment from County for a service, reimbursement for which is later disallowed by County or the State, the Federal government, or any other funding source, Contractor shall promptly refund the disallowed amount to County on request, or County may offset the amount disallowed from any payment due to or to become due to Contractor under this Agreement or any other Agreement. Similarly, a disallowance under a prior Agreement may be offset against this Agreement.
- 4.2.12 Partial Payment. If Contractor fails to perform specified services, provide specified products or perform services or provide products timely and in accordance with specified requirements, Contractor shall be paid only the reasonable cost for the services performed or products provided for the payment period as determined by the COR.
- 4.2.13 Project Generated Revenue. Project Generated Revenue realized by Contractor in excess of the Agreement budget shall be utilized in support of the Project.
- 4.2.13.1 Project Generated Revenue and Expenditures shall be reported at the end of the Agreement period.
 - 4.2.13.2 With COR approval, Contractor may expend a remaining balance of project generated revenue in the term of a subsequent County Agreement in support of this Project.
- 4.2.14 Rate of Expense. Contractor shall control its rate of expense in relation to units of service and anticipated revenues.
- 4.2.15 Contractor shall inform the COR when it is anticipated that the need for services will exceed the approved service units and budget; however, Contractor's claim/invoice shall not exceed the approved budget.
- 4.2.16 Any records of revenues, expenditures and/or clinical records under this Agreement shall be subject to compliance with Federal, State or local laws or regulations and may be audited and/or reviewed by the County and/or the appropriate Federal, State or County agency. In the event of an audit disallowance of any claimed cost which is subject to compliance with Federal, State or local law or regulations, Contractor shall be liable for any costs or lost revenue resulting therefrom.

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ARTICLE 5
AGREEMENT ADMINISTRATION

- 5.1 **County's Agreement Administrator.** The Director of Purchasing and Contracting is designated as the Contracting officer ("Contracting Officer") and is the only County official authorized to make any Changes to this Agreement. The County has designated the individual identified on the signature page as the Contracting Officer's Representative ("COR")
- 5.1.1 County's COR will chair Contractor progress meetings and will coordinate County's Agreement administrative functions. The COR is designated to receive and approve Contractor invoices for payment, audit and inspect records, inspect Contractor services, and provide other technical guidance as required. The COR is not authorized to change any terms and conditions of this Agreement. Only the Contracting Officer, by issuing a properly executed amendment to this Agreement, may make changes to the scope of work or total price.
- 5.1.2 Notwithstanding any provision of this Agreement to the contrary, County's COR may make Administrative Adjustments ("AA") to the Agreement, such as line item budget changes or adjustments to the service requirements that do not change the purpose or intent of the Statement of Work, the Terms and Conditions, the Agreement Term or the total Agreement price. Each AA shall be in writing and signed by COR and Contractor. All inquiries about such AA will be referred directly to the COR.
- 5.2 **Agreement Progress Meeting.** The COR and other County personnel, as appropriate, will meet periodically with the Contractor to review the Agreement performance. At these meetings the COR will apprise the Contractor of how the County views the Contractor's performance and the Contractor will apprise the County of problems, if any, being experienced. The Contractor shall also notify the Contracting Officer (in writing) of any work being performed, if any, that the Contractor considers being over and above the requirements of the Agreement. Appropriate action shall be taken to resolve outstanding issues. The minutes of these meetings will be reduced to writing and signed by the COR and the Contractor. Should the Contractor not concur with the minutes, the Contractor shall set out in writing any area of disagreement. Appropriate action will be taken to resolve any areas of disagreement.

ARTICLE 6
CHANGES

- 6.1 **Contracting Officer.** The Contracting Officer may at any time, by a written order, make changes ("Changes"), within the general scope of this Agreement, in the definition of services to be performed, and the time (i.e.) hours of the day, days of the week, etc. and place of performance thereof. If any such Change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Agreement, whether changed or not changed by such an order, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified in writing accordingly. Such changes may require Board of Supervisors approval.
- 6.2 **Claims.** Contractor must assert any claim for adjustment under this clause within thirty (30) days from the date of receipt by the Contractor of the notification of Change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Agreement. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Agreement entitled "Disputes" (Article 15). However, nothing in this clause shall excuse the Contractor from proceeding with this Agreement as changed.

ARTICLE 7
SUSPENSION, DELAY AND TERMINATION

- 7.1 **Termination for Default.** Upon Contractor's breach of this Agreement, County shall have the right to terminate this Agreement, in whole or part. Prior to termination for default, County will send Contractor written notice specifying the cause. The notice will give Contractor ten (10) days from the date the notice is issued to cure the default or make progress satisfactory to County in curing the default, unless a different time is given in the notice. If County determines that the default contributes to the curtailment of an essential service or poses an immediate threat to life, health or property, County may terminate this Agreement immediately upon issuing oral or written notice to the Contractor without any prior notice or opportunity to cure. In the event of termination under this Article, all finished or unfinished documents, and other materials, prepared by Contractor under this Agreement shall become the sole and exclusive property of County.

In the event of such termination, the County may purchase or obtain the supplies or services elsewhere, and Contractor shall be liable for the difference between the prices set forth in the terminated order and the actual cost thereof to the County. The prevailing market price shall be considered the fair repurchase price. Notwithstanding the above, Contractor shall not be relieved of liability to County for damages sustained by County by virtue of any breach of this Agreement by Contractor, and

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County may withhold any reimbursement to Contractor for the purpose of off-setting until such time as the exact amount of damages due County from Contractor is determined.

If, after notice of termination of this Agreement under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, the rights and obligations of the parties shall, if this Agreement contains a clause providing for termination for convenience of the County, be the same as if the notice of termination had been issued pursuant to such clause.

- 7.2 Damages for Delay. If Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as shall ensure its completion within the time specified in this Agreement, or any extension thereof, or fails to complete said work within such time, County will be entitled to the resulting damages caused by the delay. Damages will be the cost to County incurred as a result of continuing the current level and type of service over that cost that would be incurred had the Agreement segments been completed by the time frame stipulated and any other damages suffered by County.
- 7.3 County Exemption from Liability. In the event there is a reduction of funds made available by County to Contractor under this or subsequent agreements, the County of San Diego and its Departments, officers and employees shall incur no liability to Contractor and shall be held harmless from any and all claims, demands, losses, damages, injuries, or liabilities arising directly or from such action.
- 7.4 Full Cost Recovery Of Investigation And Audit Costs. Contractor shall reimburse County of San Diego for all direct and indirect expenditures incurred in conducting an audit/investigation when Contractor is found in violation (material breach) of the terms of the Agreement.

At the sole discretion of the County, and subject to funding source restrictions and federal and State law, County may (1) withhold reimbursement for such costs from any amounts due to Contractor pursuant to the payment terms of the Agreement, (2) withhold reimbursement for such costs from any other amounts due to Contractor from County, and/or (3) require Contractor to remit a check for the total amount due (or a lesser amount specified by the County) to County within thirty (30) days of request by County. Alternatively, at the County's sole discretion, County and Contractor may enter into a written repayment plan for the reimbursement of the audit/investigation costs.

- 7.5 Termination for Convenience. The County may, by written notice stating the extent and effective date terminate this Agreement for convenience in whole or in part, at any time. The County shall pay the Contractor as full compensation for work performed in accordance with the terms of this Agreement until such termination:
- 7.5.1 The unit or pro rata price for any delivered and accepted portion of the work.
- 7.5.2 A reasonable amount, as costs of termination, not otherwise recoverable from other sources by the Contractor as approved by the County, with respect to the undelivered or unaccepted portion of the order, provided compensation hereunder shall in no event exceed the total price.
- 7.5.3 In no event shall the County be liable for any loss of profits on the resulting order or portion thereof so terminated.
- 7.5.4 County's termination of this Agreement for convenience shall not preclude County from taking any action in law or equity against Contractor for:
- 7.5.4.1 Fraud, waste or abuse of Agreement funds, or
- 7.5.4.2 Improperly submitted claims, or
- 7.5.4.3 Any failure to perform the work in accordance with the Statement of Work, or
- 7.5.4.4 Any breach of any term or condition of the Agreement, or
- 7.5.4.5 Any actions under any warranty, express or implied, or
- 7.5.4.6 Any claim of professional negligence, or
- 7.5.4.7 Any other matter arising from or related to this Agreement, whether known, knowable or unknown before, during or after the date of termination.
- 7.6 Suspension of Work. The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Agreement for the period of time that the Contracting Officer determines appropriate for the convenience of the Government. County reserves the right to prohibit, without prior notice, contractor or contractor's employees, directors, officers, agents, subcontractors, vendors, consultants or volunteers from 1) accessing County data systems and County owned software applications, including websites, domain names, platforms, physical files, 2) treating County's patients, clients, or facility residents, or 3) providing any other services under this Agreement.

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- 7.7 Remedies Not Exclusive. The rights and remedies of County provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law, equity, or under resulting order.

ARTICLE 8
COMPLIANCE WITH LAWS AND REGULATIONS

- 8.1 Compliance with Laws and Regulations. Contractor shall at all times perform its obligations hereunder in compliance with all applicable federal, State, County, and local laws, rules, and regulations, current and hereinafter enacted, including facility and professional licensing and/or certification laws and keep in effect any and all licenses, permits, notices and certificates as are required. Contractor shall further comply with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health and sanitation.
- 8.2 Contractor Permits and License. Contractor certifies that it possesses and shall continue to maintain or shall cause to be obtained and maintained, at no cost to the County, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its employees to comply with all existing foreign or domestic statutes, ordinances, and regulations, or other laws, that may be applicable to performance of services hereunder. The County reserves the right to reasonably request and review all such applications, permits, and licenses prior to the commencement of any services hereunder.
- 8.3 Equal Opportunity. Contractor shall comply with the provisions of Title VII of the Civil Rights Act of 1964 in that it will not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment nor shall Contractor discriminate in any way that would deprive or intend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, handicap, medical condition, sexual orientation or marital status.
- 8.4 Affirmative Action. Each Contractor of services and supplies employing fifteen (15) or more full-time permanent employees, shall comply with the Affirmative Action Program for Vendors as set forth in Article IIIk (commencing at Section 84) of the San Diego County Administrative Code, which program is incorporated herein by reference. A copy of this Affirmative Action Program will be furnished upon request by COR or from the County of San Diego Internet web-site (www.co.san-diego.ca.us).
- 8.5 Non Discrimination. Contractor shall ensure that services and facilities are provided without regard to ethnic group identification, race, color, nation origin, creed, religion, age, sex, physical or mental disability, political affiliation or marital status in accordance with applicable laws, including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C 200-d), Section 162 (a) of the Federal-Aid Highway Act of 1973 (23 U.S.C 324), Section 504 of the Rehabilitation Act of 1973, The Civil Rights Restoration Act of 1987 (P.L. 100-209), Executive Order 12898 (February 11, 1994), Executive Order 13166 (August 16, 2000), Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000-d), the Age Discrimination of 1975 (42 U.S.C. 6101), Article 9.5, Chapter 1, Part 1, Division 2, Title 2 (Section 11135, et seq) of the California Government Code, Title 9, Chapter 4, Subchapter 6 (Section 10800, et seq) of the CCR and California Dept of Social Services Manual of Policies and Procedures (CDSS MPP) Division 21.
- 8.6 AIDS Discrimination. Contractor shall not deny any person the full and equal enjoyment of, or impose less advantageous terms, or restrict the availability of, the use of any County facility or participation in any County funded or supported service or program on the grounds that such person has Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS) as those terms are defined in Title 3, Division 2, Chapter 8, Section 32.803, of the San Diego County Code of Regulatory Ordinances.
- 8.7 American with Disabilities Act (ADA) 1990. Contractor shall not discriminate against qualified people with disabilities in employment, public services, transportation, public accommodations and telecommunications services in compliance with the Americans with Disabilities Act (ADA) and California Administrative Code Title 24.
- 8.8 Political Activities Prohibited. None of the funds, provided directly or indirectly, under this Agreement shall be used for any political activities or to further the election or defeat of any candidate for public office. Contractor shall not utilize or allow its name to be utilized in any endorsement of any candidate for elected office. Neither this Agreement nor any funds provided hereunder shall be utilized in support of any partisan political activities, or activities for or against the election of a candidate for an elected office.
- 8.9 Lobbying. Contractor agrees to comply with the lobbying ordinances of the County and to assure that its officers and employees comply before any appearance before the County Board of Supervisors. Except as required by this Agreement, none of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before State and federal Legislatures, the Board of Supervisors of the County, or before any other local governmental entity. This provision shall not preclude Contractor from seeking necessary permits, licenses and the like necessary for it to comply with the terms of this Agreement.

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- 8.9.1 Byrd Anti-Lobbying Amendment. Contractor shall file Standard Form-LLL, "Disclosure Form to Report Lobbying," to certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award by Contractor or Contractor's Subcontractors. In accordance with 31 U.S.C. 1352, Contractor shall also file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Contractor shall include this provision in all subcontracts and require each of its subcontractors to comply with the certification and disclosure requirements of this provision.
- 8.10 Religious Activity Prohibited. There shall be no religious worship, instructions or proselytization as part of or in connection with the performance of this Agreement.
- 8.11 Drug and Alcohol-Free Workplace. The County of San Diego, in recognition of individual rights to work in a safe, healthful and productive work place, has adopted a requirement for a drug and alcohol free work place, County of San Diego Drug and Alcohol Use Policy C-25, available on the County of San Diego website. This policy provides that all County-employed Contractors and Contractor employees shall assist in meeting this requirement.
- 8.11.1 As a material condition of this Agreement, the Contractor agrees that the Contractor and the Contractor employees, while performing service for the County, on County property, or while using County equipment:
- 8.11.1.1 Shall not be in any way impaired because of being under the influence of alcohol or a drug.
- 8.11.1.2 Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.
- 8.11.1.3 Shall not sell, offer, or provide alcohol or an illegal drug to another person; provided, however, that the foregoing restriction shall not be applicable to a Contractor or Contractor employee who as part of the performance of normal job duties and responsibilities prescribes or administers medically prescribed drugs.
- 8.11.2 Contractor shall inform all employees who are performing service for the County on County property or using County equipment of the County objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.
- 8.11.3 The County may terminate for default or breach this Agreement, and any other agreement the Contractor has with the County, if the Contractor, or Contractor employees are determined by the Contracting Officer not to be in compliance with the conditions listed herein.
- 8.12 Board of Supervisors' Policies. Contractor represents that it is familiar, and shall use its best efforts to comply, with the following policies of the Board of Supervisors, available on the County of San Diego website:
- 8.12.1 Board Policy B-67, which encourages the County's Contractors to offer products made with recycled materials, reusable products, and products designed to be recycled to the County in response to the County's requirements; and
- 8.12.2 Board Policies B-53 and B-39a, which encourage the participation of small and disabled veterans' business enterprises in County procurements; and
- 8.12.3 Zero Tolerance for Fraudulent Conduct in County Services. Contractor shall comply with County of San Diego Board of Supervisors Policy A-120 "Zero Tolerance for Fraudulent Conduct in County Services." There shall be "Zero Tolerance" for fraud committed by contractors in the administration of County programs and the provision of County services. Upon proven instances of fraud committed by independent contractors in connection with their performance under the Agreement, said contractor shall be subject to corrective action up to and including termination of the Agreement; and
- 8.12.4 Interlocking Directorate. In recognition of Board Policy A-79, available on the County of San Diego Website, not-for-profit Contractors shall not subcontract with related for-profit subcontractors for which an interlocking relationship exist unless specifically authorized in writing by the Board of Supervisors; and
- 8.12.5 Zero Tolerance in Coaching Medi-Cal or Welfare Clients (Including Undocumented Immigrants). The County of San Diego in recognition of its unique geographical location and the utilization of the Welfare and Medi-Cal systems by foreign nationals who are not legal residents of this county or country, has adopted a Zero Tolerance policy and shall aggressively prosecute employees and Contractors who coach Medi-Cal or Welfare clients (including undocumented immigrants), to obtain services for which they are not otherwise entitled.

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As a material condition of this Agreement, Contractor agrees that the Contractor and Contractor's employees, while performing service for the County, on County property or while using County equipment shall not:

- (a) in any way coach, instruct, advise, or guide any Medi-Cal or Welfare clients or prospective clients who are undocumented immigrants on ways to obtain or qualify for Medi-Cal assistance, for which they are not otherwise entitled.
- (b) support or provide funds to any organization engaged directly or indirectly in advising undocumented immigrants on ways to obtain or qualify for Medi-Cal assistance, for which they are not otherwise entitled.

Contractor shall inform all employees that are performing service for the County on County property or using County equipment of County's Zero Tolerance Policy as referenced herein.

County may terminate for default or breach this Agreement and any other agreement Contractor has with County, if Contractor or Contractor employees are determined not to be in compliance with the conditions stated herein.

- 8.13 Cartwright Act. Following receipt of final payment under the Agreement, Contractor assigns to the County all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright act (Chapter 2) (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County under this Agreement.
- 8.14 Hazardous Materials. Contractor shall comply with all Environmental Laws and all other laws, rules, regulations, and requirements regarding Hazardous Materials, health and safety, notices, and training. Contractor agrees that it will not store any Hazardous Materials at any County facility for periods in excess of ninety (90) days or in violation of the applicable site storage limitations imposed by Environmental Law. Contractor agrees to take, at its expense, all actions necessary to protect third parties, including, without limitation, employees and agents of the County, from any exposure to Hazardous Materials generated or utilized in its performance under this Agreement. Contractor agrees to report to the appropriate governmental agencies all discharges, releases, and spills of Hazardous Materials that are required to be reported by any Environmental Law and to immediately notify the County of it. Contractor shall not be liable to the County for the County's failure to comply with, or violation of, any Environmental Law. As used in this section, the term "Environmental Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including, but not limited to, the Resource Conservation and Recovery Act, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions or other similar substances or conditions. As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (b) is controlled, referred to, designated in or governed by any Environmental Laws; (c) gives rise to any reporting, notice or publication requirements under any Environmental Laws, or (d) is any other material or substance giving rise to any liability, responsibility or duty upon the County or Lessee with respect to any third person under any Environmental Laws.
- 8.15 Clean Air Act and Federal Water Pollution Control Act.
- 8.15.1 Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Contractor agrees to report each violation to the USDA and the appropriate EPA Regional Office.
- 8.15.2 Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 et seq.). Contractor agrees to report each violation to the USDA and the appropriate EPA Regional Office.
- 8.16 Debarment, Exclusion, Suspension, and Ineligibility.
- 8.16.1 Contractor certifies that, except as disclosed to County and acknowledged in writing by County prior to the execution of this Agreement, Contractor, its employees, directors, officers, agents, subcontractors, vendors, consultants, and volunteers:
- 8.16.1.1 Are not presently debarred, excluded, suspended, declared ineligible, voluntarily excluded, or proposed for debarment, exclusion, suspension or ineligibility by any federal, state, or local department or agency; and
 - 8.16.1.2 Have not within a 3-year period preceding this Agreement been convicted of, or had a civil or administrative judgment rendered against them for, the commission of fraud or a criminal offense or civil action in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction; violation of federal or State anti-trust statutes or commission of embezzlement, theft, forgery,

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bribery, falsification or destruction of records, making false statements, receiving stolen property; physical, financial or sexual abuse or misconduct with a patient or client, or medical negligence or malpractice;

8.16.1.3 Are not presently indicted or otherwise criminally, civilly or administratively charged by a government entity (federal, State, or local) with commission of any of the offenses enumerated in the paragraph above; and

8.16.1.4 Have not within a 3-year period preceding this Agreement had one or more public transaction (federal, State, or local) terminated for cause or default.

8.16.2 Contractor shall have an ongoing duty during the term of this Agreement to disclose to the County any occurrence that would prevent Contractor from making the certifications contained in this Section 8.16 on an ongoing basis. Such disclosure shall be made in writing to the COR and the County Office of Ethics and Compliance within five (5) business days of when Contractor discovers or reasonably believes there is a likelihood of such occurrence.

8.16.3 Contractor invoices shall include the following language:

I certify that the above deliverables and/or services were delivered and/or performed specifically for this Agreement in accordance with the terms and conditions set forth herein.

I further certify, under penalty of perjury under the laws of the State of California, that no employee or entity providing services under the terms and conditions of this Agreement is currently listed as debarred, excluded, suspended, or ineligible on the Federal System for Award Management (SAM: <http://SAM.gov>), the Federal Health and Human Services Office of Inspector General List of Excluded Individuals/Entities (LEIE: <http://exclusions.oig.hhs.gov>), or the State of California Medi-Cal Suspended and Ineligible list (www.medical.ca.gov).

8.17 Display of Fraud Hotline Poster(s). As a material term and condition of this Agreement, Contractor shall:

8.17.1 Prominently display in common work areas within all business segments performing work under this Agreement County of San Diego Office of Ethics and Compliance Ethics Hotline posters;

8.17.2 Posters may be downloaded from the County Office of Ethics and Compliance website at: <http://www.sandiegocounty.gov/content/sdc/cao/oec.html>. Additionally, if Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website;

8.17.3 If Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, the Contractor need not display the County poster;

8.17.4 In the event Contractor subcontracts any of the work performed under this Agreement, Contractor include this clause in the subcontract(s) and shall take appropriate steps to ensure compliance by the subcontractor(s).

8.18 False Claims Act Training. Contractor shall, not less than annually, provide training on the Federal False Claims Act (31 USC 3729-3730) and State False Claims Act (California Government Code 12650-12653) to all employees, directors, officers, agents, subcontractors, consultants or volunteers providing services under this Agreement. Contractor shall maintain verification of this training. Contractor shall retain these forms, or an electronic version, in accordance with the Agreement requirement for retention of records. For the purposes of this section, "Subcontractor" shall include any entity, other than County, that furnishes to Contractor services or supplies relevant to this Agreement other than standard commercial supplies, office space, and printing services.

8.19 Code of Ethics. As a material term and condition of this Agreement, Contractor shall develop and implement a Code of Ethics or similar document and maintain it during the term of this Agreement. Additionally, Contractor shall train all employees and volunteers on the Code of Ethics, and all employees, volunteers, directors, officers, and agents shall certify that they have received training and have been provided an opportunity to ask questions of their employer regarding the Code of Ethics. Contractor shall retain these certifications in accordance with the Agreement's provision regarding retention of records. Contractor shall pass this requirement down to its subcontractors in its entirety. For purposes of this section, "Subcontractor" shall mean any entity, other than County, that furnishes to Contractor services or supplies relevant to this Agreement other than standard commercial supplies, office space, and printing services.

8.20 Compliance Program. Contractors with an agreement that exceeds more than \$250,000 in value annually shall establish, and maintain for the duration of this Agreement, a compliance program that meets the standards of Federal Sentencing Guidelines section 8B2.1 and 42 CFR 438.608 (b)(1) – (b) (7) regardless of funding source or services.

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- 8.21 Investigations. Unless prohibited by an investigating government authority, Contractor shall cooperate and participate fully in any investigation initiated by County relative to this Agreement. Upon County's request, Contractor shall promptly provide to County any and all documents, including any and all communications or information stored digitally, and make available for interviews any employee(s) of Contractor identified by County. Contractor further agrees to immediately notify County if any employee, director, officer, agent, subcontractor, vendor, consultant or volunteer of Contractor comes under investigation by any federal, State or local government entity with law enforcement or oversight authority over the Agreement or its funding for conduct arising out of, or related to, performance under this Agreement.

Contractor shall promptly make available to County all internal investigative results, findings, conclusions, recommendations and corrective action plans pertaining to the investigation in its possession as requested by the County, unless otherwise protected by applicable law or privilege.

- 8.22 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms. Contractor shall, in accordance with 2 CFR 200.321 - Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms, take affirmative steps to include minority business, women's business enterprises, and labor surplus area firm by:
- 8.22.1 Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - 8.22.2 Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - 8.22.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - 8.22.4 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
 - 8.22.5 Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

- 8.23 Procurement of Recovered Materials. Contractor shall comply with 2 CFR part 200.322. Contractor shall procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000. Contractor certifies that the percentage of recovered materials to be used in the performance of this Agreement will be at least the amount required by applicable specifications or other contractual requirements. For contracts over \$100,000 in total value, Contractor shall estimate the percentage of total material utilized for the performance of the Agreement that is recovered materials and shall provide such estimate to County upon request.

- 8.24 Contract Work Hours and Safety Standards. If mechanics or laborers are to be employed under this Agreement, Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Contractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Contractor shall not require any laborer or mechanic to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous.

ARTICLE 9
CONFLICTS OF INTEREST; CONTRACTOR'S CONDUCT

- 9.1 Conflicts of Interest. Contractor presently has no interest, including but not limited to other projects or independent agreements, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor shall not employ any person having any such interest in the performance of this Agreement. Contractor shall not hire County's employees to perform any portion of the work or services provided for herein including secretarial, clerical and similar incidental services except upon the written approval of County. Without such written approval, performance of services under this Agreement by associates or employees of County shall not relieve Contractor from any responsibility under this Agreement.
- 9.1.1 California Political Reform Act and Government Code Section 1090 Et Seq. Contractor acknowledges that the California Political Reform Act ("Act"), Government Code section 81000 et seq., provides that Contractors hired by a public agency, such as County, may be deemed to be a "public official" subject to the Act if the Contractor advises the agency on decisions or actions to be taken by the agency. The Act requires such public officials to disqualify themselves from participating in any way in such decisions if they have any one of several specified "conflicts of interest" relating to the decision. To the extent the Act applies to Contractor, Contractor shall abide by the Act. In

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addition, Contractor acknowledges and shall abide by the conflict of interest restrictions imposed on public officials by Government Code section 1090 et seq.

9.2 Conduct of Contractor.

- 9.2.1 Contractor shall inform the County of all Contractor's interests, if any, that are, or that Contractor believes to be, incompatible with any interests of the County.
- 9.2.2 Contractor shall not, under circumstances that might reasonably be interpreted as an attempt to influence the recipient in the conduct of his duties, accept any gratuity or special favor from individuals or organizations with whom the Contractor is doing business or proposing to do business, in accomplishing the work under this Agreement.
- 9.2.3 Contractor shall not use for personal gain or make other improper use of confidential information, which is acquired in connection with his employment. In this connection, the term "confidential information" includes, but is not limited to, unpublished information relating to technological and scientific development; medical, personnel, or security records of the individuals; anticipated materials requirements or pricing actions; and knowledge of selections of Contractors or subcontractors in advance of official announcement.
- 9.2.4 Contractor, its employees, directors, officers, agents, subcontractors, vendors, consultants, and volunteers shall not offer, directly or indirectly, any unlawful gift, gratuity, favor, entertainment, or other item(s) of monetary value to an employee or official of the County.
- 9.2.5 Referrals. Contractor further covenants that no referrals of clients through Contractor's intake or referral process shall be made to the private practice of any person(s) employed by the Contractor.

9.3 Prohibited Agreements. As required by Section 67 of the San Diego County Administrative Code, Contractor certifies that it is not in violation of the provisions of Section 67, and that Contractor is not, and will not subcontract with, any of the following:

- 9.3.1. Persons employed by County or of public agencies for which the Board of Supervisors is the governing body;
- 9.3.2. Profit-making firms or businesses in which employees described in sub-section 9.3.1, above, serve as officers, principals, partners, or major shareholders;
- 9.3.3. Persons who, within the immediately preceding twelve (12) months came within the provisions of the above sub-sections and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the Agreement, or (2) participated in any way in developing the Agreement or its service specifications; and
- 9.3.4. Profit-making firms or businesses, in which the former employees described in sub-section 9.3.3 above, serve as officers, principals, partners, or major shareholders.

9.4 Limitation of Future Agreements or Grants. It is agreed by the parties to the Agreement that Contractor shall be restricted in its future contracting with the County to the manner described below. Except as specifically provided in this clause, Contractor shall be free to compete for business on an equal basis with other companies.

- 9.4.1 If Contractor, under the terms of the Agreement, or through the performance of tasks pursuant to this Agreement, is required to develop specifications or statements of work and such specifications or statements of work are to be incorporated into a solicitation, Contractor shall be ineligible to perform the work described within that solicitation as a prime or subcontractor under an ensuing County agreement. It is further agreed, however, that County will not, as additional work, unilaterally require Contractor to prepare such specifications or statements of work under this Agreement.
- 9.4.2 Contractor may not apply for nor accept additional payments for the same services contained in the Statement of Work.

ARTICLE 10
INDEMNITY AND INSURANCE

- 10.1 Indemnity. County shall not be liable for, and Contractor shall defend and indemnify County and the employees and agents of County (collectively "County Parties"), against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to this Agreement or the work covered by this Agreement and arising either directly or indirectly from any act, error, omission or negligence of Contractor or its Contractors, licensees, agents, servants or employees, including, without limitation, Claims caused by the sole passive negligent act or the concurrent negligent act, error or omission, whether active or passive, of County Parties. Contractor shall have no obligation,

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however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of County Parties.

- 10.2 Insurance. Prior to execution of this Agreement, Contractor must obtain at its own cost and expense, and keep in force and effect during the term of this Agreement, including all extensions, the insurance specified in Exhibit "B," "Insurance Requirements," attached hereto.

ARTICLE 11
AUDIT AND INSPECTION OF RECORDS

The County shall have the audit and inspection rights described in this section.

- 11.1 Audit and Inspection. Contractor agrees to maintain and/or make available within San Diego County accurate books and accounting records relative to all its activities under this Agreement. Authorized federal, State or County representatives shall have the right to monitor, assess, or evaluate Contractor's performance pursuant to this Agreement, said monitoring, assessments, or evaluations to include but not limited to audits, inspection of premises, reports, and interviews of project staff and participants. Contractor assertions of confidentiality shall not be a bar to full access to the records.

At any time during normal business hours and as often as County may deem necessary, Contractor shall make available to County, State or federal officials for examination all of its records with respect to all matters covered by this Agreement and will permit County, State or federal officials to audit, examine and make excerpts or transcripts from such records, and to make audits of all invoices, materials, payrolls, records of personnel, information regarding clients receiving services, and other data relating to all matters covered by this Agreement. If an audit is conducted, it will be done in accordance with generally accepted government auditing standards as described in "Government Auditing Standards," published for the United States General Accountability Office or the Institute of Internal Auditors International Standards for the Professional Practice of Internal Auditing.

If any services performed hereunder are not in conformity with the specifications and requirements of this Agreement, County shall have the right to require the Contractor to perform the services in conformity with said specifications and requirements at no additional increase in total Agreement amount. ~~When the services to be performed are of such nature that the difference cannot be corrected,~~ County shall have the right to (1) require Contractor immediately to take all necessary steps to ensure future performance of the services in conformity with requirements of the Agreement, and (2) reduce the Agreement price to reflect the reduced value of the services performed. In the event Contractor fails to perform the services promptly or to take necessary steps to ensure future performance of the service in conformity with the specifications and requirements of the Agreement, County shall have the right to either (1) by agreement or to otherwise have the services performed in conformity with the Agreement specifications and charge to Contractor any cost occasioned to County that is directly related to the performance of such services, or (2) terminate this Agreement for default as provided in the Termination clause.

- 11.2 External Audits. Contractors will provide the following to the COR:

- 11.2.1 Contractor shall provide COR a copy of all notifications of audits or pending audits by federal or State representatives regarding contracted services identified in this Agreement no later than three (3) business days of Contractor receiving notice of the audit.
- 11.2.2 Contractor shall provide COR with a copy of the draft and final State or federal audit reports within twenty four (24) hours of receiving them (Health and Human Services Agency (HHS) Contractors shall also provide electronic copies to Agency Contract Support (ACS) at ACS.HHS@sdcounty.ca.gov).
- 11.2.3 Contractor shall provide COR a copy of the contractor's response to the draft and final State or federal audit reports at the same time as response provided to the State or federal representatives.
- 11.2.4 Unless prohibited by the government agency conducting the audit, Contractor shall provide COR a copy of all responses made by the federal or State audit representative to the contractors' audit response no later than three (3) business days of receiving it. This will continue until the federal or State auditors have accepted and closed the audit.

- 11.3 Cost or Pricing Data. If the Contractor submitted cost or pricing data in connection with the pricing of this Agreement or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities of the general public, or prices set by law or regulation, the Contracting Officer or his representatives who are employees of the County or its agent shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation pricing or performance of such Agreement, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted.

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- 11.4 Availability. The materials described above shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit or reproduction, until the expiration of three (3) years from the date of final payment under this Agreement, or by section 11.4.1 and 11.4.2, below:
- 11.4.1 If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any resulting final settlement.
- 11.4.2 Record that relate to appeals under the "Disputes" clause of this Agreement, or litigation or the settlement of claims arising out of the performance of this Agreement, shall be made available until such appeals, litigation, or claims have been disposed of, or three years after Agreement completion, whichever is longer. County shall keep the materials described above confidential unless otherwise required by law.
- 11.5 Subcontract. The Contractor shall insert a clause containing all the provisions of this Article 11 in all subcontracts hereunder except altered as necessary for proper identification of the contracting parties and the contracting officer.

ARTICLE 12
INSPECTION OF SERVICE

- 12.1 Subject to Inspection. All performance (including services, materials, supplies and equipment furnished or utilized in the performance of this Agreement, and workmanship in the performance of services) shall be subject to inspection and test by the County at all times during the term of this Agreement. Contractor shall cooperate with any inspector assigned by the County to permit the inspector to determine whether Contractor's performance conforms to the requirements of this Agreement. County shall perform such inspection in a manner as not to unduly interfere with Contractor's performance.
- 12.2 Specification and Requirements. If any services performed by Contractor do not conform to the specifications and requirements of this Agreement, County may require Contractor to re-perform the services until they conform to said specifications and requirements, at no additional cost, and County may withhold payment for such services until Contractor correctly performs them. When the services to be performed are of such a nature that Contractor's cannot correct its performance, the County shall have the right to (1) require the Contractor to immediately take all necessary steps to ensure future performance of services conforms to the requirements of this Agreement, and (2) reduce the Agreement price to reflect the reduced value of the services received by County. In the event Contractor fails to promptly re-perform the services or to take necessary steps to ensure that future performance of the service conforms to the specifications and requirements of this Agreement, the County shall have the right to either (1) without terminating this Agreement, have the services performed, by agreement or otherwise, in conformance with the specifications of this Agreement, and charge Contractor, and/or withhold from payments due to Contractor, any costs incurred by County that are directly related to the performance of such services, or (2) terminate this Agreement for default.

ARTICLE 13
USE OF DOCUMENTS AND REPORTS

- 13.1 Findings Confidential. Any reports, information, data, etc., given to or prepared or assembled by Contractor under this Agreement that the County requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.
- 13.2 Ownership, Publication, Reproduction and Use of Material. All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other material or properties produced under this Agreement shall be the sole and exclusive property of County. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. County shall have unrestricted authority to publish, disclose, distribute and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement.
- 13.3 Confidentiality. Contractor agrees to maintain the confidentiality of and take industry appropriate and legally required measures to prevent the unlawful disclosure of any information that is legally required to be kept confidential. Except as otherwise allowed by local, State or federal law or regulation and pursuant to this Section 13.3, Contractor agrees to only disclose confidential records where the holder of the privilege, whether the County, or a third party, provides written permission authorizing the disclosure.
- 13.4 Public Records Act. The California Public Records Act ("CPRA") requires County to disclose "public records" in its actual or constructive possession unless a statutory exemption applies. This generally includes contracts and related documents. If County receives a CPRA request for records relating to the Agreement, County may, at its sole discretion, either determine its response to the request without notifying Contractor or notify Contractor of the request. If County determines its response to the request without notifying Contractor, Contractor shall hold County harmless for such determination. If County notifies

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Contractor of the request, Contractor may request that County withhold or redact records responsive to the request by submitting to County a written request within five (5) business days after receipt of the County's notice. Contractor's request must identify specific records to be withheld or redacted and applicable exemptions. Upon timely receipt of Contractor's request, County will review the request and at its sole discretion withhold and/or redact the records identified by Contractor. Contractor shall hold County harmless for County's decision whether to withhold and/or redact pursuant to Contractor's written request. Contractor further agrees that its defense and indemnification obligations set forth in Section 10.1 of this Agreement extend to any Claim (as defined in Section 10.1) against the County Parties (as defined in Section 10.1) arising out of County's withholding and/or redacting of records pursuant to Contractor's request. Nothing in this section shall preclude Contractor from bringing a "reverse CPRA action" to prevent disclosure of records. Nothing in this section shall prevent the County or its agents or any other governmental entity from accessing any records for the purpose of audits or program reviews if that access is legally permissible under the applicable local, State or federal laws or regulations. Similarly, County or its agent or designee may take possession of the record(s) where legally authorized to do so.

- 13.5 Maintenance of Records. Contractor shall maintain all records relating to its performance under this Agreement, including all records of costs charged to this Agreement, and shall make them available within San Diego County for a minimum of five (5) years from the ending date of this Agreement, or longer where required by funding source or while under dispute under the terms of this Agreement, unless County agrees in writing to an earlier disposition. Contractor shall provide any requested records to County within two (2) business days of request.
- 13.6 Custody of Records. County, at its option, may take custody of Contractor's client records upon Agreement, termination, expiration, or at such other time as County may deem necessary. County agrees that such custody will conform to applicable confidentiality provisions of State and federal law. Said records shall be kept by County in an accessible location within San Diego County and shall be available to Contractor for examination and inspection.
- 13.7 Audit Requirement.
- (a) Contractor shall annually engage a Licensed Certified Public Accountant licensed to perform audits and attests in the State of California to conduct an annual audit of its operations. Contractors that expend \$750,000 or more of federal grant funds per year shall also have an audit conducted in compliance with Government Auditing Standards, which includes Single Audit Act Amendments and the Compliance Supplement (2 CFR part 200 App. XD). Contractors that are commercial organizations (for-profit) are required to have a non-federal audit if, during its fiscal year, it expended a total of \$750,000 or more under one or more HHS awards. 45 CFR part 74.26(d) incorporates the threshold and deadlines of the Compliance Supplement but provides for-profit organizations two options regarding the type of audit that will satisfy the audit requirements. Contractor shall include a clause in any agreement entered into with an audit firm, or notify the audit firm in writing prior to the audit firm commencing its work for Contractor, that the audit firm shall, pursuant to 31 U.S.C. 7503, and to the extent otherwise required by law, provide access by the federal government or other legally required entity to the independent auditor's working papers that were part of the independent auditor's audit of Contractor. Contractor shall submit two (2) copies of the annual audit report, the audit performed in accordance with the Compliance Supplement, and the management letter to the County fifteen (15) days after receipt from the independent Certified Public Accountant but no later than nine (9) months after the Contractor's fiscal year end.
- (b) Contractor shall immediately notify County upon learning that Contractor's independent Certified Public Accountant may or will issue a disclaimer of opinion due to substantial doubt of Contractor's ability to continue as a going concern.
- 13.8 Reports. Contractor shall submit reports required in Exhibit A and A-1 and additional reports as may be requested by the COR and agreed to by the Contractor. Format for the content of such reports may be developed by County. The timely submission of these reports is a necessary and material term and condition of this Agreement and Contractor agrees that failure to meet specified deadlines will be sufficient cause to withhold payment. Contractor shall submit to County within thirty (30) days of the termination of this Agreement a report detailing all work done pursuant to this Agreement by Contractor.
- 13.9 Evaluation Studies. Contractor shall participate as requested by the County in research and/or evaluative studies designed to show the effectiveness and/or efficiency of Contractor services or to provide information about Contractor's project.

ARTICLE 14
INFORMATION PRIVACY AND SECURITY PROVISIONS

- 14.1 Recitals. This Article is intended to protect the privacy and security of County information that Contractor may create, receive, access, store, transmit, and/or destroy under this Agreement. In addition to the below Responsibilities, contractor shall be in compliance with the following rules, regulations, and agreements, *as applicable*:

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- 14.1.1 Health Insurance Portability and Accountability Act, specifically, Public Law 104-191, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005, 42USC section 17921 et seq., and 45CFR Parts 160 and 164, collectively referred to as "HIPAA;"
- 14.1.2 County agreements with the State of California, collectively referred to as "State Agreements" and posted on the County's website at: www.cosdcompliance.org, including:
- 14.1.2.1 The Medi-Cal Privacy and Security Agreement Between the California Department of Health Care Services (DHCS) and the County;
 - 14.1.2.2 The Medi-Cal Behavioral Health Services Performance Agreement between DHCS and the County;
 - 14.1.2.3 The San Diego County Alcohol and Drug Program Administrator Agreement between DHCS and the County
 - 14.1.2.4 The Refugee Health Agreement between the California Department of Public Health (CDPH) and the County;
 - 14.1.2.5 The HIV/AIDS Case Reporting System Data Use Agreement between CDPH and the County;
 - 14.1.2.6 The Childhood Lead Poisoning Prevention Program between CDPH and the County;
 - 14.1.2.7 The Standard Agreement between the County and the California Department of Aging; and
 - 14.1.2.8 The Agreement for Whole Person Care Pilot Program for San Diego County with DHCS.
- 14.1.3 Title 42 Code of Federal Regulations, Chapter 1, Subchapter A, Part 2.
- 14.2 **Definitions.** Terms used, but not otherwise defined, in this Article shall have the same meaning as defined by HIPAA.
- 14.2.1 "Breach" of Protected Health Information (PHI) shall have the same meaning given to the term "breach" under HIPAA and "breach" of Personal Information (PI)/Personally Identifiable Information (PII) shall have the same meaning as given to it under the State Agreements.
 - 14.2.2 "Business Associate," when applicable, shall mean the Contractor.
 - 14.2.3 "County PHI" shall have the same meaning as PHI under HIPAA, specific to PHI under this Agreement.
 - 14.2.4 "County PI/PII" shall have the same meaning as PI/PII under the State Agreements, specific to PI/PII under this Agreement.
 - 14.2.5 "Covered Entity," when applicable, shall mean the County.
 - 14.2.6 "Security incident" shall have the same meaning as defined by the State Agreements.
- 14.3 **Responsibilities of Contractor.**
- 14.3.1 **Use and Disclosure of County PHI/PI/PII.** Contractor shall use the minimum County PHI/PI/PII required to accomplish the requirements of this Agreement or as required by Law. Contractor may not use or disclose County PHI/PI/PII in a manner that would violate HIPAA or the State Agreements if done by the County.
 - 14.3.2 **Safeguards.** Contractor shall develop and maintain a HIPAA-compliant information privacy and security program to prevent use or disclosure of County PHI/PI/PII, other than as required by this Agreement.
 - 14.3.3 **Mitigation.** Contractor shall mitigate, to the extent practicable, any harmful effects caused by violation of the requirements of this Article, as directed by the County.
 - 14.3.4 **Subcontractors.** Contractor shall ensure that any agent, including a subcontractor, to whom it provides County PHI/PI/PII, imposes the same conditions on such agents that apply to Contractor under this Article.
 - 14.3.5 **Cooperation with County.**
 - 14.3.5.1 Contractor shall provide access to County PHI/PI/PII, as well as internal practices and records related to County PHI/PI/PII, at the written request of County within ten (10) calendar days.
 - 14.3.5.2 Contractor will assist County regarding individual's access, copy, amendment, accounting of disclosure, and other such requests for County PHI/PI/PII in the time and manner designated by County.
 - 14.3.6 **Breach Reporting.** Contractor shall report breaches and suspected security incidents to County, to include:
 - 14.3.6.1 **Initial Report.**
 - 14.3.6.1.1 Contractor shall email County Contracting Officer's Representative (COR) and HHSA Privacy Officer immediately upon the discovery of a suspected security incident that involves data provided to County by the Social Security Administration, as per the State Agreements.

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- 14.3.6.1.2 Contractor shall email COR and HHS Privacy Officer immediately of breaches and suspected privacy incidents involving 500 or more individuals.
- 14.3.6.1.3 Contractor shall additionally submit an online County "Privacy Incident Report" through the online portal at www.cosdcompliance.org within one (1) business day.
- 14.3.6.2 Investigation Report. Contractor shall immediately investigate such suspected security incident or breach and provide the County a complete report of the investigation within seven (7) working days using County's "Privacy Incident Report" online form.
- 14.3.6.3 Notification. Contractor will comply with County's request to notify individuals and/or media and shall pay any costs of such notifications, as well as any costs associated with the breach. County shall approve the time, manner and content of any such notifications before notifications are made.
- 14.3.7 Designation of Individuals. Contractor shall designate a Privacy Official and a Security Official to oversee its privacy and security requirements herein.
- 14.3.8 Data Security. Contractor shall comply with, as applicable, data privacy and security requirements specified by HIPAA and the State Agreements, which may include, but are not limited to:
 - 14.3.8.1 Workforce members, including employees, interns, volunteers, subcontractors, etc., with access to applicable County PHI/PI/PII shall:
 - 14.3.8.1.1 Complete privacy and security training to include a signed certification within thirty (30) days of hire, and at least annually thereafter; and
 - 14.3.8.1.2 Sign a confidentiality statement, prior to access to such PHI/PI/PII; and
 - 14.3.8.2 Computer warning banners for all systems containing applicable County PHI/PI/PII
 - 14.3.8.3 Comprehensive, annual security risk assessments
 - 14.3.8.4 Policies and internal controls to ensure secure transport and storage of County PHI/PI/PII in cars, airplanes, trains, and buses.
 - 14.3.8.5 Sufficient administrative, physical, and technical controls in place to protect County PHI/PI/PII
- 14.3.9 Termination. Upon termination of the Agreement for any reason, Contractor shall return or destroy all County PHI/PII/PI, except County PHI/PII/PI necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities, as mutually agreed upon by the Parties. If the Parties mutually agree that return or destruction of County PHI/PII/PI is infeasible, Contractor shall extend the protections of this Article to such County PHI/PII/PI for so long as Contractor maintains such County PHI/PII/PI.

ARTICLE 15
DISPUTES

Notwithstanding any provision of this Agreement to the contrary, the Contracting Officer shall decide any dispute concerning a question of fact arising out of this Agreement that is not otherwise disposed of by the parties within a reasonable period of time. The decision of the Contracting Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith. Contractor shall proceed diligently with its performance hereunder pending resolution by the Contracting Officer of any such dispute. Nothing herein shall be construed as granting the Contracting Officer or any other administrative official, representative or board authority to decide questions of law, or issues regarding the medical necessity of treatment or to pre-empt any medical practitioners' judgment regarding the medical necessity of treatment of patients in their care. The foregoing does not change the County's ability to refuse to pay for services rendered if County disputes the medical necessity of care.

ARTICLE 16
GENERAL PROVISIONS

- 16.1 Assignment and Subcontracting. Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the County; County's consent shall not be unreasonably withheld. The Contractor shall make no agreement with any party for furnishing any of the work or services herein contained without the prior written consent of the COR, pursuant to Paragraph 1.4.
- 16.2 Contingency. This Agreement shall bind the County only following its approval by the Board of Supervisors or when signed by the Purchasing and Contracting Director.

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- 16.3 Entire Agreement. This Agreement, together with all Exhibits attached hereto and other agreements expressly referred to herein, constitute the entire agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, including any proposals from Contractor and requests for proposals from County, are superseded.
- 16.4 Sections and Exhibits. All sections and exhibits referred to herein are attached hereto and incorporated by reference.
- 16.5 Further Assurances. Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.
- 16.6 Governing Law. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.
- 16.7 Headings. The Article captions, Clause and Section headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.
- 16.8 Modification Waiver. Except as otherwise provided in Article 6, "Changes," above, no modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by both parties.
- 16.9 Neither Party Considered Drafter. Despite the possibility that one party may have prepared the initial draft of this Agreement or played the greater role in the physical preparation of subsequent drafts, neither party shall be deemed the drafter of this Agreement and that, in construing this Agreement in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one party on the ground that such provision was drafted by the other.
- 16.10 No Other Inducement. The making, execution and delivery of this Agreement by the parties hereto has been induced by no representations, statements, warranties or agreements other than those expressed herein.
- 16.11 Notices. Notice to either party shall be in writing and personally delivered; sent by certified mail, postage prepaid, return receipt requested; or emailed to the County's or Contractor's designated representative (or such party's authorized representative). Any such notice shall be deemed received by the party (or such party's authorized representative) on the earliest of the date of personal delivery, three (3) business days after deposit in the U.S. Mail, or upon sending of an email from which an acknowledgement of receipt has been received other than an out of office, unavailable, or undeliverable reply.
- 16.12 Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 16.13 Successors. Subject to the limitations on assignment set forth in Clause 16.1 above, all terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.
- 16.14 Time. Time is of the essence for each provision of this Agreement.
- 16.15 Time Period Computation. All periods of time referred to in this Agreement shall be calendar days, unless the period of time specifies business days. Calendar days shall include all days of the week, including holidays. Business days shall be Monday through Friday, excluding County observed holidays.
- 16.16 Waiver. The waiver by one party of the performance of any term, provision, covenant or condition shall not invalidate this Agreement, nor shall it be considered as a waiver by such party of any other term, provision, covenant or condition. Delay by any party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant or condition shall not prevent such party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.
- 16.17 Third Party Beneficiaries Excluded. This Agreement is intended solely for the benefit of the County and its Contractor. Any benefit to any third party is incidental and does not confer on any third party to this Agreement any rights whatsoever regarding the performance of this Agreement. Any attempt to enforce provisions of this Agreement by third parties is specifically prohibited.
- 16.18 Publicity Announcements and Materials. All public announcements, including those issued on Contractor letterhead, and materials distributed to the community shall identify the County of San Diego as the funding source for contracted programs identified in this Agreement. Copies of publicity materials related to contracted programs identified in this Agreement shall be filed with the COR. County shall be advised at least twenty four (24) hours in advance of all locally generated press releases and media events regarding contracted services identified in this Agreement. Alcohol and Drug Prevention Services

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Contractors shall notify COR or designee at least five (5) business days in advance of all Contractor generated media releases and media events regarding contracted services identified in this Agreement.

- 16.19 Critical Incidents. Contractor shall have written plans or protocols and provide employee training for handling critical incidents involving: external or internal instances of violence or threat of violence directed toward staff or clients; loss, theft or unlawful accessing of confidential client, patient or facility resident Personal Information (PI), Personally Identifiable Information (PII) and/or Personal Health Information (PHI); fraud, waste and/or abuse of Agreement funds; unethical conduct; or violation of any portion of San Diego County Board of Supervisors Policy C-25 "Drug & Alcohol Use" while performing under this Agreement. Contractor shall report all such incidents to the COR within one business day of their occurrence. However, if this Agreement includes Article 14, Contractor must adhere to the timelines and processes contained in Article 14.
- 16.20 Responsiveness to Community Concerns. Unless prohibited by applicable State or federal law, Contractor shall notify County within one business day of receipt of any material complaints including but not limited to complaints referring to issues of abuse or quality of care, submitted to Contractor orally or in writing, regarding the operation of Contractor's program or facility under this Agreement. Contractor shall take appropriate steps to acknowledge receipt of said complaint(s) from individuals or organizations. Contractor shall take appropriate steps to utilize appropriate forums to address or resolve any such complaints received. Nothing in this provision shall be interpreted to preclude Contractor from engaging in any legally authorized use of its facility, property or business as approved, permitted or licensed by the applicable authority.
- 16.21 Criminal Background Check Requirements. Contractor shall ensure that criminal background checks are required and completed prior to employment or placement of any employee, director, officer, agent, subcontractor, consultant or volunteer in compliance with any licensing, certification, funding, or Agreement requirements, including the Statement of Work, which may be higher than the minimum standards described herein. At a minimum, background checks shall be in compliance with Board of Supervisors Policy C-28, available on the County of San Diego website, and are required for any individuals identified above who will be providing services under this Agreement or who will be assigned to sensitive positions funded by this Agreement. Sensitive positions are those that: (1) physically supervise minors or vulnerable adults; (2) have unsupervised physical contact with minors or vulnerable adults; and/or (3) have a fiduciary responsibility to any County client, or direct access to, or control over, bank accounts or accounts with financial institutions of any client. If this Agreement includes Article 14, Contractor must also adhere to requirements contained in Article 14.

Contractor shall have a documented process for reviewing the information and determine if criminal history demonstrates behavior that could create an increased risk of harm to clients. Contractor shall document review of criminal background findings and consideration of criminal history in the selection of such persons listed above in this section

- 16.21.1 Contractor shall utilize a subsequent arrest notification service during employee or volunteer' tenure or perform criminal history annually.
- 16.21.2 Contractor shall keep the documentation of their review and consideration of the individual's criminal history on file in accordance with paragraph 13.4 "Maintenance of Records."
- 16.21.3 Definitions
- A. Activities of Daily Living: The basic tasks of everyday life, such as eating, bathing, dressing, toileting, and transferring.
 - B. Minor: Individuals under the age of eighteen (18) years old.
 - C. Sensitive Position: A job with responsibilities that can be criminally abused at great harm to the Agreement or the clients served. All positions that (1) physically supervise minors or vulnerable adults, (2) have unsupervised physical contact with minors or vulnerable adults, or (3) have fiduciary responsibility to a County client or direct access to, or control over client bank accounts, or serve in a financial capacity to the County client.
 - D. Vulnerable Adult: (1) Individuals age eighteen (18) years or older, who require assistance with activities of daily living and who may be put at risk of abuse during service provision; (2) Individuals age eighteen (18) years or older who have a permanent or temporary limited physical and/or mental capacity that may put them at risk of abuse during service provision because it renders them: unable to make decisions for themselves, unable to physically defend themselves, or unaware of physical abuse or other harm that could be perpetrated against them.
 - E. Volunteer: A person who performs a service willingly and without pay.

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16.22 Health Insurance. Contractors providing direct services to the public shall ask if the client and any minor(s) for whom they are responsible have health insurance coverage. If the response is "no" for client or minor(s) the Contractor shall refer the client to Covered California at <https://www.coveredca.com/> or to 1-800-300-1506.

16.23 Survival. The following sections or articles of this Agreement shall survive the expiration or earlier termination of this Agreement: Sections 8.1, 8.13, 8.14, 8.15, 8.21, 10.1, 11.1, 11.2, and 11.4, and Articles 7 and 13.

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SIGNATURE PAGE

AGREEMENT TERM. The initial term of this Agreement shall begin the 1st day of February 2020 and end on June 30, 2020. ("Initial Term").

OPTION TO EXTEND. The County shall have the option to extend the term of this Agreement for 3 increments of 1 year(s) each for a total of 3 years beyond the expiration of the Initial Term, not to exceed June 30, 2023, pursuant to Exhibit C Pricing Schedule or other applicable pricing provisions of this Agreement. Unless County notifies Contractor in writing not less than thirty (30) days prior to the expiration date that the County does not intend to extend the Agreement, the Agreement will be automatically extended for the next option period.

Options to Extend For One To Six Additional Months at End of Agreement. County shall also have the option to extend the term of this Agreement, in one or more increments, for a total of no less than one (1) and no more than six (6) calendar months ("Incremental Options"). The County may exercise each Incremental Option by providing written notice to Contractor no fewer than fifteen (15) calendar days prior to expiration of this Agreement. The rates in effect at the time an Incremental Option is exercised shall apply during the term of the Incremental Option.

COMPENSATION: Pursuant to Exhibit C or other applicable pricing provisions of this Agreement, County agrees to pay Contractor a sum not to exceed two hundred thousand five hundred fourteen dollars and sixty two cents (\$200,514.62) for the initial term of this Agreement and a sum not to exceed three hundred thirty thousand nine hundred twenty seven dollars (\$330,927) for each of the 3 one-year option periods, for a maximum Agreement amount of one million one hundred ninety three thousand two hundred ninety five dollars and sixty two cents (\$1,193,295.62), in accordance with the method of payment stipulated in Article 4.

COR. The County has designated the following individual as the Contracting Officer's Representative ("COR")

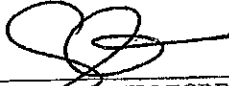
Patricia Rollin, Administrative Analyst III
5560 Overland Avenue, Ste. 310
San Diego, CA 92123
Phone 858-505-6533 and email Patricia.Rollin@sdcounty.ca.gov

CONTRACTOR'S REPRESENTATIVE. The Contractor has designated the following individual as the Contractor's Representative.

Ingrid Slettengren, Nutrition Manager
1415 D Avenue
National City, CA 91950
Phone 619-336-6751, FAX 619-477-1136 and email islettengren@nationalcityca.gov

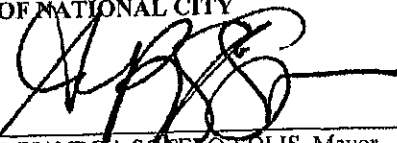
IN WITNESS WHEREOF, County and Contractor have executed this Agreement effective as of the date of the last signature below.

COUNTY OF SAN DIEGO

By:  for
JOHN M. PELLEGRINO, Director
Department of Purchasing and Contracting

Date: 1-31-20
S. Figueroa

CITY OF NATIONAL CITY

By: 
ALEJANDRA SOÑEELO-SOLIS, Mayor

Date: 1/29/2020

COUNTY CONTRACT NUMBER 561763
AGREEMENT WITH THE CITY OF NATIONAL CITY FOR SENIOR NUTRITION PROGRAM
EXHIBIT A – STATEMENT OF WORK
CONGREGATE MEALS IN THE SOUTH REGION

1. Scope of Work/Purpose

Contractor shall provide nutritionally sound meals to individuals sixty (60) years of age and older living throughout San Diego County. The meals shall be provided in a congregate (group) setting at Senior Dining Centers. There is no charge to the senior for these services, but Contractor shall provide the opportunity for the senior to make a contribution at a suggested donation amount. The eligible population for Title III C-1 is defined as individuals sixty (60) years of age or older, with emphasis on those in greatest economic and social need with particular attention to low-income minority older individuals, older individuals with Limited English Proficiency (LEP), and older individuals residing in rural areas.

2. Background Information

The Senior Nutrition Program, which began in the County of San Diego in 1975, is funded through Title III of the Older Americans Act, a federal program administered by State and County governments and operated under rules, policies, and regulations of the California Department of Aging (CDA). County of San Diego (County) Health and Human Services Agency (HHSA), Aging & Independence Services (AIS), as the designated Area Agency on Aging, oversees this program. Nutrition services assist older individuals to live independently by promoting better health and reduced isolation through a program of coordinated congregate meals, home-delivered meals, transportation, and supportive services. In fiscal year 2017/2018 various contractors served approximately 7,500 clients with lunches at several sites throughout the County, and many contractors also served approximately 2,300 clients with home delivered meals. Breakfast is also provided at some sites and to some home-delivered meal recipients.

Live Well San Diego Vision: The County of San Diego, Health and Human Service Agency (HHSA), supports the *Live Well San Diego* vision of Building Better Health, Living Safely, and Thriving. *Live Well San Diego*, developed by the County of San Diego, is a comprehensive, innovative regional vision that combines the efforts of partners inside and outside County government to help all residents be healthy, safe, and thriving. All HHSA partners and contractors, to the extent feasible, are expected to advance this vision. Building Better Health focuses on improving the health of residents and supporting healthy choices. Living safely seeks to ensure residents are protected from crime and abuse, neighborhoods are safe, and communities are resilient to disasters and emergencies. Thriving focuses on promoting a region in which residents can enjoy the highest quality of life.

On December 13, 2016, the San Diego County Board of Supervisors at the recommendation of Chairman Ron Roberts and Supervisor Greg Cox unanimously voted to establish the *Live Well San Diego* Food System Initiative (Initiative), which positions the County of San Diego to take on a greater role in the advancement of a safe, healthy, and robust food system. As part of the Initiative, the County Board of Supervisors also received the Eat Well Practices, a guide for expanding healthy, local and sustainable food and beverage options for the County. The County updated this policy to reflect the San Diego County Board of Supervisors' direction as well as United States Department of Agriculture (USDA) regulations, General Services Administration's Wellness and Sustainability requirements and Center for Disease Control's Smart Food Choices: How to Implement Food Service Guidelines in Public Facilities.

Information about *Live Well San Diego* can be found on the County's website and a website dedicated to the vision:

2.1. http://www.sdcounty.ca.gov/hhsa/programs/sd/live_well_san_diego/index.html

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CONGREGATE MEALS IN THE SOUTH REGION

2.2. <http://www.LiveWellSD.org>

3. Goals

3.1 Contractor shall provide the services described herein to accomplish the following goals:

3.1.1 Assist individuals sixty (60) years of age and older to live independently by promoting better health and reduced isolation as a result of the Senior Nutrition Program, a program of coordinated congregate meals.

3.2 Contractor shall comply with the Regulations/Standards that apply to the Title IIIC Elderly Nutrition Program (ENP).

3.2.1 Regulation websites are as follows:

[California Code of Regulations - Title 22, Division 1.8](#)

[California Retail Food Code \(CRFC\):](#)

<https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/FDB/FoodSafetyProgram/MEHKO/CALIFORNIA%20RETAIL%20FOOD%20CODE%202019.pdf>

[California Welfare and Institutions Code](#)

<https://www.acl.gov/about-acl/authorizing-statutes/older-americans-act>

<https://www.aging.ca.gov/PM/> (For Year 2012 – PM12-17(P) and attachment)

[Occupational Safety and Health Administration \(OSHA\)](#)

[Dietary Guidelines for Americans 2015 \(DGA\) CDA Standard Agreement](#)

4. Deliverables

4.1 Meals.

4.1.1 Meals shall be planned in accordance with:

4.1.1.1 Title 22, Social Security, Division 1.8 California Department of Aging, Chapter 4 (1) Title III Programs – Program and Service Provider Requirements, Article 5. Title III C- Elderly Nutrition Program (herein referred to as Title 22) Section 7638.5 Nutrition Requirements of Meals:

https://www.aging.ca.gov/ProgramsProviders/AAA/Nutrition/Code_of_Regulations/

4.1.1.2 CDA Program Memo 12-17 (P) Nutrition Older Americans Act Nutrition

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CONGREGATE MEALS IN THE SOUTH REGION

Services Menu Guidance for Compliance with Dietary Guidelines for Americans, 2010:

<https://www.aging.ca.gov/PM/> (For Year 2012 – PM12-17(P) and attachment).

- 4.1.2 Each meal shall contain at least one-third (1/3) of the current Dietary Reference Intakes (DRIs) as established by the Food and Nutrition Board, Institute of Medicine, National Academy of Sciences (2007), which are incorporated by reference.

<http://nationalacademies.org/hmd/About-HMD/Leadership-Staff/HMD-Staff-Leadership-Boards/Food-and-Nutrition-Board.aspx>

- 4.1.2.1 If the program provides two (2) meals per day, second meal shall be different from the first meal and a minimum of two-thirds (2/3) of the DRI shall be provided.

- 4.1.3 Meals shall comply with the Dietary Guidelines for Americans (2015, 8th edition) established by the U.S. Department of Agriculture and the U.S. Department of Health and Human Services. <http://fnic.nal.usda.gov/dietary-guidance/dietary-guidelines>

- 4.1.4 Contractor shall submit menus to the County's Registered Dietitian for review and approval four (4) weeks prior to the start of the month. Menus shall reflect cultural and ethnic dietary needs of participants, when feasible and appropriate.

- 4.1.5 Contractor shall meet, when feasible, the Guidelines for Congregate/Custodial Meal Programs in the Eat Well Standards and shall not supersede Section 4.1.1 above.

http://www.livewellsd.org/content/dam/livewell/topics/Eat-Well-Practices/PDFs_EatWell/Eat%20Well%20Practices.pdf

- 4.1.6 Contractor shall include, when feasible, the use of locally grown foods and identify potential partnerships with local producers and providers of locally grown foods.
- 4.1.7 Contractor shall ensure that each food facility has equipment necessary for preparing and serving meals that are safe and of good quality.
- 4.1.8 The County's Registered Dietitian shall provide input, review, and approval of the menus to ensure compliance with Title 22 CCR 7634.3 (d)(1) and Title 22 CCR 7638.

- 4.2 **Congregate Meals.** Contractor shall provide the maximum number of meals annually, pursuant to Exhibit C, to eligible seniors in a congregate setting for a minimum of five (5) days per week. A lesser frequency must be approved in advance by the County.

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- 4.2.1 Contractor shall complete an initial client assessment to determine the eligibility of participants. Factors include age and nutrition screening assessments. All assessments shall be made available to the Contracting Officer's Representative (COR) and County's Registered Dietitian upon request.
- 4.2.2 Contractor shall complete a reassessment on an annual basis prior to, or on, the date of the original assessment.
- 4.2.3 Participants shall not be means tested [OAA 315(b)(3)].
- 4.2.4 Contractor shall have a paid staff member, or a trained volunteer, responsible for the day-to-day activities at each site, and be physically present on-site during the time nutrition program activities are taking place.
- 4.2.5 Contractor shall ensure that each congregate meal site has equipment, including tables and chairs that is sturdy and appropriate for older individuals. Tables shall be arranged to assure ease of access and encourage socialization. (Title 22 s7638.1(b)(3)).
- 4.2.6 Contractor shall ensure that all congregate nutrition sites are open and accessible to the public.
- 4.2.7 Contractor shall ensure that eligible individuals with ADA accessibility requirements are not excluded from, or restricted in, participating in the program.
- 4.2.7.1 All sites shall be ADA accessible. CDA Standard Agreement Exhibit D. Article II, C.3
- 4.2.7.1.1 Americans with Disabilities Act (ADA) regulations and design:
- <https://www.ada.gov/>
- 4.2.7.2 Contractor shall make accommodations for individuals with ADA accessibility requirements.
- 4.2.8 Contractor shall post monthly menus at the congregate site, in a location easily seen by participants, to be legible and in the language of the majority of the participants. Daily meal(s) shall match the County's Registered Dietitian approved menu.
- 4.3 Nutrition Education. Contractor shall provide a minimum of four (4) nutrition education programs per contract year to participants in each of Contractor's congregate sites.
- 4.3.1 Contractor shall develop an annual nutrition education plan which shall be implemented, monitored by the County's Registered Dietitian and kept on file for review by the County. The plan shall meet the requirements of Title 22, Section 7638.11 Nutrition Education

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Services for Participants.

- 4.3.2 Nutrition Education services shall be provided in accordance with Title 22, Section 7638.11 Nutrition Education Services for Participants.
- 4.3.3 Nutrition Education shall include teaching participants about healthful food choices, balancing food and physical activity, and promoting behaviors recommended in the Dietary Guidelines for Americans.
- 4.3.4 An annual needs assessment shall be performed by the Contractor to determine the nutrition education services needed by congregate meal participants.
- 4.3.5 The County's Registered Dietitian shall provide input, review and approve the content of nutrition education prior to presentation.

5. Target Population and Geographic Service Area

5.1. Contractor shall provide services to eligible population for Title III C-1, which is defined as individuals sixty (60) years of age or older, with emphasis on those in greatest economic and social need with particular attention to low-income minority older individuals, older individuals with Limited English Proficiency (LEP), and older individuals residing in rural areas. The areas identified as greatest economic and social need are in red on the AIS Senior Nutrition Map: <http://sdcounty.maps.arcgis.com/apps/webappviewer/index.html?id=c1da92cfb82d4294a7356e2965310f0f>

5.2. Client address must be in the following zip codes to qualify as a Rural Area:

- 5.2.1. 91905 – Boulevard
- 5.2.2. 91906 – Campo
- 5.2.3. 91916 – Descanso
- 5.2.4. 91917 - Dulzura
- 5.2.5. 91934 – Jacumba
- 5.2.6. 91935 – Jamul
- 5.2.7. 91962 – Pine Valley
- 5.2.8. 91963 – Potrero
- 5.2.9. 91980 – Tecate
- 5.2.10. 92003 – Bonsall
- 5.2.11. 92004 – Borrego Springs/Ocotillo Wells

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- 5.2.12. 92036 – Julian
- 5.2.13. 92059 – Pala
- 5.2.14. 92061 – Pauma Valley, Pala
- 5.2.15. 92066 – Ranchita, Warner Springs
- 5.2.16. 92070 – San Ysabel
- 5.2.17. 92082 – Valley Center
- 5.2.18. 92068 – Warner Springs

5.3. Contractor shall post congregate dining site location(s), days of service, hours of service, and type(s) of meal served (breakfast and/or lunch) on Contractor’s website.

- 5.3.1. Congregate site:
George H Waters Nutrition Center,
1415 D Avenue, National City, CA 91950

6. Payment for Services

- 6.1 Contractor shall submit a monthly claim for the actual service deliverables for the prior month to the COR by the fifteenth (15th) of the following month.
- 6.1.1 Invoices/Claims will not be processed for payment until COR-approved, which will occur once all required information is included and submitted to COR.
- 6.2 Funding Components; Fiscal Terms and Conditions. The Senior Nutrition Program is funded by the following components and follow the fiscal terms and conditions listed below:
 - 6.2.1 Older Americans Act (OAA)/California Department of Aging (CDA) Title III Allocation. This funding is allocated as follows:
 - 6.2.1.1 State of California Title III C-1 Funding Stream. This is the fixed supplemental rate dollar amount for a portion of Contractor’s congregate meals costs. Payments are monthly compensation payments to Contractor for the provision of congregate meals according to Exhibit A, Statement of Work.
 - 6.2.2 Nutrition Services Incentive Program (NSIP). This is the fixed supplemental rate dollar amount for incentive payments from the NSIP. NSIP payments are monthly incentives based on the number of meals served per Exhibit C – Pricing Schedule. This amount will be determined annually by the County, based on funds received from the State and Contractor’s prior year’s performance (i.e., meals served). NSIP funds shall only be used

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to purchase food to be used in the Senior Nutrition Program and not to meet cost sharing or to match funds for any other federal program.

- 6.2.3 One-Time-Only (OTO) Allocation. OTO allocations are one-time annual monetary awards for the purchase of equipment/vehicle that enhances the delivery of services to the eligible population which are directly related to the Senior Nutrition Program. OTO awards are based on funds received from the State of California, and must be approved in advance by CDA and by the County. Contractor shall procure the goods or services by utilizing competitive measures, and provide documentation of receiving three (3) or more quotes to substantiate fair and reasonable pricing. County will reimburse costs upon submission of receipts with the invoice in the month following the month in which the expenditure(s) occurred.
- 6.2.4 Contractor's program income. Program income means revenue generated by the Contractor from contract-supported activities and may include:
- 6.2.4.1 Voluntary contributions received from a participant or other party for services received.
- 6.2.4.2 ~~Income from usage or rental fees of real or personal property acquired with grant funds or funds provided under this Agreement.~~
- 6.2.4.3 Royalties received on patents and copyrights from contract-supported activities.
- 6.2.4.4 Proceeds from the sale of items purchased under a CDA contract agreement. No equipment purchased with CDA funds will be sold without preapproval from the County and CDA.
- 6.2.4.5 Contractor shall not receive funds from another source for the cost of the same meal, equipment, or services [2 CFR 200.403(f)][45 CFR 75.403(f)] and OAA Title VI. In order to avoid duplicate reimbursement, Contractor shall not claim the cost of the same meal, equipment or services from another funding source.
- 6.2.5 Contractor's other revenue, such as fundraising and other donations. The fixed supplement rates are determined to offset the cost of providing services based on and subject to availability of funds from the State of California, California Department of Aging (CDA). Said compensation is not designed to fully fund the Senior Nutrition Program. Funding provided by County is only intended to supplement meal cost.
- 6.2.6 The County shall have the authority to increase or reduce the contract compensation, via the issuance of an amendment, signed by the County's Director of Purchasing and Contracting.
- 6.2.7 Contractor shall create a waiting list only when Contractor projects to serve over the contracted amount allocated in Exhibit C. If Contractor projections determines a need to

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establish a waiting list Contractor shall provide written notification to COR within twenty-four hours (24) prior to establishing a waiting list and provide the following:

6.2.7.1 Justification as to why eligible individuals are being placed on waiting list

6.2.7.2 Justification of the ranking of the eligible individual placement on the waiting list shall be based on greatest need and/or in accordance with Contractor's established policy and approved by COR. Copy of policy shall be provided to COR annually.

7. General Requirements for Service Delivery

- 7.1 Contractor's food services shall comply with the California Code of Regulations, Title 22, The California Retail Food Code(CRFC)
<https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/FDB/FoodSafetyProgram/MEHKO/CALIFORNIA%20RETAIL%20FOOD%20CODE%202019.pdf>
- 7.2 Contractor shall comply with the Division of Occupational Safety and Health (Cal/OSHA), Department of Industrial Relations requirements (<https://www.dir.ca.gov/dosh/>) regarding staff and participant safety.
-
- 7.3 Contractor shall possess and maintain a valid health permit from the County of San Diego Department of Environmental Health (<http://www.sdcounty.ca.gov/deh/>) for food preparation sites and shall post the permit as required. A copy of a valid health permit for a subcontracted Caterer or Vendor must be kept on file by the Contractor
- 7.4 Food preparation is defined as packaging, processing, assembling, portioning, or any operation that changes the form, flavor or consistency of food.
- 7.5 A Limited Service Charitable Feeding Site Registration from the County of San Diego Department of Environmental Health (<http://www.sdcounty.ca.gov/deh/>) is required for satellite sites and catered meal sites where no food preparation is taking place.
- 7.6 The County's Registered Dietitian shall conduct announced and unannounced site visits to food preparation and congregate meal sites quarterly for compliance with the above stated regulations.
- 7.7 Contractor shall provide County-supplied SNAP/CalFresh program information to all senior nutrition clients as the information is available.
- 7.8 Contractor shall ensure policies that support tobacco-free environments are in place, which includes:
- 7.8.1 Smoke-free entrances.
- 7.8.2 Smoke-free facilities (no designated smoking areas).

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7.8.3 No smoking signs are posted at all entrances/exits.

7.9 Staff and Volunteer Orientation and Training.

7.9.1 All of Contractor staff, paid and volunteer, shall be oriented and trained to perform their assigned responsibilities and tasks per Title 22 CCR 7636.5 (a)-(f).

7.9.1.1 At a minimum, training shall include:

7.9.1.1.1 Food safety, prevention of foodborne illness, and HACCP principles.

7.9.1.1.2 Accident prevention, instruction on fire safety, first aid, choking, earthquake preparedness, and other emergency procedures.

7.9.1.2 Contractor shall provide a minimum of four (4) hours of in-service staff training annually to paid and volunteer congregate meal staff.

7.9.1.3 Contractor shall provide a yearly written plan that shall be developed, implemented and maintained by the Contractor that identify who is to be trained, who will conduct training, content and date scheduled.

7.9.1.4 The County's Registered Dietitian shall review and approve the content of the staff/volunteer training prior to presentation.

7.9.1.5 Contractor training sessions shall be evaluated by those receiving the training and attendance records shall be maintained and on file.

7.9.2 Contractor shall ensure all staff and volunteers are trained in elder abuse awareness and know how and when to report if they suspect an elder may have symptoms of abuse or neglect. Contractor shall contact local law enforcement or call 1-800-510- 2020 to report suspected elder abuse.

7.9.3 Contractor shall comply with the Division of Occupational Safety and Health (Cal/OSHA), California Department of Industrial Relations requirements regarding staff and participant safety. All Contractor facilities are subject to inspection and approval.

7.10 Performance Expectations. Contractor shall maintain ninety-five percent (95%) compliance with service levels stated in this Agreement. A Performance Improvement Plan may be required to be submitted by Contractor if Contractor consistently (i.e., three (3) consecutive months or more) falls below ninety percent (90%) of the service levels. Service levels shall be reviewed monthly, quarterly, and annually by Contractor and County staff. Failure to bring service levels up to the contracted levels may result in re-negotiation of the contracted service levels or termination of the contract. The Exhibit C – Pricing Schedule may be revised to be commensurate with the lower level of service(s).

7.11 Reference to AIS. All printed materials, publicity, and media outreach prepared or conducted by Contractor shall include a reference to County of San Diego Health and Human Services Agency (HHSA), Aging & Independence Services (AIS) as the funding source. County of San Diego logos

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shall be included as appropriate. Copies of publicity materials related to programs identified in this contract shall be provided to the COR in advance for pre-approval as referenced in Section 16.18 of the contract.

- 7.12 Match. Contractor shall provide a minimum of an eleven point eleven percent (11.11%) match for program costs in cash or in-kind contributions. In-kind contributions are defined as the value of non-cash contributions donated to support the project or program (e.g., property, service, etc.).
- 7.13 Cultural Competence and Diversity. Contractor shall support the County of San Diego, Health and Human Services Agency, Aging & Independence Services (AIS) through organizational and systematic practices demonstrating cultural competence and diversity. Contractor shall have an employee training plan that addresses these competencies and shall provide a copy of this training plan to the COR annually for pre-approval. All services provided shall be oriented to meet the linguistic and cultural needs of the diverse clients to be served.
- 7.14 Vehicles. Contractor shall provide their own vehicles to deliver meals to nutrition sites and/or to transport clients to congregate sites unless vehicles are provided by County. Vehicles may be provided by County, through this Agreement based on need and the availability of funding but are not guaranteed. Contractor shall comply with all rules and regulations of the State of California Department of Motor Vehicles, the California Code of Regulations, the California Retail Food Code, Exhibit B – Vehicle Usage and Insurance & Bonding Requirements, Exhibit B-1 – Vehicle Usage Agreement and a separate usage, maintenance, and operations agreement which shall be incorporated herein.
- 7.15 AIS Contractor Meetings. AIS may schedule Contractor meetings on an as-needed basis pertaining to the needs of the contract requirements. Contractor shall have at least one representative present at all meetings. These meetings are at the discretion of AIS and will be held at the AIS office at 5560 Overland Ave, San Diego, CA 92123; and location is subject to change if needed.
- 7.16 Detailed Budget. Contractor shall use the Nutrition Contract Budget Template to submit a detailed budget with line items to the COR on an annual basis no later than July 1st of each fiscal year.

8. Specific Requirements for Service Delivery

8.1 Meal Service. Contractor shall:

8.1.1 Provide a hot or other appropriate meal approved by the County Registered Dietitian that meets minimum nutrition requirements, served a minimum of five (5) or more days a week in a congregate setting that is open to the public [45 CFR 1321.53(b)(3)].

8.1.2 Each meal shall comply with the most recent DGA and provide each participating older individual:

1. A minimum of 33 1/3 percent DRIs per meal if the program provides one meal per day.

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2. A minimum of 66 2/3 percent DRIs per meal if the program provides 2 meals per day.
 3. If providing multiple meals per day, program shall ensure that each participant is receiving both meals, or that each of the meals provides 33 1/3 percent DRIs.
- 8.2 Staffing/Administration. Contractor shall maintain an adequate number of qualified persons to assure the satisfactory implementation of: program leadership; program planning; provision of nutrition services; outreach and other services; volunteer activities; financial and contract management; data collection for required federal, State and County reports and records. **Notification of program changes must be made to the County within twenty-four (24) hours when said changes will affect the delivery of services to the participants.**
- 8.2.1 Contractor shall comply with Title 22 Section 7636.3 Staff Qualifications.
https://www.aging.ca.gov/ProgramsProviders/AAA/Nutrition/Code_of_Regulations/
- 8.3 Meal Contributions by Eligible Participants. Eligible persons receiving nutrition services shall be given the opportunity to contribute to the cost of the service provided and shall determine for themselves what they are able to contribute. Contractor shall post a suggested donation amount. Contractor shall not deny services to any person because of failure to contribute [OAA 315(b)(4)]22CCR 7638.9]. Methods to receive contributions shall ensure anonymity and protect the privacy and confidentiality of each recipient with respect to the recipient's contribution or lack of contribution. Contractor shall provide a 30-day notification to participants of increases in recommended donations.
- 8.3.1 Contractor shall establish written procedures to protect contributions and fees from loss, mishandling, and theft. Such procedures shall be kept on file at Contractor's site, and provided to the COR annually for pre-approval.
- 8.3.2 Contributions are considered program income and shall be used in support of the nutrition program.
- 8.3.3 Meal participants shall be informed that there is no obligation to contribute and contributions are purely voluntary.
- 8.4 Meal Charges for Staff and Guests under Sixty (60) Years of Age. Contractor may serve meals to staff and guests under sixty (60) years of age if doing so shall not deprive an eligible participant of a meal. These individuals shall pay at least the full cost of the meal. Contractor shall post the price for guests under sixty (60) years of age.
- 8.4.1 Charges for meals are considered program income and shall be used in support of the nutrition program.
- 8.5 Records, Reports and Distribution Information. Contractor shall maintain a system for the collection of data that will accurately reflect the Contractor's program and financial operations,

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will meet requirements with respect to confidentiality, and fulfill the information required by this contract.

8.5.1 Contractor shall have a clear sign-in process utilized at each meal. Guests under sixty (60) years of age shall be recorded separately or in a way that clearly indicates they are under sixty (60) years of age.

8.5.2 Contractor shall report all program income and match to the County on a monthly basis.

8.6 Holidays. A maximum of twelve (12) recognized holiday closings will be allowed per year. A holiday schedule shall be submitted to the COR at the beginning of each fiscal year for pre-approval, no later than thirty (30) days after the start of the new fiscal year. Additional closures will be handled on a case-by-case basis and require a minimum of thirty (30) days advance notice to the County.

8.6.1 If more than twelve (12) holiday closings are taken, Contractor must make up the days lost.

8.7 Data Collection and Reporting.

8.7.1 Contractor shall utilize the AIS-identified automated data collection system to:

8.7.1.1 Register and maintain all CDA required client demographic and assessment data for all active clients. AIS Client Intake & Assessment Form shall be used to collect required information.

8.7.1.2 Track and report all service unit delivery data (via bar-coding and manual data entry) on an on-going basis.

8.7.2 Contractor shall maintain and report accurate daily meal counts, and nutrition education units in the County-identified automated data collection system.

8.7.3 Contractor shall submit monthly summary reports of the information listed in 8.7 and claims to the designated COR by the fifteenth (15th) of the month following the month in which the services were provided. Claims will be paid upon successful determination of reconciled data as mentioned in paragraphs 8.7.1.1 and 8.7.1.2.

8.7.4 Contractor shall submit a completed report of actual costs expended for each service category at the end of each contract fiscal year for the term of the contract, as requested by the County, in the form and format as provided by COR.

8.8 Customer Satisfaction Survey. Contractor shall annually obtain the views of participants regarding the services received through the development and utilization of a customer satisfaction survey.

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8.8.1 Contractor shall provide a summary report of the results of the satisfaction survey to the COR by the fifteenth (15th) of the month following the completion of the survey cycle.

8.8.2 Contractor shall make all survey results available to COR upon request.

8.9 Grievance Procedure. Contractor shall develop a written grievance process per Title 22 CCR 7400(a)(2)-(3) for clients to report grievances pertaining to the nutrition program, inclusive of the complainant's rights to privacy. The process shall be posted in a visible and accessible area of each congregate site. Homebound individuals shall be notified of the grievance process in writing. A copy of the grievance procedure shall be provided to the COR annually for pre-approval.

9. Disaster Preparedness

9.1. As a provider of critical services to seniors and individuals with ADA accessibility requirements during a disaster, each multipurpose senior center and each senior center, as defined in subdivisions (j) and (n) of Section 9591 (n) "Senior center" means a community focal point on aging, where older individuals as individuals or in groups come together for services and activities which enhance their dignity, support their independence, and encourage their involvement in and with the community. Senior center programs consist of a variety of services and activities in areas, such as education, creative arts, recreation, advocacy, leadership development, employment, health, nutrition, social work, and other supportive services.

WELFARE AND INSTITUTIONS CODE - WIC

DIVISION 8.5. MELLO-GRANLUND OLDER CALIFORNIANS ACT [9000 - 9750] (*Division 8.5 repealed and added by Stats. 1996, Ch. 1097, Sec. 13.*)

CHAPTER 9.5. Multipurpose Senior Centers And Senior Centers Emergency Operations Plans [9625-9625.] (*Chapter 9.5 added by Stats. 2006, Ch. 620, Sec. 2.*)

9.2. Contractor shall:

9.2.1. Develop and maintain a written emergency operations plan to ensure preparedness and the ability to continue to deliver services during and post-disaster. Contractor shall submit the plan for review and pre-approval by COR annually and shall keep the plan on site.

9.2.1.1 This emergency operation plan shall include, but not be limited to, all of the following:

9.2.1.2 Facility preparation procedures to identify the location of first aid supplies, secure all furniture, appliances, and other free-standing objects, and provide instructions for operating gas and water shutoff valves.

9.2.1.3 An inventory of neighborhood resources that shall include, but not be limited to, the identification and location of all the following nearby resources:

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9.2.1.3.1 Generators

9.2.1.3.2 Telephones

9.2.1.3.3 Hospitals and public health clinics

9.2.1.3.4 Fire stations and police stations

9.2.1.4 Evacuation procedures, including procedures to accommodate those who will need assistance in evacuating the center. This evacuation plan shall be located in an area that is accessible to the public.

9.2.1.5 Procedures to accommodate seniors, individuals with ADA accessibility requirements, and other community members in need of shelter at the senior center, in the event that other community facilities are inoperable.

9.2.1.6 Personnel resources necessary for post disaster response.

9.2.1.7 Procedures for conducting periodic evacuation drills, fire drills, and earthquake drills.

9.2.1.8 Procedures to ensure service continuation after a disaster.

9.2.1.9 Consideration of cultural and linguistic barriers in emergency and evacuation plans, and ways to appropriately address those barriers.

9.2.1.9.1 In the development of the emergency operations plans required by this chapter, multipurpose senior centers and senior centers shall coordinate with the local Area Agency on Aging, as defined in Section 9006, and other relevant agencies and stakeholders.

(Amended by Stats. 2013, Ch. 352, Sec. 537. (AB 1317) Effective 26, 2013. Operative July 1, 2013, by Sec. 543 of Ch. 352.) September

9.2.1.10 Where feasible and appropriate, make arrangements for the availability of meals to participants during a major disaster, as defined in 42 U.S.C. 5122(2).

9.3. Provide the County with the following:

9.3.1. Primary and secondary emergency contact phone numbers.

9.3.2. Status updates, upon request, during and post-disaster, including the following at a minimum:

9.3.2.1.1. Operability of sites and/or services.

9.3.2.1.2. Services provided to the target population.

9.3.2.1.3. Service capacity.

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1. Scope of Work/Purpose

Contractor shall provide nutritionally sound meals to individuals sixty (60) years of age and older living throughout San Diego County by providing home delivery to frail seniors. There is no charge to the senior for these services, but Contractor shall provide the opportunity for the senior to make a contribution at a suggested donation amount. The eligible population for Title III C-2. As defined as individuals sixty (60) years of age or older, with emphasis on those in greatest economic and social need with particular attention to low-income minority older individuals, older individuals with Limited English Proficiency (LEP), and older individuals residing in rural areas.

2. Background Information

The Senior Nutrition Program, which began in the County of San Diego in 1975, is funded through Title III of the Older Americans Act, a federal program administered by state and county governments and operated under rules, policies, and regulations of the California Department of Aging (CDA). County of San Diego Health and Human Services Agency (HHSA), Aging & Independence Services (AIS), as the designated Area Agency on Aging, oversees this program. Nutrition services assist older individuals to live independently by promoting better health and reduced isolation through a program of coordinated congregate meals, home-delivered meals, transportation and supportive services. In fiscal year 2017/2018 various contractors served approximately 7,500 clients with lunches at several sites throughout the county, and many contractors also served approximately 2,300 clients with home-delivered meals. Breakfast is also provided at some sites and to some home-delivered meal recipients.

Live Well San Diego Vision: The County of San Diego, Health and Human Service Agency (HHSA), supports the *Live Well San Diego* vision of Building Better Health, Living Safely, and Thriving. *Live Well San Diego*, developed by the County of San Diego, is a comprehensive, innovative regional vision that combines the efforts of partners inside and outside County government to help all residents be healthy, safe, and thriving. All HHSA partners and contractors, to the extent feasible, are expected to advance this vision. Building Better Health focuses on improving the health of residents and supporting healthy choices. Living Safely seeks to ensure residents are protected from crime and abuse, neighborhoods are safe, and communities are resilient to disasters and emergencies. Thriving focuses on promoting a region in which residents can enjoy the highest quality of life.

On December 13, 2016, the San Diego County Board of Supervisors at the recommendation of Chairman Ron Roberts and Supervisor Greg Cox unanimously voted to establish the *Live Well San Diego* Food System Initiative (Initiative), which positions the County of San Diego to take on a greater role in the advancement of a safe, healthy, and robust food system. As part of the Initiative, the County Board of Supervisors also received the Eat Well Practices, a guide for expanding healthy, local and sustainable food and beverage options for the County. The County updated this policy to reflect the San Diego County Board of Supervisors' direction as well as United States Department of Agriculture (USDA) regulations, General Services Administration's Wellness and Sustainability requirements and Center for Disease Control's Smart Food Choices: How to Implement Food Service Guidelines in Public Facilities.

Information about *Live Well San Diego* can be found on the County's website and a website dedicated to the vision:

2.1. http://www.sdcounty.ca.gov/hhsa/programs/sd/live_well_san_diego/index.html

2.2. <http://www.LiveWellSD.org>

3. Goals

3.1 Contractor shall provide the services described herein to accomplish the following goals:

3.1.1 Assist individuals sixty (60) years of age and older to live independently by promoting better health and reduced isolation as a result of the Senior Nutrition Program, a program of coordinated home-delivered meals and referrals to appropriate supportive services.

3.2 Contractor shall comply with the Regulations/Standards that apply to the Title IIIC Elderly Nutrition Program (ENP).

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3.2.1 Regulation websites are as follows:

California Code of Regulations Title 22, Division 1.8
California Retail Food Code (CRFC)
California Welfare and Institutions Code
<https://www.acl.gov/about-acl/authorizing-statutes/older-americans-act>
<https://www.aging.ca.gov/PM/> (For Year 2012 – PM12-17(P) and attachment)
Occupational Safety and Health Administration (OSHA)
Dietary Guidelines for Americans 2015 (DGA) CDA Standard Agreement

4. Deliverables

4.1 Meals.

4.1.1 Meals shall be planned in accordance with:

4.1.1.1 Title 22, Social Security, Division 1.8 California Department of Aging, Chapter 4 (1) Title III Programs – Program and Service Provider Requirements, Article 5. Title III C- Elderly Nutrition Program (herein referred to as Title 22) Section 7638.5 Nutrition Requirements of Meals:

https://www.aging.ca.gov/ProgramsProviders/AAA/Nutrition/Code_of_Regulations/

4.1.1.2 CDA Program Memo 12-17 (P) Nutrition Older Americans Act Nutrition Services Menu Guidance for Compliance with Dietary Guidelines for Americans, 2010:
<https://www.aging.ca.gov/PM/> (For Year 2012 – PM12-17(P) and attachment)

4.1.2 Each meal shall contain at least one-third (1/3) of the current Dietary Reference Intakes (DRIs) as established by the Food and Nutrition Board, Institute of Medicine, National Academy of Sciences (2007), which are incorporated by reference.

<https://www.ncbi.nlm.nih.gov/books/NBK56068/table/summarytables.t2/?report=objectonly>

4.1.2.1 If the program provides two (2) meals per day, second meal shall be different from the first meal and a minimum of two-thirds (2/3) of the DRI must be provided.

4.1.3 Meals shall comply with the Dietary Guidelines for Americans (2015, 8th edition) established by the U.S. Department of Agriculture and the U.S. Department of Health and Human Services.
<http://fnic.nal.usda.gov/dietary-guidance/dietary-guidelines>

4.1.4 Contractor shall submit menus to the County's Registered Dietitian for review and approval four (4) weeks prior to the start of the month. Menus shall reflect cultural and ethnic dietary needs of participants, when feasible and appropriate.

4.1.5 Contractor shall meet, when feasible, the Guidelines for Congregate/Custodial Meal Programs in the Eat Well Standards and shall not supersede Section 4.1.1 above.

http://www.livewellsd.org/content/dam/livewell/topics/Eat-Well-Practices/PDFs_EatWell/Eat%20Well%20Practices.pdf

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- 4.1.6 Contractor shall include, when feasible, the use of locally grown foods and identify potential partnerships with local producers and providers of locally grown foods.
- 4.1.7 Contractor shall ensure that the food facility where Home Delivered Meals are produced has equipment necessary for the preparation and packaging of prepared meals.
- 4.1.8 The County's Registered Dietitian shall provide input, review, and approval of the menus to ensure compliance with Title 22 CCR 7634.3 (d)(1) and Title 22 CCR 7638.
- 4.2 Home-Delivered Meals. Contractor shall provide the maximum number of home-delivered meals annually, pursuant to Exhibit C, to seniors a minimum of five (5) days per week delivered between the hours of 10 a.m. and 2 p.m. Any deliveries outside of this time period require County approval in advance.
- 4.2.1 Contractor shall assess the level of need for home-delivered nutrition services of each eligible participant.
- 4.2.1.1 Eligibility of seniors are defined as frail needing assistance with 2 or more Activities of Daily Living (ADLs) and homebound. ADLs include human assistance and/or verbal cues with personal hygiene, dressing, eating, using a restroom and transferring oneself.
- 4.2.1.2 The initial assessment may be conducted by telephone, and a written assessment shall be conducted in the participant's home within two (2) weeks of initiation of services, and shall include an assessment of the type of meal (e.g., hot, cold, frozen) that is appropriate for the participant in their living environment, determining the need for a second meal if option is available and the estimated timeframe for home-delivered meals service needed.
- 4.2.1.3 A reassessment of the participant's need shall be completed quarterly and a reassessment in the participant's home shall be conducted at least every other quarter. Contractors are encouraged to direct seniors to congregate meal programs if/when they no longer meet the home-delivered meal eligibility criteria.
- 4.2.1.4 An older individual eligible for receiving home-delivered meals shall be assessed for need for nutrition-related supportive services, and referred as necessary.
- 4.2.1.5 All assessments and reassessments shall be updated on the data collection website and shall be made available to Contracting Officer's Representative (COR) upon request.
- 4.2.2 Participants shall not be means tested [OAA 315(b)(3)].
- 4.2.3 Contractor shall provide written instructions for handling and re-heating of the cold or frozen meal in the language of the participant receiving the meal.
- 4.2.4 Home-Delivered Meals Drivers. Contractor's staff and/or volunteers providing home delivery shall possess a current and valid driver's license issued by the State of California, and Contractor shall maintain a copy(ies) of said licenses on site for review by COR. Drivers shall maintain the appropriate type of California license for the size vehicle used to transport food and comply with the State of California, Department of Motor Vehicle requirements.

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- 4.2.5 Waiting List. Contractor shall have a written procedure in place to address how they will prioritize the most-at-risk seniors when contractor is unable to provide meals to eligible individuals. Documentation of this procedure will be submitted to the COR. Contractor shall report the number of seniors on their wait list on a monthly basis.
- 4.3 Nutrition Education. Contractor shall provide a minimum of four (4) nutrition education programs per contract year to participants in each of Contractor's home-delivered meal programs.
- 4.3.1 Contractor shall develop an annual nutrition education plan which shall be implemented, monitored the County's Registered Dietitian and kept on file for review by the County. The plan shall meet the requirements of Title 22, Section 7638.11 Nutrition Education Services for Participants.
- 4.3.2 Nutrition Education services shall be provided in accordance with Title 22, Section 7638.11 Nutrition Education Services for Participants.
- 4.3.3 Nutrition Education shall include teaching participants about healthful food choices, balancing food and physical activity, and promoting behaviors recommended in the Dietary Guidelines for Americans.
- 4.3.4 An annual needs assessment shall be performed by the Contractor to determine the nutrition education services needed by home-delivered-meal-participants.
- 4.3.5 The County's Registered Dietitian shall provide input, review and approve the content of nutrition education prior to presentation.

5. Target Population and Geographic Service Area

- 5.1. Contractor shall provide services to eligible population for Title III C-2. As defined as individuals sixty (60) years of age or older, with emphasis on those in greatest economic and social need with particular attention to low-income minority older individuals, older individuals with Limited English Proficiency (LEP), and older individuals residing in rural areas. The areas identified as greatest economic and social need are in red on the AIS Senior Nutrition Map: <http://sdcountry.maps.arcgis.com/apps/webappviewer/index.html?id=c1da92cfb82d4294a7356e2965310f0f>
- 5.2. Client address must be in the following zip codes to qualify as a Rural Area:
- 5.2.1. 91905 – Boulevard
 - 5.2.2. 91906 – Campo
 - 5.2.3. 91916 – Descanso
 - 5.2.4. 91917 - Dulzura
 - 5.2.5. 91934 – Jacumba
 - 5.2.6. 91935 – Jamul
 - 5.2.7. 91962 – Pine Valley
 - 5.2.8. 91963 – Potrero
 - 5.2.9. 91980 – Tecate

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- 5.2.10. 92003 – Bonsall
- 5.2.11. 92004 – Borrego Springs/Ocotillo Wells
- 5.2.12. 92036 – Julian
- 5.2.13. 92059 – Pala
- 5.2.14. 92061 – Pauma Valley, Pala
- 5.2.15. 92066 – Ranchita, Warner Springs
- 5.2.16. 92070 – San Ysabel
- 5.2.17. 92082 – Valley Center
- 5.2.18. 92068 – Warner Springs

5.3. Contractor shall post Home-delivered meal zip codes, street and/or physical boundaries on Contractor's website.

5.3.1. Home Delivered Meal zip code: 91950

6. Payment for Services

6.1 ~~Contractor shall submit a monthly claim for the actual service deliverables for the prior month to the COR by the~~
fifteenth (15th) of the following month.

6.1.1 Invoices/Claims shall not be processed for payment until COR-approved, which will occur once all required information is included and submitted to COR.

6.2 Funding Components: Fiscal Terms and Conditions. The Senior Nutrition Program is funded by the following components and follow the fiscal terms and conditions listed below:

6.2.1 Older Americans Act (OAA)/California Department of Aging (CDA) Title III Allocation. This funding is allocated as follows:

6.2.1.1 State of California Title III C-2 Funding Stream. This is the fixed supplemental rate dollar amount for a portion of Contractor's home-delivered meal costs. Payments are monthly compensation payments to Contractor for the provision of home-delivered meals according to Exhibit A and A-1, Statement of Work.

6.2.2 Nutrition Services Incentive Program (NSIP). This is the fixed supplemental rate dollar amount for incentive payments from the NSIP. NSIP payments are monthly incentives based on the number of meals served per Exhibit C – Pricing Schedule. This amount will be determined annually by the County, based on funds received from the State and Contractor's prior year's performance (i.e., meals served). NSIP funds shall only be used to purchase food to be used in the Senior Nutrition Program and not to meet cost sharing or to match funds for any other federal program.

6.2.3 One-Time-Only (OTO) Allocation. OTO allocations are one-time annual monetary awards for the purchase of equipment/vehicle that enhances the delivery of services to the eligible population which are directly related to the Senior Nutrition Program. OTO awards are based on funds received from the State of California, and must be approved in advance by the County. Contractor shall procure the goods or services by utilizing

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competitive measures, and provide documentation of receiving three (3) or more quotes to substantiate fair and reasonable pricing. County will reimburse costs upon submission of receipts with the invoice in the month following the month in which the expenditure(s) occurred.

6.2.4 Contractor's program income. Program income means revenue generated by the Contractor from contract-supported activities and may include:

6.2.4.1 Voluntary contributions received from a participant or other party for services received.

6.2.4.2 Income from usage or rental fees of real or personal property acquired with grant funds or funds provided under this Agreement.

6.2.4.3 Royalties received on patents and copyrights from contract-supported activities.

6.2.4.4 Proceeds from the sale of items purchased under a CDA contract agreement. No equipment purchased with CDA funds will be sold without preapproval from the County and the CDA.

6.2.4.5 Contractor shall not receive funds from another source for the cost of the same meal, equipment, or services [2 CFR 200.403(f)][45 CFR 75.403(f)] and OAA Title VI. In order to avoid duplicate reimbursement, Contractor shall not claim the cost of the same meal, equipment or services from another funding source.

6.2.5 Contractor's other revenue, such as fundraising and other donations. The fixed supplement rates are determined to offset the cost of providing services based on and subject to availability of funds from the State of California, California Department of Aging (CDA). Said compensation is not designed to fully fund the Senior Nutrition Program. Funding provided by County is only intended to supplement meal cost.

6.2.6 The County shall have the authority to increase or reduce the contract compensation, via the issuance of an amendment, signed by the County's Director of Purchasing and Contracting.

6.2.7 Contractor shall create a waiting list only when Contractor projects to serve over the contracted amount allocated in Exhibit C. If Contractor projections determines a need to establish a waiting list Contractor shall provide written notification to COR within twenty-four hours (24) prior to establishing a waiting list and provide the following:

6.2.7.1 Justification as to why eligible individuals are being placed on waiting list

6.2.7.2 Justification of the ranking of the eligible individual placement on the waiting list shall be based on greatest need and/or in accordance with Contractor's established policy and approved by COR. Copy of policy shall be provided to COR annually.

7. General Requirements for Service Delivery

7.1 Contractor's food services shall comply with the California Code of Regulations, Title 22, The California Retail Food Code (CRFC)
<https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/FDB/FoodSafetyProgram/MEHKO/CALIFORNIA%20RETAIL%20FOOD%20CODE%202019.pdf>

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- 7.2 Contractor shall comply with the Division of Occupational Safety and Health (Cal/OSHA), Department of Industrial Relations requirements (<https://www.dir.ca.gov/dosh/>) regarding staff and participant safety.
- 7.3 Contractor shall possess and maintain a valid health permit from the County of San Diego Department of Environmental Health (<http://www.sdcountry.ca.gov/deh/>) for food preparation sites and shall post the permit as required. A copy of a valid health permit for a subcontracted Caterer or Vendor must be kept on file on by the Contractor.
- 7.4 Food preparation is defined as packaging, processing, assembling, portioning, or any operation that changes the form, flavor or consistency of food.
- 7.5 The County's Registered Dietitian shall conduct announced and unannounced site visits to food preparation facilities and meal delivery sites for compliance with the above stated regulations.
- 7.6 Contractor shall provide County-supplied SNAP/CalFresh program information to all senior nutrition clients as the information is available.
- 7.7 Contractor shall ensure policies that support tobacco-free environments are in place, which includes:
- 7.7.1 Smoke-free entrances.
- 7.7.2 Smoke-free facilities (no designated smoking areas).
- 7.7.3 No smoking signs are posted at all entrances/exits.
- 7.8 Staff and Volunteer Orientation and Training.
- 7.8.1 All of Contractor staff, paid and volunteer, shall be oriented and trained to perform their assigned responsibilities and tasks per Title 22 CCR 7636.5 (a)-(f).
- 7.8.1.1 At a minimum, training shall include:
- 7.8.1.1.1 Food safety, prevention of foodborne illness, and HACCP principles.
- 7.8.1.1.2 Accident prevention, instruction on fire safety, first aid, choking, earthquake preparedness, and other emergency procedures.
- 7.8.1.2 Contractor shall provide a minimum of four (4) hours of in-service staff training annually to paid and volunteer congregate and home delivered meal staff.
- 7.8.1.3 Contractor shall provide a yearly written plan that shall be developed, implemented and maintained by the Contractor that identifies who shall to be trained, who shall conduct training, content and date scheduled.
- 7.8.1.4 The County's Registered Dietitian shall review and approve the content of the staff/volunteer training prior to presentation.
- 7.8.1.5 Contractor training sessions shall be evaluated by those receiving the training and attendance records shall be maintained and on file.
- 7.8.2 Contractor shall ensure all staff and volunteers are trained in elder abuse awareness and know how and when to report if they suspect an elder may have symptoms of abuse or neglect. Contractor shall contact local law enforcement or call 1-800-510- 2020 to report suspected elder abuse.

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- 7.8.3 Contractor shall comply with the Division of Occupational Safety and Health (Cal/OSHA), California Department of Industrial Relations requirements regarding staff and participant safety. All Contractor facilities are subject to inspection and approval.
- 7.9 Performance Expectations. Contractor shall maintain ninety-five percent (95%) compliance with service levels stated in this Agreement. A Performance Improvement Plan may be required to be submitted by Contractor if Contractor consistently (i.e., three (3) consecutive months or more) falls below ninety percent (90%) of the service levels. Service levels shall be reviewed monthly, quarterly, and annually by Contractor and County staff. Failure to bring service levels up to the contracted levels may result in re-negotiation of the contracted service levels or termination of the contract. The Exhibit C – Pricing Schedule may be revised to be commensurate with the lower level of service(s).
- 7.10 Reference to AIS. All printed materials, publicity, and media outreach prepared or conducted by Contractor shall include a reference to County of San Diego Health and Human Services Agency (HHSA), Aging & Independence Services (AIS) as the funding source. County of San Diego logos shall be included as appropriate. Copies of publicity materials related to programs identified in this contract shall be provided to the COR.
- 7.11 Match. Contractor shall provide a minimum of an eleven point eleven percent (11.11%) match for program costs in cash or in-kind contributions. In-kind contributions are defined as the value of non-cash contributions donated to support the project or program (e.g., property, service, etc.).
- 7.12 Cultural Competence and Diversity. Contractor shall support the County of San Diego, Health and Human Services Agency, Aging & Independence Services (AIS) through organizational and systematic practices demonstrating cultural competence and diversity. Contractor shall have an employee training plan that addresses these competencies and shall provide a copy to the COR annually. All services provided shall be oriented to meet the linguistic and cultural needs of the diverse clients to be served.
- 7.13 Vehicles. Contractor shall provide their own vehicles to deliver meals to nutrition sites and/or to transport clients to congregate sites unless vehicles are provided by the County. Vehicles may be provided by County, through this Agreement based on need and the availability of funding but are not guaranteed. Contractor shall comply with all rules and regulations of the State of California Department of Motor Vehicles, the California Code of Regulations, the California Retail Food Code, Exhibit B – Insurance Requirements, Exhibit B-1 – Vehicle Usage Agreement and a separate usage, maintenance, and operations agreement which shall be incorporated herein.
- 7.14 AIS Contractor Meetings. AIS may schedule Contractor meetings on an as-needed basis pertaining to the needs of the contract requirements. Contractor shall have at least one representative present at all meetings. These meetings are at the discretion of AIS and will be held at the AIS office at 5560 Overland Ave, San Diego, CA 92123 and location is subject to change if needed.
- 7.15 Detailed Budget. Contractor shall use the Nutrition Contract Budget Template to submit a detailed budget with line items to the COR on an annual basis no later than July 1st of each fiscal year.

8. Specific Requirements for Service Delivery

8.1 Meal Service. Contractor shall:

- 8.1.1 Provide hot or other appropriate meal that meets minimum nutrition requirements [45 CFR 1321.53(b)(3)]. Meals to participants who are homebound must be made available a minimum of five days per week, and frozen meals for the weekend or holidays may be delivered during the week. Meals shall be prepared,

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packaged, served and delivered in a manner which complies with local public health laws and regulations, and in consideration of the clients being served.

- 8.1.2 Each meal shall comply with the most recent DGA and provide each participating older individual:
1. A minimum of 33 1/3 percent DRIs per meal if the program provides one meal per day.
 2. A minimum of 66 2/3 percent DRIs per meal if the program provides 2 meals per day.
 3. If providing multiple meals per day, program shall ensure that each participant is receiving both meals, or that each of the meals provides 33 1/3 percent DRIs.
- 8.1.3 Meal delivery can occur less frequently only with prior approval from COR, but meals shall be made available a minimum of five days per week, and frozen meals for weekend or holidays.
- 8.2 **Staffing/Administration.** Contractor shall maintain an adequate number of qualified persons to assure the satisfactory implementation of: program leadership; program planning; provision of nutrition services; outreach and other services; volunteer activities; financial and contract management; data collection for required federal, State and County reports and records. **Notification of program changes must be made to the County within twenty-four (24) hours when said changes will affect the delivery of services to the participants.**
- 8.2.1 Contractor shall comply with Title 22 Section 7636.3 Staff Qualifications.
https://www.aging.ca.gov/ProgramsProviders/AAA/Nutrition/Code_of_Regulations/
- 8.2.2 All Contractor staff, paid and volunteer, shall be oriented and trained to perform their assigned responsibilities and tasks per Title 22 CCR 7636.5 (a)(e).
- 8.3 **Meal Contributions by Eligible Participants.** Eligible persons receiving nutrition services shall be given the opportunity to contribute to the cost of the service provided and shall determine for themselves what they are able to contribute. Contractor shall provide written information regarding the suggested donation amount. Contractor shall not deny services to any person because of failure to contribute [OAA 315(b)(4)]22CCR 7638.9]. Methods to receive contributions shall ensure anonymity and protect the privacy and confidentiality of each recipient with respect to the recipient's contribution or lack of contribution. Contractor shall provide a 30-day notification to participants of increases in recommended donations.
- 8.3.1 Contractor shall establish written procedures to protect contributions and fees from loss, mishandling, and theft. Such procedures shall be kept on file at Contractor's site, and provided to the COR annually for pre-approval.
- 8.3.2 Contributions are considered program income and shall be used in support of the nutrition program.
- 8.3.3 Meal participants shall be informed that there is no obligation to contribute and contributions are purely voluntary.
- 8.4 **Records, Reports and Distribution Information.** Contractor shall maintain a system for the collection of data that will accurately reflect the Contractor's program and financial operations, will meet requirements with respect to confidentiality, and fulfill the information required by this contract.
- 8.4.1 Contractor shall maintain accurate daily home delivered meal logs that record each meal delivered to each participating seniors.

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8.4.2 Contractor shall report all program income and match to the County on a monthly basis.

8.5 Holidays. A maximum of twelve (12) recognized holiday closings will be allowed per year. A holiday schedule shall be submitted to the COR at the beginning of each fiscal year, no later than thirty (30) days after the start of the new fiscal year. Additional closures will be handled on a case-by-case basis and require a minimum of thirty (30) days advance notice to the County.

8.5.1 If more than twelve (12) holiday closings are taken, Contractor must make up the days lost.

8.6 Data Collection and Reporting.

8.6.1 Contractor shall utilize the AIS-identified automated data collection system to:

8.6.1.1 Register and maintain all CDA required client demographic and assessment data for all active clients. AIS Client Intake & Assessment Form can be used to collect required information.

8.6.1.2 Track and report all service unit delivery data (via bar-coding and manual data entry) on an on-going basis.

8.6.2 Contractor shall maintain and report accurate daily meal counts and nutrition education units in the County-identified automated data collection system.

8.6.3 Contractor shall submit monthly summary reports of the information listed in 8.6 and claims to the designated COR by the fifteenth (15th) of the month following the month in which the services were provided. Claims will be paid upon successful determination of reconciled data as mentioned in paragraphs

8.6.1.1 and 8.6.1.2.

8.6.4 Contractor shall submit a completed report of actual costs expended for each service category at the end of each contract fiscal year for the term of the contract, as requested by the County, in the form and format as provided by AIS.

8.7 Customer Satisfaction Survey. Contractor shall annually obtain the views of participants regarding the services received through the development and utilization of a customer satisfaction survey.

8.7.1 Contractor shall provide a summary report of the results of the satisfaction survey to the COR by the fifteenth (15th) of the month following the completion of the survey cycle.

8.7.2 Contractor shall make all survey results available to COR upon request.

8.8 Grievance Procedure. Contractor shall develop a written grievance process per Title 22 CCR 7400(a)(2)(3) for clients to report grievances pertaining to the nutrition program, inclusive of the complainant's rights to privacy. Homebound individuals shall be notified of the grievance process in writing. A copy of the grievance procedure shall be provided to the COR annually for pre-approval.

9. Meal Preparation Site Closure Plan

9.1 As a provider of services to home bound seniors and persons with ADA accessibility requirements Contractor shall:

9.1.1 Establish and maintain a Meal Preparation Site Closure Plan to ensure preparedness and the ability to continue to deliver services if at all possible. Contractor shall provide a copy to COR annually for pre-approval and keep

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the plan on file with Contractor.

9.1.2 If Contractor is unable to provide delivery services due to unanticipated site closure Contractor shall notify COR within twenty-four (24) hours and initiate the established plan to provide projected timeline when delivery services shall resume.

9.1.3 Provide the County with the following:

9.1.3.1 Primary and secondary emergency contact phone numbers.

9.1.3.2 Status updates, upon request, including the following at a minimum:

9.1.3.2.1 Services provided to the target population.

9.1.3.2.2 Service capacity.

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Without limiting Contractor's indemnification obligations to County, Contractor shall provide at its sole expense and maintain for the duration of this contract, or as may be further required herein, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of the work by the Contractor, his agents, representatives, employees or subcontractors.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. Commercial General Liability, Occurrence form, Insurance Services Office form CG0001.
- B. Automobile Liability covering all owned, non-owned, hired auto Insurance Services Office form CA0001.
- C. Automobile Physical Damage providing ACV Comprehensive and Collision on Program vehicles.
- D. Workers' Compensation, as required by State of California and Employer's Liability Insurance.

2. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability, and Independent Contractors Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$4,000,000.
- B. Automobile Liability: \$1,000,000 each accident for bodily injury and property damage.
- C. ~~Automobile Physical Damage: Coverage shall include a Loss Payable clause to the County of San Diego. Maximum deductible of \$2,500 per occurrence~~
- C. Employer's Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of County of San Diego.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. As a requirement of this contract, any available insurance proceeds in excess of the specified minimum limits and coverage stated above, shall also be available to the County of San Diego.

3. Deductibles and Self-Insured Retentions

Any self-insured retention must be declared to and approved by County Risk Management.

4. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

A. Additional Insured Endorsement

The County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively are to be covered as additional insureds on the General Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed by or on behalf of the Contractor. General Liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO from CG 2010 11 85 or both CG 2010, CG 2026, CG 2033, or CG 2038; and CG 2037 forms if later revisions used).

B. Primary Insurance Endorsement

For any claims related to this contract, the Contractor's insurance coverage, including any excess liability policies, shall be primary insurance at least as broad as ISO CG 2001 04 13 as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by the County, its officers, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

C. Notice of Cancellation

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Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

D. Severability of Interest Clause

Coverage applies separately to each insured, except with respect to the limits of liability, and that an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds.

General Provisions

5. Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A, VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by County Risk Management.

6. Evidence of Insurance

Prior to commencement of this Contract, but in no event later than the effective date of the Contract, Contractor shall furnish the County with a copy of the policy declaration and endorsement pages along with the certificates of insurance and amendatory endorsements effecting coverage required by this clause. Policy declaration and endorsement pages shall be included with renewal certificates and amendatory endorsements submissions and shall be furnished to County within thirty days of the expiration of the term of any required policy. Contractor shall permit County at all reasonable times to inspect any required policies of insurance.

7. Failure to Obtain or Maintain Insurance; County's Remedies

Contractor's failure to provide insurance specified or failure to furnish certificates of insurance and amendatory endorsements or failure to make premium payments required by such insurance, shall constitute a material breach of the Contract, and County may, at its option, terminate the Contract for any such default by Contractor.

8. No Limitation of Obligations

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to the Contract, including, but not limited to, the provisions concerning indemnification.

9. Review of Coverage County retains the right at any time to review the coverage, form and amount of insurance required herein and may require Contractor to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

10. Self-Insurance

Contractor may, with the prior written consent of County Risk Management, fulfill some or all of the insurance requirements contained in this Contract under a plan of self-insurance. Contractor shall only be permitted to utilize such self-insurance if in the opinion of County Risk Management, Contractor's (i) net worth, and (ii) reserves for payment of claims of liability against Contractor, are sufficient to adequately compensate for the lack of other insurance coverage required by this Contract. Contractor's utilization of self-insurance shall not in any way limit liabilities assumed by Contractor under the Contract.

11. Subcontractors' Insurance

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors. Such Additional Insured endorsement shall be attached to the certificate of insurance in order to be valid and on a form at least as broad as ISO from CG 2010 11 85 or both CG 2010, CG 2026, CG 2033, or CG 2038; and CG 2037 forms if later revisions used. If any sub contractor's coverage does not comply with the foregoing provisions, Contractor shall defend and indemnify the County from any damage, loss, cost, or expense, including attorneys' fees, incurred by County as a result of subcontractor's failure to maintain required coverage.

12. Waiver of Subrogation

Contractor hereby grants to County a waiver of their rights of subrogation which any insurer of Contractor may acquire against County by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the County for all work performed by the Contractor, its employees, agents and subcontractors.

COUNTY CONTRACT NUMBER 561763
AGREEMENT WITH THE CITY OF NATIONAL CITY FOR SENIOR NUTRITION PROGRAM
EXHIBIT B-1 – VEHICLE USAGE AGREEMENT

This Exhibit shall apply to vehicle(s) purchased with California Department of Aging (CDA) funds. Contractor shall be responsible for obtaining and maintaining vehicles (and affixed refrigeration units) pursuant to the requirements of the CDA and this Agreement.

(a) Contractor shall take possession (or maintain possession if obtained under a prior County agreement) of the following vehicles for its use under this Agreement:

1. 2004 Ford Ranger Hotshot, Vehicle Identification Number (VIN): 1FTYR11U24PBO3143, License Number 1156571, County Identification Number 338
2. 2008 Ford Ranger Hotshot, Vehicle Identification Number (VIN): 1FTYR10U78PB01735, License Number 1315992, County Identification Number 356
3. 2013 Ford F150 Hotshot, Vehicle Identification Number (VIN): 1FTMF1CM5DFC14067, License Number 1413787, County Identification Number 381

(b) County will provide California Department of Aging (CDA) inventory asset tags to the Contractor, subject to the requirements set forth below.

1. Contractor shall register all vehicles purchased with CDA funding with the Department of Motor Vehicles listing Contractor to as owner and the "County of San Diego" as the lien holder.
2. Contractor shall, at its sole expense, maintain, repair, and operate the vehicle(s) (including affixed refrigeration units) in accordance with the manufacturer's requirements and standards. Contractor shall, at its sole expense, make all necessary repairs, whether resulting from normal operations or from an accident. Contractor shall maintain records of all maintenance and repairs and shall provide copies of such records to the Contracting Officer's Representative (COR) when services and repairs are completed.
3. Contractor shall utilize the vehicle(s) only for the purposes specified in this Agreement. Any other use of these vehicles requires the County's prior written approval.
4. Unless the County provides prior written approval, Contractor shall operate the vehicles only within the geographical boundaries of San Diego County.
5. Whenever feasible, Contractor shall coordinate with other senior providers to maximize the availability of transportation to seniors.
6. Contractor shall comply with all rules and regulations of the State of California Department of Motor Vehicles including those regarding the public transportation of passengers.
7. Contractor shall report to the COR within twenty-four (24) hours of any accident in which a vehicle is involved. Within ten (10) working days, Contractor must submit a written report to the COR that includes a copy of the police report, the amount of damage, and the steps to be taken by the Contractor to repair or replace the vehicles.

COUNTY CONTRACT NUMBER 561763
AGREEMENT WITH THE CITY OF NATIONAL CITY FOR SENIOR NUTRITION PROGRAM
EXHIBIT B-1 – VEHICLE USAGE AGREEMENT

8. For each vehicle, on or before September 1st of each year, Contractor shall file a report with the COR consisting of the vehicle log(s), the vehicle(s) maintenance record, and a general summary of the current condition and use of the vehicle(s) and the current location of the vehicle(s).
9. Contractor shall notify the COR immediately if a vehicle is stolen or otherwise not in Contractor's possession.
10. If Contractor can no longer utilize the vehicle(s) under this Agreement, Contractor shall immediately contact the COR in writing regarding disposition of the vehicle(s). Upon such notification, upon termination of the Agreement, or in conformance with disentanglement requirements, vehicles shall be disposed of as follows:
 - a. The County may, in its sole discretion, request approval from CDA to dispose of the vehicle(s). If written approval from CDA is obtained, the County shall notify Contractor of the approval, and Contractor shall dispose of the vehicle(s) in accordance with CDA, County, and any other applicable legal requirements. Contractor shall provide proper documentation to County of the method of disposal and submit proof of disposal to the COR within five (5) business days of such disposal. Any proceeds (including insurance proceeds) from disposal of the vehicle(s) and/or any refrigeration units affixed to the vehicle(s) shall be provided to the County.
 - b. If, in the County's sole discretion, the vehicle(s) can be utilized by another provider or the County, Contractor shall the transfer ownership the vehicle(s) and any affixed refrigeration units as directed by the County.
11. Contractor shall make the vehicle(s) available for inspection to the County or a County designee.
12. Contractor shall display CDA inventory asset tags as instructed. The inventory asset tags are to remain free of obstruction and, if damaged, Contractor shall notify COR in writing within twenty-four (24) hours to request a replacement for the CDA inventory asset tag.

COUNTY CONTRACT NUMBER 561763
AGREEMENT WITH THE CITY OF NATIONAL CITY FOR SENIOR NUTRITION PROGRAM
EXHIBIT C – PRICING SCHEDULE

COMPENSATION: The compensation listed below is not designed to fully fund the program. The fixed supplemental rates are developed annually based on funding and determined to offset the cost of providing services. These rates are subject to availability of funding from the State of California, California Department of Aging (CDA) and can change annually. A completed report of actual costs (closeout report) expended shall be submitted at the end of the fiscal year.

BASE PERIOD February 1, 2020 – June 30, 2020

Services	Proposed Number of Service Meals	County's Fixed Supplemental Rate	Total (Multiply the # of Service Meals by the County Supplemental Rate or Incentive Payment for the total)	Contractor's Match (Multiply the total by 11.11% for total contractor match)
Congregate Meals	25,630	\$4.96	\$127,124.80	\$14,123.57
Home-Delivered Meals	9,863	\$4.76	\$46,947.88	\$5,215.91
Transportation (Number of proposed Congregate Meals)	N/A	N/A	N/A	N/A
Incentive Payments* (Number of proposed Congregate Meals)	25,630	\$0.77	\$19,735.10	N/A
Incentive Payments* (Number of proposed Home-Delivered Meals)	9,863	\$0.68	\$6,706.84	N/A
GRAND TOTAL:			\$200,514.62	\$19,339.47

*Nutrition Services Incentive Payment (NSIP) dollar amounts are estimates ONLY and may be adjusted based on actual prior year number of meals served.

1. Cost Reimbursement

- 1.1. Contractor may be reimbursed for items purchased under this agreement in accordance with SOW paragraph 6.2.3 for One-Time-Only (OTO) Funds.
- 1.2. OTO Funds are based funds received from the State of California. The County cannot guarantee the receipt of the funds and all expenditures must be approved in advance by the County.
- 1.3. Contractor shall procure County approved goods and services through competitive measures further defined in SOW paragraph 6.2.3.
 - 1.3.1. Contractor shall provide a log of purchases made during the billing period and provide with an invoice for reimbursement. Information provided shall include:
 - 1.3.1.1. Description of item purchased
 - 1.3.1.2. Description of competitive measures taken to make said purchase
 - 1.3.1.2.1. Back up documentation providing competitive measures were taken.
 - 1.3.1.3. Total Price of item(s) purchased
 - 1.3.1.4. Date of items(s) purchased

**COUNTY CONTRACT NUMBER 561763
 AGREEMENT WITH THE CITY OF NATIONAL CITY FOR SENIOR NUTRITION PROGRAM
 EXHIBIT C – PRICING SCHEDULE**

OPTION 1 - July 1, 2020 – June 30, 2021

Services	Proposed Number of Service Meals	County's Fixed Supplemental Rate	Total (Multiply the # of Service Meals by the County Supplemental Rate or Incentive Payment for the total)	Contractor's Match (Multiply the total by 11.11% for total contractor match)
Congregate Meals	40,972	\$4.96	\$203,221.12	\$22,577.87
Home-Delivered Meals	17,676	\$4.76	\$84,137.76	\$9,347.71
Transportation (Number of proposed Congregate Meals)	N/A	N/A	N/A	N/A
Incentive Payments* (Number of proposed Congregate Meals)	40,972	\$0.77	\$31,548.44	N/A
Incentive Payments* (Number of proposed Home-Delivered Meals)	17,676	\$0.68	\$12,019.68	N/A
GRAND TOTAL:			\$330,927.00	\$31,925.57

*Nutrition Services Incentive Payment (NSIP) dollar amounts are estimates ONLY and may be adjusted based on actual prior year number of meals served.

1. Cost Reimbursement

- 1.1. Contractor may be reimbursed for items purchased under this agreement in accordance with SOW paragraph 6.2.3 for One-Time-Only (OTO) Funds.
- 1.2. OTO Funds are based funds received from the State of California. The County cannot guarantee the receipt of the funds and all expenditures must be approved in advance by the County.
- 1.3. Contractor shall procure County approved goods and services through competitive measures further defined in SOW paragraph 6.2.3.
 - 1.3.1. Contractor shall provide a log of purchases made during the billing period and provide with an invoice for reimbursement. Information provided shall include:
 - 1.3.1.1. Description of item purchased
 - 1.3.1.2. Description of competitive measures taken to make said purchase
 - 1.3.1.2.1. Back up documentation providing competitive measures were taken.
 - 1.3.1.3. Total Price of item(s) purchased.
 - 1.3.1.4. Date of items(s) purchased.

COUNTY CONTRACT NUMBER 561763
AGREEMENT WITH THE CITY OF NATIONAL CITY FOR SENIOR NUTRITION PROGRAM
EXHIBIT C – PRICING SCHEDULE

OPTION 2 - July 1, 2021 – June 30, 2022

Services	Proposed Number of Service Meals	County's Fixed Supplemental Rate	Total (Multiply the # of Service Meals by the County Supplemental Rate or Incentive Payment for the total)	Contractor's Match (Multiply the total by 11.11% for total contractor match)
Congregate Meals	40,972	\$4.96	\$203,221.12	\$22,577.87
Home-Delivered Meals	17,676	\$4.76	\$84,137.76	\$9,347.71
Transportation (Number of proposed Congregate Meals)	N/A	N/A	N/A	N/A
Incentive Payments* (Number of proposed Congregate Meals)	40,972	\$0.77	\$31,548.44	N/A
Incentive Payments* (Number of proposed Home-Delivered Meals)	17,676	\$0.68	\$12,019.68	N/A
GRAND TOTAL:			\$330,927.00	\$31,925.57

*Nutrition Services Incentive Payment (NSIP) dollar amounts are estimates ONLY and may be adjusted based on actual prior year number of meals served.

1. Cost Reimbursement

- 1.1. Contractor may be reimbursed for items purchased under this agreement in accordance with SOW paragraph 6.2.3 for One-Time-Only (OTO) Funds.
- 1.2. OTO Funds are based funds received from the State of California. The County cannot guarantee the receipt of the funds and all expenditures must be approved in advance by the County.
- 1.3. Contractor shall procure County approved goods and services through competitive measures further defined in SOW paragraph 6.2.3.
 - 1.3.1. Contractor shall provide a log of purchases made during the billing period and provide with an invoice for reimbursement. Information provided shall include:
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 - 1.3.1.2. Description of competitive measures taken to make said purchase
 - 1.3.1.2.1. Back up documentation providing competitive measures were taken.
 - 1.3.1.3. Total Price of items(s) purchased
 - 1.3.1.4. Date of items(s) purchased

COUNTY CONTRACT NUMBER 561763
AGREEMENT WITH THE CITY OF NATIONAL CITY FOR SENIOR NUTRITION PROGRAM
EXHIBIT C – PRICING SCHEDULE

OPTION 3 - July 1, 2022 – June 30, 2023

Services	Proposed Number of Service Meals	County's Fixed Supplemental Rate	Total (Multiply the # of Service Meals by the County Supplemental Rate or Incentive Payment for the total)	Contractor's Match (Multiply the total by 11.11% for total contractor match)
Congregate Meals	40,972	\$4.96	\$203,221.12	\$22,577.87
Home-Delivered Meals	17,676	\$4.76	\$84,137.76	\$9,347.71
Transportation (Number of proposed Congregate Meals)	N/A	N/A	N/A	N/A
Incentive Payments* (Number of proposed Congregate Meals)	40,972	\$0.77	\$31,548.44	N/A
Incentive Payments* (Number of proposed Home-Delivered Meals)	17,676	\$0.68	\$12,019.68	N/A
GRAND TOTAL:			\$330,927.00	\$31,925.57

*Nutrition Services Incentive Payment (NSIP) dollar amounts are estimates ONLY and may be adjusted based on actual prior year number of meals served.

1. Cost Reimbursement

- 1.1. Contractor may be reimbursed for items purchased under this agreement in accordance with SOW paragraph 6.2.3 for One-Time-Only (OTO) Funds.
- 1.2. OTO Funds are based funds received from the State of California. The County cannot guarantee the receipt of the funds and all expenditures must be approved in advance by the County.
- 1.3. Contractor shall procure County approved goods and services through competitive measures further defined in SOW paragraph 6.2.3.
 - 1.3.1. Contractor shall provide a log of purchases made during the billing period and provide with an invoice for reimbursement. Information provided shall include:
 - 1.3.1.1. Description of item purchased
 - 1.3.1.2. Description of competitive measures taken to make said purchase
 - 1.3.1.2.1. Back up documentation providing competitive measures were taken.
 - 1.3.1.3. Total Price of items(s) purchased
 - 1.3.1.4. Date of items(s) purchased

RESOLUTION NO. 2023 -

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF NATIONAL CITY AND THE COUNTY OF SAN DIEGO TO ACCEPT THE SENIOR NUTRITION INFRASTRUCTURE GRANT AND THE ESTABLISHMENT OF GRANT FUND APPROPRIATIONS OF \$198,815 AND CORRESPONDING REVENUE BUDGET.

WHEREAS, the George H. Waters Nutrition Program provides thousands of healthy congregate and home-delivered meals to our local seniors every year; and

WHEREAS, the City of National City had entered into an agreement with the County of San Diego in order to receive subsidized funding for the meals served to our local senior population; and

WHEREAS, the County of San Diego has made additional funding available to the City of National City through its Senior Nutrition Infrastructure Grant program; and

WHEREAS, staff recommends City Council approve the amendment to the agreement between the City and County in order to facilitate the purchase of needed equipment for the George H. Waters Nutrition Center and its Senior Nutrition Program.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1: That the City Council hereby authorizes the Mayor to execute an amendment to the agreement between the City of National City and the County of San Diego to accept the Senior Nutrition Infrastructure Grant and the establishment of grant fund appropriations of \$198,815 and corresponding revenue budget.

Section 2: That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

Resolution No. 2023 –
Page Two

PASSED and ADOPTED this 7th day of February, 2023.

Ron Morrison, Mayor

ATTEST:

Shelley Chapel, Interim City Clerk

APPROVED AS TO FORM:

Barry J. Schultz, City Attorney



AGENDA REPORT

Department: Administrative Services - Finance
Prepared by: Paul Valadez, Budget Manager
Meeting Date: Tuesday, February 7, 2023
Approved by: Brad Raulston, City Manager

SUBJECT:

Resolution of the City Council of the City of National City, California authorizing various fiscal year 2023 first quarter budget adjustments

RECOMMENDATION:

Accept the staff report and adopt the resolution authorizing fiscal year 2023 supplemental budget appropriations.

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

BACKGROUND

As part of the City of National City's Strategic Plan objective to provide consistent financial reports, this staff report presents an update on the City's financial operations for the first quarter of fiscal year 2022-2023.

DISCUSSION

Budgets are projections based on known and anticipated future revenues and expenditures. Throughout the year, staff monitor and analyze revenues and expenditures, develop projections, and provide periodic financial reports to the City Council, City Manager, and department directors. The totals presented herein reflect revenue and expenditure totals for the period of July 1st through September 30th for the current and prior years.

1st Quarter Fiscal Year 2023

The fiscal year 2023 adopted budget estimated an increase in the General Fund unassigned fund balance of \$364,000. Since it is early in the fiscal year, the ability to project year-end revenue and expenditure totals and actual use of fund balance is limited. The most useful information at the end of the first quarter is a comparison of the fiscal-year-to-date totals of the City's major revenue sources and expenditure categories for the period for the current and prior fiscal years. This information is summarized in the tables below.

Revenues

Revenue Source	FY 23	FY 22	change
Sales & Use Tax	\$ 1,966,351	\$ 1,727,081	\$239,270
District Transactions & Use Tax	\$ 1,221,101	\$ 974,972	\$246,129
Property Tax	\$60,077	\$ 44,614	\$15,463
Property Tax in Lieu of VLF	-	-	-
Other Revenues	\$2,888,487	\$1,080,661	\$1,807,826
Total	\$ 6,136,016	\$ 3,827,328	\$2,308,688

The sales & use tax and district transactions & use tax revenue amounts shown are those distributed to the City by the State in September for July sales activity. Fiscal year 2023 sales & use tax and district transaction & use tax revenues are \$485,000 higher than fiscal year 2022's through the end of the first quarter. Although it is too early to draw definitive conclusions from this limited data, this aligns with the latest outlook provided by the City's sales tax consultant for a continued modest growth for sales tax. The two largest categories of sales tax revenue for National City are auto sales & transportation and general consumer goods.

Fiscal year 2023 property tax revenue for the first quarter, consisting primarily of payments related to unsecured and supplemental property tax bills, is \$15,000 higher than that of fiscal year 2022 for the period. While the revenue is low for both years, this is normal at this point of the year, as the largest portions of property tax revenues are typically received in December and April, corresponding to tax payment due dates. Early reports from the County indicate that secured property taxes, the most significant component of the Property Tax category, will be in line with the City's adopted budget.

Because the distribution of property tax in lieu of VLF revenue occurs in January and May, no allocation of this revenue was received in the first quarter of the current or previous fiscal year. However, staff estimates this revenue will be \$8.2 million in fiscal year 2023 compared to \$7.7 million in fiscal year 2022.

First quarter fiscal year 2023 revenues in the "Other Revenues" category are \$1.8 million higher than for fiscal year 2022 at the same point in time. The increase is primarily due to the posting of \$1.1 million of unrealized gains on investments, as well as increases of \$280,000 in Transient Lodging Tax and \$150,000 in Plan Checking Fees.

Expenditures

Expenditure Type	FY 23	FY 22	change
Personnel Services	\$9,617,253	\$15,301,085	\$(5,683,833)
Maintenance & Operations (M&O)	\$730,472	\$739,288	\$(8,816)
Capital Projects	\$10,861	\$220,770	\$(209,910)
Internal Service Charges	\$2,095,456	\$1,909,594	\$185,861
Total	\$18,138,887	\$ 18,100,633	\$(5,716,697)

Although Personnel Services costs in the General Fund are \$5.7 million less than fiscal year 2022's through the first quarter, the primary driver of this is the refinancing of the unfunded accrued liability ("UAL") portion of the City's annual pension contribution into the Pension Obligation Bonds. Previously the annual UAL payment was due to CalPERS each July, while the debt service for the Pension Obligation Bonds are due each November and May. Beyond the changes to the UAL payment, standard personnel expenditures saw a combined increase of \$1.5 million due to compensation increases authorized as part of the labor group agreements in 2022, as well as increases to health care and retirement rates. These costs are being continuously monitored and projections will be compared to the budget in the mid-year budget status report.

Fiscal-year-to-date 2023 Maintenance & Operations (M&O) expenditures as of September 30th are \$9,000 lower than in fiscal year 2022. Although there are increases and decreases across the various accounts within the category, overall year-to-date expenditures are in line with prior fiscal years.

Capital outlay expenditures are \$210,000 less than first quarter 2022 due to miscellaneous facilities upgrades, traffic system improvements, and expenditures on the Paradise Creek Park Remediation project that took place in the first quarter of 2022.

Internal service charges for the first quarter of fiscal year 2023 are \$185,861 higher than the same point last fiscal year. This is due to the increase in annual budgeted building services charges and information systems maintenance charges.

Conclusion / Budgetary Outlook

As noted above, the adopted fiscal year 2023 estimated an increase of General Fund unassigned fund balance of \$364,000. At such an early point in the fiscal year, the ability to project year-end revenue and expenditure totals and actual use of fund balance is limited. A clearer picture can be drawn mid-year when the City will have received multiple months of sales tax receipts and received our initial secured property tax allocation in December.

Staff will continue to monitor revenues and expenditures and will provide information regarding comparisons to the budget and the prior year in future staff reports to the City Council. The next report will be the mid-year budget status report which includes projections to year-end for revenues and expenditures and their combined estimated impact on unassigned fund balance.

BUDGET ADJUSTMENTS

During the quarterly budget review process, the Finance Department, in conjunction with City department staff, identified budget adjustments necessary due to expenses unanticipated during the annual budgeting process. The attached schedule ("Exhibit A") details the recommended adjustments. The recommendation section below provides a summary of those adjustments by account group and fund.

RECOMMENDATION

Authorize the City Manager to approve budget adjustments up to the following amounts:

- **General Fund**
Expenditures
 - \$228,600 Maintenance & Operations
 - \$ 3,822 Transfers Out

- **Transportation DIF**
Revenues
 - \$ 3,822 Transfers In

- **Sewer Service Fund**
Revenues
 - \$1,718,088 Other Revenue

- **IT Fund**
Expenditures
 - \$10,000 Personnel Services
 - \$ 12,288 Maintenance & Operations

FINANCIAL STATEMENT:

Approval of the recommended General Fund budget adjustments will result in additional General Fund appropriations of \$232,422.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Balanced Budget and Economic Development

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

Exhibit A – Supplemental Appropriation Requests

Exhibit B - Resolution

Q1 SUPPLEMENTAL APPROPRIATION REQUESTS -Summary
Fiscal Year 2023

Fund	Expenditure	Revenue	Net
General Fund			
Community Services			
Music licensing for City Events	\$ 3,600	\$	3,600
Community Services Total	\$ 3,600	\$	3,600
Neighborhood Services			
Legal services for significant code enforcement issues	\$ 225,000	\$	225,000
Neighborhood Services Total	\$ 225,000	\$	225,000
Non-Departmental			
Transfer from the General Fund to the Transportation DIF	\$ 3,822	\$	3,822
Non-Departmental Total	\$ 3,822	\$	3,822
General Fund Total	\$ 232,422	\$	232,422

Fund	Expenditure	Revenue	Net
Information Systems Maintenance Fund			
Information Technology			
Overtime budget for IT omitted from adopted budget	\$ 10,000	\$	10,000
OCLC cataloging services	\$ 12,288	\$	12,288
Information Technology Total	\$ 22,288	\$	22,288
Information Systems Maintenance Fund Total	\$ 22,288	\$	22,288

Fund	Expenditure	Revenue	Net
Sewer Service Fund			
PW/Engineering			
Budget adjustment to align with FY23 Tax Roll Sewer Service Fees report	\$	1,738,088	\$ (1,738,088)
PW/Engineering Total	\$	1,738,088	\$ (1,738,088)
Sewer Service Fund Total	\$	1,738,088	\$ (1,738,088)

Fund	Expenditure	Revenue	Net
Transportation DIF Fund			
Non-Departmental			
Transfer from the General Fund to the Transportation DIF	\$	3,822	\$ (3,822)
Non-Departmental Total	\$	3,822	\$ (3,822)
Transportation DIF Fund Total	\$	3,822	\$ (3,822)

RESOLUTION NO. 2023 -

RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF NATIONAL CITY, CALIFORNIA,
AUTHORIZING VARIOUS FISCAL YEAR 2023
1st QUARTER BUDGET ADJUSTMENTS

WHEREAS, on June 7, 2022, the City Council of the City of National City adopted Resolution No. 2022-97, adopting the budget for fiscal year 2023; and

WHEREAS, as part of the 1st quarter review process, the Finance Department reviewed the first three months for actual revenues and expenditures; and

WHEREAS, the 1st quarter budget review was presented to the City Council and members of the public on February 7, 2023; and

WHEREAS, the City Manager has requested approval of the Recommended 1st quarter Budget Adjustments ("Exhibit 'A'"); and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of National City hereby approves the fiscal year 2023 Recommended 1st quarter Budget Adjustments ("Exhibit 'A'") and authorizes the City Manager to make the associated adjustments to the Fiscal Year 2023 Budget.

PASSED and ADOPTED this 7th day of February, 2023.

Ron Morrison, Mayor

ATTEST:

Shelley Chapel, MMC, Interim City Clerk

APPROVED AS TO FORM

Barry J. Schultz, City Attorney



CITY COUNCIL ITEM REQUEST

The City Council Item Request Form is for members of the City Council to submit written requests to the City Manager's Office for inclusion of an item on a future City Council Meeting Agenda. At the meeting where the initial written request is heard, discussion should be limited to whether the item should be added to an agenda and a date, not the merit of the item. A majority vote of the City Council is required for the item to be added to a future City Council Meeting Agenda for action.

Requesting Member of City Council: Council Member Rodriguez

Today's Date: Tuesday, January 31st, 2023

Is this matter considered Time-Sensitive by another entity deadline? No

WRITTEN REQUEST

I, Council Member Rodriguez, hereby request that the following item be placed on the City of National City – City Council meeting agenda for consideration.

At our next regularly scheduled City Council meeting, to have City Council receive a presentation on Street sweeping schedule and attach policy/procedures associated with practice.



CITY COUNCIL ITEM REQUEST

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Requesting Member of City Council: Council Member Rodriguez

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WRITTEN REQUEST

I, Council Member Rodriguez, hereby request that the following item be placed on the City of National City – City Council meeting agenda for consideration.

At our next regularly scheduled City Council meeting, to review and discuss Policy #901, Management of Real Property (Sale, Lease, Rental, Surplus) with intent to expand home ownership opportunities within City owned properties.

CITY COUNCIL POLICY

CITY OF NATIONAL CITY

TITLE: Management of Real Property (Sale, Lease, Rental, Surplus)	POLICY # 901
ADOPTED: June 19, 1984	AMENDED: January 22, 2019

Background:

The City of National City is owner of substantial real property which is used for various municipal purposes. As public service needs change, the requirements for these properties may be revised and, on occasion, certain parcels may be in excess of the City's current need. This requires that each individual site be reviewed in terms of its potential for future public use, as well as its potential economic benefit to the City.

The proceeds from the sale and lease of City-owned lands and the revenues generated from leases are normally utilized for General Fund purposes unless the property sold or leased belonged to a restricted program.

Purpose:

It is the purpose of this policy 1) to establish a procedure by which unused and marginally used City-owned real estate is reviewed for its potential public use, and for designating unneeded parcels for lease or sale; 2) to provide methodology for the sale or exchange of City-owned real estate and 3) to establish policies for the leasing of City-owned real property.

Policy:

It is the City's policy to manage its real estate assets so that municipal needs which rely on these assets may be properly implemented. It is not the City's policy to speculate in real estate. The City Council will review City-owned real estate not used for municipal purposes and determine the appropriate use of the property. Those properties not needed for either City or public use within the foreseeable future, may be made available for lease or sale.

The City shall optimize the sale price or lease rent from City-owned real estate based on relevant factors, including 1) an appraisal reflecting current market value when either a transaction or authorization to sell or lease is presented to the City Council, 2) prevailing economic conditions and market trends, and 3) any special benefits to accrue from the sale or lease.

The City shall seek market value for its properties. Discounts will not be negotiated unless an extraordinary need or circumstance is recognized by Council Resolution setting forth the amount of the discount from appraised value and the public purpose served in justification of the discount.

City staff under the direction of City Manager shall prepare and present to the City Council a comprehensive Property Management Plan with periodic reviews as needed, and updates to the City Council. The Property Management Plan shall include an overall review of the City's real estate portfolio (or inventory), an operating plan for corporate property, a disposition plan for surplus property, market research to support anticipated transactions and a request for authority to act within defined parameters (as described in this policy).

The major elements of the property management plan are to include:

- Property evaluation and characterization of real estate assets
- Strategy for City occupied real estate
- Investment Portfolio Plan (leases to for-profit tenants)
- Review of not-for-profit leases
- Disposition Plan for surplus assets
- Business Case development review to support proposed transactions
- Legal document development and review

Procedure for sale of City owned Real Estate:

A. Real Estate Review

As part of an overall property management plan for the City's real estate assets, staff will review the City's property inventory to determine which properties are no longer needed for public facilities or to support the elements of the General Plan and whose disposition will provide a greater public benefit.

A City-owned property may become available for sale if:

- The property is not currently used by the City or does not support a municipal function.
- The property is vacant and has no foreseeable use by the City.
- The property is a non-performing or under-performing asset and greater value can be generated by its sale.
- Significant economic development opportunities can be generated by selling the property.

Factors to be considered in determining whether a property should be sold include:

- Will the City be relieved of potential liabilities and/or cost of maintaining property that does not generate income or provide public benefit?
- Property tax increment that will be created by returning the properties to the tax rolls.

- Stimulation of the economy by providing opportunities for private sector investment.
- Generation of revenue.
- The sale of the property will generate greater economic value than a ground lease, if a ground lease is a feasible option.

B. Governmental Clearance Process

Government Code Section 54222 requires that a local agency proposing to dispose of surplus property must first notify all governmental agencies operating within the City as to the availability of the property. The agencies are given 60 days to respond with an intent to acquire, if not, the property may be deemed cleared for public sale.

Regarding the list of properties for sale:

- Governmental agencies are regularly contacted as the surplus list is updated.
- City departments are individually contacted as the surplus list is updated.
- Council members are given a preliminary review and opportunity to comment on foreseeable uses for the property.

C. Approval Process

- City-owned properties that have been identified by the City Manager as candidates for sale will be presented to the City Council for approval to be sold. If a property is of a type and location that would make a ground lease feasible, an economic analysis of the benefits of lease vs. sale will be conducted.
- If City Council determines that the property may be sold, it shall authorize City Manager to sell the property for a price equal to or greater than a minimum price established by a current (less than six months old) appraisal. The authorization to sell the property will be valid for twelve months from the date of City Council action.
- The City Manager or designee may enter into purchase and sale agreements, close escrows and execute and deliver grant deeds to the purchasers of the properties at prices equal to or greater than the minimum price approved by City Council on terms and conditions deemed reasonable, and in the City's best interests.
- City Manager or designee will provide a report to the City Council, regarding the price, terms, and conditions of all transactions.
- Properties that cannot be sold at a price equal to or greater than the minimum price approved by Council will be returned to Council for further consideration prior to disposition. Council approval will be required to sell a property at a price less than the minimum price previously approved by the City Council.

D. Method of Sale

Properties may be sold by any method allowed by City Council Policy. This includes direct negotiation, request for proposal, listing with a broker, sealed bid, auction or other appropriate method as determined by the City Council. Possible method of sale for all properties will be included in the enabling resolution authorizing their sales.

E. Marketing

Properties offered for sale shall receive the widest possible exposure to the open market place. This may be accomplished through direct marketing techniques, such as requests for proposals (RFPs), advertising, exposure through the real estate media, posting the property on the multiple listing service or any other appropriate method. When appropriate, properties may be listed for sale with qualified real estate brokers. The authorization to utilize the services of a real estate broker will be contained in the enabling resolution.

F. Real Estate Brokers

Real estate brokers may be used to represent the City in the sale of its properties. Brokers will be selected for individual assignments through Requests for Proposals (RFP) or Requests for Qualifications (RFQ) and a subsequent bid or other methods that result in the City receiving the services of a qualified broker at the best value to the City. The maximum approved commission rate will be contained in the enabling resolution for the property's sale. If the property is listed with a broker, the City reserves the right to exclude from the listing agreement potential buyers whose interest in purchasing a subject property has been made a part of the record prior to the execution of such agreement.

G. Exclusively Negotiated Sales

It will be the City's policy to insure the highest price for its real estate by pursuing open market transactions. However, on certain occasions, an exclusively negotiated sale may be justified as applicable and may be approved under one of the following conditions:

1. When a parcel is landlocked.
2. When the sale is to a contiguous owner.
3. When a fee interest in a pipeline or other right-of-way is no longer required, it may be sold to a contiguous owner. A restrictive pipeline easement of adequate width or other required easements will be reserved from said sale.
4. When other governmental, public and quasi-public agencies submit acquisition proposals a sale may be consummated. These agencies shall include but not be limited to: Federal, State, and County agencies; school districts, special districts, and regulated utility companies.

5. When qualified non-profit institutional organizations offer to purchase City-owned land, a negotiated sale may be consummated at fair market value providing there is: 1) a development commitment, and 2) a right to repurchase or a reversion upon a condition subsequent. Institutional organizations such as places of public assembly, hospitals, extended care facilities, private schools and community service organizations are required to develop under the City's conditional use permit procedure.
6. When a property has been offered by public auction and no acceptable bids were received, it may be sold on a negotiated basis to any applicant submitting an acceptable offer within six months following the date of auction.
7. Real property exchanges may be consummated by direct negotiation. However, exchanges will be considered only with other governmental agencies or when there is an advantage to the City.

H. Rezoning

Prior to completion of the sales transaction, City land shall be considered for rezoning in accordance with the General Plan, existing community plans or other City Council direction if a higher sale price will result. Also, all unnecessary easements affecting title to the property shall be removed if this will result in a commensurate increase in value.

I. Easements

The City will receive current fair market value for the removal of restrictive easements or access rights previously paid for by the City or other governmental agency or reserved in a sale of City property.

J. Priority Handling

Since time is of essence in land transactions, all such actions by the City Council and staff shall be given the highest priority and special handling.

K. Public Utilities Installed by Private Entities

The applicant for the use of unimproved City land for public purposes, such as streets, sewers, and other public utilities, shall compensate the City for the fair market value of the rights to be granted by the City. The amount of compensation shall be established by appraisal.

Procedure for leasing City-owned Real Property

The City of National City has a very diverse real estate portfolio. While the policies herein are to act as the standard that governs most leases, the City acknowledges that parts of its leasing portfolio have specialized needs or restrictions. In these cases, this policy will act as a framework for a sub-policy that will govern a specific area. Should a

conflict arise between the framework policy and the sub-policy, the sub-policy will govern.

A. Criteria for Leasing

City property shall be considered for leasing when one or more of the following criteria apply:

1. The property is not required for current municipal use, but is to be held for possible future use and can be leased as an interim measure.
2. The property can only be leased because of legal restraints. For example, property held under Tideland trust grants or as dedicated parks.
3. The City requires substantial control over development, use and reuse of the property.
4. The property has the immediate potential of a high return to the City because of its high demand and type of use, such as commercial and industrial land.
5. The property can be efficiently utilized by a provider of services needed by the City.
6. The property can be leased to promote a substantial economic development opportunity.

B. Property Management Plan

The City Council may approve the execution of lease transactions that meet the terms of the City's asset strategy for a particular property previously approved by City Council in an overall Property Management Plan. Negotiated transactions that fall outside of the parameters of an approved Property Management Plan either will be submitted individually for City Council approval, or deferred until the next periodic update and approval of the plan.

C. Lessee Selection for New Leases

Competitive offers for lease of City property shall be solicited from the open market place. This may be accomplished through a number of marketing techniques, such as Request for Proposals (RFPs), a marketing subscription system, direct advertising, use of a Multiple Listing Service (MLS), listing with a broker, posting the property and any other appropriate means.

In certain limited situations, the City may exclusively consider a single proposal for lease of City property. Potential lessees wishing to exclusively negotiate with the City must submit for City staff review a business case with sufficient justification as to how it is capable of optimizing the use of the property and return to the City, thereby negating the need for a competitive process. This information will be included when the lease transaction is presented for City Council approval.

Leasehold proposals shall be evaluated in terms of:

1. The degree to which the proposed use is in compliance with the City's strategic plan for the property.
2. In terms of the amount of consideration offered in the form of rent.
3. In terms of the financial feasibility of the proposal.
4. The capability, expertise and experience of the potential lessee with respect to the proposed leasehold development and operation.
5. If new development is proposed, a development plan that includes a description of the development team and its qualifications.
6. The details of each person or entity that will have an interest in the proposed lease
7. Special public benefits to be derived (if any).

D. Rate of Return

The City shall obtain fair market rents for its leases commensurate with the highest and best use of the property. The fair market rent shall be based on an appraisal that complies with the definition of Market Rent found in the Uniform Standards of Professional Appraisal Practice (USPAP) published by the Appraisal Foundation. The appraisal shall be no more than six months old at the time the lease transaction is presented for City Council approval. If the cost of an appraisal is not justified by the anticipated rents, the City may choose an alternative method to establish rent. City leases shall contain terms and conditions which will sustain a fair rate of return throughout the duration of the lease.

E. Rental Terms

Rental terms may be negotiated on the basis of fixed rates (flat rent leases) or percentages of the lessee's gross income derived from business conducted on the property, with a provision for a minimum rent on percentage leases.

F. Percentage Leases

Minimum Rent

The minimum rent component for a new percentage lease shall be set at no less than eighty percent (80%) of the fair market rent as defined above. In certain cases, a portion of the minimum rent may be abated for new construction or redevelopment on the leasehold. The minimum rent shall be adjusted upward throughout the duration of the lease at intervals of not more than every five (5) years to reflect no less than eighty percent (80%) of the average annual rent actually paid or accrued during the three (3) years preceding the adjustment. In no event shall the adjusted minimum rent be less than the minimum rent in existence immediately preceding the adjustment.

Percentage Rates

Percentage leases shall provide for adjustments of percentages rates every five (5) years to current fair market rates as established by appraisals of prevailing market percentage rates primarily within the Southern California area.

G. Flat Rate Leases

Market Rate Adjustments

Flat rate leases shall provide for upward adjustment of rent every five (5) years to current fair market rent.

Consumer Price Index Adjustments

Flat rate leases shall provide for upward adjustment of rent in the interval term between market rate adjustments by changes in the consumer price index. The index used for consumer price index adjustments will be the All Urban Consumers index for Los Angeles - Riverside - Orange County, California with a base year of 1982-84. If the U.S. Department of Labor indices are no longer published, another substitute index generally recognized as authoritative will be used. Flat rate leases may include pre-determined periodic increases to rent instead of consumer price index adjustments. These periodic increases would occur at least every five (5) years.

H. Rent Arbitration

Leases can provide for binding arbitration when the City and lessee cannot agree on the new rent for a rental period under review. The City and lessee shall each select a professional independent real estate appraiser who in turn will select a third independent real estate appraiser to determine the fair market rent. If the two selected appraisers fail to mutually select a third appraiser, then the third appraiser will be appointed in accordance with the rules of the American Arbitration Association. The City and lessee shall pay the cost of its own selected appraiser and equally share the cost of the third appraiser.

I. Appraisal Assumptions

City leases shall include a definition of the fair market value to be used to adjust rent and an identification of the premise for that value. In establishing the fair market value of leased property, any appraisal shall consider the property as a fee simple absolute estate and as vacant and available for lease or sale for the authorized purposes of the lease at the commencement of the rental period under review. Rates established for purposes of periodic percentage rental adjustments shall not consider any abatement as may be appropriate in a "new" development of vacant land. It shall also be assumed that all

required regulatory approvals to permit the use authorized in the lease have been obtained.

J. Lease Term

Short-Term Lease

The City Manager, at all times, shall have power, without advertising, notice, or competitive bidding, to lease any City property for a term of three (3) years or less (short-term lease). The City Council will be notified of a short-term lease not later than fifteen (15) days following its execution. A short-term lease may not be renewed without approval of the City Council. The City Manager, or designee may also execute rental agreements covering up to eighteen (18) months for tenant occupancy of City-owned residential housing.

Long-Term Lease

A lease in excess of three (3) years requires a resolution passed by a majority vote of all members of the City Council. The length of lease term shall be based on the level of capital improvements to be made by the lessee and the economic life expectancy of the development. These factors can be determined utilizing cost estimating and economic life expectancy resources such as tables provided by Marshall Valuation Service. The City may consider other relevant information in determining if a longer lease term is warranted, such as if the proposed leasehold development is expected to generate above average returns to the City or significantly improve the quality of the property. A lease shall not exceed 55 years unless the conditions set forth in Government Code section 37380(b) are met,

K. Lease Amendments

Amendments to long-term leases require City Council approval. The City's agreement to an amendment may be contingent upon updating sections of the lease to incorporate current City standard lease provisions and an adjustment to fair market rent.

L. Subleases

A lessee may sublease all or part of the leased property to a qualified sub-lessee subject to approval by the City. No sublease shall be approved which would be detrimental to the City's rights under the master lease or for a use that is not consistent with uses allowed by the master lease. The City Manager may authorize subleases which meet these conditions and which do not require amendment of the master lease. Unless special circumstances

exist. Leases shall provide for the City to receive a minimum of fifty percent (50%) of the incremental gross rental revenues due to the lessee from subleases.

M. Leasehold Financing

The City will not subordinate its fee interest to encumbrances placed against any leasehold by a lessee. The City Council may approve appropriate financial encumbrances of the leasehold interest, which provide that all loan proceeds are used for authorized improvement of the property until the leasehold is fully developed in accordance with the lease. City staff shall take appropriate steps to review the proposed financing and insure that loan proceeds go into the leasehold. Maximum loan proceeds shall not be in excess of seventy-five percent (75%) loan-to-value, where "value" refers to the leasehold improvements, as determined by a lender's appraisal which has been reviewed and approved by City staff. The loan term shall not exceed the term of the lease.

Loans or refinancing in the form of encumbrances against the lease for the purpose of reducing equity or financing the sale of leasehold interest will not be allowed until the property is fully developed for uses authorized in the lease. After the property is developed, such financing may be permitted so long as there is also substantial benefit to be gained by the City. This may take the form of either a percentage share of the loan proceeds or an upward adjustment to the rent. Either of which shall be based on commercially reasonable comparables found in the market.

N. Leasehold Improvements

Leasehold improvements installed by lessees shall be removed at the lease termination without cost to the City, or will revert to the City, at the City's option. All leasehold improvements and alterations require prior written approval of the City Council.

O. Maintenance and Utilities Responsibility

City leases shall require the lessee to maintain all improvements on the property at its own expense and be responsible for the cost of all utilities. Leases for multi-tenanted space shall include specific requirements delineating appropriate responsibilities.

P. Lease Audits

All percentage leases may be audited by the City's Finance Department in the first year of operation to establish proper reporting procedures and at least once every three (3) years thereafter. More frequent audits may be made if appropriate. The City shall reserve the right to audit all other leases and agreements subject to this Council Policy, if determined to be warranted by the City's Finance Department.

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Q. Leasehold Assignments

Requests for assignment of leasehold interest shall be evaluated on the same basis as the criteria used in evaluating a leasehold proposal. The City Manager may authorize assignments which do not require amendment of the master lease. Consent may be contingent on the payment of additional consideration to the City, either as a percentage share of the purchase price of the leasehold interest or an upward adjustment to the rent. Either of which shall be based on commercially reasonable comparables found in the market. If new financing is involved in the sale, the requirements of 'Leasehold Financing' shall apply.

R. Lease Extensions & Renewals

Requests from existing lessees for lease extensions or renewals may be considered if such proposals promote capital investment and redevelopment of City property. Whenever an existing lessee is seeking renewal of an expiring long-term lease that is not contemplated in a previously approved property management plan, the City Manager will bring the issue before the applicable City Council Committee with an appropriate recommendation. In addition to the criteria used to assess new lease proposals, City staff also will review the lessee's history with respect to: maintenance of the property; compliance with existing lease terms; prompt rent payments; and a rental return consistent with maximizing the property's full potential.

The lessee must propose capital investment that: will increase the value or the useful life of the leasehold improvements by an amount more than can be reasonably amortized over the remaining lease term; is not recurring in nature; and is at least ten percent (10%) or more of the value of the existing improvements. It specifically should exclude expenditures to correct deferred maintenance and expenditures for repairs to keep the existing improvements in good condition. The length of any extended lease term shall be calculated by the same method used for calculating the length of new leases.

S. City's Interest in Leasehold Improvements

City lease agreements provide the City the right to assume ownership of the leasehold improvements at the end of the lease. The value of the City's interest in the leasehold improvements can be appraised using widely accepted appraisal methods. In the event the City grants a lessee a lease extension, the City shall be compensated by an amount equal to the change in present value attributable to the deferral of its interest in the leasehold improvements. This amount either can be paid as an upfront payment at the beginning of the extended term or amortized over time with appropriate interest applied. The City shall offset from the value of its interest in the leasehold improvements any increased economic benefit derived from an extended lease. The City shall not receive any

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compensation for its interest in the leasehold improvements on leases extended prior to the last twenty percent (20%) of the existing term.

T. Leasing to Non- Profit Organizations

It shall be the policy of the City Council to allow direct negotiation with nonprofit organizations for the use of City-owned lands for the purpose of providing the community with cultural, recreational, educational enrichment, and other public services to the citizens and visitors of National City. Relative to this policy the following will apply:

1. Available City property shall be leased at fair market value to nonprofit organizations when it is deemed by Council that appropriate public benefit will be derived.
2. The only discount in the land rental rate which will be considered is that which will be a direct offset to City expenditures. An example would be where the nonprofit organization is constructing and operating a facility to provide a service that would otherwise be a recognized obligation of the City to provide.
3. Council approval of a prospective nonprofit organization's use of City-owned land shall be obtained prior to commencement of lease negotiations.
4. No lease will become effective until firm financial commitments have been obtained under an appropriate lease option arrangement.
5. Lessees will be required to construct, operate, and maintain the premises at their sole cost.
6. Lessees shall be incorporated nonprofit organizations under the laws of the State of California.
7. Development on parklands shall be in conformance with City park development plans, and construction shall comply with City park design criteria.
8. Lessees shall provide desired services and facilities to the general public without discrimination as to race, color, creed, sex, age, or national origin.
9. When leases permit revenue producing activities, some measure of rental compensation shall be paid to the City. However, this provision will not apply to occasional fund raising events provided the funds are used exclusively for the specified purpose(s) of the lease.
10. Properties with significant potential for commercial, industrial, or scientific research uses shall not be available for nonprofit use.
11. Subleases will be considered on their individual merits by the City and consistency with conditions placed upon the City. Fees generated from subleasing will belong to the City and be deposited with the City upon receipt by the Agency.

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U. Security Deposits

The standard security deposit for a new lease agreement shall be equivalent to two (2) month's rent. The security deposit may take the form of cash, an instrument of credit or a faithful performance bond. For a lessee making a substantial investment in improvements, the security deposit will be refunded upon completion of the improvements.

Related Policy References

Government Codes: 37350 and 37380

Government Codes: 54200-54232, 54235-54237

Prior Policy Amendments

August 14, 1990

