



# AGENDA

## Consolidated Regular Meeting

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

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

*Ben Martinez, Interim City Manager*  
*Barry J. Schultz, City Attorney*  
*Shelley Chapel, MMC, City Clerk*  
*R. Mitchel Beauchamp, City Treasurer*

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*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 Meetings 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 before 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 before 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*)

### **EFFECTIVE JANUARY 1, 2023**

All Contributions to Candidates and Current Elected Officials are required to self-report a Declaration of Campaign Contribution to a Councilmember of more than \$250 within the past year (effective Jan 1, 2023). This report may be included on the Public Comment Speaker Slip to be completed prior to the City Council Meeting.

If you wish to submit a written comment [email](#) to the City Clerk's Office at least 2 hours before 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 before 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 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.

**A PARTIR DEL 1 DE ENERO DE 2023**

Todas las contribuciones a los candidatos y funcionarios electos actuales deben autoinformar una Declaración de contribución de campaña a un concejal de más de \$ 250 en el último año (a partir del 1 de enero de 2023). Este informe puede incluirse en el Recibo del orador de comentarios públicos que se completará antes de la reunión del Concejo 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, November 7, 2023, 6:00 p.m.  
City Council Chamber - 1243 National City Boulevard  
National City, CA

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Pages

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE TO THE FLAG
4. INVOCATION
5. 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.

6. PROCLAMATIONS AND RECOGNITION

- 6.1 Introduction of New City Employees

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

8. 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.

- 8.1 Approval of Reading by Title Only and Waiver of Reading in Full of Ordinance on this Agenda
- 8.2 Approval of City Council Meeting Minutes. 7
- Recommendation:  
Approve and file.
- 8.3 Acceptance of the Department of Alcoholic Beverage Control Award of \$40,000 to the National City Police Department to perform operations sponsored by the Department of Alcoholic Beverage Control’s Minor Decoy/Shoulder Tap Grant Project. 28
- Recommendation:  
Adopt the Resolution Entitled, “Resolution of the City of National City, California, Authorizing the Acceptance of the Department of Alcoholic Beverage Control’s Minor Decoy/Shoulder Tap Grant Project Funds in the Amount of \$40,000, Funded by the California Office of Traffic Safety through the National Highway Traffic Safety Administration, and Authorizing the Establishment of a Fiscal Year 2024 Appropriation and Corresponding Revenue Budget in the Amount of \$40,000.”
- 8.4 Accepting a Caltrans Sustainable Transportation Planning Grant for the National City Sustainable Mobility Plan (SMP) 45
- Recommendation:  
Adopt a Resolution Entitled, “Resolution of the City Council of the City of National City, California, 1) Accepting a California Department of Transportation (Caltrans), Division of Transportation Planning, Sustainable Transportation Planning Grant in the Amount of \$422,918; 2) Authorizing the City Manager to Execute the Grant Agreement and any Amendments Thereto with Caltrans for the National City Sustainable Mobility Plan; 3) Authorizing the Establishment of an Engineering Grants Fund Appropriation of \$422,918 and Corresponding Revenue Budget; and 4) Committing to Providing a Local Match of \$54,795.”
- 8.5 Acting Assignment Policy 55
- Recommendation:  
Adopt a Resolution Entitled, “Resolution of the City Council of the City of National City, California, Adopting a City Administrative Policy on Acting Assignments.”

- 8.6 Affordable Housing Density Bonus Agreement for 2704 East 18th Street 61
- Recommendation:  
 Adopt the Resolution Entitled “Resolution of the City Council of the City of National City, California, Approving an Affordable Housing Density Bonus Agreement and Related Documents with 2704 18th, LLC, a California Limited Liability Company, and Restricting the Rent and Occupancy of Two Units to Low-Income Households in Exchange for Four Incentives Pursuant to California Government Code Sections 65915 – 65918 for the Development of Nine Housing Units Located at 2704 East 18th Street in National City.”
- 8.7 Approval of a Resolution Authorizing the Acceptance of Justice Assistance Grant (JAG) and Appropriation of Funds to Purchase Red Dot Pistol Optics and Holsters. 102
- Recommendation:  
 Adopt a Resolution Entitled, “Resolution of the City Council of the City of National City, California, Authorizing the Acceptance of the National City Police Department’s Grant Award of \$31,358.00 from the 2023 Edward Byrne Memorial Justice Assistance Grant (JAG) Program to Purchase Red Dot Pistol Optics and Holsters, and Authorizing the Establishment of an Appropriation and Corresponding Revenue Budget.”
- 8.8 Authorize Adding One (1) Full-Time Police Dispatch Supervisor and Removing One (1) Full-Time Police Dispatcher for Fiscal Year 2023-2024 and Onward. 147
- Recommendation:  
 Adopt a Resolution Entitled, “Resolution of the City Council of National City, California, Authorizing the Addition of One (1) Police Dispatch Supervisor and Removal of One Police Dispatcher from the Authorized Positions of the City.”
- 8.9 National City Chamber of Commerce Economic Development Agreement 160
- Recommendation:  
 Adopt the Resolution Entitled, “Resolution of the City Council of the City of National City, California, Authorizing the Mayor to Execute an Agreement between the City of National City and the National City Chamber of Commerce for a Not-to-Exceed Amount of \$50,000 to Assist in Economic Development Services.”

8.10	Ratifying Prior Expenditures and Amendment No. 1 for Section 8 Software.	178
	<p>Recommendation:          Adopt the Resolution Entitled, "Resolution of the Community Development Commission-Housing Authority of the City of National City, California, Ratifying Prior Expenditures from Fiscal Year (FY) 2002 through FY 2024 Totaling \$292,349.49 and Master Agreement Amendment No. 1, Including a Not-to-Exceed Amount of \$35,030.00 for FY 2025, to Administer the Section 8 Housing Choice Voucher Program through Happy Software Inc., Now Known as MRI Software LLC."</p>	
8.11	Investment transactions for the month ended August 31, 2023.	215
	<p>Recommendation:          Accept and file the Investment Transaction Ledger for the month ended August 31, 2023.</p>	
8.12	Warrant Register #11 for the period of 9/8/23 through 9/14/23 in the amount of \$607,705.26	222
	<p>Recommendation:          Ratify Warrants Totaling \$607,705.26</p>	
8.13	Warrant Register #12 for the period of 9/15/23 through 9/21/23 in the amount of \$2,130,294.40	226
	<p>Recommendation:          Ratify Warrants Totaling \$2,130,294.40</p>	

**9. PUBLIC HEARING**

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

9.1	Second Reading and Adoption of Ordinance Establishing Speed Limits Based on Engineering and Traffic Surveys	231
	<p>Recommendation:          Adopt an Ordinance Establishing Speed Limits on Various Streets Based on Engineering and Traffic Surveys and Authorizing the Director of Public Works to Post Speed Limit Signs Consistent with the Recommendations of the Engineering and Traffic Surveys.</p>	
9.2	Cost Recovery Fees for Fire Department Responses	253
	<p>Recommendation:          Adopt the Resolution Entitled "Resolution of the City Council of the City of National City, California, Amending Exhibit "A" of the National City Municipal Code Section 4.70.03 Relating to Recovering Costs for the Deployment of Emergency Services by the National City Fire Department."</p>	

- 9.3 Introduction of an Ordinance Amending National City Municipal Code Sections 10.70 – Police Regulated Business Regulations and 10.79 – Massage Establishments. 265

Recommendation:

Introduction and First Reading of an Ordinance Entitled, “An Ordinance of the City Council of the City of National City, California, Amending Chapters 10.70 – Police Regulated Business Regulations and 10.79 – Massage Establishments of the National City Municipal Code.”

**10. STAFF REPORTS**

- 10.1 Fiscal Year 2024 First Quarter Budget Review 307

Recommendation:

Accept and File this Report, and Adopt a Resolution Entitled, “Resolution of the City Council of the City of National City, California, Authorizing Various Fiscal Year 2024 1st Quarter Budget Adjustments.”

- 10.2 Consideration of a Project Labor Agreement with the San Diego Building and Construction Trades Council and Associated Craft Unions. 313

Recommendation:

Adopt a Resolution Entitled, “Resolution of the City Council of the City of National City, California, Authorizing Entering into a Project Labor Agreement with the San Diego Building and Construction Trades Council and Associated Craft Unions.”

**11. CITY MANAGER’S REPORT**

**12. ELECTED OFFICIALS REPORT**

**13. CITY ATTORNEY REPORT**

**14. ADJOURNMENT**

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

# MEET OUR TEAM

## POLICE DEPARTMENT



**VANIA NOLASCO**  
**ANIMAL REGULATIONS  
OFFICER**



**IRMA AGUILAR**  
**POLICE DISPATCHER**

## ENGINEERING/PUBLIC WORKS



**MANUEL AGUIRRE**  
**MAINTENANCE**



**DUSTIN ELLIS**  
**BUILDING TRADES  
SPECIALIST**

# WELCOME



# AGENDA REPORT

Department: City Clerk's Office  
Prepared by: Shelley Chapel, City Clerk  
Meeting Date: Tuesday, November 7, 2023  
Approved by: Ben Martinez, Interim City Manager

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**SUBJECT:**

Approval of City Council Meeting Minutes.

**RECOMMENDATION:**

Approve and file.

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

Not Applicable.

**EXPLANATION:**

Meeting Minutes:

- Regular City Council Meeting of October 3, 2023
- Special City Council Meeting of October 12, 2023
- Special City Council Meeting of October 17, 2023
- Regular City Council Meeting of October 17, 2023

**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 - Regular City Council Meeting of October 3, 2023
- Exhibit B - Special City Council Meeting of October 12, 2023
- Exhibit C - Special City Council Meeting of October 17, 2023
- Exhibit D - Regular City Council Meeting of October 17, 2023



**REGULAR MEETING MINUTES OF THE CITY COUNCIL**

**October 3, 2023, 6:00 p.m.**

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

**Present:**                    **Councilmember Bush** (*arrived at 6:39 p.m.*)  
**Councilmember Rodriguez**  
**Councilmember Yamane**  
**Vice-Mayor Molina**  
**Mayor Morrison**

**Others Present:**        **Ben Martinez, Interim City Manager**  
**Richard Romero, Assistant City Attorney**  
**Carlos Aguirre, Acting Deputy City Manager/Housing Authority**  
**Director**  
**Molly Brennan, Administrative Services Director**  
**Danielle Ghio, Principal Librarian**  
**Alejandro Hernandez, Assistant Chief of Police**  
**Tonya Hussain, Executive Secretary**  
**Stephen Manganiello, Director of Public Works/City Engineer**  
**Sergio Mora, Fire Chief**  
**Martin Reeder, Planning Manager**

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**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.

**2.     ROLL CALL**

Councilmembers present: Bush (*arrived at 6:39 p.m.*), Rodriguez, Yamane, Molina, Morrison

Administrative Officials present: Martinez, Romero, Aguirre, Brennan, Ghio, Hernandez, Hussain, Manganiello, Mora, Reeder

Interpretation in Spanish provided by Ruth Monroy and Luisa Diaz.

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

Vice-Mayor Molina led the Pledge of Allegiance.

**4. INVOCATION**

Invocation delivered by Pastor Benny Madrid Sr. from World of Life Worship Center

**5. PUBLIC COMMENT**

Mayor Morrison summarized the process for acceptance of live public comment allowing three (3) minutes per comment and introduced Executive Secretary Hussain.

Two (2) speakers provided in-person comments, and three (3) people provided virtual comment.

In-Person Comment:

Laura Wilkinson Sinton  
Joan Rincon  
Paul Wapnowski  
Ed Nieto

Zoom Comment:

Peggy Walker  
Becky Rapp  
Barbara Gordon

**6. PROCLAMATION**

6.1 National Domestic Violence Awareness Month

Mayor Morrison presented the proclamation. The Proclamation was accepted by Domestic Violence Abuse Survivor Rachelle.

6.2 Introduction of New City Employees

Mayor Morrison Introduced Interim City Manager Martinez, introduced Acting Community Development Director, Brian Hadley, and Retired Annuitant Eric Dennis, hired as a Building Official.

Alex Hernandez, Assistant Chief of Police; Eugenia Gonzales, Animal Regulations Officer; and, Stephen Eric Karcher, Police Dispatcher

**7. PRESENTATION (Limited to Five (5) Minutes each)**

7.1 Civil Service Commission Annual Report to Council

Mayor Morrison Introduced Director of Administrative Services Brennan, who also serves as Secretary to the Civil Service Commission. Mrs. Brennan introduced Commissioner Wapnowski and gave the Annual Report.

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

Councilmembers Bush, Rodriguez, and Yamane had nothing to report.

Vice-Mayor Molina reported on the SANDAG Board of Directors Meeting.

Mayor Morrison had nothing to report.

Port of San Diego Commissioner Sandy Naranjo provided a report on the recent Board Meeting.

9. **CONSENT CALENDAR**

**ACTION:** Motion by Councilmember Bush, seconded by Councilmember Yamane to approve Consent Calendar Items 9.1 through 9.3 and 9.5, 9.6, and 9.8 through 9.14 with Item 9.4 pulled by Councilmember Yamane, and Item 9.7 pulled by a member of the public.

**Motion carried by unanimous vote.**

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

**Motion carried by unanimous vote**

9.2 Acceptance of Donation from The Over Under Initiative and Approval of Use of Existing Appropriation and Fund Balance for Fencing for Kimball Park Goalpher Project.

Approved Resolution No. 2023-140

Approved the Resolution Entitled "Resolution of the City Council of the City of National City, California, Authorizing the Acceptance of the In-Kind Capital Donation and Installation of a Pair of Goalphers from The Over Under Initiative and the Use of the Kimball Park Dog Park & Tot Lot and Las Palmas Dog Park Project Fund Balance for Fencing for the Kimball Park Goalpher Project."

**Motion carried by unanimous vote**

9.3 Approval of City Council Meeting Minutes

**Motion carried by unanimous vote**

*Item pulled for discussion by City Councilmember Yamane.*

9.4 California Library Family Literacy Services Grant Funds Acceptance Recommendation:

Approved Resolution No. 2023-141

Adopted Resolution Entitled, "Resolution of the City Council of the City of National City, California, Accepting the California Library Literacy Services (CLLS) grant of \$55,945 from the California State Library for the Library Literacy Services Program for FY24 Adult Literacy and Family Literacy programs and authorizing the establishment of Library Grants Fund appropriations of \$55,945 and corresponding revenue budgets."

Interim City Manager introduced Danielle Ghio, Acting City Librarian, who introduced Mikki Vidamo, Academic Enrichment Program Coordinator who provided information regarding the Literacy Services Program.

**ACTION:** Motion by Councilmember Yamane, seconded by Vice-Mayor Molina to adopt the resolution.

**Motion carried by unanimous vote**

- 9.5 Notice of Decision - Conditional Use Permit for Modified Alcohol Sales Hours at an Existing Retail Store (The 99 Cents Only Store) Located at 1320 Highland Avenue.

Approved Resolution No. 2023-144

Approved the Request for the Extended Alcohol Sales Hours Subject to the Attached Recommended Conditions. The Sale of Alcohol is a Conditionally Allowed Use in MXD-2 and Would Contribute to the Diversity of Commercial Offerings in the Area.

**Motion carried by unanimous vote**

- 9.6 Notice of Decision - Conditional Use Permit for an Outdoor Commercial Recreation Facility (Padel Club) to be Located at 21 West 7th Street.

Approved the Operation of an Outdoor Commercial Recreation Facility, Subject to the Recommended Conditions in the Attached Resolution and a Determination that the Project is Exempt from CEQA. The Operation of an Outdoor Commercial Recreation Page 2 of 4 Facility is a Conditionally-Allowed Use in Development Zone 1B of the Downtown Specific Plan (DSP).

**Motion carried by unanimous vote**

*Item pulled for discussion by a member of the public.*

- 9.7 Notice of Decision – Conditional Use Permit for alcohol sales and karaoke at a new entertainment center (Round 1 Bowling & Arcade) to be located at Westfield Plaza Bonita.

One (1) speaker provided in-person comment: Joan Rincon

Alex Hernandez, Assistant Chief of Police, and Martin Reeder, Planning Manager provided responses to City Councilmembers’ questions.

Recommendation to approve the sale of on-site beer, wine, and distilled spirits with live entertainment, subject to the recommended conditions in the attached resolution and a determination that the project is exempt from the California Environmental Quality Act (CEQA). The sale of alcohol is a conditionally allowed use in the MXD-2 zone and would be accessory to food sales at the proposed entertainment center.

**ACTION:** Motion by Councilmember Bush, seconded by Councilmember Yamane to approve the recommendation to set a Public Hearing based on a date determined by the Interim City Manager to return to be considered by the City Council.

**Motion carried by unanimous vote**

9.8 Part-Time Police Dispatcher Trainer Assignment Pay

Approved Resolution No. 2023-142

Adopted a Resolution Entitled "Resolution of the City Council of the City of National City, California Authorizing Trainer Assignment Pay for Part-Time Police Dispatchers."

**Motion carried by unanimous vote**

9.9 Investment Report for the Quarter Ended June 30, 2023.

Accept and File the Investment Report for the Quarter Ended June 30, 2023.

**Motion carried by unanimous vote**

9.10 Investment transactions for the month ended July 31, 2023.

Accept and file the Investment Transaction Ledger for the month ended July 31, 2023.

**Motion carried by unanimous vote**

9.11 Warrant Register #3 for the period of 7/14/23 through 7/20/23 in the amount of \$1,484,995.15.

Ratify Warrants Totaling \$ 1,484,995.15

**Motion carried by unanimous vote**

9.12 Warrant Register #4 for the period of 7/21/23 through 7/27/23 in the amount of \$2,907,856.44.

Ratify Warrants Totaling \$ 2,907,856.44.

**Motion carried by unanimous vote**

9.13 Warrant Register #5 for the period of 7/28/23 through 8/03/23 in the amount of \$2,994,591.27.

Ratify Warrants Totaling \$2,994,591.27

**Motion carried by unanimous vote**

9.14 Warrant Register #6 for the period of 8/4/23 through 8/10/23 in the amount of \$3,540,950.62.

Ratify Warrants Totaling \$3,540,950.62

**Motion carried by unanimous vote**

## **PUBLIC HEARING**

### 10.1 Master Fee Schedule Update

Approved Resolution No. 2023-143

Mayor Morrison introduced Director of Administrative Services Brennan who provided an overview of the report. Alex Hernandez, Assistant Chief of Police was also available for questions.

Vice-Mayor Molina asked for staff to return with a report in the future to provide the dog license process and responsibility for doing so.

Mayor Morrison declared the Public Hearing open at 7:25 p.m.

No Public Comment.

**ACTION:** Motion by Councilmember Yamane, seconded by Vice-Mayor Molina to Close the Public Hearing.

Motion carried by unanimous vote

Public Hearing closed at 7:25 p.m.

Recommendation: Hold a Public Hearing, Receive Public Comments, and Adopt the Resolution Entitled, "Resolution of the City Council of the City of National City, California, Adopting Updated City User Fees."

**ACTION:** Motion by Councilmember Yamane, seconded by Councilmember Rodriguez to adopt the Resolution adopting City User Fees.

Motion carried by unanimous vote.

## **STAFF REPORTS**

### 11.1 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.

Approved Resolution No. 2023-144

Recommendation: Approval of a Resolution Entitled, "Resolution of the City Council of the City of National City, California, Authorizing the City Manager to Execute a Second Amendment to the 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.

Acting Deputy City Manager and Housing Authority Director Aguirre provided the report.

**ACTION:** Motion by Vice-Mayor Molina, seconded by Councilmember Yamane to adopt the resolution.

Motion carried by unanimous vote.

*Councilmember Bush left the dais at 7:33 pm. and returned at 7:35 pm.*

12. **CITY MANAGER'S REPORT**

No report.

13. **ELECTED OFFICIALS REPORT**

Closing remarks were provided by members of the City Council.

14. **CITY ATTORNEY REPORT**

No report.

15. **ADJOURNMENT**

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

The meeting adjourned at 7:43 p.m.

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Shelley Chapel, MMC, City Clerk

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

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Ron Morrison, Mayor



**SPECIAL MEETING MINUTES OF THE CITY COUNCIL**

**October 12, 2023, 3:00 p.m.  
City Council Chamber - 1243 National City Boulevard  
National City, CA**

**Present:** Councilmember Bush  
Councilmember Rodriguez  
Councilmember Yamane  
Vice-Mayor Molina  
Mayor Morrison

**Others Present:** Ben Martinez, Interim City Manager  
Richard Romero, Assistant City Attorney  
Shelley Chapel, City Clerk (*via Zoom*)  
Tonya Hussain, Executive Secretary

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**1. CALL TO ORDER**

A Special Meeting of the City Council of the City of National City was called to order at 3:05 p.m. via teleconference and in the Council Chamber, located in City Hall, 1243 National City Boulevard, National City, California.

**2. ROLL CALL**

Councilmembers present: Bush, Rodriguez, Yamane, Molina, Morrison

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

Councilmember Bush led the Pledge of Allegiance.

**4. PUBLIC COMMENT**

Mayor Morrison summarized the process for acceptance of live public comment allowing three (3) minutes per comment and introduced City Clerk Chapel.

Six (6) speakers provided in-person comments.

In-Person Comment:

Kelsey Genesi ;  
Joan Rincon  
Bradley Bang  
Jose Franco Garcia  
Montserrat Hernandez  
Zachary Gomez

**5. CLOSED SESSION**

*Members retired into Closed Session at 3:23 p.m. Bush, Rodriguez, Yamane, Molina, Morrison, Martinez, Romero. All members returned to the open session at 4:43 p.m. with all members present in attendance: Bush, Rodriguez, Yamane, Molina, Morrison, Martinez, Romero.*

5.1 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Government Code Section 54956.9(d)

Number of potential cases: 1

Mayor Morrison announced that the City Council united in preparing a response to the Port of San Diego and the Public.

Assistant City Attorney Romero stated the Council received direction and no reportable action.

**6. ADJOURNMENT**

Mayor Morrison adjourned to the Regular Meeting of the City Council of the City of National City, on Tuesday, September 19, 2023, at 6:00 p.m. in the Council Chamber, located in City Hall, 1243 National City Boulevard, National City, California.

The meeting adjourned at 4:45 p.m.

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Shelley Chapel, MMC, City Clerk

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

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Ron Morrison, Mayor



## **SPECIAL MEETING MINUTES OF THE CITY COUNCIL**

**October 17, 2023, 4:30 p.m.  
City Council Chamber - 1243 National City Boulevard  
National City, CA**

**Present:**  
**Councilmember Bush**  
**Councilmember Rodriguez**  
**Councilmember Yamane**  
**Vice-Mayor Molina**  
**Mayor Morrison**

**Others Present:**  
**Ben Martinez, Interim City Manager**  
**Barry J. Schultz, City Attorney**  
**Shelley Chapel, City Clerk (via Zoom)**  
**Tonya Hussain, Executive Secretary**

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### **1. CALL TO ORDER**

A Special Meeting of the City Council of the City of National City was called to order at 4:32 p.m. via teleconference and in the Council Chamber, located in City Hall, 1243 National City Boulevard, National City, California.

### **2. ROLL CALL**

Councilmembers present: Bush, Rodriguez, Yamane, Molina, Morrison

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

Vice-Mayor Molina led the Pledge of Allegiance.

**4. PUBLIC COMMENT**

No public comment.

**5. CLOSED SESSION**

*Members retired into Closed Session at 4:34 p.m. Bush, Rodriguez, Yamane, Molina, Morrison, Martinez, and Schultz. Interim City Manager Martinez left Closed Session at 4:49 p.m. and returned to the Closed Session at the request of Assistant City Attorney Romero at 5:20 p.m. Following all remaining members discussed item 5.2. in Closed Session.*

*All members returned to the Open Session at 6:03 p.m. with all members present in attendance: Bush, Rodriguez, Yamane, Molina, Morrison, Martinez, and Romero.*

**5.1 PUBLIC EMPLOYMENT**

Government Code Section 54957.6

Position to be filled: City Manager

**5.2 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Government Code Section 54956.9(d)

Number of potential cases: 1

**6. ADJOURNMENT**

Mayor Morrison adjourned to the Regular Meeting of the City Council of the City of National City, on Tuesday, October 17, 2023, at 6:03 p.m. in the Council Chamber, located in City Hall, 1243 National City Boulevard, National City, California.

The meeting adjourned at 6:02 p.m.

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Shelley Chapel, MMC, City Clerk

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

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Ron Morrison, Mayor



**REGULAR MEETING MINUTES OF THE CITY COUNCIL**

**October 17, 2023, 6:00 p.m.**

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

**Present:**  
Councilmember Bush  
Councilmember Rodriguez  
Councilmember Yamane  
Vice-Mayor Molina  
Mayor Morrison

**Others Present:**  
Ben Martinez, Interim City Manager  
Barry Schultz, City Attorney  
Shelley Chapel, City Clerk *(via Zoom)*  
Carlos Aguirre, Acting Deputy City Manager/Housing Authority  
Director  
Molly Brennan, Administrative Services Director  
Danielle Ghio, Principal Librarian  
Brian Hadley, Building Official/Acting Director of Community  
Development  
Alejandro Hernandez, Assistant Chief of Police  
Tonya Hussain, Executive Secretary  
Stephen Manganiello, Director of Public Works/City Engineer  
Martin Reeder, Planning Manager  
James Stiles, Fire Captain

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**1. CALL TO ORDER**

A Regular Meeting of the City Council of the City of National City was called to order at 6:14 p.m. via teleconference and in the Council Chamber, located in City Hall, 1243 National City Boulevard, National City, California.

**2. ROLL CALL**

Councilmembers present: Bush, Rodriguez, Yamane, Molina, Morrison

Administrative Officials present: Martinez, Romero, Aguirre, Brennan, Ghio, Hernandez, Hussain, Manganiello, Mora, Reeder

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

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

Councilmember Rodriguez led the Pledge of Allegiance.

**4. INVOCATION**

Invocation delivered by Pastor Carlos Serrano of the Bible Baptist Church in National City.

**5. PUBLIC COMMENT**

Mayor Morrison summarized the process for acceptance of live public comment allowing three (3) minutes per comment and introduced City Clerk Chapel.

Four (4) speakers provided in-person comments, and one (1) person provided virtual comment.

In-Person Comment:

Ted Godshalk  
Geoffrey Schrock  
Jared Hernandez  
Ed Nieto

Written Comment:

Nathan Maycott

*Councilmember Bush left the dais at 6:18 pm. and returned at 6:20 pm.*

**6. PROCLAMATION**

6.1 Filipino American History Month

Mayor Morrison presented the proclamation. The Proclamation was accepted by Joann Fields, Government and Public Relations Director of the Asian Pacific Islander Initiative; Dr. Camacho, MD of National City; and Michael Estella, President of the Board of Directors for Filipino American Society and Cultural Arts Troop.

6.2 Employee of the Quarter, David Welch, Associate Planner

Mayor Morrison Introduced Martin Reeder, Planning Manager introduced David Welch. Mayor Morrison presented Mr. Welch with a Proclamation.

**7. PRESENTATION (Limited to Five (5) Minutes each)**

7.1 Port of San Diego Proposed Zero Emission Truck Stop, National City

Mayor Morrison Introduced Port Commissioner Sandy Naranjo and Maggie Weber, Principal of Strategic Planning of the Port of San Diego. Ms. Weber provided the overview of the Request for Proposals for the Zero Emission Truck Stop plan.

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

Councilmembers Bush, Rodriguez, and Yamane had nothing to report.

Vice-Mayor Molina reported on the SANDAG Board of Directors Meeting.

Mayor Morrison reported on the Regional Solid Waste Association and discussed recent legislation including the food waste program.

Port of San Diego Commissioner Sandy Naranjo provided a report on the recent Board Meeting.

**9. CONSENT CALENDAR**

**ACTION:** Motion by Vice-Mayor Molina, seconded by Councilmember Yamane to approve Consent Calendar Items 9.1 through 9.3, and 9.6, with Item Number 9.4 pulled by a member of the public.

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

**Motion carried by unanimous vote**

9.2 Amendments to On-Call Consultant Agreements for City's Capital Improvement Program (CIP).

Approved Resolution No. 2023-145

Approved the Resolution Entitled "Resolution of the City Council of the City of National City, California, authorizing the Mayor to execute 1) a First Amendment to the Agreement with Neri Landscape Architecture to increase the not-to-exceed amount by \$1,000,000; 2) Second Amendments to the Agreements with a) Anser Advisory, b) Innovative Construction Consulting Services, LLC, and c) STC Traffic, Inc. to extend Agreements by one year and increase the not-to-exceed amounts by \$1,000,000 each, including an hourly rates update; and 3) Third Amendments to the Agreements with a) Chen Ryan Associates, Inc. and b) Project Professionals Corporation to extend Agreements by one year and increase the not-to-exceed amounts by \$1,000,000 each, including hourly rate updates."

**Motion carried by unanimous vote**

9.3 Warrant Register #7 for the period of 8/11/23 through 8/17/23 in the amount of \$2,585,630.15.

**Motion carried by unanimous vote**

*Item pulled for discussion by a member of the public.*

9.4 Warrant Register #8 for the period of 8/18/23 through 8/24/23 in the amount of \$2,818,862.23.

Public comment received from Joan Rincon.

**ACTION:** Motion by Councilmember Rodriguez, seconded by Mayor Morrison to approve the item.

**Motion carried by unanimous vote**

9.5 Warrant Register #9 for the period of 8/25/23 through 8/31/23 in the amount of \$ 770,025.86.

**Motion carried by unanimous vote**

9.6 Warrant Register #10 for the period of 9/01/23 through 9/07/23 in the amount of \$ 2,927,081.05.

**Motion carried by unanimous vote**

**PUBLIC HEARING**

10.1 Public hearing for an Appeal of a Planning Commission Denial of a Request for a Conditional Use Permit (CUP) for on-sale beer and wine (Type 41) at a new restaurant (Manna Heaven BBQ) located at 3030 Plaza Bonita Road, Suite 1096.

Approved Resolution No. 2023-146

Mayor Morrison introduced Planning Manager Reeder who provided an overview of the report and PowerPoint Presentation. Alex Hernandez, Assistant Chief of Police was also available for questions.

*Per City Council Policy No. 116 - Disclosures of Ex Parte Contacts:*

Councilmember Bush met with the applicant and team and owner of the chain.

Councilmember Rodriguez met with the applicants and was also given a tour.

Councilmember Yamane met with the applicant and consultants.

Vice-Mayor Molina had nothing to disclose.

Mayor Morrison met with the applicants.

Mayor opened the Public Hearing at 7:36 p.m.

Mayor provided the opportunity for the applicant and representatives to make a statement. Corporate representative on behalf of the appellant, and Sean Yeo was also available for questions.

Mayor Morrison declared the Public Hearing open at 7:36 p.m.

Public Comment:

In-Person Comment:

Mauricio Valadez  
Breanna Bravo  
Alfonso Arana Jr.  
Gian Celario  
Cheddy Matthew

Written Comment and eSCRIBE Comment:

Ted Godshalk

**ACTION:** Motion by Vice-Mayor Molina, seconded by Councilmember Bush to Close the Public Hearing.

Motion carried by unanimous vote.

Public Hearing closed at 7:46 p.m.

*Councilmember Bush left the dais at 7:48 p.m. and returned at 7:50 p.m.*

Recommendation: Approving the appeal, reversing the Planning Commission decision based on the attached findings or findings determined by the City Council.

**ACTION:** Motion by Councilmember Yamane, seconded by Vice-Mayor Molina adopt the Resolution based on the findings.

Motion carried by unanimous vote.

*Per City Council Policy 104 (III)(R) Mayor Morrison recognized that there was no one registered on the Zoom for comment, the interpreters were released at 8:00 p.m.*

- 10.2 Public Hearing- Conditional Use Permit for Alcohol Sales and Karaoke at a New Entertainment Center (Round 1 Bowling & Arcade) to be located at 3030 Plaza Bonita Road Suite 1025, Westfield Plaza Bonita.

Approved Resolution No. 2023-147

*Councilmember Rodriguez left the dais at 8:24 p.m. and returned at 8:26 p.m.*

Mayor Morrison introduced Planning Manager Reeder who provided an overview of the report and PowerPoint Presentation. Alex Hernandez, Assistant Chief of Police was also available for questions.

*Per City Council Policy No. 116 - Disclosures of Ex Parte Contacts: No Disclosures.*

Mayor provided the opportunity for the applicant and representatives to make a statement. The Director of Loss Prevention for Round 1 was available for response to Council questions. Steven Takeuchi, Round 1 Construction and Compliance Director.

Mayor Morrison declared the Public Hearing open at 8:29 p.m.

Public Comment:

In-Person Comment:

Joan Rincon

Written Comment and eSCRIBE Comment:

Ted Godshalk

**ACTION:** Motion by Councilmember Yamane, seconded by Councilmember Bush to Close the Public Hearing.

Motion carried by unanimous vote

Public Hearing closed at 8:33 p.m.

Recommendation: Staff recommends Approval of the Sale of On-Site Beer, Wine, and Distilled Spirits with Live Entertainment, Subject to the Recommended Conditions in the Attached Resolution and a Determination that the Project is Exempt from CEQA. The Sale of Alcohol is a Conditionally-Allowed Use in the MXD-2 Zone and would be Accessory to Food Sales at the Proposed Entertainment Center.

**ACTION:** Motion by Councilmember Bush, seconded by Councilmember Rodriguez to adopt the Resolution to include an amendment to expand hours to 2:00 a.m.

Substitution Motion by Mayor Morrison, seconded by Vice-Mayor Molina to adopt the recommendation to include an amendment to hold the last call at midnight and allow the business to close at 2:00 a.m.

Mayor Morrison to amend the substitute motion to limit alcohol last call to 1:00 a.m., and allow the business to close at 2:00 a.m., Seconded by Vice-Mayor Molina.

Motion carried by unanimous vote.

- 10.3 Declaration that the real property owned by the City and located at 720 West 23rd Street in National City (APN 559-118-02) is surplus land, no longer needed for City purposes, and is non-exempt under the Surplus Land Act.

Approved Resolution No. 2023-148

*Councilmember Bush left the dais at 8:55 p.m. and returned at 8:58 p.m.*

Mayor Morrison introduced Planning Manager Reeder who provided an overview of the report.

Mayor Morrison declared the Public Hearing open at 8:56 p.m.

Public Comment:

In-Person Comment:  
Joan Rincon

Written Comment and eSCRIBE Comment:  
Ted Godshalk

**ACTION:** Motion by Councilmember Yamane, seconded by Vice-Mayor Molina to Close the Public Hearing.

Motion carried by unanimous vote

Public Hearing closed at 8:57 p.m.

Recommendation: Staff Recommends Adopting the Resolution Entitled, "Resolution of the City Council of the City of National City, California, Declaring that the Real Property Located at 720 West 23rd Street (APN 559-118-02) is Surplus Land, is No Longer Needed for City Purposes, and is Non-Exempt under the Surplus Land Act."

**ACTION:** Motion by Councilmember Yamane, seconded by Councilmember Rodriguez to adopt the Resolution.

Motion carried by unanimous vote.

- 10.4 Introduction and First Reading of the Ordinance Establishing Speed Limits Based on Engineering and Traffic Surveys.

Mayor Morrison introduced Director of Public Works/ City Engineer Manganiello who provided an overview of the report and PowerPoint. Phil Rag with STS Traffic was available for questions.

Mayor opened the Public Hearing at 9:14 p.m.

Mayor provided the opportunity for the applicant and representatives to make a statement.

Written Comment and eSCRIBE Comment:  
Ted Godshalk

**ACTION:** Motion by Councilmember Yamane, seconded by Vice-Mayor Molina to Close the Public Hearing.

Motion carried by unanimous vote.

Public Hearing closed at 9:14 p.m.

Recommendation: Introduce the Ordinance by First Reading, Entitled, "Ordinance of the City Council of the City of National City, California, Establishing Speed Limits on Various Streets Based on Engineering and Traffic Surveys and Authorizing the Director of Public Works to Post Speed Limit Signs Consistent with the Recommendations of the Engineering and Traffic Surveys."

**ACTION:** Motion by Vice-Mayor Molina, seconded by Councilmember Bush to accept the first reading of the Ordinance.

Motion carried by unanimous vote.

**STAFF REPORTS**

11.1 Annual Review of City Council Policy Manual

Approved Resolution No. 2023-149

City Clerk Chapel provided the report.

*Councilmember Bush left the dais at 9:41 p.m. and returned at 9:43 p.m.*

Recommendation: Approval of a Resolution Entitled, "Resolution of the City Council of the City of National City, California, Amending City Council Policy Nos. 104, 108, 111, 112 (eliminate), 115, 117, 204, 205, 301, 401, 402, 603, and 711 (eliminate)."

**ACTION:** Motion by Councilmember Rodriguez, seconded by Councilmember Yamane to adopt the resolution with an amendment to the public comment section to include a change to four hours before the meeting.

Staff to return to the City Council with an update to Policy 104 to update the area regarding headphones for translations.

Motion carried by unanimous vote.

11.2 Consideration of the Legal Opinion Regarding Primary Voting System

City Attorney Schultz provided the report. City Clerk Chapel was available for questions. Note that the Special Counsel waived the Attorney-Client privilege to allow the memo to be attached to the report for reference.

*Councilmember Bush left the dais at 10:33 p.m. and returned at 10:35 p.m.*

Public Comment:

In-Person Comment:

Aida Castaneda  
Joan Rincon  
Randi Castle

Zoom Comment:

Kelsey Genesi

Recommendation: Provide Direction to Staff Regarding Options provided in the Legal Opinion Regarding Primary Voting System.

**ACTION:** Motion by Councilmember Rodriguez, seconded by Councilmember Bush, to direct and pursue the charter option to be placed on the November 2024

Election with a primary voting system in the charter and allow to explore other options to be included in the charter.

Amended motion by Councilmember Rodriguez to wait for the presentation by the City Attorney and City Clerk at the second meeting in November to then have a more robust discussion at that time.

Substitute Motion by Mayor Morrison to accept and file the report, seconded by Vice-Mayor Molina.

Motion failed by 2-3 vote.

Ayes: Molina, Morrison  
Nays: Bush, Rodriguez, Yamane

Original motion by Councilmember Rodriguez, seconded by Councilmember Bush, to return to Council with a report at the second meeting in November if possible.

Motion carried by 3-2 vote.

Ayes: Bush, Rodriguez, Yamane  
Nays: Molina, Morrison

**12. CITY MANAGER'S REPORT**

No report.

**13. ELECTED OFFICIALS REPORT**

Closing remarks were provided by members of the City Council.

**14. CITY ATTORNEY REPORT**

City Attorney Schultz announced that there were two items discussed in Closed Session, the first item involved public employment, and position concerned was the City Manager position. The City Council has directed the City Attorney to negotiate with Ben Martinez a contract for a permanent position as City Manager.

The second item dealt with a conference with legal counsel regarding significant exposure to litigation and no reportable action for that item.

**15. ADJOURNMENT**

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

The meeting adjourned at 10:55 p.m.

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Shelley Chapel, MMC, City Clerk

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

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Ron Morrison, Mayor



# AGENDA REPORT

**Department:** Police Department  
**Prepared by:** Joseph Camacho, Police Sergeant  
**Meeting Date:** Tuesday, November 7, 2023  
**Approved by:** Ben Martinez, Interim City Manager

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**SUBJECT:**

Acceptance of the Department of Alcoholic Beverage Control Award of \$40,000 to the National City Police Department to perform operations sponsored by the Department of Alcoholic Beverage Control's Minor Decoy/Shoulder Tap Grant Project.

**RECOMMENDATION:**

Adopt the Resolution Entitled, "Resolution of the City of National City, California, Authorizing the Acceptance of the Department of Alcoholic Beverage Control's Minor Decoy/Shoulder Tap Grant Project Funds in the Amount of \$40,000, Funded by the California Office of Traffic Safety through the National Highway Traffic Safety Administration, and Authorizing the Establishment of a Fiscal Year 2024 Appropriation and Corresponding Revenue Budget in the Amount of \$40,000."

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

Not Applicable.

**EXPLANATION:**

In August of 2023, the National City Police Department submitted an application to the Department of Alcoholic Beverage Control for consideration to be awarded up to \$40,000 as a part of the Department of Alcoholic Beverage Control's Minor Decoy/Shoulder Tap Grant Project, funded by the California Office of Traffic Safety through the National Highway Traffic Safety Administration (Refer to Exhibit A – National City Police Department ABC Grant Application).

On September 27, 2023, the National City Police Department was advised by the Department of Alcoholic Beverage Control that the National City Police Department had been selected to participate in the Department of Alcoholic Beverage Control's ABC-OTS Grant Program and had been awarded \$40,000. As part of the grant, the Department of Alcoholic Beverage Control requests a signed resolution from the National City Police Department's governing body (Refer to Exhibit B – ABC Congratulations Letter to NCPD, Exhibit C – ABC-OTS Grant Program Information Sheet, and Exhibit F - Resolution).

In addition, the Department of Alcoholic Beverage Control submitted a "Standard Agreement" which will be signed by Chief Jose Tellez or Assistant Chief Alejandro Hernandez with agreed-upon terms and conditions for the scope of work performed during grant-funded operations, budget details, and payment provisions, general terms and conditions, and special terms and conditions (Refer to Exhibit D – ABC/NCPD Standard Agreement and Exhibit E – ABC OTS Exhibits).

The Police Department proposes the acceptance of the grant monies to allow for police operations focused on community safety, reductions of alcohol sales to minors, and regulation/education of Police Regulated Businesses that vendor alcohol within National City.

**FINANCIAL STATEMENT:**

290-11607-3463	\$40,000
290-411-607-102-0000	\$35,406.49
290-411-607-140-0000	\$3445.05
290-411-607-161-0000	\$513.39
290-411-607-226-0000	\$635.06

**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 – National City Police Department ABC Grant Application  
Exhibit B – ABC Congratulations Letter to NCPD  
Exhibit C – ABC-OTS Grant Program Information Sheet  
Exhibit D – ABC/NCPD Standard Agreement  
Exhibit E – ABC OTS Exhibits  
Exhibit F – Resolution



## ***NATIONAL CITY POLICE DEPARTMENT***

The Department of Alcoholic Beverage Control,

The National City Police Department respectfully wishes to be considered to receive your grant for local law enforcement agencies to reduce alcohol related harm which is funded by the California Officer of Traffic Safety (OTS), through the National Highway Traffic Safety Administration (NHTSA).

As you can tell from the attachment, the City of National City's 2020 OTS Crash Ranking Results for vehicle accidents, especially those involving alcohol, resulting in injury or death is a major cause for concern for the National City Police Department and the National City community. National City is ranked third in the total of fatal and injury collisions. National City is ranked first in those collisions involving alcohol. National City is ranked first in those drivers involved in the alcohol related collisions being less than 21 years old and first in the drivers involved in the alcohol related collisions being between the ages of 21 to 34. National City is ranked first in motorcycle, pedestrian and composite related collisions where the victims are killed or injured. National City is ranked first in nighttime collisions resulting in fatality or injury and ranked third in hit and run collision resulting in fatality or injury. Comparatively the National City Police Department is ranked 97<sup>th</sup> out of 106 cities in regards to DUI arrests, with 152 DUI arrests.

National City is a heavily saturated community with alcohol related business with both on and off sales locations. The City of National City is only a 9.1 square miles with 1.8 square miles being water. National City has 71 on sale ABC licenses issued to businesses in our city and 53 off sale ABC licenses issued to businesses in our city. The National City Police Department has noticed and documented increased crime rates around these alcohol related businesses and crimes involving people coming and going from these business.

The National City Police Department has conducted several Minor Decoy Program operations, several Shoulder Tap Program operations, and IMPACT inspections in the past while also participating in grants provided by ABC. If awarded with this grant, the National City Police Department's grant would be run by myself, Sgt. Joseph Camacho, and the proactive enforcement team I supervise which focuses on stopping crime, criminal activity, and criminals before they can victimize a citizen. Managing this grant would aid and be aided by my collateral duty assignments which include being the National City Police Department's officer in charge of monitoring all police regulated businesses for the City of National City, evaluating and approving pending ABC licensed establishments intending to operate within National City and being the ABC Liaison Officer for the National City Police Department. The National City Police Department would use the grant funds to perform an operation monthly. National City Police Department would perform a Minor Decoy Operation once per quarter (4), a Shoulder Tap operation once per quarter (4) and the remaining months (3) would be used for IMPACT inspections and follow ups.



The National City Police Department and I will work with the San Diego District Attorney's Office to have an assigned District Attorney for our operations to ensure prosecution or consequence to violators attempting to further alcohol related harm to the National City community. The National City Police Department and I will also work with the community to gain their support and understanding of the National City Police Department's goal to enhance community safety and reduce alcohol related harm to community members through the use of press releases and social media posts. If selected, the National City Police Department will issue a press release announcing the start of the program and issue a press release at the conclusion of each Minor Decoy operation and/or Shoulder Tap operation.

I believe this grant will be a great aid to the community and the safety of all the citizens of National City by granting the National City Police Department with additional police enforcement opportunities at the point of sales of alcohol to attempt to prevent alcohol related harm. It would also allow for the National City Police Department to provide educational opportunities to ABC licensee to also aid in the reduction of alcohol related harm.

On behalf of the National City Police Department and the National City Police Department Chief of Police, Jose Tellez, thank you for your time and consideration.

Respectfully,



Joseph Camacho  
Sergeant #449  
National City Police Department

**DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL**

3927 Lennane Drive, Suite 100  
Sacramento, CA 95834  
(916) 419-2500



September 25, 2023

Sergeant Joseph Camacho  
National City Police Department  
1200 National City Blvd.  
National City, CA 91950

Re: ABC-OTS Grant Program

Dear Sergeant Camacho:

Congratulations. Your agency has been selected to participate in the Department of Alcoholic Beverage Control's ABC-OTS Grant Program. Funding for this project is provided by the Office of Traffic Safety through the National Highway Traffic Safety Administration.

We anticipate operations to begin upon completion of the one-day mandatory training class for your operations officer. Fiscal Officers will be contacted by our Fiscal Coordinator; Kristine Okino for training how to submit claims for reimbursement.

Since the grant starts October 1, 2023, you can make pre-paid travel arrangements on or after that date for your operations officer to attend the training. Pre-paid travel purchased prior to October 1<sup>st</sup> will not be reimbursed. The information regarding the date, location and authorized per diem rates are enclosed.

To expedite the issuance of your contract, please review and complete the enclosed ABC-OTS Grant Program Information Sheet. In addition, we will also need a resolution from your agency's governing body. Since these resolutions must be put on calendar, we ask that you do so as soon as possible.

Please mail, fax, or email this information to our Grant Coordinator; Diana Fouts-Guter, at 3927 Lennane Drive, Suite 100, Sacramento, CA 95834, Fax: (916) 928-7625, or at [Diana.fouts-guter@abc.ca.gov](mailto:Diana.fouts-guter@abc.ca.gov).

If you have questions, please contact Supervising Agent Jeff Gregson via email at [jeff.gregson@abc.ca.gov](mailto:jeff.gregson@abc.ca.gov).

We appreciate your prompt response and look forward to working with your agency.

Sincerely,

  
Joseph McCullough  
Chief Deputy Director

Enclosures



*State of California*  
**Department of Alcoholic Beverage Control**  
***ABC-OTS Grant Program Information Sheet***

**Contract will be between:** The Department of Alcoholic Beverage Control and  
The City of National City through the National City Police Department

Mailing Address: 1200 National City Blvd., National City, CA 91950

Funding Amount: \$40,000

Authority to Sign Contract Name/Title: **Chief Jose Tellez**

Address if different from above: \_\_\_\_\_

Federal Tax ID Number: **956000749**

**Operations Officer:**

**Attending Training (Circle)**

**YES/NO**

Print Name: **Sergeant Joseph Camacho**

Telephone Number: **(619)336-4436**

Email Address: **jcamacho@nationalcityca.gov**

**Fiscal Officer (responsible for preparing billings to ABC):**

Print Name: **Ronald Gutlay**

Telephone Number: **(619)336-4517**

Email Address: **rgutlay@nationalcityca.gov**

**RETURN COMPLETED FORM TO:**

**Diana Fouts-Guter**  
**Grant Coordinator**  
**Department of Alcoholic Beverage Control**  
**3927 Lennane Drive, Suite #100**  
**Sacramento, CA 95834**  
**[Diana.fouts-guter@abc.ca.gov](mailto:Diana.fouts-guter@abc.ca.gov)**  
**Fax: (916)928-7625**  
**Office: (916)928-9807**

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER <b>24-OTS112</b>	PURCHASING AUTHORITY NUMBER (If Applicable) <b>ABC-2100</b>
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1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME  
Department of Alcoholic Beverage Control

CONTRACTOR NAME  
City of National City through the National City Police Department

2. The term of this Agreement is:  
START DATE  
October 1, 2023

THROUGH END DATE  
August 31, 2024

3. The maximum amount of this Agreement is:  
\$40,000.00 Forty thousand dollars and no cents

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits	Title	Pages
Exhibit A	Scope of Work	3
Exhibit B	Budget Detail and Payment Provisions	1
Exhibit C *	General Terms and Conditions (GTC 04/2017)	4
+ - Exhibit D	Special Terms and Conditions	1

*Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.*

*These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>*

**IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.**

**CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)  
City of National City through the National City Police Department

CONTRACTOR BUSINESS ADDRESS 1200 National City Blvd.	CITY National City	STATE CA	ZIP 91950
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PRINTED NAME OF PERSON SIGNING Jose Tellez	TITLE Chief
---	----------------

CONTRACTOR AUTHORIZED SIGNATURE	DATE SIGNED
---------------------------------	-------------

**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME  
Department of Alcoholic Beverage Control

CONTRACTING AGENCY ADDRESS 3927 Lennane Drive, Suite 100	CITY Sacramento	STATE CA	ZIP 95834
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PRINTED NAME OF PERSON SIGNING Patty Baker	TITLE Chief, Business Management Branch
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CONTRACTING AGENCY AUTHORIZED SIGNATURE	DATE SIGNED
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CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL	EXEMPTION (If Applicable)
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## EXHIBIT A SCOPE OF WORK

### Purpose and Description of Services

Contractor agrees to implement the Department of Alcoholic Beverage Control programs as listed:

- Minor Decoy operations – designed to educate and deter licensed locations from selling/furnishing alcohol to minors and shall be conducted at both “On-Sale” and “Off-Sale” licensed establishments within the operation period of the grant.
- Shoulder Tap operations – used to detect and deter adult furnishers outside of a licensed business and shall be performed at “Off-Sale” licensed locations to apprehend adults that are unaffiliated with the licensed businesses who are purchasing alcohol for minors outside of the stores within the operation period of the grant.
- Informed Merchants Preventing Alcohol-Related Crime Tendencies (IMPACT) Inspections – primary goal is to educate licensees on alcohol related laws to help reduce alcohol-related crime in and around licensed premises. Contractor agrees to conduct visits and inspections of licensed premises identifying areas of non-compliance at “On-Sale” and “Off-Sale” licensed locations within the operation period of the grant.
- Holiday Enforcement – This program consists of working general undercover and high-profile enforcement targeting underage drinking, sales/furnishing to minors, sales to obviously intoxicated patrons, and other related violations.

Holidays would be defined as **Halloween** (Oct 27-31), **Thanksgiving** (Nov 22-26), **New Year’s Eve** (Dec 31), **St. Patrick’s Day** (March 17), **Cinco de Mayo** (May 5), **Memorial Day weekend** (May 24-27) and **4<sup>th</sup> of July** (July 4). In order to help reduce youth involved fatal and/or injury crashes, the dates for Holiday Enforcement operations coincide with NHTSA/OTS AVOID Campaign dates, which have been determined as holidays with an influx number of DUI crashes.

The project is targeted to reduce underage drinking and the resultant DUI driving injuries and fatalities, and/or property damages, reduce youth access to alcoholic beverages through the education of licensee, enforcement intervention and the impressions of omnipresence of law enforcement.

In addition, contractor agrees to the following goals:

- Raise public awareness that selling, serving and/or furnishing alcoholic beverages to individuals under twenty-one years old is a criminal violation that will be prosecuted by local city and district attorneys.
- Establish and implement a coordinated effort between contractor and ABC, and acknowledges no operations will be conducted until after the contractor’s representative has completed training conducted by ABC.

- Issue press releases as follows:
  1. To announce the start of the program;
  2. At the conclusion of each Minor Decoy Operation held (to announce the number of licensed premises who sold to the minor decoy)
  3. At the conclusion of each Shoulder Tap Operation held (to announce the number of adults arrested for purchasing alcoholic beverages for the decoy).
  4. At the conclusion of each IMPACT operation held
- Email each press release to the Department's Public Information Officer ([pio@abc.ca.gov](mailto:pio@abc.ca.gov)) as soon as it is released.
- In all press releases, in addition to any credits the agency wishes to give, will include the following statement: "This project is part of the Department of Alcoholic Beverage Control's Minor Decoy/Shoulder Tap Grant Project, funded by the California Office of Traffic Safety through the National Highway Traffic Safety Administration."
- Complete and submit bi-monthly reports, in a format designed by the Department of Alcoholic Beverage Control due no later than 15 days after operations conducted:
  - On or before **January 15, 2024** (with results of operations October, November & December 2023)
  - On or before **March 15, 2024** (with results of operations January & February 2024)
  - On or before **May 16, 2024** (with results of operations March & April 2024)
  - On or before **July 15, 2024** (with results of operations May & June 2024)
  - On or before **September 16, 2024** (with results of operations July & August 2024)
- Submit an Executive Summary as part of the final report due on or before **September 16, 2024**. The summary shall contain the following:
  1. An evaluation statement concerning the end product and cost benefits; and a listing of recommended and/or adopted policy or procedure changes, if any, occurring as a result of the project
  2. Project personnel identifying the key personnel who worked on the project, together with their job classification, and a brief description of their contribution
  3. Problems – describe any operational or cost problems that were encountered in project implementation. If known, state alternative methods that would have avoided the problem and increased the effectiveness of the project.
  4. Results – describe the results of the project in terms of meeting the original objectives as stated in the project agreement. Also, describe the results in terms of how they will be specifically applied for future improvement of the agency's continuing activities relating to alcohol problem prevention and enforcement. Where possible, describe estimated savings resulting from implementing project results.
  5. Disclaimer – The final report shall include the following: "The opinions, findings, and conclusions expressed in this publication are those of the authors and not necessarily those of the State of California, Business, Consumer Services and Housing Agency, or the Department of Alcoholic Beverage Control."
  6. Documentation – Attach any relevant documents developed. Examples are new or revised forms, diagrams, management reports, photos, coding manuals, instructional manuals, etc.

## Contract Term

The operation period of the grant is October 1, 2023 through August 31, 2024.

## Project Representatives

The project representatives during the term of this agreement will be:

National City Police Department  
Joseph Camacho, Sgt.  
1200 National City Blvd.  
National City, CA 91950  
(619) 336-4436  
[jcamacho@nationalcityca.gov](mailto:jcamacho@nationalcityca.gov)

Department of Alcoholic Beverage Control  
Diana Fouts-Guter, Grant Coordinator  
3927 Lennane Drive, Suite 100  
Sacramento, CA 95834  
(916) 928-9807  
[Diana.fouts-guter@abc.ca.gov](mailto:Diana.fouts-guter@abc.ca.gov)

Direct all fiscal inquiries to:

National City Police Department  
Ronald Gutlay  
1200 National City Blvd.  
National City, CA 91950  
(619) 336-4517  
[rgutlay@nationalcityca.gov](mailto:rgutlay@nationalcityca.gov)

Department of Alcoholic Beverage Control  
Kristine Okino, Fiscal Grant Analyst  
3927 Lennane Drive, Suite 100  
Sacramento, CA 95834  
[Kristine.okino@abc.ca.gov](mailto:Kristine.okino@abc.ca.gov)

## **EXHIBIT B BUDGET DETAIL AND PAYMENT PROVISIONS**

### **Invoicing and Payment**

- For services satisfactorily rendered and upon receipt and approval of the invoice, the Department of Alcoholic Beverage Control agrees to pay bi-monthly for approved reimbursable costs per the Budget Detail of personnel overtime and benefits (actual cost).
- Invoices shall clearly reference this contract number (24-OTS112) and must not exceed the contract total authorized amount of \$40,000.00. Invoices are to be submitted on a bi-monthly basis, on the prescribed form designed by the Department of Alcoholic Beverage Control.

Submit to:                      Department of Alcoholic Beverage Control  
   Attn: Kristine Okino, Grants Fiscal Analyst  
   3927 Lennane Drive, Suite 100  
   Sacramento, California 95834

- This grant is only for overtime compensation and travel for training on October 17, 2023 only.
- In accordance with State of CA travel policy, agencies are eligible to receive reimbursement for travel expenses incurred for training on October 17, 2023.  
<https://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>
- Payment shall be made in arrears within 45 days from the receipt of an undisputed invoice.
- Contractor understands in order to be eligible for reimbursement; cost must be incurred on or after the effective date of the project, October 1, 2023 and on or before the project termination date, August 31, 2024.
- Contractor understands any other costs incurred by contractor, other than attendance at initial training and/or personnel overtime and benefits as authorized above, in the performance of this agreement are the sole responsibility of contractor.

### **Budget Contingency Clause**

- It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this agreement does not appropriate sufficient funds for the program, this agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to contractor or to furnish any other considerations under this agreement and contractor shall not be obligated to perform any provisions of this agreement.
- If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this agreement with no liability occurring to the State, or offer an agreement amendment to contractor to reflect the reduced amount.

### **Prompt Payment Clause**

- Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

## **EXHIBIT C GENERAL TERMS AND CONDITIONS**

1. **APPROVAL**: This agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT**: No amendment or variation of the terms of this agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the agreement is binding on any of the parties.
3. **ASSIGNMENT**: This agreement is not assignable by the contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT**: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION**: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by contractor in the performance of this agreement.
6. **DISPUTES**: Contractor shall continue with the responsibilities under this agreement during any dispute.
7. **TERMINATION FOR CAUSE**: The State may terminate this agreement and be relieved of any payments should the contractor fail to perform the requirements of this agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the contractor under this agreement and the balance, if any, shall be paid to the contractor upon demand.
8. **INDEPENDENT CONTRACTOR**: Contractor, and the agents and employees of contractor, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. **RECYCLING CERTIFICATION**: The contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209.

With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this agreement, contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this agreement by this reference as if attached hereto.
12. TIMELINESS: Time is of the essence in this agreement.
13. COMPENSATION: The consideration to be paid contractor, as provided herein, shall be in compensation for all of contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
15. ANTITRUST CLAIMS: The contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
- b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body 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 bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
  - c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
  - d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.
16. CHILD SUPPORT COMPLIANCE ACT: For any agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:
- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
  - b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
17. UNENFORCEABLE PROVISION: In the event that any provision of this agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this agreement have force and effect and shall not be affected thereby.
18. PRIORITY HIRING CONSIDERATIONS: If this contract includes services in excess of \$200,000, the contractor shall give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.
19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a. If for this contract contractor made a commitment to achieve small business participation, then contractor must within 60 days of receiving final payment under this contract (or within such other time period as may be specified elsewhere in this contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b. If for this contract contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then contractor must within 60 days of receiving final payment under this contract (or within such other time period as may be specified elsewhere in this contract) certify in a report to the awarding department: (1) the total amount the prime contractor received under the contract; (2) the name and address of the DVBE(s) that participated in the performance of the contract; (3) the amount each DVBE received from the prime contractor; (4) that all payments under the contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER: If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

## **EXHIBIT D SPECIAL TERMS AND CONDITIONS**

**Disputes:** Any disputes concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Director, Department of Alcoholic Beverage Control, or designee, who shall reduce his decision in writing and mail or otherwise furnish a copy thereof to the contractor. The decision of the Department shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the contractor mails or otherwise furnishes to the State a written appeal addressed to the Director of the Department of Alcoholic Beverage Control. The decision of the Director of Alcoholic Beverage Control or his duly authorized representative for the determination of such appeals 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, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, contractor shall proceed diligently with the performance of the contract and in accordance with the decision of the State.

**Cancellation/Termination:** This agreement may be cancelled or terminated without cause by either party by giving thirty (30) calendar days advance written notice to the other party. Such notification shall state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements. No penalty shall accrue to either party because of contract termination.

**Contractor Certifications:** By signing this agreement, contractor certifies compliance with the provisions of CCC 04/2017, Standard Contractor Certification Clauses. This document may be viewed at: <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/Standard-Contract-Language>

If the State determines that the grant project is not achieving its goals and objectives on schedule, funding may be reduced by the State to reflect this lower level of project activity.

**RESOLUTION NO. 2023 -**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, AUTHORIZING THE ACCEPTANCE OF THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL'S MINOR DECOY/SHOULDER TAP GRANT PROJECT FUNDS IN THE AMOUNT OF \$40,000.00, FUNDED BY THE CALIFORNIA OFFICE OF TRAFFIC SAFETY THROUGH THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, AND AUTHORIZING THE ESTABLISHMENT OF A FISCAL YEAR 2024 APPROPRIATION AND CORRESPONDING REVENUE BUDGET IN THE AMOUNT OF \$40,000.**

**WHEREAS**, the Department of Alcoholic Beverage Control (ABC), sponsored by the Office of Traffic Safety (OTS), through the National Highway Traffic Safety (NHTSA), requested applications from local law enforcement agencies for the awarding of up to \$40,000 as part of an ABC-OTS Local Law Enforcement Grant (the "Grant") to be utilized towards Minor Decoy Program operations, Shoulder Tap Program operations, IMPACT Program operations and Holiday Enforcement operations; and

**WHEREAS**, the National City Police Department submitted an application to ABC to be considered for this Grant; and

**WHEREAS**, ABC selected and awarded the National City Police Department (NCPD) with \$40,000 as part of the Grant; and

**WHEREAS**, NCPD will utilize the Grant as follows: (a) performing Minor Decoy Program operations; (b) performing Shoulder Tap Program operations; (c) performing IMPACT Program operations; and (d) performing Holiday Enforcement operations.

**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 acceptance of the Department of Alcoholic Beverage Control's Minor Decoy/Shoulder Tap Grant Project in the amount of \$40,000, funded by the California Office of Traffic Safety through the National Highway Traffic Safety Administration.

**Section 2:** That the City Council authorizes the establishment of a Fiscal Year 2024 appropriation and a corresponding revenue budget in the amount of \$40,000.

**Section 3:** 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 November, 2023**

\_\_\_\_\_  
Ron Morrison, Mayor

**ATTEST:**

\_\_\_\_\_  
Shelley Chapel, MMC, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Barry J. Schultz, City Attorney



# AGENDA REPORT

**Department:** Engineering  
**Prepared by:** Tirza Gonzales, Operations Manager  
**Meeting Date:** Tuesday, November 7, 2023  
**Approved by:** Ben Martinez, Interim City Manager

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**SUBJECT:**

Accepting a Caltrans Sustainable Transportation Planning Grant for the National City Sustainable Mobility Plan (SMP)

**RECOMMENDATION:**

Adopt a Resolution Entitled, "Resolution of the City Council of the City of National City, California, 1) Accepting a California Department of Transportation (Caltrans), Division of Transportation Planning, Sustainable Transportation Planning Grant in the Amount of \$422,918; 2) Authorizing the City Manager to Execute the Grant Agreement and any Amendments Thereto with Caltrans for the National City Sustainable Mobility Plan; 3) Authorizing the Establishment of an Engineering Grants Fund Appropriation of \$422,918 and Corresponding Revenue Budget; and 4) Committing to Providing a Local Match of \$54,795."

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

Not Applicable.

**EXPLANATION:**

On March 8, 2023, the Engineering and Public Works Department submitted a grant application for a California Department of Transportation (Caltrans), Division of Transportation Planning, Sustainable Transportation Planning Grant. The National City (NC) Sustainable Mobility Plan (SMP) will identify, coordinate, and prioritize Complete Streets and Active Transportation projects for improving the City's multimodal system through transparent and robust stakeholder engagement with a keen focus on hard-to-reach community members. The SMP will work to meet the regional transportation strategies of SANDAG's Regional Plan (combined Regional Transportation Plan (RTP), Sustainable Communities Strategy (SCS) and Comprehensive Plan) that comply with state and federal mandates, including an SCS, per SB 375 to achieve Greenhouse Gas (GHG) emission reduction targets of the California Air Resources Board, in compliance with federal civil rights requirements of Title VI, and environmental justice considerations, air quality conformity, and public participation process.

The SMP will address concerns raised by residents over the years, regarding an imbalance in the City's analysis as much of the recent planning efforts over the last decade have focused on the westside near Downtown National City. The SMP will implement an equitable approach to prioritizing projects that focuses on safety enhancements for vulnerable pedestrian users groups, bicyclists and underserved areas of the community. Establishing a Citywide multi-modal mobility network will improve access for all residents, regardless of age, abilities or socioeconomic status, to work, school, recreation, and resources in a manner that will reduce reliance on automobiles, reduce greenhouse gas emissions, encourage mode shift, and supply new opportunities to advance equity and environmental justice.

The SMP will coordinate existing sustainable transportation plans utilizing a new database and criteria for prioritizing the implementation of projects, as well as the incorporation of new projects identified through the planning process. The creation of the SMP will involve a citywide existing conditions assessment and gap analysis, comprehensive collision analysis to identify safety countermeasures, robust stakeholder involvement in the development of prioritization criteria, and equitable approach to project prioritization.

On August 31, 2023, staff was notified by Caltrans that the City of National City had been awarded state funding for the National City Sustainable Mobility Plan in the amount of \$422,918, which requires a local match of \$54,795, resulting in a total project cost of \$477,713. Matching funds are available from existing appropriations in the Traffic Safety Enhancements infrastructure project. Following authorization of the City Council, a Restricted Grant Agreement must be executed with Caltrans in early 2024. Planning efforts are projected to start in Spring of 2024. The final plan needs to be completed prior to the grant expiration deadline of April 30, 2026.

Staff recommends authorizing the Resolution as stated.

**FINANCIAL STATEMENT:**

Revenue Account	296-06618-3436 (State STP Grant Revenues)	\$422,918
Expenditure Account	296-409-500-598-6618 (State STP Grant Expenditures)	\$422,918
Local Match	001-409-500-598-6573 (Traffic Safety Enhancements)	\$54,795

**RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:**

Transportation Choices and Infrastructure

**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 – Grant Award Letter  
Exhibit B – Resolution

# California Department of Transportation

DIVISION OF TRANSPORTATION PLANNING  
 P.O. BOX 942873, MS-32 SACRAMENTO, CA 94273-0001  
 (916) 261-3326 | TTY 711  
[www.dot.ca.gov](http://www.dot.ca.gov)



August 31, 2023

## SENT VIA E-MAIL

On behalf of the California Department of Transportation (Caltrans), Division of Transportation Planning, we are pleased to congratulate you on your Sustainable Transportation Planning Grant award.

Sustainable Transportation Planning Grant Program						
Grant Award Fiscal Year	2023-24	Grant Category	Sustainable Communities Competitive		Grant Fund Source	SHA
Project Title	National City Sustainable Mobility Plan					
Grantee/Agency	City of National City					
Executive Director	Roberto N. Yano					
Grantee/Agency Contact	Roberto N. Yano					
Sub-Recipient(s)						
Caltrans District Contact(s)	Jacob Burkholder					
Caltrans District Contact(s) E-mail	jacob.burkholder@dot.ca.gov					
Grant Award	Local Match (Cash)	Local Match (In-Kind)	Total Local Match	% Local Match	Total Project Cost	
\$422,918	\$54,795	\$0	\$54,795	11.47%	\$477,713	
Conditions of Award Due to Caltrans		Grant Expiration Date		Final Invoice Due		
9/28/23		4/30/26		6/29/26		
<p>* The final contractually agreed upon Local Match and Fund Source are located on the Grant Application Cover Sheet and Project Cost and Schedule. Any change in Local Match that increases/decreases the Total Project Cost must be approved by Caltrans and may require a Formal Amendment. Each invoice must include the contractual/agreed upon local match % - any deviation to this amount requires an approved Tapered Local Match Amendment prior to invoice submittal. Any change to the Local Match Fund Source requires prior Caltrans approval and an Administrative Amendment.</p>						

## Next Steps

1. The Caltrans District Grant Manager will schedule a Conditional Award Meeting with your agency soon.
  - The attached specific and general conditions and project revisions necessary to accept grant funding will be discussed at this meeting.
2. The required conditions must be submitted to the Caltrans District Grant Manager no later than the date listed in the table above.
  - Failure to satisfy these conditions will result in the forfeiture of grant funds.
3. The Caltrans District Grant Manager will review and approve all items required to fulfill the attached specific and general conditions.
4. Once the required conditions are met and the agreement is executed, the Caltrans District Grant Manager will:
  - Send a Notice to Proceed letter (for MPO/RTPAs, this will happen after the OWP/OWPA formal amendment is processed). *Grant work cannot begin until the Notice to Proceed letter is received by your agency.*
  - Coordinate and schedule a grant kick-off meeting with your agency.

If you have questions concerning your Conditional Grant Award, please reach out to your Caltrans District contact listed in the table above.

Sincerely,



ERIN THOMPSON  
Chief, Office of Regional and Community Planning

Attachments:  
Specific and General Conditions

Sustainable Transportation Planning Grant Program  
**Grant Award Specific and General Conditions**

**Specific Conditions**

If Specific Conditions have been identified for this grant, they will be listed below. Please make all necessary revisions to the Grant Application Cover Sheet, Scope of Work (SOW), and/or the Cost and Schedule, and complete the right column to indicate where the specific conditions were addressed.

Specific Conditions	Conditions Addressed List Document, Section & Page(s)
1. Scope of Work Introduction: Add reference state active transportation policies, goals, and plans.	
2. Scope of Work Introduction: Explain how these efforts tie to Caltrans Complete Streets or Smart Mobility Framework.	
3. Identify the authorized signer(s) and email address(s) for the grant agreement that will be routed via Adobe Acrobat Sign.	

Specific Conditions	Conditions Addressed List Document, Section & Page(s)

## General Conditions

Please review the General Conditions below and complete them, as necessary. Most of these items are outlined in the Grant Application Guide, Ch. 6 and Appendix B.

- **Board Resolution** – A current (less than one year old) Local Board Resolution, signed by the governing board that includes the grant project title and job title of the person authorized to enter into a contract with Caltrans, is required to be submitted to Caltrans by October 15, 2023.
- **Payee Data Record (STD. 204)** states government entities are not required to submit the form; however, it is required by Caltrans Accounting to ensure payments are sent to the correct recipient and address.
- **Scope of Work (SOW) and Project Cost and Schedule** (Refer to Grant Application Guide, Appendix B Checklists) These are frequently missed requirements:
  - Project Management stand-alone tasks, staff and/or consultant coordination are not allowed. Project Management activities must be charged to the tasks in which they accrued.
  - Include tasks for a kick-off meeting with Caltrans, invoicing, quarterly reporting, and Board adoption or acceptance.
  - Ensure the deliverable for the consultant procurement task includes: Request for Proposal (RFP), executed consultant contract, and a copy of your agency's procurement procedures.
  - The earliest project start date is January 2, 2024, with an end date of April 30, 2026. The Project Cost and Schedule will need be updated to reflect your proposed start date. At least one Task must extend to the grant expiration date on April 30, 2026.
  - Indirect Costs - For Local Government Agencies requesting to bill for indirect costs: Indirect costs must be identified in the SOW and Project Cost and Schedule, and the indirect cost rate included at the bottom of the Project Cost and Schedule.
- **Grant Application Cover Sheet and Project Cost and Schedule**
  - Ensure the grant award, local match, and total project costs are consistent with the award letter amounts.
- **Grant Application Cover Sheet** - Must identify the specific source of cash and in-kind local match funds; and must identify the agency providing the local match.
  - If your agency is using staff time as a cash match, the application cover sheet must identify the source of local match funds for staff time (e.g., General Fund).
  - Direct grantee staff time is not an allowable in-kind match and must be identified as cash match.
- **Third Party In-Kind Valuation Plan, if applicable** - Third-party in-kind contributions consist of goods and services donated from outside the grantee's agency (e.g., printing, facilities, interpreters, equipment, advertising, staff time, and other goods or services). If utilizing third-party in-kind contributions to satisfy the local match requirement:
  - Ensure in-kind contribution information is identified on the Grant Application Cover Sheet and Project Cost and Schedule.

- To clarify, sub-recipient staff time, if reimbursed, is considered cash match. If donating their time, it is considered in-kind.
- Submit a Third-Party In-kind Valuation Plan. The District can provide a copy of the valuation plan checklist and template.
- **Ensure Consistency** - All changes made to the Grant Application Cover Sheet, SOW, and Project Cost and Schedule are made consistently in all documents.

## Grant Administrative Requirements

Refer to the Grant Application Guide, Ch. 6, and the Restricted Grant Agreement boilerplate for a detailed overview of the Grant Administrative Requirements that must be adhered to over the life of the project. In summary:

- **Third Party Contracts** - Competitive consultant procurement, i.e., Request for Proposals (RFP) is required for all grant projects
  - If there is a consultant on-board, ensure the process to procure the consultant was a competitive process (documentation must be provided to Caltrans); the grant work must have been part of the original RFP
  - If using an on-call consultant list, the process for establishing the list must be competitive and less than five years old (documentation must be provided to Caltrans)
  - If the consultant helped to prepare the Project Scope of Work or grant application, they shall not be considered in the consultant procurement
- **Quarterly Reporting** – Quarterly Progress Reports (a narrative of completed project activities) are submitted on a quarterly basis
- **Invoicing and Financial Requirements** –
  - Maintain a proper accounting system (MS Excel is unacceptable)
  - Request for Reimbursements/invoices (RFRs) at least quarterly, but no more than monthly
    - One-time, lump sum invoices are not allowed
    - If requesting reimbursement of indirect costs, a copy of the ICAP/ICRP acceptance letter must be submitted with the first invoice
    - Local match commitments must be satisfied with every RFR/invoice, including any local match amount above the minimum amount. If you are unable to meet this commitment, coordinate with your district Contract Manager.
    - All work must be completed by April 30, 2026.
    - Final RFR/invoice and the final product are due no later than June 29, 2026.
    - The final RFR/invoice will not be processed without the final product
  - An Indirect Cost Allocation Plan/Indirect Cost Rate Proposal (ICAP/ICRP) must be submitted each year to the Inspector General Independent Office of Audits and Investigations for approval. Instructions for submitting an ICAP/ICRP are available at the following webpage: <https://ig.dot.ca.gov/resources>
- **Grant Amendments** - Proposed changes to the Grant Application Cover Sheet, SOW, and Project Cost and Schedule (e.g., local match amount, fund source, movement of funds) will require an Amendment and Caltrans approval. Please contact Caltrans for guidance on this process.

**RESOLUTION NO. 2023 -**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, 1) ACCEPTING A CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS), DIVISION OF TRANSPORTATION PLANNING, SUSTAINABLE TRANSPORTATION PLANNING GRANT IN THE AMOUNT OF \$422,918; 2) AUTHORIZING THE CITY MANAGER TO EXECUTE THE GRANT AGREEMENT AND ANY AMENDMENTS THERETO WITH CALTRANS FOR THE NATIONAL CITY SUSTAINABLE MOBILITY PLAN; 3) AUTHORIZING THE ESTABLISHMENT OF AN ENGINEERING GRANTS FUND APPROPRIATION OF \$422,918 AND CORRESPONDING REVENUE BUDGET; AND 4) COMMITTING TO PROVIDING A LOCAL MATCH OF \$54,795.**

**WHEREAS**, the Engineering & Public Works Department submitted a grant application for a California Department of Transportation (“Caltrans”), Division of Transportation Planning, Sustainable Transportation Planning Grant (the “Grant”) for the National City Sustainable Mobility Plan (the “Plan”) and was subsequently awarded state funding for the Plan in the amount of \$422,918, which requires a local match of \$54,795, resulting in a total project cost of \$477,713; and

**WHEREAS**, the City of National City is eligible to receive Federal and/or State funding for certain transportation planning-related plans through Caltrans; and

**WHEREAS**, the local match requirement is available through existing appropriations in the Traffic Safety Enhancements infrastructure project; and

**WHEREAS**, the Grant requires that a Restricted Grant Agreement (the “Agreement”) with Caltrans be executed before such funds can be reimbursed through the Grant; and

**WHEREAS**, City staff recommends delegating authority to execute the Agreement and any amendments thereto to the City Manager.

**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 acceptance of a California Department of Transportation (Caltrans), Division of Transportation Planning, Sustainable Transportation Planning Grant in the amount of \$422,918 and authorizes the City Manager to execute the grant agreement and any amendments thereto with Caltrans for the National City Sustainable Mobility Plan.

**Section 2:** That the City Council authorizes the establishment of an Engineering Grants Fund Appropriation of \$422,918 and corresponding revenue budget.

**Section 3:** That the City Council authorizes to commit to providing a local match of \$54,795.

**Section 4:** 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 November, 2023.**

\_\_\_\_\_  
Ron Morrison, Mayor

**ATTEST:**

\_\_\_\_\_  
Shelley Chapel, MMC, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Barry J. Schultz, City Attorney



# AGENDA REPORT

**Department:** Administrative Services - Human Resources  
**Prepared by:** Molly Brennan, Administrative Services Director  
**Meeting Date:** Tuesday, November 7, 2023  
**Approved by:** Ben Martinez, Interim City Manager

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**SUBJECT:**

Acting Assignment Policy

**RECOMMENDATION:**

Adopt a Resolution Entitled, "Resolution of the City Council of the City of National City, California, Adopting a City Administrative Policy on Acting Assignments."

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

Not Applicable.

**EXPLANATION:**

The City has had an Acting Assignments Administrative Policy since 2012. Acting Assignments occur when an employee is temporarily assigned the duties of a higher classification during periods of temporary vacancy. Employees working in an officially recognized acting assignment receive additional compensation for assuming the duties and responsibilities of the higher classification. Currently, the salary compensation is 5% of base salary for the first six months of the acting assignment and 10% of base salary if the appointment exceeds six months.

Recently, CalPERS contacted City staff to inform us that in order for Acting Assignment pay to be pensionable, as in part of the employee's pension contribution and calculation, the compensation needs to be approved through a resolution of the City's governing body.

In addition to approving the policy at the City Council level for CalPERS reasons, staff recommends adjusting the compensation amount for management employees placed in an executive-level acting assignment. There is typically a 10-20% pay differential between management and executive-level classifications. Providing a manager a 5% salary increase to take responsibility for directing an entire department, along with often continuing the responsibilities of their management-level position, is not fair compensation for services provided. To promote career growth and equitably compensate leadership within the organization, staff recommends providing up to 15% of base salary for managers assigned as acting executives, beginning the first day of the acting assignment. The exact percentage will be at the discretion of the City Manager and it shall not exceed 15% of base salary. The current 5% and 10% salary rates will continue for all other acting assignments. The proposed change is reflected as Salary Part 3 in the full policy included as Exhibit A.

**FINANCIAL STATEMENT:**

The salary and benefit savings of the staff vacancy offset the cost of the acting assignment pay.

**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 – Acting Assignment Policy

Exhibit B - Resolution

<b>TITLE:</b> City Administrative Manual		
<b>SUBJECT:</b> Acting Assignments		
<b>VOLUME NO. 1</b>	<b>PAGE NO. 1 OF 3</b>	<b>INSTRUCTION NO. 04.12</b>
<b>CITY MANAGER:</b> <b>Approval:</b>	<b>EFFECTIVE DATE:</b> 02/14/12	<b>REVISION DATE:</b> 11/7/23
<p><u>PURPOSE</u></p> <p>The purpose of this policy is to establish a process for temporarily assigning an employee to perform the duties of a higher classification during periods of temporary vacancy caused by factors including but not limited to illness, vacations and separation.</p> <p>Acting assignments provide operationally for the continuation of services in the best interest of the agency and the community it serves. Acting assignments also provide an opportunity for employee enrichment and development.</p> <p><u>POLICY</u></p> <p>The policy contained herein is applicable to all acting assignments (the higher classification identified for temporary assignment) except in such case where the acting assignment classification is represented by an employee labor association that is governed by a Memorandum of Understanding (MOU) between the association and the City. In such cases, the MOU shall prevail <i>if</i> it includes provisions for such an acting assignment.</p> <p>Employees serving in an acting assignment will not gain any permanent rights to the position. However, time served in an acting assignment may be applied as qualifying experience for the purpose of meeting the minimum qualifications for open and/or promotional recruitment processes.</p> <p><u>RESPONSIBILITY</u></p> <p>It is the responsibility of each department director to ensure that this policy is adhered to. It is the responsibility of the Human Resources Director to verify that all requests for acting assignments meet the conditions established by this policy prior to approval, including adherence to duration.</p> <p><u>PROCEDURE</u></p> <p>Eligibility</p> <ol style="list-style-type: none"> <li>1. For positions in classified service, the conditions, criteria and duration shall be governed by Civil Service Rule.</li> <li>2. For positions that are exempted from classified service, the decision to allow an acting assignment and the establishment of duration of assignment shall be that of the City Manager or his/her designee.</li> </ol>		

**TITLE:** City Administrative Manual

**SUBJECT:** Acting Assignments

**VOLUME NO. 1** | **PAGE NO. 2 OF 3** | **INSTRUCTION NO. 04.12**

<b>CITY MANAGER:</b> <b>Approval:</b>	<b>EFFECTIVE</b> <b>DATE:</b> 2/14/12	<b>REVISION</b> <b>DATE:</b> 11/7/23
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Compensation

Employees working in an officially recognized acting assignment shall receive additional compensation for assuming the duties and responsibilities of the higher classification and shall continue to receive the compensation for the duration of the assignment. Compensation for acting assignments shall be as follows:

A. Salary

1. An amount equal to 5% above the base salary of the employee assuming the acting assignment from the first day of the acting assignment, for a period of up to six months or the end of the acting assignment, whichever comes first.
2. An amount equal to 10% above the base salary of the employee assuming the acting assignment effective at six months and one day of the qualifying acting assignment, for the duration of the assignment.
3. For Management assigned as an acting Executive, an amount up to 15% above the base salary of the Management employee assigned as an acting Executive, from the first day of the acting assignment through the duration of the assignment. The City Manager will determine the exact percentage of compensation provided, with a minimum of 5% and a maximum of 15%.

B. Benefits

If an acting assignment exceeds or is anticipated to exceed a period of three months, the City Manager, at his/her discretion, may grant the acting employee the benefits package, or portions thereof, provided to the higher classification as outlined the City's approved compensation plan. Eligible benefits include, but may not be limited to, leave accrual formulas, health care contributions and other special compensation (i.e. auto allowance). In no case shall an employee in an acting assignment be provided a lesser benefit than that of his/her permanent classification.

Any increase in benefits granted in association with the acting assignment shall be terminated concurrent with the termination of the acting assignment.

Approvals

Requests for acting assignments must be approved in advance by the City Manager or his/her designee. If at such time as the acting assignment becomes eligible for compensation, a request for such compensation must be submitted in writing by the department with the acting assignment on the City's prescribed Personnel Action Form.

**TITLE:** City Administrative Manual

**SUBJECT:** Acting Assignments

**VOLUME NO. 1** | **PAGE NO. 3 OF 3** | **INSTRUCTION NO. 04.12**

**CITY MANAGER:**  
**Approval:** | **EFFECTIVE DATE:** 2/14/12 | **REVISION DATE:** 11/7/23

No such request shall be processed until such form is submitted with the proper signatory approvals.

Continuation of Assignment

1. Acting assignments may be discontinued at any time at the discretion of the City Manager or designee or at the request of the acting employee.
2. Failure to perform the duties of the acting assignment at a satisfactory level shall result in the employee being removed from the acting assignment and returned to his/her current permanently held position. Any increase in salary or benefits granted in association with the acting assignment shall be terminated concurrent with the termination of the acting assignment with no other adverse consequences.
3. Failure to comply with employee rules of conduct may result in the employee being removed from the acting assignment (including a termination of acting assignment compensation) and/or disciplined in a manner consistent with applicable City policies and procedures.

**RESOLUTION NO. 2023 -**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA,  
ADOPTING A CITY ADMINISTRATIVE POLICY ON ACTING ASSIGNMENTS**

**WHEREAS**, the City of National City has an administrative policy regarding acting assignments; and

**WHEREAS**, acting assignments occur when an employee is temporarily assigned the duties of a higher classification during periods of temporary vacancy; and

**WHEREAS**, employees working in an officially recognized acting assignment receive additional compensation for assuming the duties and responsibilities of the higher classification; and

**WHEREAS**, the legislative body of the agency is required to approve compensation in order for it to be included as pensionable for CalPERS; and

**WHEREAS**, the salary compensation for an acting assignment is 5% of base salary for the first six months of the acting assignment and 10% of base salary if the appointment exceeds six months; and

**WHEREAS**, for managers assigned an executive level acting appointment, the salary compensation is up to 15% of base salary, beginning the first day of the acting assignment; and

**WHEREAS**, the City Manager will determine the exact percentage of compensation provided to managers in an executive level acting assignment, with a minimum of 5% and a maximum of 15%.

**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 adoption of the Acting Assignments Administrative Policy attached 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 7th day of November, 2023.**

\_\_\_\_\_  
Ron Morrison, Mayor

**ATTEST:**

\_\_\_\_\_  
Shelley Chapel, MMC, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Barry J. Schultz, City Attorney



# AGENDA REPORT

**Department:** Housing Authority  
**Prepared by:** Greg Rose, Property Agent  
**Meeting Date:** Tuesday, November 7, 2023  
**Approved by:** Ben Martinez, Interim City Manager

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**SUBJECT:**

Affordable Housing Density Bonus Agreement for 2704 East 18th Street

**RECOMMENDATION:**

Adopt the Resolution Entitled “Resolution of the City Council of the City of National City, California, Approving an Affordable Housing Density Bonus Agreement and Related Documents with 2704 18th, LLC, a California Limited Liability Company, and Restricting the Rent and Occupancy of Two Units to Low-Income Households in Exchange for Four Incentives Pursuant to California Government Code Sections 65915 – 65918 for the Development of Nine Housing Units Located at 2704 East 18th Street in National City.”

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

Not Applicable.

**EXPLANATION:**

2704 18th, LLC (“Developer”), a California Limited Liability Company, would like to build a 9-unit project at 2704 E 18th Street. The Developer can build nine (9) units by right and proposes restricting two (2) units as low-income in exchange for four incentives, pursuant to California Government Code Section 65915-65918. The incentives are 1) Parking ratio reduction of 0.5 spaces per unit for a total of seven (7) parking spaces provided; 2) Reduction of common open space requirement from four hundred (400) square feet to three hundred (300) square feet; 3) Remove private open space requirements for the project; and 4) Remove storage space requirements for residential units.

The Planning Division approved the four incentives for the Affordable Density Housing Bonus Agreement (“Agreement;” Exhibit “B”). The Agreement will memorialize the Developer’s obligation to restrict the affordable units for 55 years. A Performance Deed of Trust (Exhibit “C”) and a Subordination Agreement (Exhibit “D”) will be recorded to secure the Agreement on the property. Information on the Density Bonus Program can be found in the Background Information (Exhibit “A”) and on the City’s website, [www.nationalcityca.gov](http://www.nationalcityca.gov), under [Asset Management](#).

**FINANCIAL STATEMENT:**

The developer will be paying all City fees associated with the construction of this project. Upon completion, it will add to the property tax base for the City. The Housing Authority will collect an annual monitoring fee of \$215.00 per affordable unit.

**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. CCR 15378; 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- Background Information
- Exhibit B- Density Bonus Agreement
- Exhibit C- Deed of Trust
- Exhibit D- Subordination Agreement
- Exhibit E -Resolution

## BACKGROUND REPORT

California's Density Bonus Law is a mechanism which allows developers to obtain more favorable local development requirements in exchange for offering to build or donate land for affordable or senior units. The Density Bonus Law (found in California Government Code Sections 65915 – 65918) provides developers with powerful tools to encourage the development of affordable and senior housing, including up to a 50% increase in project densities, depending on the amount of affordable housing provided. The Density Bonus Law is about more than the density bonus itself, however. It is actually a larger package of incentives intended to help make the development of affordable and senior housing economically feasible. Other tools include reduced parking requirements, and incentives and concessions such as reduced setback and minimum square footage requirements. Often these other tools are even more helpful to project economics than the density bonus itself, particularly the special parking benefits. Sometimes these incentives are sufficient to make the project pencil out, but for other projects financial assistance is necessary to make the project feasible.

In determining whether a development project would benefit from becoming a density bonus project, developers also need to be aware that:

- The Density Bonus is a state mandate. A developer who meets the requirements of the state law is entitled to receive the density bonus and other benefits as a matter of right. As with any state mandate, some local governments will resist complying with the state requirement. But many local governments favor the density bonus as a helpful tool to cut through their own land use requirements and local political issues.
- Use of a density bonus may be particularly helpful in those jurisdictions that impose inclusionary housing requirements for new developments.
- Special development bonuses are available for developers of commercial projects who partner with affordable housing developers to provide onsite or offsite affordable housing. Special bonuses are also available for condominium conversion projects and projects that include child care facilities.
- The Legislature has recently added density bonuses for housing developments for foster youth, disabled veterans, homeless persons and college students.

Cities and counties are required to grant a density bonus and other incentives or concessions to housing projects which contain one of the following:

- At least 5% of the housing units are restricted to very low income residents.
- At least 10% of the housing units are restricted to lower income residents.
- At least 10% of the housing units in a for-sale common interest development are restricted to moderate income residents.
- At least 10% of the housing units are for transitional foster youth, disabled veterans or homeless persons, with rents restricted at the very low income level.
- At least 20% of the housing units are for low income college students in housing dedicated for full-time students at accredited colleges.
- The project donates at least one acre of land to the city or county for very low income units, and the land has the appropriate general plan designation, zoning, permits and approvals, and access to public facilities needed for such housing.
- The project is a senior citizen housing development (no affordable units required).

- The project is a mobile home park age-restricted to senior citizens (no affordable units required).

Affordable rental units must be restricted by an agreement which sets maximum incomes and rents for those units. As of January 1, 2015, the income and rent restrictions must remain in place for a 55 year term for very low or lower income units. Rents must be restricted as follows:

- For very low income units, rents may not exceed 30% x 50% of the area median income for a household size suitable for the unit.
- For lower income units, rents may not exceed 30% x 80% of the area median income for a household size suitable for the unit.
- Area median income is determined annually by regulation of the California Department of Housing and Community Development, based upon median income regulations adopted by the U.S. Department of Housing and Urban Development.
- Rents must include a reasonable utility allowance.
- Household size appropriate to the unit means 1 for a studio unit, 2 for a one bedroom unit, 3 for a two bedroom unit, 4 for a three bedroom unit, etc. In many cases, achieving a reduction in parking requirements may be more valuable than the additional permitted units.

The Density Bonus Law is often used by developers to obtain more housing than the local jurisdiction would ordinarily permit, it can also be a helpful land use tool. The density bonus can provide a useful mechanism for increasing allowable density without requiring local officials to approve general plan amendments and zoning changes. A project that satisfies the requirements of the Density Bonus Law often can obtain the necessary land use approvals through the award of the density bonus units and requested concessions and incentives, without having to amend the underlying land use requirements.

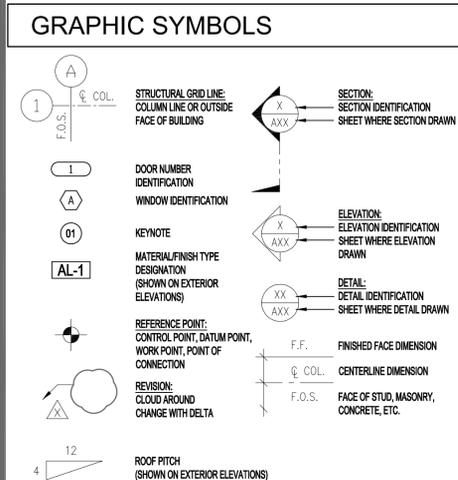
Although there is no specific density bonus exemption from the California Environmental Quality Act, many density bonus projects are likely candidates for urban infill and affordable housing exemptions from CEQA. One commonly invoked exemption is the Class 32 urban infill exemption found in CEQA Guidelines Section 15332. That exemption is available if the project is consistent with applicable general plan designation and zoning, the site is five acres or less and surrounded by urban uses, is not habitat for endangered, rare or threatened species, does not have any significant effects relating to traffic, noise, air quality or water quality, and is adequately served by utilities and public services. Other exemptions are available for high density housing projects near major transit stops (CEQA Guidelines Section 15195) and affordable housing projects of up to 100 units (CEQA Guidelines Section 15194).

Developer incentives are (1) Parking ratio reduction of 0.5 spaces per unit for a total of 7 parking spaces provided. 2) Reduction of common open space requirement from four hundred (400) square feet to three hundred (300) square feet. 3) Remove private open space requirements for the project.

80% Area Median Income Limits for National City effective May 13, 2023								
Family Size	1	2	3	4	5	6	7	8
	\$77,200	\$88,200	\$99,250	\$110,250	\$119,100	\$127,900	\$136,750	\$145,550

The site plans for the apartment project at 2704 E 18th Street start on the following page.

ABBREVIATIONS			
A.B. ANCHOR BOLT	F.H. FIRE HYDRANT	P.W.D. PLYWOOD	P.W.D. PLYWOOD
A.C. ASPHALT CONCRETE	F.N. FINISH	P.T. FINISH PRESSURE TREATED	
AC AIR CONDITIONING	FLR. FLOOR	R RISER	
ACOUS. ACOUSTICAL	FLSH. FLASHING	RAD. RADIUS	
AA. AREA DRAIN	FLW. FLOW LINE	R.A.G. RETURN AIR GRILLE	
ADJ. ADJACENT	FLUR. FLUORESCENT	R.D. ROOF DRAIN	
A.F.F. ABOVE FINISH FLOOR	F.O.C. FACE OF COLUMN	R.D.W. REDWOOD	
ALUM. ALUMINUM	F.O.M. FACE OF MASONRY	REF. REFERENCE	
ANOD. ANODIZED	F.O.S. FACE OF STUD	REFR. REFRIGERATOR	
A.P. ACCESS PANEL	FT. FEET OR FOOT	RES. REGISTER	
AUTO. AUTOMATIC	F.S. FLOOR SINK	REINF. REINFORCED	
ARCH. ARCHITECTURAL	FTG. FOOTING	REQD. REQUIRED	
	FUR(R). FURRING	RSL. RESILIENT	
BD. BOARD		RM. ROOM	
BIT. BITUMINOUS		R.O. ROUGH OPENING	
BLDG. BUILDING	GA. GAUGE	R.O.W. RIGHT-OF-WAY	
BLK(Q). BLOCKING	GALV. GALVANIZED	R.S. RESAWN	
B.N. BOUNDARY NAIL	G.I. GALVANIZED IRON		
B.O. BOTTOM OF	GYP. GYPSUM	S.A.G. SUPPLY AIR GRILLE	
BOT(T). BOTTOM	H.B. HOSE BIBB	S.A.R. SUPPLY AIR REGISTER	
B.S. BOTH SIDES	H.C. HOLLOW CORE	S.C. SOLID CORE	
BTW. BETWEEN	HDBD. HARD BOARD	SCHED. SCHEDULE	
	HDR. HEADER	S.A. STORM DRAIN	
CAB. CABINET	HDW. HARDWARE	SECT. SECTION	
C.B. CATCH BASIN	HDWD. HARDWOOD	S.F. SQUARE FEET	
CEM. CEMENT	H.M. HOLLOW METAL	SHT. SHEET	
C.F. CUBIC FEET	HORIZ. HORIZONTAL	SHTG. SHEATHING	
CF. COUNTER FLASHING	I.D. INSIDE DIAMETER	SIM. SIMILAR	
C.I. CAST IRON	I.E. INVERT ELEVATION	S.M. SHEET METAL	
C.J. CONTROL JOINT	INSUL. INSULATION	S.O.V. SHUT-OFF VALVE	
CLG. CEILING	INT. INTERIOR	SP. SPACE(S)	
CLOS. CLOSET	JST. JOIST	SPECS. SPECIFICATIONS	
CLR. CLEAR	JT. JOINT	SQ. SQUARE	
C.O. CLEAN OUT	KIT. KITCHEN	S.S. STAINLESS STEEL	
C.O.C. CENTERLINE OF COLUMN		STL. STEEL	
COL. COLUMN		STOR. STORAGE	
CONC. CONCRETE	LAV. LAVATORY	STRUCT. STRUCTURAL	
COND. CONDITION	LB. LAG BOLT	SUSP. SUSPENDED	
CONT. CONTINUOUS	LT. LIGHT	T.C.F.O. TEMPORARY CERTIFICATE OF OCCUPANCY	
CONTR. CONTRACTOR		T. TREAD	
CONST. CONSTRUCTION		T.O.C. TOP OF CURB	
CORR. CORROSION		T.E. TELEPHONE	
C.S. COUNTERSINK		T.O.F. TOP OF FOOTING	
C.T. CERAMIC TILE		T.O.G. TONGUE AND GROOVE	
C.Y. CUBIC YARD		TK. THICK	
		T.N. TOE NAIL	
DEPT. DEPARTMENT		T.O. TOP OF	
DET. DETAIL		T.O.P. TOP OF PARAPET	
D.F. DOUGLAS FIR OR DRINKING FOUNTAIN		T.O.S. TOP OF SHEATHING	
		T.O.W. TOP OF WALL	
DIA. DIAMETER		T.O.T. TOP OF TRELIS	
DM. DIMENSION		TYP. TYPICAL	
DISP. DISPENSER		U.O.N. UNLESS OTHERWISE NOTED	
DN. DOWN		UR. URINAL	
D.S. DOWNSPOUT			
DWG. DRAWING			
EA. EACH			
E.A.G. EXHAUST AIR GRILLE			
E.J. EXPANSION JOINT			
ELEV. ELEVATION			
ELEC. ELECTRICAL			
EMER. EMERGENCY			
EN. EDGE NAIL			
E.P. ELECTRICAL PANEL			
EQ. EQUAL			
EQIP. EQUIPMENT			
E.S. EACH SIDE			
E.W.C. ELECTRIC WATER COOLER			
(E) EXISTING			
EXT. EXTERIOR			
FA. FIRE ALARM			
F.D. FLOOR DRAIN			
F.D.C. FIRE DEPT. CONNECTION			
F.E. FIRE EXTINGUISHER			
F.F. FACTORY FINISH OR FINISH FACE			
FFE. FINISH FLOOR ELEVATION			



### FIRE RATED ASSEMBLIES & SEPARATIONS

UNIT DIMISING WALLS:	1-HOUR (SEE SHEETS A1.0 THRU A1.2)
EXTERIOR WALLS:	1-HOUR (SEE SHEETS A0.2 THRU A0.3) EXTERIOR WALLS ON EAST FACING PORTION OF THE NEW BUILDING

### REQUIRED SPECIAL FEATURES

FEATURE(S) THAT MUST BE INSTALLED AS CONDITION FOR MEETING THE MODELED ENERGY PERFORMANCE:

- DUCTS WITH HIGH LEVEL OF INSULATION

### UNIT AREA ANALYSIS

FLOOR	UNIT	DESCRIPTION	AREA (SF)
1st FLOOR	UNIT 1	1-BED/ 1-BATH	535 sf
	UNIT 2	STUDIO/ 2-BATH	358 sf
	UNIT 3	STUDIO/ 1-BATH	410 sf
2nd FLOOR	UNIT 4	2-BED/ 2-BATH	1,203 sf
	UNIT 5	2-BED/ 2-BATH	830 sf
	UNIT 6	2-BED/ 2-BATH	937 sf
3rd FLOOR	UNIT 7	2-BED/ 2-BATH	985 sf
	UNIT 8	2-BED/ 2-BATH	715 sf
	UNIT 9	2-BED/ 2-BATH	850 sf

### DEFERRED SUBMITTAL

TYPE	DEFERRED SUBMITTAL	SEPARATE PERMIT
AUTOMATIC FIRE SPRINKLER SYSTEM NFPA 13R (NEW STRUCTURE)	YES	NO
FIRE / SMOKE ALARM SYSTEM	YES	NO
ELECTRIC VEHICLE (EV) CHARGING STATION	YES	NO
PHOTOVOLTAIC SYSTEM	YES	NO

1. THE DEFERRED SUBMITTAL ITEMS SHALL BE SUBMITTED TO THE ARCHITECT OR ENGINEER OF RECORD WHO SHALL REVIEW THEM INDICATING THAT THE DEFERRED SUBMITTAL DOCUMENTS HAVE BEEN REVIEWED AND THAT THEY HAVE BEEN FOUND TO BE IN GENERAL CONFORMANCE WITH THE DESIGN OF THE BUILDINGS. THE DEFERRED SUBMITTAL ITEMS SHALL NOT BE INSTALLED UNTIL THEIR DESIGN AND SUBMITTAL DOCUMENTS HAVE BEEN APPROVED BY THE BUILDING OFFICIAL. GENERAL CONTRACTOR TO PROCESS ANY DEFERRED SUBMITTALS WITH THE GOVERNING AGENCY TO OBTAIN APPROVAL AND PERMITS.

2. PLANS FOR THE DEFERRED SUBMITTAL ITEMS SHALL BE SUBMITTED IN A TIMELY MANNER THAT ALLOWS A MINIMUM OF 30 WORKING DAYS FOR INITIAL PLAN REVIEW. ALL COMMENTS RELATED TO THE DEFERRED SUBMITTAL MUST BE ADDRESSED TO THE SATISFACTION OF THE PLAN CHECK DIVISION PRIOR TO APPROVAL OF THE SUBMITTAL ITEMS.

3. IT IS UNDERSTOOD THAT PLANS FOR THE PROJECT HAVE AT THIS TIME, BEEN REVIEWED FOR COMPLIANCE WITH THE EXCEPTION OF THE DEFERRED ITEMS LISTED.

4. I/WE UNDERSTAND THAT I/WE WILL NOT BE AUTHORIZED ANY INSPECTION OF THE DEFERRED ITEMS PROPOSED PRIOR TO THE SUBMITTAL AND APPROVAL OF PLANS AND/OR CALCULATIONS FOR THOSE DEFERRED ITEMS.

5. THE DEFERRED SUBMITTAL ITEMS SHALL NOT BE INSTALLED UNTIL THEIR DESIGN AND SUBMITTAL DOCUMENTS HAVE BEEN APPROVED BY THE BUILDING OFFICIAL WITH ANNOTATION INDICATING THAT THE DEFERRED SUBMITTAL DOCUMENTS HAVE BEEN REVIEWED AND FOUND TO BE IN GENERAL CONFORMANCE TO THE DESIGN OF THE BUILDING.

### C.B.C. AREA CALCULATIONS

CONSTRUCTION TYPE:	TYPE VB (R-2 OCCUPANCY) TYPE VB (S-2 OCCUPANCY)
OCCUPANCY GROUP:	R-2 (PRIVATELY OWNED & FUNDED) S-2 COVERED PARKING GROUND FLOOR
SPRINKLERS:	YES - NFPA 13R "SEE ACTUAL ALLOWABLE AREA" BELOW
BASIC ALLOWABLE AREA PER FLOOR:	7,000 sf (R-2) (\$13R PER CBC 506.2) 13,500 sf (S-2) (NS PER CBC 506.2)
EXISTING DETACHED DWELLING UNIT 'A' (R-3)	717 sf
EXISTING DETACHED DWELLING UNIT 'B' (R-3)	862 sf
	1,579 sf

GROUND FLOOR (R-2):	
NEW DWELLING UNITS	1,293 sf
NEW LAUNDRY ROOM	143 sf
NEW W.H. & ELECT. ROOMS	59 sf
TOTAL GROUND FLOOR (R-2)	1,495 sf
GROUND FLOOR (S-2):	
COVERED PARKING AREA	1,665 sf
TOTAL GROUND FLOOR (S-2)	1,665 sf
TOTAL GROUND FLOOR AREA (R-2 + S-2)	3,160 sf
SECOND FLOOR (R-2):	
NEW DWELLING UNITS	2,974 sf
EGRESS BALCONY / STAIRS	454 sf
TOTAL SECOND FLOOR	3,428 sf
THIRD FLOOR (R-2):	
NEW DWELLING UNITS	2,554 sf
EGRESS BALCONY / STAIRS	349 sf
TOTAL SECOND FLOOR	2,903 sf
TOTAL BLDG. AREA:	9,312 sf

ACTUAL ALLOWABLE AREA CALCULATIONS: (SEPARATED OCCUPANCIES) (PER CBC 506.2.2)

GROUND FLOOR:	R-2 = 0.45 < 1.0 (3,160 SF / 7,000 SF)
	S-2 = 0.23 < 1.0 (3,160 SF / 13,500 SF)
*AREA SUM OF R-2 + S-2 OCCUPANCIES	
2ND & 3RD FLOOR: SINGLE OCCUPANCY (R-2)	3,428 SF < 7,000 SF PER FLOOR

CBC BASIC ALLOWABLE HEIGHT: 40 FT / 3 STORIES (R-2) (\$13R PER CBC 504.4)  
N.A. / 2 STORIES (S-2) (NS PER CBC 504.4)

ACTUAL HEIGHT & NO. STORIES: 34.63 FT / 3 STORIES

### COMMON OPEN SPACE CALCULATIONS

LOCATION	AREA (SF)	DIMENSION
OPEN COURTYARD	300	13 FT x 28 FT. (+/-)

### SCOPE OF WORK

- THE PROJECT IS PRIVATELY FUNDED & IS A PRIVATE HOUSING PROJECT
- EXISTING 2 (R-3) DWELLING UNITS TO REMAIN
- CONSTRUCT A NEW 3-STORY MULTI-FAMILY STRUCTURE WITH 9 UNITS PER THE FOLLOWING:
  - SEE "CBC AREA CALCULATIONS" FOR BUILDING AREAS
  - PROJECT PROPOSES TO UTILIZE THE DENSITY BONUS PROGRAM
  - 2 UNITS TO BE LOW INCOME AFFORDABLE HOUSING (10% OF BASE DENSITY)
  - INCENTIVE REQUESTED FOR PARKING REDUCTION (SEE "INCENTIVE REQUESTS" BELOW)
  - WAIVER REQUEST TO REDUCE COMMON OPEN SPACE REQUIREMENTS & PRIVATE OPEN SPACE (SEE "WAIVER/REDUCTION REQUESTS" BELOW)
- NEW GROUND FLOOR UNITS SHALL COMPLY WITH ACCESSIBLE REQUIREMENTS OF OPTION 2 PER CBC 1134A FOR BATHING & TOILET FACILITIES
- PROPOSED WATER AND FIRE SERVICES SHALL BE DONE UNDER A SEPARATE PERMIT

### PROJECT DENSITY

SITE AREA:	11,781 SF (0.26 ACRES)
ALLOWABLE DENSITY:	48 DWELLING UNITS PER ACRE
ALLOWABLE BASE:	12 DWELLING UNITS
DENSITY BONUS	
DENSITY BONUS PERCENTAGE REQUESTED:	20%
ADDITIONAL NUMBER OF UNIT NUMBERS BEING BUILT PER THE BONUS:	0
TOTAL NUMBER OF UNITS, WITH THE BONUS:	11 (2 EX. + 9 NEW) (9 MARKET RATE / 2 LOW INCOME)
PERCENT LOW INCOME UNITS TO BE DEDICATED (10% OF BASE DENSITY):	2 UNITS

### AFFORDABLE HOUSING

ALL AFFORDABLE HOUSING & MARKET RATE HOUSING REFERENCED BELOW PERTAINS TO THE NEW BUILDING.

TOTAL NUMBER OF DWELLING UNITS AT MARKET RATE: 7

TOTAL NUMBER OF DWELLING UNITS AT LOW INCOME (<80 AMI): 2

DESIGNATED AFFORDABLE UNITS:

UNIT 5: 2 BED / 2 BATH (2nd FLOOR)

UNIT 9: 2 BED / 2 BATH (3rd FLOOR)

### INCENTIVE REQUESTS

ALLOWABLE NUMBER OF DENSITY BONUS INCENTIVE REQUESTS: 1

PROPOSED INCENTIVES PER THE CALIFORNIA DENSITY BONUS LAW:

- DENSITY BONUS PARKING REQUIREMENTS: 0.5 PARKING SPACES / PER BEDROOM (ROUNDED DOWN) FOR A TOTAL OF 7 PROVIDED PARKING SPACES

### WAIVER/REDUCTION REQUESTS

NUMBER OF DENSITY BONUS WAIVER / REDUCTION REQUESTED: 2

PROPOSED REDUCTION PER THE CALIFORNIA DENSITY BONUS LAW:

- DENSITY BONUS WAIVER TO REDUCE COMMON OPEN SPACE REQUIREMENT FROM 20 FT x 20 FT (400 SF) TO 300 SF. SEE SHEET A0.4 FOR LOCATION.
- DENSITY BONUS REQUEST TO WAIVE PRIVATE OPEN SPACE REQUIREMENTS

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### OPEN SPACE AREA ANALYSIS

LOCATION	AREA (SF)	DIMENSION
OPEN COURTYARD	300	13 FT x 28 FT. (+/-)

### CODE SUMMARY

- THIS PROJECT SHALL COMPLY WITH THE FOLLOWING BUILDING CODES AND ASSOCIATED CITY OF NATIONAL CITY AMENDMENTS:
  - 2019 CALIFORNIA BUILDING CODE
  - 2018 CALIFORNIA GREEN BUILDING STANDARDS CODE
  - 2019 CALIFORNIA ELECTRICAL CODE
  - 2019 CALIFORNIA PLUMBING CODE
  - 2019 CALIFORNIA FIRE CODE
  - 2019 CALIFORNIA BUILDING ENERGY EFFICIENCY STANDARDS

### PROJECT DATA

PROJECT ADDRESS:	2704 E. 18TH STREET NATIONAL CITY, CA 91950	OCCUPANCY:	R-2 APARTMENTS/LAUNDRY S-2 COVERED PARKING
OWNER:	JUSTIN ISAAC, CLAYE CANTWELL, LYNLEY CONNOR	CONSTRUCTION TYPE:	VB NON-RATED
DESCRIPTION OF WORK:	SEE "SCOPE OF WORK" SECTION FOR DETAILED INFORMATION	SPRINKLERS:	R-2 - NFPA13R S-2 - N.S.
ZONING INFORMATION:		NO. OF STORIES:	3 STORIES
LEGAL DESCRIPTION:	556-250-32-00 TR 1748 LOT 271	HEIGHT (BUILDING):	34.63'
LOT AREA:	0.26 ACRES OR 11,781 SF	MAX. DENSITY:	48 DU PER ACRE
ZONING CLASSIFICATION:	MXC-1	BUILDING AREA (SEE CBC AREA CALCULATION TABLE ON THIS SHEET)	
CLIMATE ZONE:	7	TOTAL BUILDING AREA:	EXISTING 1,543 SF + NEW 7,847 SF* = 9,390 SF
HEIGHT LIMIT:	50'-0" / 3-STORIES	* AREA INCLUDED R-2 OCCUPANCY	
REQUIRED SETBACKS:	FRONT YARD (FYSB) = 0 SIDE YARD (SYSB) = 0 REAR YARD (RYSB) = 0	SD SCHOOL FEE AREA:	9,190 SF
EXISTING USE:	R-3 DETACHED DUPLEX UNITS R-2 MULTI FAMILY DWELLING	ALLOWABLE F.A.R.:	BASE 1.0 (11,780 SF); MAX 2.0 (22,522 SF)
PROPOSED USE:		ACTUAL BUILDING AREA:	9,276 SF (SEE CBC AREA CALCULATION TABLE)
YEAR BUILT:	1950 (2 EXISTING FRONT UNITS)	* AREA INCLUDED R-2 OCCUPANCY	
THIS PROJECT IS NOT WITHIN A NOISE CRITICAL AREA (CNEL CONTOUR OF 60 DB) AS SHOWN IN THE GENERAL PLAN		ACTUAL F.A.R.:	0.78 (9,190 SF / 11,781)

### PROJECT DIRECTORY

OWNER	2704 E. 18TH STREET NATIONAL CITY, CA 91950 TEL: (619) 504-9312 CONTACT: JUSTIN ISAAC	ELECTRICAL ENGINEER	PRO ENGINEERING CONSULTING, INC. 2712 LOKER AVENUE WEST #1063 TEL: (858) 240-9960 CONTACT: RAMIN PARS, EPE	GEOTECHNICAL ENGINEER	GEI, GEOTECHNICAL EXPLORATION, INC. 7420 TRADE STREET SAN DIEGO, CA 92121 TEL: (858) 549-7222 CONTACT: CATHY GANZE
PROJECT MANAGER/DESIGNER	ARCHS DESIGN STUDIO 2825 DEWEY ROAD, UNIT 207 SAN DIEGO, CA 92106 TEL: (858) 336-4556 CONTACT: RACHELLE DOMINGO-ROGERS	MECHANICAL/PLUMBING ENGINEER	PRO ENGINEERING CONSULTING, INC. 2712 LOKER AVENUE WEST #1063 TEL: (858) 240-9960 CONTACT: RAMIN PARS, EPE	LANDSCAPE DESIGNER	LANDSCAPE LOGIC 4455 MORENA BLVD, SUITE 110 SAN DIEGO, CA 92117 TEL: (619) 446-6482 CONTACT: TONY VITALE
STRUCTURAL ENGINEER	HTX STRUCTURAL ENGINEERS 14288 DANIELSON STREET, SUITE 200 POWAY, CA 92064 TEL: (858) 678-9989 CONTACT: HELMAND KUSHKAKI	CIVIL ENGINEER	J&B ENGINEERS, SURVEYORS 13670 DANIELSON STREET, SUITE G POWAY, CA 92064 TEL: (858) 513-1741 CONTACT: FELIPE MANNANG		

### REVISIONS

DATE	DESCRIPTION
7/25/22	PC1 SUBMITTAL
3/16/23	PC2 SUBMITTAL

Bid Issue Date: TBD

Date: 06/19/23

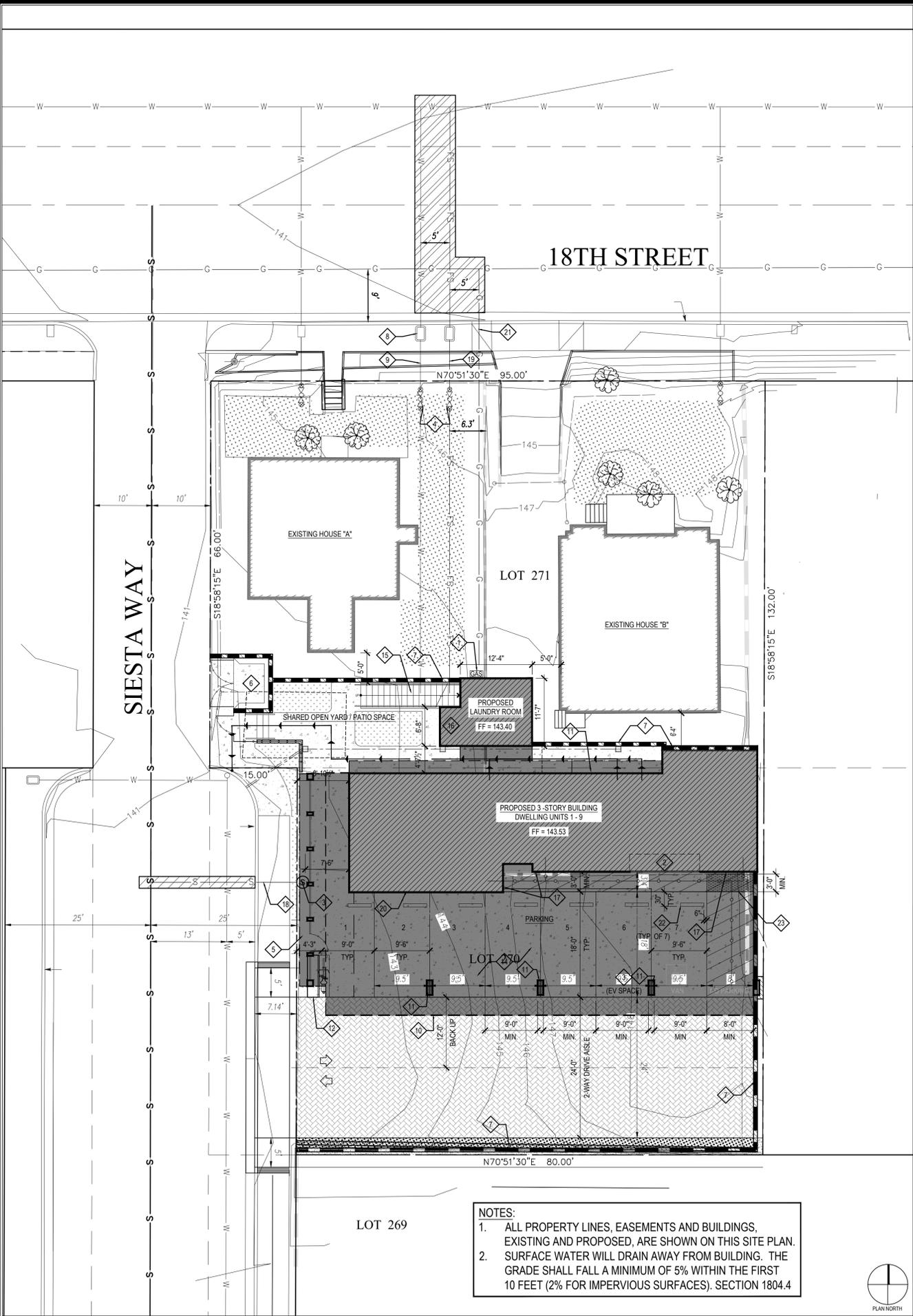
Scale: AS NOTED

Project No: -

Sheet Title:

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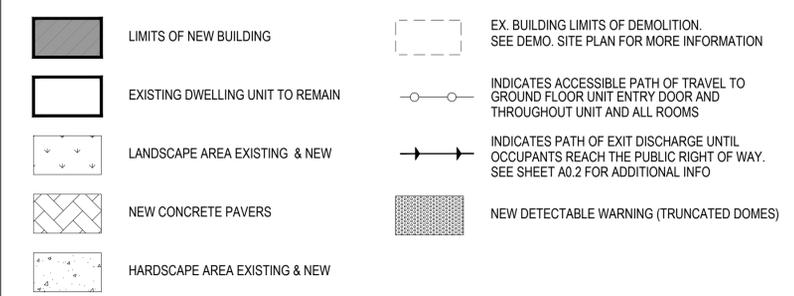
**NOTES:**  
 1. ALL PROPERTY LINES, EASEMENTS AND BUILDINGS, EXISTING AND PROPOSED, ARE SHOWN ON THIS SITE PLAN.  
 2. SURFACE WATER WILL DRAIN AWAY FROM BUILDING. THE GRADE SHALL FALL A MINIMUM OF 5% WITHIN THE FIRST 10 FEET (2% FOR IMPERVIOUS SURFACES), SECTION 1804.4

**SITE PLAN**

**SITE PLAN KEYNOTES**

- 1 NEW GAS METER LOCATION - SEE PLUMBING DRAWINGS
- 2 ELECTRICAL SERVICE
- 3 ELECTRIC VEHICLE CHARGING SPACE (EV SPACE) - REFER TO EV GENERAL NOTES ON THIS SHEET FOR ADDITIONAL INFO
- 4 NEW WATER BACKFLOW PREVENTOR PER CIVIL PLANS (SHEET C3)
- 5 NEW SECURITY PEDESTRIAN GATE AND FENCING
- 6 NEW TRASH / RECYCLING ENCLOSURE PER SHEET T1.7
- 7 PROPOSED CMU RETAINING WALL
- 8 NEW WATER METER PER CIVIL PLANS (SHEET C3)
- 9 NEW WATER SERVICE PER CIVIL PLANS (SHEET C3)
- 10 LINE OF BUILDING FLOORS ABOVE
- 11 APPROX. LOCATION OF ROOF DOWNSPOUTS
- 12 NEW 1-BICYCLE STORAGE/SECURITY RACK
- 13 CONCRETE WALKWAY
- 14 COVERED CARPORT PARKING
- 15 STAIR ACCESS TO UPPER FLOORS
- 16 WATER HEATER CLOSET
- 17 "INTERNATIONAL SYMBOL OF ACCESSIBILITY" SIGN INDICATING DIRECTION OF ACCESSIBLE BUILDING ENTRY
- 18 NEW SEWER LATERAL W/ CLEANOUT PER CIVIL PLANS AND ROW PERMIT
- 19 NEW FIRE SERVICE PER CIVIL PLANS (SHEET C3)
- 20 APPROX. LOCATION OF EXISTING HOSE BIBBS
- 21 NEW GAS SERVICE PER CIVIL PLANS (SHEET C3)
- 22 NEW WHEELSTOP, SEE DETAIL: 2/A0.0
- 23 NEW TRUNCATED DOMES, SEE DETAIL: 3/A0.0

**SITE PLAN LEGEND**



**EV PARKING GENERAL NOTES**

1. WHERE COMMON USE PARKING IS PROVIDED AT LEAST ONE EV SPACE SHALL BE LOCATED IN THE COMMON USE PARKING AREA AND SHALL BE AVAILABLE FOR USE BY ALL RESIDENTS (4.106.4.2.1)
2. WHEN EV CHARGERS ARE INSTALLED, EV SPACES REQUIRED BY SECTION 4.106.4.2.2, ITEM 3, SHALL COMPLY WITH AT LEAST ONE OF THE FOLLOWING OPTIONS:
  - a. THE EV SPACE SHALL BE LOCATED ADJACENT TO AN ACCESSIBLE PARKING SPACE MEETING THE REQUIREMENTS OF THE CALIFORNIA BUILDING CODE, CHAPTER 11A, TO ALLOW USE OF THE EV CHARGER FROM THE ACCESSIBLE PARKING SPACE.
  - b. THE EV SPACE SHALL BE LOCATED ON AN ACCESSIBLE ROUTE, AS DEFINED IN THE CALIFORNIA BUILDING CODE, CHAPTER 2, TO THE BUILDING.
- EXCEPTION:** ELECTRIC VEHICLE CHARGING STATIONS DESIGNED AND CONSTRUCTED IN COMPLIANCE WITH THE CALIFORNIA BUILDING CODE, CHAPTER 11B, ARE NOT REQUIRED TO COMPLY WITH SECTION 4.106.4.2.1.1 AND SECTION 4.106.4.2.2, ITEM 3
- NOTE:** ELECTRIC VEHICLE CHARGING STATIONS SERVING PUBLIC HOUSING ARE REQUIRED TO COMPLY WITH THE CALIFORNIA BUILDING CODE, CHAPTER 11B.
3. EV SPACES SHALL BE DESIGNED TO COMPLY WITH THE FOLLOWING DIMENSION REQUIREMENTS:
  - a. THE MINIMUM LENGTH OF EACH EV SPACE SHALL BE 18 FEET
  - b. THE MINIMUM WIDTH OF EACH EV SPACE SHALL BE 9 FEET
  - c. ONE IN EVERY 25 EV SPACES, BUT NOT LESS THAN ONE, SHALL ALSO HAVE AN 8-FOOT WIDE MINIMUM AISLE. A 5-FOOT (1524 mm) WIDE MINIMUM AISLE SHALL BE PERMITTED PROVIDED THE MINIMUM WIDTH OF THE EV SPACE IS 12 FEET.
    - i) SURFACE SLOPE FOR THIS EV SPACE AND THE AISLE SHALL NOT EXCEED 1 UNIT VERTICAL IN 48 UNITS HORIZONTAL (2.083 PERCENT SLOPE) IN ANY DIRECTION.
4. WHEN A SINGLE EV SPACE IS REQUIRED, THE EV SPACE SHALL BE DESIGNED IN ACCORDANCE WITH SECTION 4.106.4.2.3.4
5. WHEN MULTIPLE EV SPACES ARE REQUIRED, THE EV SPACES SHALL BE DESIGNED IN ACCORDANCE WITH SECTION 4.106.4.2.4.4
6. THE SERVICE PANELS OR SUBPANELS SHALL BE IDENTIFIED IN ACCORDANCE WITH SECTION 4.106.4.2.5

**SITE PLAN**

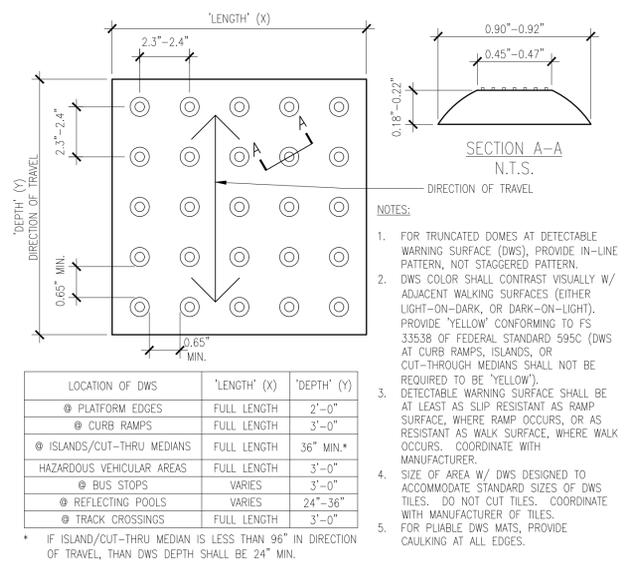
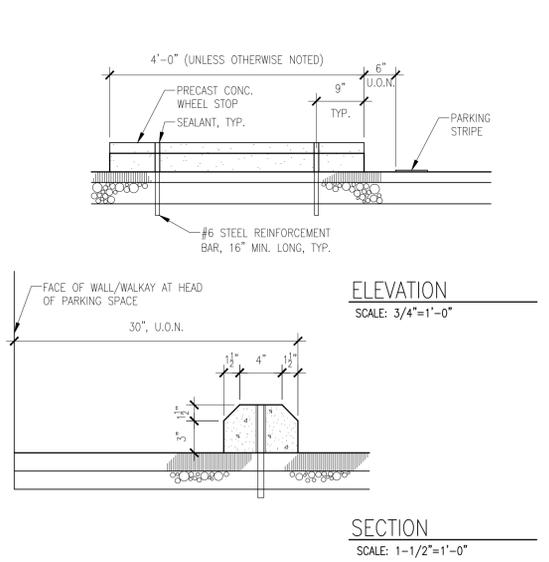
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**WHEELSTOP**

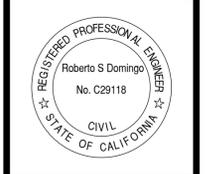
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**DETECTABLE WARNING SURFACE**

SCALE: 3" = 1'-0" 3



2825 Dewey Road  
 Bldg 202, Unit 207  
 San Diego, CA 92106  
 Phone: 619.546.9670



**2704 - 2710 E. 18TH STREET**  
 NATIONAL CITY, CA  
 91950

REVISIONS	
DATE	DESCRIPTION
7/25/22	PC1 SUBMITTAL
3/16/23	PC2 SUBMITTAL

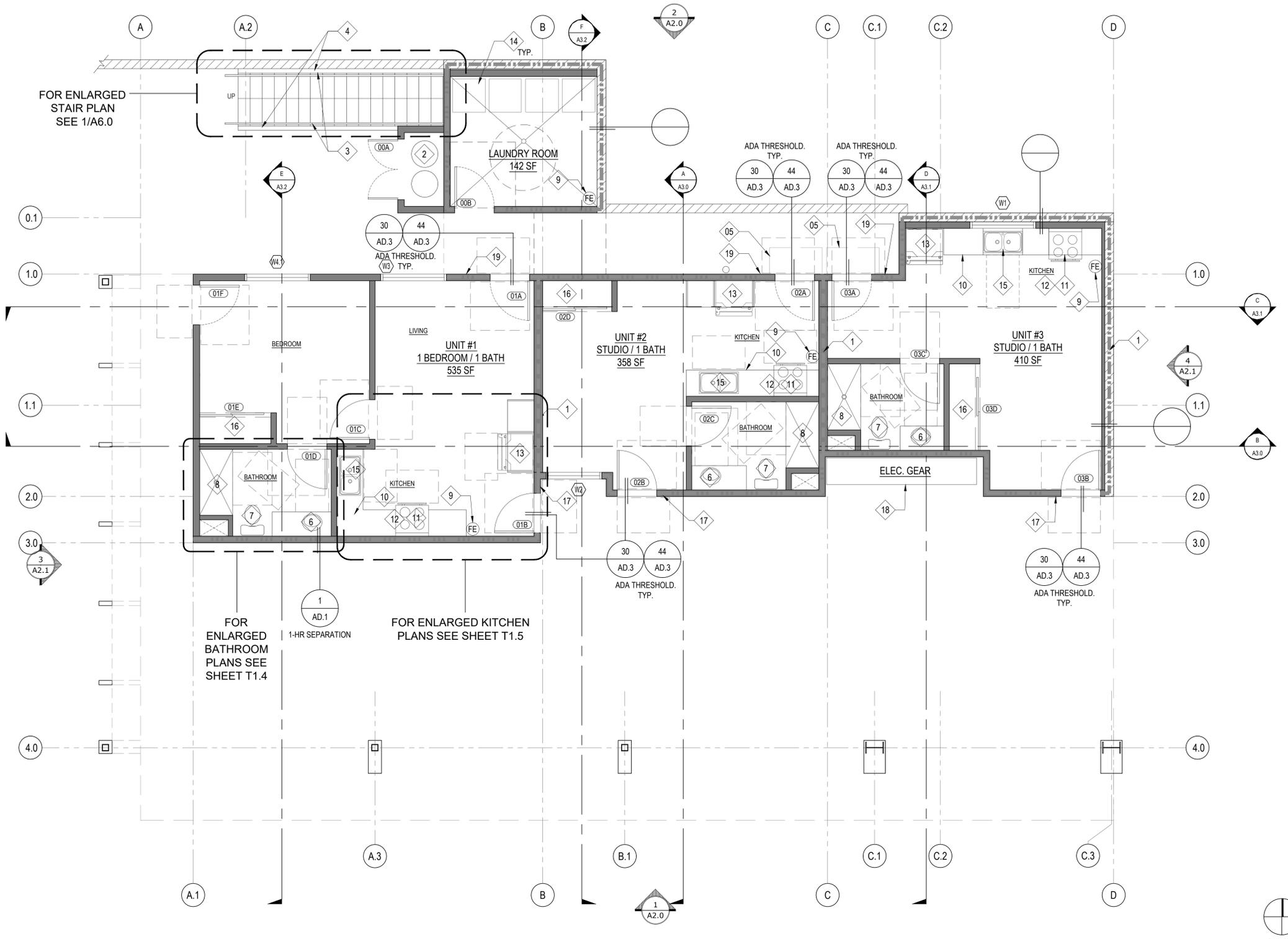
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 Sheet Title:

SITE PLAN

Sheet No.:

**A0.0**

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### FLOOR PLAN KEYNOTES

- 1 1-HOUR RATED UNIT SEPARATION WALLS. SEE DETAIL 2/AD.1
- 2 WATER HEATERS PER PLUMBING PLAN
- 3 1.5" DIAMETER HANDRAIL MOUNTED TO GUARDRAIL POST NOT LESS THAN 34 INCHES AND NOT MORE THAN 38 INCHES TO TOP OR RAIL FROM FINISH TREAD. HANDRAIL SHALL HAVE A MIN. CLEARANCE OF 1.5" FROM FINISH SURFACE OF WALL. SEE DETAIL 43/AD.3
- 4 48 INCH HIGH (FROM FINISH FLOOR) PAINTED STEEL EXTERIOR GUARDRAIL. OPENING LIMITATIONS FOR GUARDRAIL MEMBERS SHALL NOT HAVE OPENINGS WHICH WOULD ALLOW THE PASSAGE OF A SPHERE 4 INCHES IN DIAMETER FROM THE WALKING SURFACE TO THE REQUIRED GUARD HEIGHT. SEE DETAIL 29/AD.2
- 5 ENTRY AWNING ABOVE
- 6 LAVATORY W/ 22" COUNTERTOP WITH A MAXIMUM FLOW OF 1.2 GALLONS PER MINUTE. CASEWORK AND COUNTERTOP MATERIAL TO BE SELECTED BY ARCHITECT.
- 7 WATER CLOSET W/ MIN. CLEARANCE OF 30 INCHES WIDE (15 INCHES ON CENTER) AND 24 INCHES IN FRONT. WATER CLOSET WITH A MAXIMUM FLOW OF 1.28 GALLONS PER FLUSH
- 8 SHOWER - PROVIDED/SELECTED BY OWNER
- 9 NEW 1A:10B:C RATED FIRE EXTINGUISHER PER CBC 906
- 10 KITCHEN CASEWORK AND APPLIANCE LAYOUT AND DESIGN TO BE SELECTED BY INTERIOR DESIGNER AND OWNER
- 11 ELECTRIC OVEN AND RANGE COMBINATION TO BE SELECTED BY OWNER.
- 12 KITCHEN HOOD. SEE MECH. SHEETS FOR VENTILATION
- 13 REFRIGERATOR / FREEZER COMBINATION TO BE SELECTED BY OWNER.
- 14 FRONT LOADING CLOTHES WASHER AND DRYERS
- 15 KITCHEN SINK TO BE SELECTED BY OWNER. KITCHEN FAUCETS WITH A MAXIMUM FLOW OF 1.8 GPM
- 16 16" DP. SHELF AND POLE PAINTED AND PRIMED
- 17 "INTERNATIONAL SYMBOL OF ACCESSIBILITY" SIGN INDICATING DIRECTION OF ACCESSIBLE BUILDING ENTRY
- 18 ELECTRICAL GEAR AND METERS. SEE ELECTRICAL DRWG'S.
- 19 ELECTRIC DOOR BUZZER / CHIME LOCATED A MAX. OF 48" ABOVE FINISH FLOOR & PERMANENTLY WIRED.

### WALL LEGEND

- 1-HOUR UNIT SEPARATION DIMISING WALL(S) ASSEMBLY PER DETAIL 2/AD.1
- NON-RATED 2x2 STUD FRAMED WALL (SEE STRUCTURAL FOR BEARING REQUIREMENTS) FOR INTERIOR CONDITION SEE DETAIL 5/AD.1 FOR EXTERIOR CONDITION SEE DETAIL 1/AD.1 (SIM.)
- 1-HOUR EXTERIOR WALL(S) PER DETAIL 1/AD.1  
PER CBC TABLE 602 BASED ON "FIRE SEPARATION DISTANCE REQUIREMENT."  
PER CBC 1028.4.2 BASED ON EGRESS COURT LESS THAN 10 FT. WIDE  
PER CBC 708 BASED ON EGRESS BALCONY SEPARATION FROM INTERIOR.  
PER CBC TABLE 508.4 FIRE BARRIER SEPARATION.
- 2-HOUR EXTERIOR WALL(S) PER DETAIL 4/AD.2  
PER CBC 1023.4 & 1023.5 WALL ADJACENT TO STAIRS.

### FLOOR PLAN GENERAL NOTES

1. GENERAL CONTRACTOR TO FIELD VERIFY ALL EXISTING AND UNDERGROUND AND ABOVE GROUND UTILITIES.
2. CONTRACTOR TO PROVIDE NEW ELECTRICAL, MECHANICAL AND PLUMBING.
3. CONTRACTOR TO FIELD VERIFY ALL NEW AND EXISTING WALLS PRIOR TO MILLWORK FABRICATION.
4. ALL APPLIANCES TO BE PROVIDED BY OWNER AND COORDINATED WITH GC / MILLWORK SUB.
5. ALL INTERIOR FINISHES TO BE SPECIFIED / PROVIDED BY OWNER.
6. EXHAUST DUCTS AND DRYER VENTS SHALL BE EQUIPPED WITH BACK-DRAFT DAMPERS.

### ACCESSIBILITY LEGEND

1. UNIT ACCESSIBLE KITCHEN REQUIREMENTS PER SHEET T1.5 & T1.6.
2. UNIT ACCESSIBLE BATHROOM REQUIREMENTS PER SHEET T1.4 & T1.6.
3. ALL DOORS ON THE GROUND FLOOR UNITS ALONG THE PATH OF TRAVEL TO EVERY ROOM SHALL COMPLY WITH THE CLEARANCE REQUIREMENTS SHOWN ON PER SHEET T1.3 & T1.6.
4. ALL UNIT ENTRY DOORS ON THE GROUND FLOOR UNITS SHALL COMPLY WITH THE THRESHOLD REQUIREMENTS SHOWN ON SHEET T1.3 & T1.6.

### INSULATION SCHEDULE

REFER TO T24 CALCULATION FOR MORE INFORMATION.

LOCATION	TYPE	(MIN) R-VALUE	REMARKS
EXTERIOR WALLS	BATT INSULATION	R-19	FULL CAVITY (2x6)
FLOOR/CEILING	BATT INSULATION	R-19	FULL CAVITY (JOIST)
ROOF/ATTIC	BATT INSULATION	R-19	FULL CAVITY (JOISTS)
UNIT DIMISING WALL	BATT INSULATION	R-19	FULL CAVITY (JOISTS)
PLUMBING WALLS	BATT INSULATION	R-13	

### GROUND FLOOR PLAN - UNITS 1, 2 & 3 AND LAUNDRY ROOM

SCALE: 1/4" = 1'-0" 1

### DECK WATERPROOFING REQUIREMENTS

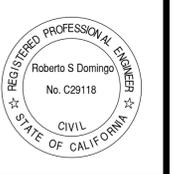
1. ALL PLYWOOD AT DECKS SHALL BE EXTERIOR GRADE WITH A MINIMUM THICKNESS CONFORMING TO SPECIFICATIONS OF WATERPROOFING MANUFACTURE & STRUCTURAL REQUIREMENTS (WHICHEVER IS LARGER). EDGES MUST BE T&G AND/OR BLOCKED. OSB IS PROHIBITED.
2. PLYWOOD SHOULD BE PROPERLY GAPPED AND DEFECTS SHOULD BE FILLED WITH MANUFACTURE APPROVED MATERIAL. TAPE ALL JOINTS AS REQUIRED.
3. FASTEN DECK PLYWOOD WITH CORROSION-RESISTANT FASTENERS THAT RESIST EXTRACTION. SCREWS, SCREW SHANK NAILS AND RING SHANK NAILS SHOULD BE DRIVEN FLUSH TO PLYWOOD SURFACE.
4. SHEET METAL SHOULD BE BONDERIZED OR ACID ETCHED FOR ADHESION AND SHOULD COMPLY WITH SMACNA STANDARDS.
5. FLASHING AT INSIDE AND OUTSIDE CORNERS SHALL HAVE A MINIMUM 4 INCH OVERLAP OF ALL FLASHING COMPONENTS SET IN A BED OF SEALANT AT THE WALL AND DECK FLANGES.
6. PERIMETER FLASHING SHALL BE INSTALLED OVER A CONTINUOUS BEAD OF SEALANT TO THE SUBFLOOR OR BASE LAYER OF WATERPROOF COATING SYSTEM AND UNDER ALL SUBSEQUENT LAYERS.
7. FINISHED DECK SURFACES AND/OR SUBSTRATE (PER STRUCTURAL) MUST SLOPE 1/4" PER FOOT MINIMUM TOWARD DRAIN WHEN CONSTRUCTED OVER HABITABLE SPACE OR PER MANUFACTURE REQUIREMENTS.
8. DECK DOOR THRESHOLD FLASHING PAN SHOULD LAP OVER THE DECK SHEET METAL AND HAVE A CONTINUOUS SEALANT BETWEEN THE TWO FLASHING SYSTEMS. FASTNER PENETRATIONS ARE PROHIBITED FOR THE HORIZONTAL PAN SURFACE.

### TUB & SHOWER BACKER REQUIREMENTS

1. WHERE WALL TILES ARE INSTALLED IN TUB & SHOWER COMPARTMENTS, ONLY FIBER-CEMENT, FIBER-MAT REINFORCED CEMENTITIOUS BACKER UNITS, GLASS MAT GYPSUM BACKERS OR FIBER-REINFORCED GYPSUM BACKERS SHALL BE USED PER CBC 2509.2
2. TUB AND SHOWER SPACES WITH SHOWER HEADS SHALL HAVE WALLS FINISHED WITH A NONABSORBANT SURFACE TO A HEIGHT OF NOT LESS THAN 6 FEET (72") ABOVE THE FLOOR.



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San Diego, CA 92106  
Phone: 619.546.9670



2704 - 2710 E. 18TH STREET  
NATIONAL CITY, CA 91950

### REVISIONS

DATE	DESCRIPTION
7/25/22	PC1 SUBMITTAL
3/16/23	PC2 SUBMITTAL

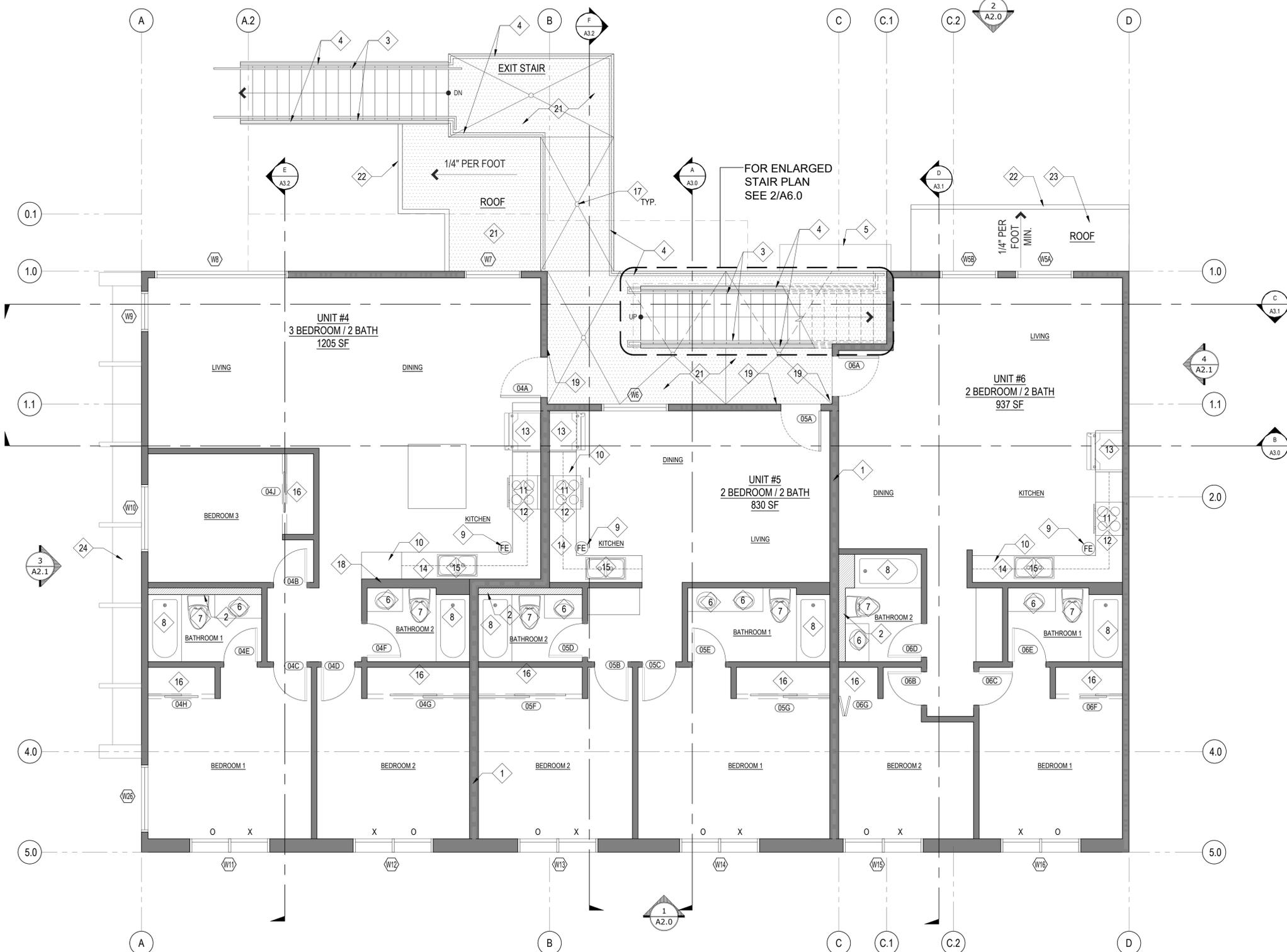
Bid Issue Date: TBD  
Date: 06/19/23  
Scale: AS NOTED  
Project No.: -  
Sheet Title:

GROUND FLOOR PLAN  
UNITS 1, 2, & 3  
AND LAUNDRY ROOM

Sheet No.:  
**A1.0**

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**FIRE SEPERATION DISTANCE**  
SEE SHEET A0.2 & A0.3 FOR F.S.D. REQUIREMENTS



**FLOOR PLAN KEYNOTES**

- 1 1-HOUR RATED UNIT SEPARATION WALLS. SEE DETAIL 2/A2.1
- 2 FUR WALL
- 3 1.5" DIAMETER WALL MOUNTED HANDRAIL MOUNTED NOT LESS THAN 34 INCHES AND NOT MORE THAN 38 INCHES TO TOP OR RAIL FROM FINISH TREAD. HANDRAIL SHALL HAVE A MIN. CLEARANCE OF 1.5" FROM FINISH SURFACE OF WALL. SEE DETAIL 43/A2.3
- 4 48 INCH HIGH (FROM FINISH FLOOR) PAINTED STEEL EXTERIOR GUARDRAIL. OPENING LIMITATIONS FOR GUARDRAIL MEMBERS SHALL NOT HAVE OPENINGS WHICH WOULD ALLOW THE PASSAGE OF A SPHERE 4 INCHES IN DIAMETER FROM THE WALKING SURFACE TO THE REQUIRED GUARD HEIGHT. SEE DETAIL 28/A2.2
- 5 ENTRY AWNING BELOW
- 6 LAVATORY W/ 27" COUNTERTOP WITH A MAXIMUM FLOW OF 1.2 GALLONS PER MINUTE. CASEWORK AND COUNTERTOP MATERIAL TO BE SELECTED BY ARCHITECT.
- 7 WATER CLOSET W/ MIN. CLEARANCE OF 30 INCHES WIDE (15 INCHES ON CENTER) AND 24 INCHES IN FRONT. WATER CLOSET WITH A MAXIMUM FLOW OF 1.28 GALLONS PER FLUSH
- 8 TUB & SHOWER COMBO - PROVIDED/SELECTED BY OWNER
- 9 NEW 1A:10B:C RATED FIRE EXTINGUISHER PER CBC 906
- 10 KITCHEN CASEWORK AND APPLIANCE LAYOUT AND DESIGN TO BE SELECTED BY INTERIOR DESIGNER AND OWNER
- 11 ELECTRIC OVEN AND RANGE COMBINATION TO BE SELECTED BY OWNER.
- 12 KITCHEN HOOD. SEE MECH. SHEETS FOR VENTILATION
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- 14 DISHWASHER TO BE SELECTED BY OWNER.
- 15 KITCHEN SINK TO BE SELECTED BY OWNER. KITCHEN FAUCETS WITH A MAXIMUM FLOW OF 1.8 GPM
- 16 16" DP. SHELF AND POLE PAINTED AND PRIMED
- 17 NEW DECK DRAIN. SEE DETAIL 27/A2.2.
- 18 2X8 WALL
- 19 ELECTRIC DOOR BUZZER / CHIME LOCATED A MAX. OF 48" ABOVE FINISH FLOOR & PERMANENTLY WIRED.
- 20 NOT USED.
- 21 1/4" SLOPE (MAX.) AT EXIT BALCONY, TYPICAL.
- 22 ALUMINUM ROOF GUTTER
- 23 CLASS 'A' ROOFING, FOR SPEC. SEE ROOF PLAN ON SHEET A1.3
- 24 TRELLIS BELOW

**WALL LEGEND**

- 1-HOUR UNIT SEPARATION DIMISING WALL(S) ASSEMBLY PER DETAIL 3/A2.1
- NON-RATED 2x STUD FRAMED WALL (SEE STRUCTURAL FOR BEARING REQUIREMENTS) FOR INTERIOR CONDITION SEE DETAIL 5/A2.1 FOR EXTERIOR CONDITION SEE DETAIL 1/A2.1 (SIM.)
- 1-HOUR EXTERIOR WALL(S) PER DETAIL 1/A2.1
- PER CBC TABLE 602 BASED ON "FIRE SEPARATION DISTANCE REQUIREMENT."
- PER CBC 1028.4.2 BASED ON EGRESS COURT LESS THAN 10 FT. WIDE
- PER CBC 708 BASED ON EGRESS BALCONY SEPARATION FROM INTERIOR.
- 2-HOUR EXTERIOR WALL(S) PER DETAIL 4/A2.2

**WINDOW LEGEND**

- X = OPERABLE GLAZING
- O = FIXED GLAZING

**FLOOR PLAN GENERAL NOTES**

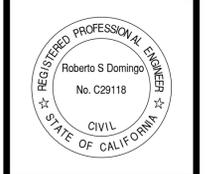
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**DECK WATERPROOF SYSTEM**

- MANUFACTURE: DEX-FLEX (BY DEX-O-TEX)  
 TYPE: MULTICOAT ELASTOMERIC WATERPROOF SYSTEM  
 APPROVALS: ICC-ESR 5036 & 1714
- LAYERS (FROM PLYWOOD TO TOP SURFACE):  
 1. DEX-O-TEX LATH MORTAR (S16)  
 2. 20 MIL. BARRIER GUARD MEMBRANE  
 3. 20 MIL. BARRIER GUARD MEMBRANE w/ RP FABRIC  
 4. RESISTIVE PROTECTION COATS MULTICOAT  
 5. AJ-44 XL SEALER - SLIP RESISTANT TEXTURE (COLOR, FINISH & FINAL TEXTURE SELECTED BY OWNER)
- SLOPE DIRECTION TOWARD DRAIN. MAX. SLOPE AT LEVEL LANDINGS SHALL NOT EXCEED 2% IN ANY DIRECTION. MAX. SLOPE IN ALL OTHER LOCATIONS SHALL NOT EXCEED 5% IN ANY DIRECTION

**arch 5 design**

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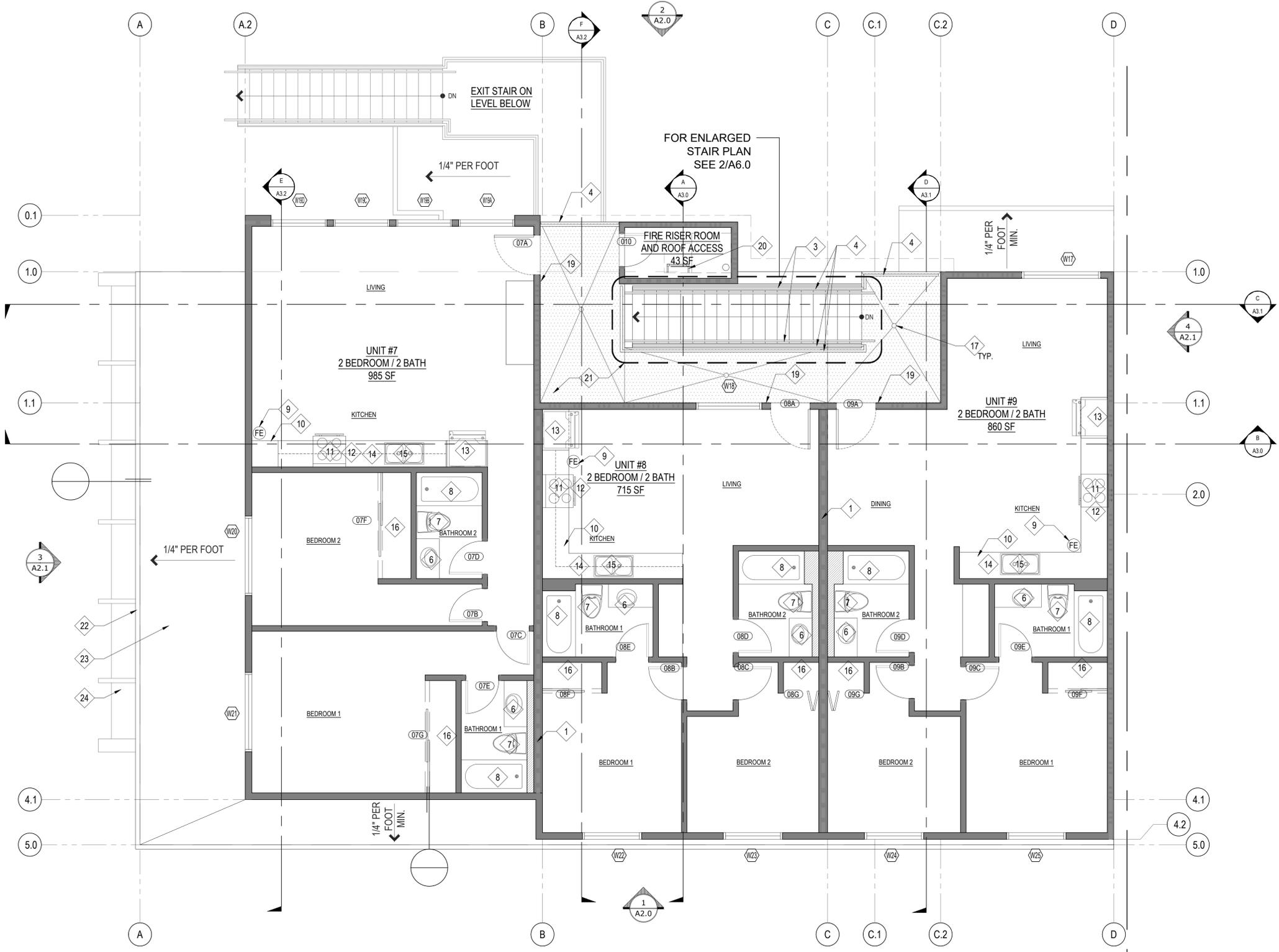
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 NATIONAL CITY, CA  
 91950

REVISIONS	
DATE	DESCRIPTION
7/25/22	
3/16/23	

Bid Issue Date:	TBD
Date:	06/19/23
Scale:	AS NOTED
Project No.:	-
Sheet Title:	SECOND FLOOR PLAN UNITS 4, 5 & 6
Sheet No.:	A1.1

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**FIRE SEPERATION DISTANCE**  
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- 2 NOT USED.
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- 6 LAVATORY W/ 22" COUNTERTOP WITH A MAXIMUM FLOW OF 1.2 GALLONS PER MINUTE. CASEWORK AND COUNTERTOP MATERIAL TO BE SELECTED BY ARCHITECT.
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- 19 ELECTRIC DOOR BUZZER / CHIME LOCATED A MAX. OF 48" ABOVE FINISH FLOOR & PERMANENTLY WIRED.
- 20 PRE-MANUFACTURED ROOF ACCESS LADDER. CONTRACTOR TO VERIFY THE MAKE & MODEL COMPLIES WITH LOCAL REGULATIONS.
- 21 1/4"12" SLOPE (MAX.) AT EXIT BALCONY, TYPICAL.
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**FLOOR PLAN GENERAL NOTES**

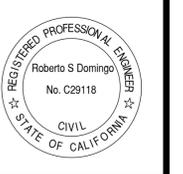
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DATE	DESCRIPTION
7/25/22	PC1 SUBMITTAL
3/16/23	PC2 SUBMITTAL

Bid Issue Date: TBD  
Date: 06/19/23  
Scale: AS NOTED  
Project No.: -  
Sheet Title:

THIRD FLOOR PLAN  
UNITS 7, 8 & 9

Sheet No.:

**A1.2**

No Fees per Government Code 6103 ]  
RECORDING REQUESTED BY: ]  
National City Housing Authority ]  
] ]  
] ]  
] ]  
WHEN RECORDED MAIL TO: ]  
National City Housing Authority ]  
Attention: Executive Director ]  
1243 National City Boulevard ]  
National City, CA 91950 ]

**AFFORDABLE HOUSING DENSITY BONUS AGREEMENT  
(2704 E 18th Street)**

THIS AFFORDABLE HOUSING DENSITY BONUS AGREEMENT (“Agreement”) is dated as of the \_\_\_ day of November, 2023, by and between the City of National City (“City”), and 2704 18th, LLC, a California limited liability company (“Developer”).

WHEREAS, Developer is the owner of that certain real property generally located at 2704 E 18th Street, in the City of National City, County of San Diego, more particularly described in Exhibit “A” attached hereto (“Property”); and

WHEREAS, Developer has applied to the City for a density bonus pursuant to Government Code section 65915, and Sections 18.48.030, et seq. of the National City Municipal Code, provided, however, the Developer has independently and of its own free will chosen not to increase the density of the Development to be built at the Property. Rather, the Developer is electing to take four (4) waivers, incentives, and concessions (as defined in Government Code Section 65915 and Sections 18.48.040 of the National City Municipal Code) in exchange for providing the two Affordable Units, as defined below; and

WHEREAS, Developer proposes to develop a total of nine (9) housing units on the Property (“Development”) and restrict the rent and occupancy of two (2) 922 square foot 2 bedroom residential dwelling units (“Affordable Units”) to lower-income households in exchange for the four (4) waivers, incentives and concessions; and

WHEREAS, This Agreement will serve to memorialize Developer’s obligation to provide the Affordable Units, the time frame for the construction and occupancy of the Affordable Units and the restriction of the Affordable Units by the recordation of this Agreement assuring affordability for a total of fifty-five (55) years measured from the issuance of final inspection approval for the Development.

NOW, THEREFORE, in consideration of the foregoing and of the mutual terms and covenants hereinafter set forth and other good and valuable consideration, the City and Developer agree as follows:

1. Acknowledgement of Incentives. Developer acknowledges and agrees that the Development is entitled to and is receiving four (4) waivers, incentives, and concessions as follows: (1) Parking ratio reduction of 0.5 spaces per unit for a total of 7 parking spaces provided, (2) Reduction of common open space requirement from four hundred (400) square feet to three hundred (300) square feet, (3) Remove private open space requirements for the project (4) Remove storage space requirements for residential units pursuant to and in accordance with Government Code 65915.

2. Developer Covenants. Pursuant to and in consideration of the waivers, incentives, and concessions, Developer hereby agrees and covenants on behalf of itself and its successors and assigns, and each successor in interest to the Property, that at all times during the term of this Agreement the two 922 square foot 2 bedroom residential dwelling units on the Property (designated as unit 5 and unit 9 on those certain plans for the project by Arch 5 Design, 2nd Building Permit Submittal dated March 16, 2023) shall be rented and occupied as the Affordable Units as set forth in this Agreement. As used herein, the term "Affordable Units" shall refer to the two (2) residential dwelling unit on the Property held available strictly in accordance with the terms and conditions set forth in this Agreement.

3. Affordability Restrictions.

(a) Area Median Income. As used herein, "Area Median Income" shall mean the area median income, as adjusted for family size, for San Diego County, established periodically by the California Department of Housing and Community Development ("HCD") and published in the California Code of Regulations. In the event HCD ceases to publish an established Area Median Income as aforesaid, the City may, in its sole discretion, use any other reasonably comparable method of computing Area Median Income.

(b) Occupancy Restrictions. During the term of this Agreement, the Affordable Units shall be occupied by a household whose income does not exceed the low income limits applicable to San Diego County, adjusted for household size, as published annually by HCD, earning at or below eighty percent (80%) of the Area Median Income.

(c) Rent Amount. During the term of this Agreement, the monthly rental rate for the Affordable Units (which shall include a utility allowance based on the utility allowance schedules published annually by the National City Housing Authority) shall not exceed 1/12 of thirty percent (30%) of eighty percent (80%) of the Area Median Income, as adjusted for assumed household size and utilities. The imputed household size for the Affordable Units shall be equal to the number of bedrooms in the unit plus one. For example, the rent for the studio Affordable Unit shall be calculated using eighty percent (80%) of the Area Median Income for a 1-person household.

4. Restrictions. The following restrictions shall also be applicable to the Affordable Units:

(a) No Relationship With Developer. The Affordable Units shall not be occupied or leased to Developer or any relative (by blood or marriage) of Developer or any person employed

by Developer or of any individuals who are members, principals, executives, directors, partners, or shareholders of Developer or in any entity having an ownership in Developer or in the Property.

(b) No FullTime Students. The Affordable Units shall not be occupied or leased to any household comprised exclusively of persons who are full-time students, unless such persons are eligible to file a joint federal income tax return and all such persons reside in the Affordable Units. The term “full-time student” shall be defined as any person who will be or has been a full-time student during five calendar months of the calendar year in question at an educational institution (other than a correspondence school) with regular faculty and students.

(c) No Student Dependents. Notwithstanding the provisions of section 4(b), the Affordable Units shall not be occupied or leased to any student dependent as defined in the U.S. Internal Revenue Code, unless the taxpayer (upon whom the student in question is dependent) resides in the same unit.

(d) No Owners of Real Property. The Affordable Units shall not be occupied or leased to any person or any household comprised of one or more persons who own real property.

(e) Liquid Asset Limitation. The Affordable Units shall not be occupied or leased to any person or household holding, directly or indirectly, liquid assets whose aggregate value exceeds, at the time of determination of eligibility, eighty percent (80%) of the then-current annual Area Median Income. As used herein, the term “liquid assets” refers to cash and assets which are readily convertible to cash within a reasonable period, including but not limited to savings and checking accounts, certificates of deposit of any term, marketable securities, money market and similar accounts, mutual fund shares, and insurance policy cash values. The term “liquid assets” shall not include retirement funds which are not readily accessible or which cannot be accessed by the tenant without the tenant incurring a penalty.

(f) Income of Co-Tenants. The income of all co-tenants and/or occupants shall be taken into account in determining whether a tenant or prospective tenant meets the requirements of this Agreement.

(g) Eligible Tenants Increased Income. If as a result of the annual recertification procedure described in Section 7 below, any household which was previously determined to be eligible to occupy the Affordable Unit is determined to have income in excess of the limit set forth in Section 3(b), above, that household will continue to be eligible to occupy the Affordable Unit, but shall commence paying rent equivalent to thirty percent (30%) of the household’s income and Developer shall pay to the City an amount equal the difference between the actual amount of rent paid by the household and the maximum amount of rent for the unit as set forth in Section 3(c), above. Notwithstanding the foregoing, if as a result of the annual recertification procedure described in Section 7 below, a household’s income is determined to be in excess of 120% of the Area Median Income, then the Developer shall take all reasonable steps to pursue eviction of the household.

5. Term. Pursuant to Government Code Section 65915, this Agreement shall be effective on the date of its recordation and shall remain in force until the date that is fifty-five (55) years from the date of issuance of final inspection approval of the Development by the City.

6. Deed of Trust.

(a) Execution and Recordation. Developer shall, concurrently with the execution of this Agreement, execute, acknowledge and record a deed of trust on the Property ensuring timely performance of the obligations set forth in this Agreement (“Deed of Trust”). The Deed of Trust shall be subordinated to the construction deed(s) of trust and/or permanent financing in favor of institutional lenders, as approved by the City Manager. The subordination shall be upon such terms and conditions and for such periods of time as the City Manager may approve to protect the provision of affordable housing as required by this Agreement. The City shall reconvey the Deed of Trust following the expiration of the term of this Agreement.

(b) Foreclosure on the Property. In the event of a foreclosure on the Property which eliminates the Deed of Trust, the new owner, upon five (5) days’ written notice from the City, shall: (i) execute, acknowledge, and deliver to the City an assignment and assumption of this Agreement in a form as approved by the City, in its reasonable discretion, for recordation; (ii) execute, acknowledge, and deliver to the City a deed of trust, in a form as approved by the City, in its reasonable discretion, to be recorded against the Property, in a lien priority immediately junior to the assignment and assumption of this Agreement which will secure the performance of this Agreement; and (iii) reimburse the City for all of its attorneys’ fees and costs in connection with the foregoing, including all costs, attorneys’ fees, and expert witnesses fees incurred by the City in obtaining compliance by the new owner, including those incurred in litigation, if any.

7. Verification of Eligibility. The Affordable Units shall not be rented to a prospective tenant or occupied by any person unless and until the City, through its designated staff, has verified that the prospective tenant or occupant is eligible and that affordable rents will be charged in accordance with the criteria set forth in this Agreement. Developer and/or its successor in interest shall ensure that all eligibility and rent criteria are met during the term of the Agreement. Annually, on the anniversary of the initial certification of compliance, as determined by the City, during the term of this Agreement, Developer or its successor in interest shall certify to the City that the Affordable Units is being occupied by eligible tenants. Said certification shall be on forms acceptable to the City.

8. Maintenance Standards. During the term of this Agreement, Developer shall maintain the Affordable Units and the Property in a condition that satisfies the more stringent of (a) the requirements of the applicable local codes or (b) the United States Department of Housing and Urban Development’s Uniform Physical Conditions Standards. The City shall have the right to inspect the Affordable Units and the Property prior to initial occupancy and periodically during the term of this Agreement, upon three business days’ notice to Developer. The City shall have the right to disclose results of those inspections to the appropriate enforcement authorities. Any deficiencies in the physical condition of the Affordable Units shall be corrected by Developer at Developer’s expense within thirty (30) days of the identification of such deficiency by the City and delivery of written notice of the same to Developer. Failure to maintain the unit(s) and the

Property in compliance with this section shall constitute a breach of this Agreement and subject the Developer to damages as set forth in Section 13 of this Agreement.

9. Interpretation and Construction. If any provision of this Agreement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Agreement and the application of such provisions to persons or circumstances, other than those as to which it is found to be invalid, shall not be affected thereby. Nothing contained herein shall be deemed compliance with or waiver of any provision of law or conditions of approval except as expressly stated herein.

10. Design, Construction and Occupancy Schedule for the Affordable Units. The Affordable Units shall receive final inspection approval no later than the date that the market-rate units receive final inspection and approval. Time is of the essence in the occupancy of the Affordable Units. The City Manager may, in his or her sole discretion, extend one or more time deadlines for performance as referenced in this Agreement for good cause.

11. Indemnity. Developer agrees to indemnify, defend and hold harmless the City, the National City Housing Authority, and any and all of their respective councilmembers, commissioners, members, officers, agents, servants, and employees (the "Indemnitees") from and against all claims, liens, claims of lien, losses, damages, costs, and expenses, whether direct or indirect, arising in any way from this Agreement, including the construction, sale, rental, or operation of the Development, the Property, and/or any of the units, or from the default by Developer in the performance of its obligations under this Agreement; provided, however, that Developer shall not be required to indemnify, defend, or hold harmless any of the Indemnitees from claims, losses, damages, costs, and expenses related to the sole negligence or willful misconduct of the Indemnitees.

12. Agreement Binding on Successors. The terms, covenants and conditions of this Agreement shall apply to, and shall bind the parties hereto and any successors or assignees. Developer shall not sell, transfer, or otherwise dispose of the Property, any portion thereof, or any interest therein unless the proposed transferee shall have executed and delivered to the City an express written assumption of all of Developer's obligations under this Agreement, on a form reasonably acceptable to the City. Upon assignment and assumption by a successor entity, as approved by the City, Developer shall be released from all prospective liability and responsibility under the terms of this Agreement. Developer agrees that all of its obligations hereunder shall constitute covenants, which shall run with the land and shall be binding upon the Property and upon every person having any interest therein at any time and from time to time during the term of this Agreement. Further, Developer agrees that, if a court of competent jurisdiction determines that the obligations set forth herein do not qualify as covenants running with the land, they shall be enforced as equitable servitudes. Any sale or conveyance of the Property shall be made subject to this Agreement.

13. Damages; Enforcement; Remedies; Security.

(a) Standing; Equitable Remedies; Remedies Cumulative. Developer expressly agrees and declares that the City shall be the proper party to, and shall have standing to, initiate

and pursue any and all actions or proceedings, at law or in equity, to enforce the provisions hereof and/or to recover damages for any event that is expressly stated to be a material default hereunder and which event remains uncured following sixty (60) days' written notice to Developer from the City (or up to one hundred twenty (120) days after notice, if actions to correct the material default have been timely initiated and are, in the reasonable opinion of the City, being diligently pursued), notwithstanding the fact that such damages or the detriment arising from such a material default that remains uncured as aforesaid may have actually been suffered by some other person or by the public at large. Further, Developer expressly agrees that injunctive relief and specific performance are proper pre-trial and/or post-trial remedies hereunder to assure compliance with this Agreement. Nothing in this Section and no recovery by the City shall restrict or limit the rights or remedies of persons or entities other than the City, against Developer in connection with the same or related acts by Developer, provided that Developer shall not be subject to duplicate awards or recoveries. The remedies set forth in this Section are cumulative and not mutually exclusive, except to the extent that their award is specifically determined to be duplicative by final order of a court of competent jurisdiction. Further, the award of damages hereunder shall not bar the exercise of police power or other governmental powers, or the pursuit of criminal, civil, or administrative penalties by the City in connection with any material default under this Agreement that remains uncured as aforesaid. Developer acknowledges that a material default under this Agreement that remains uncured may constitute a violation of state law.

(b) Remedies At Law For Breach Of Rental Restrictions. In the event of any material default under the provisions hereof that remains uncured following thirty (30) days' written notice to Developer from the City (or up to one hundred sixty (160) days after notice, if actions to correct the material default have been timely initiated and are, in the reasonable opinion of the City, being diligently pursued) regarding restrictions on rental of the Affordable Units, at the sole option of the City, the City shall be entitled to the following remedies at law to the extent they are not duplicative, the election of which shall not be required and may be revoked and/or modified until immediately prior to entry of judgment:

(1) Damages For Specific Breach. The City shall be entitled to recover compensatory damages, at its sole option in the event of a material uncured default under the terms of this Agreement. If the material uncured default in question involves the violation of Section 13(b) above, the amount of such compensatory damages shall be the product of multiplying (A) the number of months that the material uncured default in question has continued until the time of trial or cure, whichever occurs first, by (B) the result of subtracting (i) the rents properly chargeable hereunder for the Affordable Units (ii) the rents actually collected by Developer for the Affordable Units for the months in question, as reasonably determined by the City. Developer and the City agree that it would be extremely difficult or impracticable to ascertain the precise amount of actual damages accruing to the City as a result of such a material uncured default and that the foregoing formula is a fair and reasonable method of approximating such damages. The City shall be entitled to seek and to recover damages in separate actions for successive, separate breaches, which may occur during the term of this Agreement. Further, interest shall accrue on the amount of such damages from the date of the expiration of Developer's cure period for the material uncured breach in question at the rate of ten percent

(10%) per annum or the maximum rate then allowed by law, whichever is less. Nothing in this section shall preclude the award of exemplary damages as allowed by law.

(2) Acceleration and Liquidation of Future Performance. At the sole option of the City, if any material default by Developer in the performance of its obligations under this Agreement remains uncured for more than ninety (90) days after written notice to Developer by the City specifying such breach in reasonable detail (or such longer period of time, not to exceed six (6) months, as may reasonably be required for Developer to cure such breach exercising reasonable diligence), Developer's obligation to perform hereunder may be accelerated by the City and declared immediately due through the payment of a liquidated sum. Developer and the City agree that it would be extremely difficult and impractical to predict the precise cost to the City of (i) locating a rental unit equivalent to the Affordable Units, (ii) procuring such unit (through purchase, lease, or subsidies) at the rent discounts contemplated herein, (iii) performing the substantial administrative activities associated with replacing the Affordable Units, and (iv) inflation. Therefore, Developer and the City agree that, in the event of a material default hereunder by Developer that remains uncured as aforesaid, and upon written notice from the City to Developer that the City has elected to exercise its option to accelerate and liquidate Developer's performance hereunder in accordance with the provisions of this Section 13(b)(2), Developer shall pay, and the City shall be entitled to receive, within thirty (30) days of the City's delivery of such written notice, in complete liquidation of the City's future monetary damages and Developer's future obligations under this Agreement, a lump sum payment equal to: (A) the aggregate of the mathematical differences between the monthly rent for a "Comparable Market Rate Unit" (as determined by the City, using statistical data for units of the same size and location at the time of the breach) and the monthly rent allowable hereunder for the Affordable Units, at the date of delivery of the aforesaid written notice of election to accelerate, multiplied by (B) the number of months remaining in the term of this Agreement, from and after the date of delivery of the aforesaid written notice of election to accelerate. Developer and the City agree that acceleration is a fair and reasonable remedy for non-compliance hereunder, and that the foregoing formula represents a fair and reasonable method of approximating and liquidating the future monetary obligations of Developer to the City hereunder for purposes of any such optional acceleration by the City. Further, such liquidated amount shall automatically commence to bear interest at the rate of ten percent (10%) per annum or the maximum rate then allowed by law, whichever is less, from and after the date that the City delivers to Developer the aforesaid written notice of the City's election to accelerate Developer's performance hereunder, until paid. Further, if Developer breaches this Section 13(b)(2), the City shall be entitled to receive all reasonable attorneys' fees, costs of suit, title insurance charges, foreclosure costs, and other out-of-pocket expenses reasonably incurred in recovering such liquidated amount.

14. Monitoring Fees. Developer shall pay to the City, each year during the term of this Agreement, an annual monitoring fee, as determined by the City in schedules promulgated by the City from time to time. Failure to timely pay such fees shall constitute a material default under this Agreement.

15. General Provisions.



(h) Exhibits and Recitals Incorporated. All exhibits referred to in this Agreement are hereby incorporated in this Agreement by this reference, regardless of whether or not the exhibits are actually attached to this Agreement. The Recitals to this Agreement are hereby incorporated in this Agreement by this reference.

(i) Further Assurances. If Developer does not receive all of the necessary permits and approvals to construct the Development, Developer and the City agree that this Agreement and the density bonus granted herein shall be null and void and of no further force and effect and Developer and the City agree to take all reasonable steps and to execute and cause to be recorded all documents reasonably necessary to remove this Agreement and the Deed of Trust from the record chain of title to the Property.

16. Risk of Market Conditions. Developer shall bear sole responsibility for developing, constructing, and marketing the units covered by this Agreement, pursuant to the approvals that the City has issued for the Development and the requirements contained in this Agreement. The City shall have no obligation to amend this Agreement, and the Developer shall reimburse the City for administrative costs associated with any modification of this Agreement that shall require the approval of the City Council of National City.

17. Signature Authority. All individuals signing this Agreement for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the other party hereto that he or she has the necessary capacity and authority to act for, sign, and bind the respective entity or principal on whose behalf he or she is signing.

**CITY:**  
City of National City

By: \_\_\_\_\_  
Ben Martinez, Interim City Manager

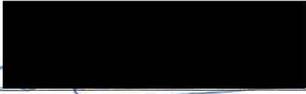
**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Barry J. Schultz, City Attorney

**[SIGNATURES CONTINUED ON FOLLOWING PAGE]**

**DEVELOPER:**

2704 18th, LLC, a California limited liability company

By:   
Clayc Thomas Cantwell

**ACKNOWLEDGMENT**

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

State of California )  
 )  
County of San Diego )

On October 2nd, 2023, before me, Kristin Rhodes, notary public, personally appeared Clay Thomas Cantwell, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(ies), and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature  \_\_\_\_\_

(Seal)



**ACKNOWLEDGMENT**

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

State of California            )  
  )  
County of San Diego         )

On \_\_\_\_\_, 2023, before me, \_\_\_\_\_, notary public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**EXHIBIT "A"**

**Legal Description of the Property**

That certain real property located in the City of National City, County of San Diego, State of California more particularly described as follows:

Lot Number: 270,271 City, Municipality, Township: NATIONAL CITY Subdivision Name: LINCOLN ACRES ANNEX #2 Tract No: 1748 Brief Description: TR 1748 LOT 271\*(EX ST WID)W 95 FT OF LOT 270 & OF Recorder's Map Ref: 001748

ASSESSORS PARCEL NUMBER: 558-250-32-00

**No Fees per Government Code 6103**

**Recording Requested By:**  
National City Housing Authority

**When Recorded Mail To:**  
National City Housing Authority  
Attention: Executive Director  
1243 National City Boulevard  
National City, CA 91950

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**PERFORMANCE DEED OF TRUST  
(2704 East 18th Street)**

**THIS DEED OF TRUST** is dated as of the \_\_\_ day of November, 2023, between 2704 18th LLC, a California limited liability company (“Trustor”), whose address is 2825 Dewey Road, unit 207, San Diego, California 92106, Stewart Title Guaranty Company (“Trustee”), and the City of National City (“Beneficiary”), whose address is 1243 National City Boulevard, National City, California 91950.

**TRUSTOR HEREBY** irrevocably grants, transfers, and assigns to Trustee, in trust, with power of sale, all that property in the City of National City, County of San Diego, State of California, described as (“Property”):

(See Legal Description - Exhibit “A”)

**FOR THE PURPOSE OF SECURING:**

- (1) The timely performance of the Affordable Housing Density Bonus Agreement of even date herewith (“Agreement”), between the Beneficiary and the Trustor, and any renewals, extensions, modifications, or amendments to the Agreement by the Trustor and each and every covenant set forth herein; and
- (2) The performance of each agreement contained in this Deed of Trust.

**A. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:**

1. Defense of Security. To appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys’ fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose on this Deed of Trust.

2. Payment of Liens and Taxes. To pay, when due, all taxes and assessments affecting the Property, including assessments on appurtenant water stock, all encumbrances, charges, and liens, with interest, on the Property or any part of the Property, which appear to be prior or superior to this Deed of Trust, and all costs, fees, and expenses of this Deed of Trust. If Trustor fails to make any payment or to do any act as provided in this Deed of Trust, then Beneficiary or Trustee may (but is not obligated to) make the payment or do the act in the required manner and to the extent deemed necessary by Beneficiary or Trustee to protect the security of this Deed of Trust. The performance by Beneficiary or Trustee of such an act shall not require notice to or demand upon Trustor and shall not release Trustor from any obligation under this Deed of Trust. Beneficiary or Trustee shall also have the following related rights and powers: to enter upon the Property for the foregoing purposes; to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee; to pay, purchase, contest, or compromise any encumbrance, charge, or lien that in the judgment of either appears to be prior or superior to this Deed of Trust; to employ counsel; and to pay necessary expenses and costs, including attorneys' fees.

3. Reimbursement of Costs. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to this Deed of Trust, with interest from date of expenditure at the amount allowed by law in effect at the date of this Deed of Trust, and to pay any reasonable amount demanded by Beneficiary (up to the maximum allowed by law at the time of the demand) for any statement regarding the obligation secured by this Deed of Trust.

4. Use. That it will not permit or suffer the use of any of the Property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed.

5. Incorporation of Agreement. That the Agreement is incorporated herein by reference and made a part of this Deed of Trust.

6. Performance of Other Obligations. To perform, in a timely manner, each agreement and covenant by and between Trustor on any and all notes, loans and deeds of trust that are senior and/or junior to this Deed of Trust. A default in any of these obligations, beyond any applicable cure period, shall constitute a default under this Deed of Trust.

**B. THE PARTIES AGREE THAT:**

7. Waiver of Late Payments. By accepting payment of any sum secured by this Deed of Trust after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any indebtedness secured by this Deed of Trust.

8. Full Reconveyance. Upon expiration of the term of the Agreement and written request of Beneficiary, and payment of Trustee's fees and charges, Trustee shall reconvey, without warranty, the Property then subject to this Deed of Trust. The recitals in the reconveyance shall be conclusive proof of the truthfulness of the recitals. The grantee in the reconveyance may be described as "the person or persons legally entitled thereto."

9. Assignment of Rents. As additional security, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority during the continuance of this Deed of Trust, to collect the rents, issues, and profits of the Property, but reserves the right, prior to any default by Trustor in payment of any indebtedness secured by this Deed of Trust or in the performance of any agreement under this Deed of Trust, to collect and retain these rents, issues, and profits as they become due and payable. Upon any such default beyond any applicable cure period, Beneficiary may, without notice and without regard to the adequacy of the security for the indebtedness secured by this Deed of Trust, either personally or by agent or court-appointed receiver, do the following: enter upon and take possession of the Property or any part of the Property; sue for or otherwise collect all rents, issues, and profits, including those past due and unpaid; and apply these rents, issues, and profits, less costs and expenses of operation and collection (including reasonable attorneys' fees), upon any indebtedness secured by this Deed of Trust, in any order determined by Beneficiary. The exercise of the foregoing rights by Beneficiary shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such a notice.

10. Default and Foreclosure. Upon default under the Agreement, subject to any applicable notice and cure rights contained in the Agreement, or in the performance of any obligation under this Deed of Trust beyond any applicable cure period, Beneficiary may declare all obligations secured by this Deed of Trust immediately due and payable by delivering to Trustee a written declaration of default and demand for sale and a written notice of default and election to sell the Property. Trustee shall cause the notice of default and election to sell to be recorded. After the required time period has lapsed following the recordation of the notice of default, and after notice of sale has been given as required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place specified in the notice of sale, either as a whole or in separate parcels, and in any order determined by Trustee, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser at the auction its deed conveying the Property sold, but without any covenant or warranty, express or implied. The recital in the deed of any matter or fact shall be conclusive proof of the truthfulness of the recital. Any person, including Trustor, Trustee, or Beneficiary, may purchase at the sale. After deducting all costs, fees, and expenses of Trustee and Beneficiary under this paragraph, including costs of procuring evidence of title incurred in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms of this Deed of Trust, not then repaid, with accrued interest at the amount allowed by law in effect at the date of this Deed of Trust; all other sums then secured by this Deed of Trust; and the remainder, if any, to the person or persons legally entitled to the remaining proceeds.

11. Due on Sale or Further Encumbrance. Trustor shall not sell, transfer or otherwise dispose of the real property described in this deed of trust, or any portion thereof, or any interest therein unless the proposed transferee shall have executed and delivered to the Beneficiary an express written assumption of all of Trustor's obligations hereunder this deed of trust, on a form reasonably acceptable to the Beneficiary. Consent to one transaction of this type will not constitute a waiver of the right to acquire consent to future or successive transactions.

12. General Provisions. This Deed of Trust applies to, inures to the benefit of, and binds all parties to this Deed of Trust and their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" shall mean the City of National City, and its successors and assigns. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

13. Substitution of Trustees. Beneficiary, or any successor in ownership of any obligations secured by this Deed of Trust, may from time to time, by written instrument, substitute a successor or successors to any Trustee named in or acting under this Deed of Trust. The substitution instrument shall contain the name of the original Trustor, Trustee, and Beneficiary under this Deed of Trust, the book and page where this Deed is recorded, and the name and address of the new Trustee. When executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, the substitution instrument shall be conclusive proof of proper substitution of the successor Trustee or Trustees. Any successor Trustee or Trustees shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers, and duties.

14. Cumulative Powers and Remedies. The powers and remedies conferred in this Deed of Trust are concurrent and cumulative to all other rights and remedies provided in this Deed of Trust or given by law. These powers and remedies may be exercised singly, successively, or together, and as often as deemed necessary.

15. Conclusiveness of Recitals. The recitals contained in any reconveyance, trustee's deed, or any other instrument executed by the Trustee from time to time under the authority of this Deed of Trust or in the exercise of its powers or the performance of its duties under this Deed of Trust, shall be conclusive evidence of their truth, whether stated as specific and particular facts, or in general statements or conclusions absent manifest error. Further, the recitals shall be binding and conclusive upon the Trustor, its heirs, executors, administrators, successors, and assigns, and all other persons.

16. Attorneys' Fees. If any action is brought for the foreclosure of this Deed of Trust or for the enforcement of any provision of this Deed of Trust (whether or not suit is filed), Trustor agrees to pay all costs and expenses of Beneficiary and Trustee, including reasonable attorneys' fees; and these sums shall be secured by this Deed of Trust. The prevailing party in any litigation, including but not limited to arbitration, writ petitions, complaints, and/or actions for declaratory relief, brought to enforce, interpret or reform the provisions of this Deed of Trust shall be entitled to reasonable attorneys' and experts' fees, costs and out-of-pocket expenses (whether or not considered recoverable "costs" under applicable statute) incurred in such litigation.

17. Request for Notices of Default and Sale. In accordance with Section 2924b of the California Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under that Deed of Trust executed by the Trustor concerning this Property be mailed to:

City of National City  
Attention: Executive Director  
1243 National City Boulevard  
National City, CA 91950

**NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.**

18. Inspections. Trustor shall permit Beneficiary and its agents or representatives, to inspect the Property at any and all reasonable times, upon 48 hours advance notice to Trustor. Inspections shall be conducted so as not to interfere with the tenants' use and enjoyment of the Property.

19. Hazardous Materials Defined. For purposes of this Deed of Trust, "Hazardous Materials" means and includes any flammable, explosive, or radioactive materials or hazardous, toxic, or dangerous wastes, substances, or related materials or any other chemicals, materials, or substances, exposure to which is prohibited, limited, or regulated by any federal, state, county, regional, or local authority or which, even if not so regulated, may or could pose a hazard to the health and safety of the occupants of the Property or of property adjacent to the Property, including, but not limited to, asbestos, PCBs, petroleum products and byproducts, substances defined or listed as "hazardous substances" or "toxic substances" or similarly identified in, pursuant to, or for purposes of, the California Solid Waste Management, Resource Recovery and Recycling Act (California Government Code Section 66700 *et seq.*), the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. Section 9601, *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, *et seq.*), the Resource Conservation and Recovery act (42 U.S.C. Section 6901, *et seq.*), Section 25117 or Section 25316 of the California Health & Safety Code; and any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material; or any substances or mixture regulated under the Toxic Substance Control Act of 1976, as now or hereafter amended (15 U.S.C. Section 2601 *et seq.*); and any "toxic pollutant" under the Clean Water Act, as now or hereafter amended (33 U.S.C. Section 1251 *et seq.*); and any hazardous air pollutant under the Clean Air Act, as now or hereafter amended (42 U.S.C. Section 7901 *et seq.*). Notwithstanding the above, the term "Hazardous Materials" shall not include small amounts of chemicals, cleaning agents, and the like commonly employed in routine household uses in a manner typical of occupants in other similar residential properties provided they are used in compliance with applicable laws. The term "Hazardous Materials Laws" means any federal, state, or local law, code, statute, ordinance, rule, regulation, rule of common law, or guideline relating to Hazardous

Materials now or hereafter enacted or promulgated (collectively, and including, without limitation, any such laws which require notice of the use, presence, storage, generation, disposal, or release of any Hazardous Materials to be provided to any party).

20. Trustor's Hazardous Materials Representations and Warranties and Indemnity. In addition to the general and specific representations, covenants, and warranties set forth in the Deed of Trust or otherwise, Trustor represents, covenants, and warrants, with respect to Hazardous Materials, as follows:

(a) Neither Trustor nor, to the best knowledge of Trustor, any other person, has ever caused or permitted any Hazardous Materials to be manufactured, placed, held, located, or disposed of on, under, or at the Property or any part thereof, and neither the Property nor any part thereof, or any property adjacent thereto, has ever been used (whether by the Trustor or, to the best knowledge of the Trustor, by any other person) as a manufacturing site, dump site, or storage site (whether permanent or temporary) for any Hazardous Materials;

(b) Trustor hereby agrees to indemnify Beneficiary, its officers, employees, contractors and agents, and hold Beneficiary, its officers, employees, contractors and agents harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses, and claims of any and every kind whatsoever paid, incurred, or suffered by, or asserted against Beneficiary, its officers, employees, contractors, and agents for, with respect to, or as a direct or indirect result of, the presence or use, generation, storage, release, threatened release or disposal of Hazardous Materials on or under the Property or the escape, seepage, leakage, spillage, discharge, emission, or release of any Hazardous Materials from the Property (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under CERCLA, any so-called "Superfund" or "Superlien" law, or any other federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Materials) regardless of whether or not caused by or within the control of Trustor, except to the extent arising as a result of the negligence or willful misconduct of Beneficiary.

(c) Trustor has not received any notice of (i) the happening of any event involving the use, spillage, discharge, or cleanup of any Hazardous Materials ("Hazardous Discharge") affecting Trustor or the Property or (ii) any complaint, order, citation, or notice with regard to air emissions, water discharges, noise emissions, or any other environmental, health or safety matter affecting Trustor or the Property ("Environmental Complaint") from any person or entity, including, without limitation, the United States Environmental Protection Agency ("EPA"). If Trustor receives any such notice after the date hereof, then Trustor will give, within seven (7) business days thereafter, oral and written notice of same to Beneficiary.

(d) Without limitation of Beneficiary's rights under this Deed of Trust, Beneficiary shall have the right, but not the obligation, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve, or minimize the impact of, or otherwise deal with, any such Hazardous Materials or Environmental Complaint upon its receipt of any notice from any person or entity, including without limitation, the EPA, asserting the existence of any Hazardous Materials or an Environmental Complaint on or pertaining to the

Property which, if true, could result in an order, suit or other action against Trustor affecting any part of the Property by any governmental agency or otherwise which, in the sole opinion of Beneficiary, could jeopardize its security under this Deed of Trust. All reasonable costs and expenses incurred by Beneficiary in the exercise of any such rights shall be secured by this Deed of Trust and shall be payable by Trustor upon demand together with interest thereon at a rate equal to the highest rate payable by law.

(e) The foregoing representation, covenants, indemnities, and warranties shall be continuing and shall be true and correct for the period from the date hereof to the release of this Deed of Trust (whether by satisfaction of the obligations secured hereby or foreclosure or action in lieu thereof), and these representations, covenants, indemnities and warranties shall survive such release.

21. Authority to Sign. All individuals signing this Deed of Trust for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the Beneficiary that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

**TRUSTOR:**

2704 18th LLC, a California limited liability company

By: 

Clay Thomas Cantwell

**ACKNOWLEDGMENT**

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

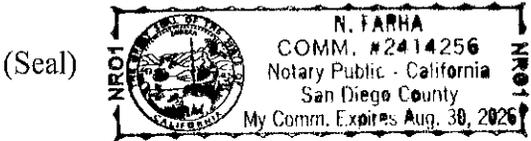
State of California )  
 )  
County of San Diego )

On July 9, 2023, before me, N. Farha, notary public, personally appeared Clay Thomas Cantwell, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she/they executed the same in his her/their authorized capacity(ies), and that by his her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature 



**Exhibit "A"**

**Legal Description**

That certain real property located in the City of National City, County of San Diego, State of California more particularly described as follows:

Lot Number: 270,271 City, Municipality, Township: NATIONAL CITY Subdivision Name: LINCOLN ACRES ANNEX #2 Tract No: 1748 Brief Description: TR 1748 LOT 271\*(EX ST WID)W 95 FT OF LOT 270 & OF Recorder's Map Ref: 001748

ASSESSORS PARCEL NUMBER: 558-250-32-00

**No Fees per Government Code 6103**

**Recording Requested By:**

**When Recorded Mail To:**

National City Housing Authority  
Attention: Executive Director  
1243 National City Boulevard  
National City, CA 91950

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**SUBORDINATION AGREEMENT  
(2704 East 18<sup>th</sup> Street)**

**THIS SUBORDINATION AGREEMENT** (“Subordination Agreement”) is dated as of the \_\_\_ day of November, 2023, by the City of National City (“City”), 2704 18th LLC, a California limited liability company (“Borrower”) and Fidelis Private Fund (“Lender”).

**RECITALS**

A. Borrower is the owner of certain real property generally located at 2704 East 18th Street, in the City of National City, County of San Diego, California (“Property”), as more particularly described in that certain Deed of Trust dated as of October 5, 2021, and recorded in the Office of the Recorder of the County of San Diego, State of California on October 5, 2021, as Instrument No. 2021-0695980 (“Lender Deed of Trust”).

B. Concurrently with recordation of this Subordination Agreement, Borrower is causing the following to be recorded against the Property in the Office of the Recorder of the County of San Diego, State of California: (i) an Affordable Housing Density Bonus Agreement (2704 East 18th Street) (“Density Bonus Agreement”) by and between the City and Borrower; and (ii) a Deed of Trust (“City Deed of Trust”) executed by the Borrower in favor of the City.

C. City, Lender, and Borrower all agree and desire to execute this Subordination Agreement to memorialize their understanding and agreement with regard to the respective priorities of each of the above-referenced documents. It is the intention of the parties that the Density Bonus Agreement shall unconditionally be and remain at all times a lien, claim, and charge on the Property prior and superior to the Lender Deed of Trust and that the Lender Deed of Trust shall unconditionally be and remain at all times a lien, claim and charge on the Property prior and superior to the City Deed of Trust.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the City, Lender and Borrower hereby agree as follows:

**AGREEMENT**

1. Subordination of the Lender Deed of Trust to the Density Bonus Agreement. The Lender Deed of Trust, together with all rights and privileges of Lender and Borrower thereunder, are hereby irrevocably and unconditionally made subordinate to and subject to the Density Bonus Agreement and the Density Bonus Agreement is and will remain at all times, a lien, claim, and charge on the Property prior and superior to the Lender Deed of Trust and to all rights and privileges of Lender and Borrower thereunder; provided, however, that a violation of the Density Bonus Agreement shall not defeat, render invalid, or limit the Lender Deed of Trust.

2. Subordination of the City Deed of Trust to the Lender Deed of Trust. The City Deed of Trust, together with all rights and privileges of the City and Borrower thereunder, are hereby irrevocably and unconditionally made subordinate to and subject to the Lender Deed of Trust and the Lender Deed of Trust will remain at all times a lien, claim, and charge on the Property prior and superior to the City Deed of Trust and all rights and privileges of the City and Borrower thereunder.

3. Notices. City, Lender and Borrower agree to give to each other copies of all notices of events of default under their respective documents. All notices given under this Subordination Agreement shall be in writing and sent to the party at its address appearing below (a) by certified or registered U.S. mail, return receipt requested, (b) overnight by a nationally recognized overnight courier such as UPS Overnight or FedEx, or (c) by personal delivery. All notices shall be effective upon receipt (or refusal to accept delivery). These addresses may be changed by any party by written notice to all other parties.

If to the City:                      City of National City  
   Attention: City Manager  
   1243 National City Boulevard  
   National City, CA 91950

If to Borrower:                      2704 18th LLC  
   2825 Dewey Road, Unit 207  
   San Diego, CA 92106

If to Lender:                          Fidelis Private Fund. John P. Lloyd  
   12481 High Bluff Drive, Ste 160  
   San Diego, CA 92130

4. Whole Agreement; Binding Effect. This Subordination Agreement is the whole and only agreement with regard to the priority of the lien, claim and charge of the Density Bonus Agreement, the Lender Deed of Trust and the City Deed of Trust. This Subordination Agreement is binding on and inures to the benefit of the legal representatives, heirs, successors and assigns of the parties.

5. Attorney's Fees. If any party to this Subordination Agreement brings an action to interpret or enforce its rights under this Subordination Agreement, the prevailing party will be entitled to recover its costs and reasonable attorney's fees as awarded in the action.

6. Governing Law. This Subordination Agreement is governed by, and shall be construed in accordance with, the laws of the State of California.

7. Counterparts. This Subordination Agreement may be executed in counterparts, and all counterparts constitute but one and the same document.

8. Signatures. All individuals signing this Subordination Agreement for a party which is a corporation, limited liability company, partnership, or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to one another that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

**IN WITNESS WHEREOF**, the parties have executed this Subordination Agreement as of the date first set forth above and agree to be bound hereby.

**LENDER:**



Fidelis Private Fund. John P. Lloyd

**[SIGNATURES CONTINUED ON FOLLOWING PAGE]**

**BORROWER:**

2704 18th LLC, a California limited liability company

By:   
Claye Thomas Cantwell

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

**CITY:**  
City of National City

By: \_\_\_\_\_  
Ben Martinez, Interim City Manager

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Barry J. Schultz, City Attorney

**ACKNOWLEDGMENT**

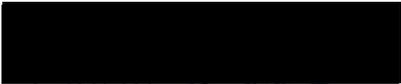
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 )  
County of San Diego )

On October 2nd, 2023, before me, Kristin Rhodes, notary public, personally appeared Clay Thomas Cantwell, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(ies), and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature  \_\_\_\_\_

(Seal)



**ACKNOWLEDGMENT**

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

State of California )  
 )  
County of San Diego )

On October 3, 2023, 2023, before me, Monica Johnston, notary public, personally appeared John Lloyd, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature  (Seal)



**ACKNOWLEDGMENT**

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

State of California            )  
  )  
County of San Diego         )

On \_\_\_\_\_, 2023, before me, \_\_\_\_\_, notary public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**RESOLUTION NO. 2023-**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, APPROVING AN AFFORDABLE HOUSING DENSITY BONUS AGREEMENT AND RELATED DOCUMENTS WITH 2704 18TH, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND RESTRICTING THE RENT AND OCCUPANCY OF TWO UNITS TO LOW-INCOME HOUSEHOLDS IN EXCHANGE FOR FOUR INCENTIVES PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 65915 – 65918 FOR THE DEVELOPMENT OF NINE HOUSING UNITS LOCATED AT 2704 EAST 18TH STREET IN NATIONAL CITY.**

**WHEREAS**, 2704 18<sup>th</sup>, LLC, a California Limited Partnership (“Developer”), is developing the property located at 2704 E 18th Street; and

**WHEREAS**, the current zoning allows for the construction of 9 units by right and the developer has requested a density bonus; and

**WHEREAS**, the Developer agreed to restrict the rent and occupancy of two units (“Affordable Units”) to low-income households below 80% of the area median income; and

**WHEREAS**, in exchange for the Affordable Units, the Developer is allowed four incentives, pursuant to California Government Code Section 65915-65918; and

**WHEREAS**, the incentives the Developer selected are 1) parking ratio reduction of 0.5 spaces per unit for a total of 7 parking spaces provided; 2) reduction of common open space required from four hundred (400) square feet to three hundred (300) square feet; 3) removal of private open space requirements for the project; and 4) removal of storage space requirements for residential units; and

**WHEREAS**, the Developer agreed to enter into an Affordable Density Housing Bonus Agreement (“Agreement”) to memorialize the Developer’s obligation to provide the two affordable units; and

**WHEREAS**, the Agreement provides a time frame for the construction and occupancy of the Affordable Units and will be recorded to assure affordability for fifty-five (55) years; and

**WHEREAS**, the Developer agreed to enter into a Deed of Trust (“Trust”) to secure the property and it ensures the timely performance of the Affordable Housing Density Bonus Agreement; and

**WHEREAS**, the Developer agreed to enter into a Subordination Agreement for the Agreement to be recorded against the Property by the Developer in favor of the City.

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

**Section 1:** The City Council hereby approves the Affordable Housing Density Bonus Agreement with 2704 18th, LLC. restricting the rent and occupancy of two units to a low-income household in exchange for four incentives pursuant to California Government Code Sections 65915–65918 for the development of 9 housing units located at 2704 E 18th Street in National City. The four incentives include:

1. Parking reduction of 0.5 spaces per unit for a total of 7 parking spaces;
2. Reduction of common open space required from four hundred (400) square feet to three hundred (300) square feet;
3. Removal of private open space requirements for the project; and
4. Removal of storage space requirements for residential units.

**Section 2:** The City Council hereby approves the Deed of Trust with 2704 18th, LLC for the property located at 2704 E 18th Street in National City.

**Section 3:** The City Council also hereby approves a Subordination Agreement to be recorded against the Property by the Developer in favor of the City.

**Section 4:** The City Clerk shall certify the passage and adoption of this Resolution and enter it into the book of original Resolutions.

**PASSED and ADOPTED this 7th day of November 2023.**

\_\_\_\_\_  
Ron Morrison, Mayor

**ATTEST:**

\_\_\_\_\_  
Shelley Chapel, MMC, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Barry J. Schultz, City Attorney



# AGENDA REPORT

**Department:** Police Department  
**Prepared by:** Salvador Gil, Corporal  
**Meeting Date:** Tuesday, November 7, 2023  
**Approved by:** Ben Martinez, Interim City Manager

**SUBJECT:**

Approval of a Resolution Authorizing the Acceptance of Justice Assistance Grant (JAG) and Appropriation of Funds to Purchase Red Dot Pistol Optics and Holsters.

**RECOMMENDATION:**

Adopt a Resolution Entitled, "Resolution of the City Council of the City of National City, California, Authorizing the Acceptance of the National City Police Department's Grant Award of \$31,358.00 from the 2023 Edward Byrne Memorial Justice Assistance Grant (JAG) Program to Purchase Red Dot Pistol Optics and Holsters, and Authorizing the Establishment of an Appropriation and Corresponding Revenue Budget."

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

Not Applicable.

**EXPLANATION:**

The Office of Justice Programs (OJP) Bureau of Justice Assistance (BJA) and the U.S. Department of announced that the City of National City is eligible for a grant award of \$31,358 from the Fiscal Year 2023 Edward Byrne Memorial Justice Assistance Grant (JAG) Program – Local Solicitation, for the purchase of red dot pistol optics and holsters as dictated within the grant.

The JAG Program provides States and local governments with critical funding necessary to support a range of program areas, including, but not limited to, law enforcement, prosecution, court programs, prevention, and education programs. Applicants are required to complete an online application and submit a budget and various narratives justifying the use of the funds.

The 2023 Edward Byrne Memorial Justice Assistance Grant (JAG) Program is a direct grant allocation program and does not require the City to allocate any upfront costs or matching funds.

The City is required to make the grant application available for review and public comment for no less than 30 days and a formal award will not be made until the 30-day review requirement has been met.

**FINANCIAL STATEMENT:**

Revenue:	290-11684-3498	Other Federal Grants
Expense:	290-411-684-518-0000	Public Safety Equipment

**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 - 2023 JAG NCPD Agency Information
- Exhibit B - 2023 JAG Disclosure of Lobbying Activity
- Exhibit C - 2023 Disclosure of High-Risk Status
- Exhibit D - 2023 Form Application Test Case
- Exhibit E - 2023 JAG Narrative
- Exhibit F - 2023 JAG Grant Submission Confirmation
- Exhibit G - 2023 JAG Award Letter-Project Info-Budget Summary
- Exhibit H - 2023 JAG Certification
- Exhibit I - 2023 JAG Resolution



**Background**

Recipients' financial management systems and internal controls must meet certain requirements, including those set out in the "Part 200 Uniform Requirements" (2.C.F.R. Part 2800).

Including at a minimum, the financial management system of each OJP award recipient must provide for the following:

- (1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, and the name of the Federal agency.
- (2) Accurate, current, and complete disclosure of the financial results of each Federal award or program.
- (3) Records that identify adequately the source and application of funds for Federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income, and interest, and be supported by source documentation.
- (4) Effective control over, and accountability for, all funds, property, and other assets. The recipient must adequately safeguard all assets and assure that they are used solely for authorized purposes.
- (5) Comparison of expenditures with budget amounts for each Federal award.
- (6) Written procedures to document the receipt and disbursement of Federal funds including procedures to minimize the time elapsing between the transfer of funds from the United States Treasury and the disbursement by the OJP recipient.
- (7) Written procedures for determining the allowability of costs in accordance with both the terms and conditions of the Federal award and the cost principles to apply to the Federal award.
- (8) Other important requirements related to retention requirements for records, use of open and machine readable formats in records, and certain Federal rights of access to award-related records and recipient personnel.

1. Name of Organization and Address:

Organization Name: **NationalCity Police Department**  
 Street1: **1200 National City Blvd**  
 Street2:   
 City: **National City**  
 State: **CA**  
 Zip Code: **91950**

2. Authorized Representative's Name and Title:

Prefix:  First Name: **Salvador** Middle Name:   
 Last Name: **Gil** Suffix:   
 Title: **Police Corporal**

3. Phone: **619-600-6535** 4. Fax:

5. Email: **sgil@nationalcityca.gov**

6. Year Established: <b>1887</b>	7. Employer Identification Number (EIN): <b>956000749</b>	8. Unique Entity Identifier (UEI) Number: <b>72494073</b>
-------------------------------------	--	--

9. a) Is the applicant entity a nonprofit organization (including a nonprofit institution of higher education) as described in 26 U.S.C. 501(c)(3) and exempt from taxation under 26 U.S.C. 501(a)?  Yes  No

If "No" skip to Question 10.  
If "Yes", complete Questions 9. b) and 9. c).



**AUDIT INFORMATION**

9. b) Does the applicant nonprofit organization maintain offshore accounts for the purpose of avoiding paying the tax described in 26 U.S.C. 511(a)?

Yes  No

9. c) With respect to the most recent year in which the applicant nonprofit organization was required to file a tax return, does the applicant nonprofit organization believe (or assert) that it satisfies the requirements of 26 C.F.R. 53.4958-6 (which relate to the reasonableness of compensation of certain individuals)?

Yes  No

If "Yes", refer to "Additional Attachments" under "What An Application Should Include" in the OJP solicitation (or application guidance) under which the applicant is submitting its application. If the solicitation/guidance describes the "Disclosure of Process related to Executive Compensation," the applicant nonprofit organization must provide -- as an attachment to its application -- a disclosure that satisfies the minimum requirements as described by OJP.

For purposes of this questionnaire, an "audit" is conducted by an independent, external auditor using generally accepted auditing standards (GAAS) or Generally Governmental Auditing Standards (GAGAS), and results in an audit report with an opinion.

10. Has the applicant entity undergone any of the following types of audit(s)(Please check all that apply):

"Single Audit" under OMB A-133 or Subpart F of 2 C.F.R. Part 200

Financial Statement Audit

Defense Contract Agency Audit (DCAA)

Other Audit & Agency (list type of audit):

None (if none, skip to question 13)

11. Most Recent Audit Report Issued:  Within the last 12 months  Within the last 2 years  Over 2 years ago  N/A

Name of Audit Agency/Firm:

**AUDITOR'S OPINION**

12. On the most recent audit, what was the auditor's opinion?

Unqualified Opinion  Qualified Opinion  Disclaimer, Going Concern or Adverse Opinions  N/A: No audits as described above

Enter the number of findings (if none, enter "0"): \_\_\_\_\_

Enter the dollar amount of questioned costs (if none, enter "\$0"): \_\_\_\_\_

Were material weaknesses noted in the report or opinion?

Yes  No

13. Which of the following best describes the applicant entity's accounting system:

Manual  Automated  Combination of manual and automated

14. Does the applicant entity's accounting system have the capability to identify the receipt and expenditure of award funds separately for each Federal award?

Yes  No  Not Sure

15. Does the applicant entity's accounting system have the capability to record expenditures for each Federal award by the budget cost categories shown in the approved budget?

Yes  No  Not Sure

16. Does the applicant entity's accounting system have the capability to record cost sharing ("match") separately for each Federal award, and maintain documentation to support recorded match or cost share?

Yes  No  Not Sure



17. Does the applicant entity's accounting system have the capability to accurately track employees actual time spent performing work for each federal award, and to accurately allocate charges for employee salaries and wages for each federal award, and maintain records to support the actual time spent and specific allocation of charges associated with each applicant employee?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Not Sure
18. Does the applicant entity's accounting system include budgetary controls to preclude the applicant entity from incurring obligations or costs that exceed the amount of funds available under a federal award (the total amount of the award, as well as the amount available in each budget cost category)?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
19. Is applicant entity familiar with the "cost principles" that apply to recent and future federal awards, including the general and specific principles set out in 2 C.F.R Part 200?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure

**PROPERTY STANDARDS AND PROCUREMENT STANDARDS**

20. Does the applicant entity's property management system(s) maintain the following information on property purchased with federal award funds (1) a description of the property; (2) an identification number; (3) the source of funding for the property, including the award number; (4) who holds title; (5) acquisition date; (6) acquisition cost; (7) federal share of the acquisition cost; (8) location and condition of the property; (9) ultimate disposition information?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Not Sure
21. Does the applicant entity maintain written policies and procedures for procurement transactions that -- (1) are designed to avoid unnecessary or duplicative purchases; (2) provide for analysis of lease versus purchase alternatives; (3) set out a process for soliciting goods and services, and (4) include standards of conduct that address conflicts of interest?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Not Sure
22. a) Are the applicant entity's procurement policies and procedures designed to ensure that procurements are conducted in a manner that provides full and open competition to the extent practicable, and to avoid practices that restrict competition?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
22. b) Do the applicant entity's procurement policies and procedures require documentation of the history of a procurement, including the rationale for the method of procurement, selection of contract type, selection or rejection of contractors, and basis for the contract price?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
23. Does the applicant entity have written policies and procedures designed to prevent the applicant entity from entering into a procurement contract under a federal award with any entity or individual that is suspended or debarred from such contracts, including provisions for checking the "Excluded Parties List" system ( <a href="http://www.sam.gov">www.sam.gov</a> ) for suspended or debarred sub-grantees and contractors, prior to award?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Not Sure

**TRAVEL POLICY**

24. Does the applicant entity: (a) maintain a standard travel policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (b) adhere to the Federal Travel Regulation (FTR)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
--	--

**SUBRECIPIENT MANAGEMENT AND MONITORING**

25. Does the applicant entity have written policies, procedures, and/or guidance designed to ensure that any subawards made by the applicant entity under a federal award -- (1) clearly document applicable federal requirements, (2) are appropriately monitored by the applicant, and (3) comply with the requirements in 2 CFR Part 200 (see 2 CFR 200.331)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure  <input checked="" type="checkbox"/> N/A - Applicant does not make subawards under any OJP awards
--	--



26. Is the applicant entity aware of the differences between subawards under federal awards and procurement contracts under federal awards, including the different roles and responsibilities associated with each?

- Yes  No  Not Sure  
 N/A - Applicant does not make subawards under any OJP awards

27. Does the applicant entity have written policies and procedures designed to prevent the applicant entity from making a subaward under a federal award to any entity or individual is suspended or debarred from such subawards?

- Yes  No  Not Sure  
 N/A - Applicant does not make subawards under any OJP awards

**DESIGNATION AS 'HIGH-RISK' BY OTHER FEDERAL AGENCIES**

28. Is the applicant entity designated "high risk" by a federal grant-making agency outside of DOJ? (High risk includes any status under which a federal awarding agency provides additional oversight due to the applicant's past performance, or other programmatic or financial concerns with the applicant.)

- Yes  No  Not Sure

If "Yes", provide the following:

(a) Name(s) of the federal awarding agency:

[Redacted]

(b) Date(s) the agency notified the applicant entity of the "high risk" designation:

[Redacted]

(c) Contact information for the "high risk" point of contact at the federal agency:

Name:

[Redacted]

Phone:

[Redacted]

Email:

[Redacted]

(d) Reason for "high risk" status, as set out by the federal agency:

[Redacted]

**CERTIFICATION ON BEHALF OF THE APPLICANT ENTITY**

(Must be made by the chief executive, executive director, chief financial officer, designated authorized representative ("AOR"), or other official with the requisite knowledge and authority)

On behalf of the applicant entity, I certify to the U.S. Department of Justice that the information provided above is complete and correct to the best of my knowledge. I have the requisite authority and information to make this certification on behalf of the applicant entity.

Name: **Salvador Gil**

Date: **8/23/2023**

Title:  Executive Director  Chief Financial Officer  Chairman

Other: **POC**

Phone: **619-600-6535**

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

0348-0046

(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input checked="" type="checkbox"/> <b>b</b> a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	<b>2. Status of Federal Action:</b> <input checked="" type="checkbox"/> <b>b</b> a. bid/offer/application b. initial award c. post-award	<b>3. Report Type:</b> <input checked="" type="checkbox"/> <b>a</b> a. initial filing b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input checked="" type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: National City Police Department 1200 National City Blvd National City Ca 91950 Congressional District, if known:	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known:	
<b>6. Federal Department/Agency:</b> Department of Justice	<b>7. Federal Program Name/Description:</b> Edward Byrne Memorial Justice Assistance Grant Program  CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$ 31,358.00	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i> N/A	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i> N/A	
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: <u>Salvador Gil</u> Print Name: <u>Salvador Gil</u> Title: <u>Police corporal</u> Telephone No.: <u>(619) 600-6535</u> Date: <u>8/23/2023</u>	
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.



## *NATIONAL CITY POLICE DEPARTMENT*

Edward Byrne Memorial

Justice Assistance Grant (JAG) Program

C-BJA-2023-00105-PROD Local Solicitation

### Applicant Disclosure of High Risk Status

The National City Police Department and the City of National City California are not designated as high risk by any other federal agency. We do not require additional oversight by any federal agency due to past programmatic or financial concerns.

*National City Police Department  
1200 National City Boulevard  
National City, CA 91950  
(619) 336-4400/Fax (619) 336-4525  
[www.nationalcitypd.org](http://www.nationalcitypd.org)*

**Application for Federal Assistance SF-424**

* 1. Type of Submission: <input type="checkbox"/> Preapplication <input checked="" type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application	* 2. Type of Application: <input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision	* If Revision, select appropriate letter(s): <input type="text"/> * Other (Specify): <input type="text"/>
--	--	--

* 3. Date Received: 07/27/2023	4. Applicant Identifier: O-BJA-2023-171790
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5a. Federal Entity Identifier: <input type="text"/>	5b. Federal Award Identifier: <input type="text"/>
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**State Use Only:**

6. Date Received by State: <input type="text"/>	7. State Application Identifier: <input type="text"/>
---	---

**8. APPLICANT INFORMATION:**

* a. Legal Name: City of national City	
* b. Employer/Taxpayer Identification Number (EIN/TIN): 956000749	* c. UEI: KJA9JQQC2M75

**d. Address:**

* Street1:	1200 National City Blvd
Street2:	<input type="text"/>
* City:	National City
County/Parish:	San Diego
* State:	CA: California
Province:	<input type="text"/>
* Country:	USA: UNITED STATES
* Zip / Postal Code:	919504302

**e. Organizational Unit:**

Department Name: National City Police Departmen	Division Name: Operations Support
--	--------------------------------------

**f. Name and contact information of person to be contacted on matters involving this application:**

Prefix: Mr.	* First Name: Salvador
Middle Name: <input type="text"/>	
* Last Name: Gil	
Suffix: <input type="text"/>	

Title: Police Corporal

Organizational Affiliation:  
National City Police Department

\* Telephone Number: 619-600-6535      Fax Number:

\* Email: sgil@nationalcityca.gov

**Application for Federal Assistance SF-424**

**\* 9. Type of Applicant 1: Select Applicant Type:**

C: City or Township Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

\* Other (specify):

**\* 10. Name of Federal Agency:**

Bureau of Justice Assistance

**11. Catalog of Federal Domestic Assistance Number:**

16.738

CFDA Title:

Edward Byrne Memorial Justice Assistance Grant Program

**\* 12. Funding Opportunity Number:**

O-BJA-2023-171790

\* Title:

BJA FY 23 Edward Byrne Memorial Justice Assistance Grant (JAG) Program - Local Solicitation

**13. Competition Identification Number:**

C-BJA-2023-00105-PROD

Title:

Category 2-Applicants with eligible allocation amounts of \$25,000 or more

**14. Areas Affected by Project (Cities, Counties, States, etc.):**

Add Attachment

Delete Attachment

View Attachment

**\* 15. Descriptive Title of Applicant's Project:**

Red Dot Optics Transition grant request

Attach supporting documents as specified in agency instructions.

Add Attachments

Delete Attachments

View Attachments

**Application for Federal Assistance SF-424**

**16. Congressional Districts Of:**

\* a. Applicant

\* b. Program/Project

Attach an additional list of Program/Project Congressional Districts if needed.

Add Attachment

Delete Attachment

View Attachment

**17. Proposed Project:**

\* a. Start Date:

\* b. End Date:

**18. Estimated Funding (\$):**

* a. Federal	<input type="text" value="31,358.00"/>
* b. Applicant	<input type="text" value="20,000.00"/>
* c. State	<input type="text" value="0.00"/>
* d. Local	<input type="text" value="0.00"/>
* e. Other	<input type="text" value="0.00"/>
* f. Program Income	<input type="text" value="0.00"/>
* g. TOTAL	<input type="text" value="51,358.00"/>

**\* 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

a. This application was made available to the State under the Executive Order 12372 Process for review on

b. Program is subject to E.O. 12372 but has not been selected by the State for review.

c. Program is not covered by E.O. 12372.

**\* 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)**

Yes  No

If "Yes", provide explanation and attach

Add Attachment

Delete Attachment

View Attachment

**21. \*By signing this application, I certify (1) to the statements contained in the list of certifications\*\* and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances\*\* and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 18, Section 1001)**

\*\* I AGREE

\*\* The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

**Authorized Representative:**

Prefix:  \* First Name:

Middle Name:

\* Last Name:

Suffix:

\* Title:

\* Telephone Number:  Fax Number:

\* Email:

\* Signature of Authorized Representative:  \* Date Signed:



## *NATIONAL CITY POLICE DEPARTMENT*

Edward Byrne Memorial

Justice Assistance Grant (JAG) Program

C-BJA-2023-00105-PROD Local Solicitation

### **Proposal Narrative**

The National City Police Department proposes using the FY 2023 Local Edward Byrne Memorial Justice Assistance Grant funds allocated in the amount of \$31,358 to purchase red dot sight pistol optics, suppressor height iron sights and upgraded holsters for frontline police officers. Transitioning to red dot sights would help frontline police officers to make good use-of-force decisions by allowing them to focus on threat by superimposing the red dot sight on the threat versus the traditional gun iron sights which focus on front sights resulting in a blurred view of the threat. The purchase of a red dot sight optics would allow police officers to increase their situational awareness and survivability when involved in potential deadly use-of-force encounters. This grant will only be utilized for the procurement of technologies and safety equipment to assist frontline law enforcement personnel in the field.

The implementation of red dot sights would allow for a faster, more accurate target/threat detection under stress. Red dot optics allow for a faster and more accurate target/threat detection under stress. Being threat focused allows for increased accuracy by officers as they utilize either a gross sight picture at close distances or a refined sight picture at greater distances.

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## *NATIONAL CITY POLICE DEPARTMENT*

Edward Byrne Memorial

Justice Assistance Grant (JAG) Program

C-BJA-2023-00105-PROD Local Solicitation

Additionally red dot optics allows officers to refine and remove any unnecessary movements or inconsistencies within the grip and presentation of the pistol, the officers build a repeatable process, which in turn leads to predictable results. The red dot optic teaches officers how to build a proper and successful master grip so that the dot presents itself to the shooter's eyes predictably in the same manner each time. In addition red dot optics allow shooters to have a greater field of view and situational awareness by allowing them to keep both eyes open and on the intended target versus the traditional iron sights techniques that teaches front sight focus which causes a blurred focus on the target. Red dot optics would also help officers with diminished or fleeting acuity in their eyesight by allowing them to superimpose the optic sight over the threat versus struggling to acquire the threat due to their diminished eye sight.

The National City Police Department has already transitioned to a red dot sight optic for their Patrol Rifles (using Holosun 510c red dots) and for their Less Lethal Bean Bag Remington 870 Shotguns (using Vortex Spark red dots). The National City Police Department proposes using the FY 203 Local Edward Byrne Memorial Justice Assistance Grant funds allocated in the amount of \$31,358 to purchase red dot sight pistol optics in order to complete the red dot sight transition for all weapons platforms for the department.

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# NATIONAL CITY POLICE DEPARTMENT

Edward Byrne Memorial

Justice Assistance Grant (JAG) Program

C-BA-2023-00105-PROD Local Solicitation

The National City Police Department is always seeking new ways to improve our equipment to stay on the forefront of technology to remain competitive with societal improvements and the abilities of the criminal elements using technology to commit crimes. The acquisition of equipment such as computers, radios, phones, less lethal and duty pistol red dot equipment will enable officers to stay technologically ahead of the criminal element.

## **Budget and Budget Narrative**

- A. Personnel – No personnel costs in application
- B. Fringe Benefits – No fringe benefit costs in application
- C. Travel – No travel costs in application
- D. Equipment
  - 1. Purchase of (100) Holosun SCS (solar charging sight) that have same multi reticle style system as in our patrol rifles (equipped with Holosun 510C red dot sights) and our less lethal beanbag, Remington 870 shotguns (equipped with Vortex Spark red dot sights).
  - 2. The total estimated cost for the (100) Holosun red dot optics will be \$34,900.00.
- E. Supplies – No supply costs in application
- F. Construction – No construction costs in application
- G. Consultants/Contracts – No consultants/contracts costs in application
- H. Indirect Costs – No indirect costs in this application

## **Budget Summary**

Personnel	\$0
Fringe Benefits	\$0

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**NATIONAL CITY POLICE DEPARTMENT**

Edward Byrne Memorial

Justice Assistance Grant (JAG) Program

C-BJA-2023-00105-PROD Local Solicitation

Travel	\$0
Equipment	\$34,900.00
Supplies	\$0
Construction	\$0
Consultants/Contracts	\$0
Other Costs	\$0
Indirect Costs	\$0
Estimated total	\$34,900.00
Federal Grant Request	\$34,900.00

The equipment costs quoted in this Budget Narrative are approximations based on current availability. The National City Police Department will use JAG funds to purchase the highest quality and up to date technology equipment to meet our needs. The number of items ultimately purchased by the National City Police Department will be determined by costs and availability at the time of purchase. The National City Police Department will incur any costs over the current allocation of \$34,900.00.

Applicable sales taxes associated with the equipment items is calculated into the costs of the equipment.

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## Confirmation

Thank you for submitting your grant application package via Grants.gov. Your application is currently being processed by the Grants.gov system. Once your submission has been processed, Grants.gov will send email messages to advise you of the progress of your application through the system. Over the next 24 to 48 hours, you should receive two emails. The first will confirm receipt of your application by the Grants.gov system, and the second will indicate that the application has either been successfully validated by the system prior to transmission to the grantor agency or has been rejected due to errors.

Please do not hit the back button on your browser.

If your application is successfully validated and subsequently retrieved by the grantor agency from the Grants.gov system, you will receive an additional email. This email may be delivered several days or weeks from the date of submission, depending on when the grantor agency retrieves it.

You may also monitor the processing status of your submission within the Grants.gov system by clicking on the "Track My Application" link listed at the end of this form.

Note: Once the grantor agency has retrieved your application from Grants.gov, you will need to contact them directly for any subsequent status updates. Grants.gov does not participate in making any award decisions.

**IMPORTANT NOTICE:** If you do not receive a receipt confirmation and either a validation confirmation or a rejection email message within 48 hours, please contact us. The Grants.gov Contact Center can be reached by email at [support@grants.gov](mailto:support@grants.gov), or by telephone at 1-800-518-4726. Always include your Grants.gov tracking number in all correspondence. The tracking numbers issued by Grants.gov look like GRANTXXXXXXXXX.

If you have questions please contact the Grants.gov Contact Center: [support@grants.gov](mailto:support@grants.gov)  
1-800-518-4726 24 hours a day, 7 days a week. Closed on federal holidays.

The following application tracking information was generated by the system:

**Grants.gov Tracking Number:** GRANT13946755

**UEI:** KJA9JQQC2M75

**Submitter's Name:** Salvador Gil

**CFDA Number:** 16.738

**CFDA Description:** Edward Byrne Memorial Justice Assistance Grant Program

**Funding Opportunity Number:** O-BJA-2023-171790

**Funding Opportunity Description:** BJA FY 23 Edward Byrne Memorial Justice Assistance Grant (JAG) Program - Local Solicitation

**Agency Name:** Bureau of Justice Assistance

**Application Name of this Submission:** 2023 JAG Grant

**Date/Time of Receipt:** Jul 27, 2023 03:20:33 PM EDT

TRACK MY APPLICATION – To check the status of this application, please click the link below:

[https://apply07.grants.gov/apply/spoExit.jsp?p=web/grants/applicants/track-my-application.html&tracking\\_num=GRANT13946755](https://apply07.grants.gov/apply/spoExit.jsp?p=web/grants/applicants/track-my-application.html&tracking_num=GRANT13946755)

It is suggested you Save and/or Print this response for your records.

## Salvador Gil

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**From:** Default <do-not-reply@ojp.usdoj.gov>  
**Sent:** Friday, September 22, 2023 6:13 PM  
**To:** Salvador Gil; Salvador Gil; Salvador Gil  
**Subject:** DOJ Justice Grants System - Award Number 15PBJA-23-GG-03143-JAGX Notification

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.



Congratulations! Application GRANT13946755 submitted under the 2023 BJA FY 23 Edward Byrne Memorial Justice Assistance Grant (JAG) Program - Local Solicitation has been selected for an award. Please log into Justice Grants System (JustGrants) at <https://justgrants.usdoj.gov> to see award details.

For assistance logging into JustGrants, contact [JustGrants.Support@usdoj.gov](mailto:JustGrants.Support@usdoj.gov) or 833-872-5175.

Prior to the Authorized Representative accepting the award, the Entity Administrator needs to assign a Financial Manager (responsible for submitting the Federal Financial Form), a Grant Award Administrator (responsible for submitting Grant Award Modifications, Performance Reports and Closeouts) and an Alternate Grant Award Administrator (responsible for submitting Grant Award Modifications) to the award.

To be eligible for payment, follow the Automated Standard Application for Payments (ASAP) recipient enrollment and login guidance at the JustGrants Website [www.justicegrants.usdoj.gov](http://www.justicegrants.usdoj.gov). Please do not reply to this message. You can contact your grant manager Fadumo Tahlil at 202-598-9805 and [Fadumo.Tahlil@usdoj.gov](mailto:Fadumo.Tahlil@usdoj.gov)

For more information go to [www.justicegrants.usdoj.gov](http://www.justicegrants.usdoj.gov)  
JustGrants is operated under the U.S. Department of Justice



# Department of Justice (DOJ)

Office of Justice Programs

Bureau of Justice Assistance

Washington, D.C. 20531

<b>Name and Address of Recipient:</b>	CITY OF NATIONAL CITY 1200 NATIONAL CITY BLVD
<b>City, State and Zip:</b>	NATIONAL CITY, CA 91950
<b>Recipient UEI:</b>	KJA9JQQC2M75
<b>Project Title:</b> Red Dot Optics Transition grant request	<b>Award Number:</b> 15PBJA-23-GG-03143-JAGX
<b>Solicitation Title:</b> BJA FY 23 Edward Byrne Memorial Justice Assistance Grant (JAG) Program - Local Solicitation	
<b>Federal Award Amount:</b> \$31,358.00	<b>Federal Award Date:</b> 9/22/23
<b>Awarding Agency:</b>	Office of Justice Programs Bureau of Justice Assistance
<b>Funding Instrument Type:</b>	Grant
<b>Opportunity Category:</b> D	
<b>Assistance Listing:</b> 16.738 - Edward Byrne Memorial Justice Assistance Grant Program	
<b>Project Period Start Date:</b> 10/1/22	<b>Project Period End Date:</b> 9/30/26
<b>Budget Period Start Date:</b> 10/1/22	<b>Budget Period End Date:</b> 9/30/26
<b>Project Description:</b>  The City of National City proposes to use the FY 23 local JAG funds to purchase Red Dot Sight Optics, Iron Sights and upgraded holsters.	

## Award Letter

September 22, 2023

Dear Sal Gil,

On behalf of Attorney General Merrick B. Garland, it is my pleasure to inform you the Office of Justice Programs (OJP) has approved the application submitted by CITY OF NATIONAL CITY for an award under the funding opportunity entitled 2023 BJA FY 23 Edward Byrne Memorial Justice Assistance Grant (JAG) Program - Local Solicitation. The approved award amount is \$31,358.

Review the Award Instrument below carefully and familiarize yourself with all conditions and requirements before accepting your award. The Award Instrument includes the Award Offer (Award Information, Project Information, Financial Information, and Award Conditions) and Award Acceptance. For COPS Office and OVW funding the Award Offer also includes any Other Award Documents.

Please note that award requirements include not only the conditions and limitations set forth in the Award Offer, but also compliance with assurances and certifications that relate to conduct during the period of performance for the award. These requirements encompass financial, administrative, and programmatic matters, as well as other important matters (e.g., specific restrictions on use of funds). Therefore, all key staff should receive the award conditions, the assurances and certifications, and the application as approved by OJP, so that they understand the award requirements. Information on all pertinent award requirements also must be provided to any subrecipient of the award.

Should you accept the award and then fail to comply with an award requirement, DOJ will pursue appropriate remedies for non-compliance, which may include termination of the award and/or a requirement to repay award funds.

Prior to accepting the award, your Entity Administrator must assign a Financial Manager, Grant Award Administrator, and Authorized Representative(s) in the Justice Grants System (JustGrants). The Entity Administrator will need to ensure the assigned Authorized Representative(s) is current and has the legal authority to accept awards and bind the entity to the award terms and conditions. To accept the award, the Authorized Representative(s) must accept all parts of the Award Offer in the Justice Grants System (JustGrants), including by executing the required declaration and certification, within 45 days from the award date.

To access your funds, you will need to enroll in the Automated Standard Application for Payments (ASAP) system, if you haven't already completed the enrollment process in ASAP. The Entity Administrator should have already received an email from ASAP to initiate this process.

Congratulations, and we look forward to working with you.

Maureen Henneberg  
Deputy Assistant Attorney General  
**Office for Civil Rights Notice for All Recipients**

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) has been delegated the responsibility for ensuring that recipients of federal financial assistance from the OJP, the Office of Community Oriented Policing Services (COPS), and the Office on Violence Against Women (OVW) are not engaged in discrimination prohibited by law. Several federal civil rights laws, such as Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, require recipients of federal financial assistance to give assurances that they will comply with those laws. Taken together, these civil rights laws prohibit recipients of federal financial assistance from discriminating in services and employment because of race, color, national origin, religion, disability, sex, and, for grants authorized under the Violence Against Women Act, sexual orientation and gender identity. Recipients are also prohibited from discriminating in services because of age. For a complete review of these civil rights laws and nondiscrimination requirements, in connection with DOJ awards, see <https://ojp.gov/funding/Explore/LegalOverview/CivilRightsRequirements.htm>.

Under the delegation of authority, the OCR investigates allegations of discrimination against recipients from individuals, entities, or groups. In addition, the OCR conducts limited compliance reviews and audits based on regulatory criteria.

These reviews and audits permit the OCR to evaluate whether recipients of financial assistance from the Department are providing services in a nondiscriminatory manner to their service population or have employment practices that meet equal-opportunity standards.

If you are a recipient of grant awards under the Omnibus Crime Control and Safe Streets Act or the Juvenile Justice and Delinquency Prevention Act and your agency is part of a criminal justice system, there are two additional obligations that may apply in connection with the awards: (1) complying with the regulation relating to Equal Employment Opportunity Programs (EEOPs); and (2) submitting findings of discrimination to OCR. For additional information regarding the EEOP requirement, see 28 CFR Part 42, subpart E, and for additional information regarding requirements when there is an adverse finding, see 28 C.F.R. §§ 42.204(c), .205(c)(5).

The OCR is available to help you and your organization meet the civil rights requirements that are associated with DOJ grant funding. If you would like the OCR to assist you in fulfilling your organization's civil rights or nondiscrimination responsibilities as a recipient of federal financial assistance, please do not hesitate to contact the OCR at askOCR@ojp.usdoj.gov.

## **Memorandum Regarding NEPA**

### **NEPA Letter Type**

OJP - Ongoing NEPA Compliance Incorporated into Further Developmental Stages

### **NEPA Letter**

The Edward Byrne Memorial Justice Assistance Grant Program (JAG) allows states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system, some of which could have environmental impacts. All recipients of JAG funding must assist BJA in complying with NEPA and other related federal environmental impact analyses requirements in the use of grant funds, whether the funds are used directly by the grantee or by a subgrantee or third party. Accordingly, prior to obligating funds for any of the specified activities, the grantee must first determine if any of the specified activities will be funded by the grant.

?

The specified activities requiring environmental analysis are:

a. New construction;

b. Any renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;

c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;

d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and

e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

Complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. Further, for programs relating to methamphetamine laboratory operations, the preparation of a detailed Mitigation Plan will be required. For more information about Mitigation Plan requirements, please see <https://www.bja.gov/Funding/nepa.html>.

### **NEPA Coordinator**

**First Name**

Orbin

**Middle Name****Last Name**

Terry

**Award Information**

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

**Recipient Information****Recipient Name**

CITY OF NATIONAL CITY

**UEI**

KJA9JQQC2M75

**Street 1**

1200 NATIONAL CITY BLVD

**Street 2****City**

NATIONAL CITY

**State/U.S. Territory**

California

**Zip/Postal Code**

91950

**Country**

United States

**County/Parish****Province****Award Details****Federal Award Date**

9/22/23

**Award Type**

Initial

**Award Number**

15PBJA-23-GG-03143-JAGX

**Supplement Number**

00

**Federal Award Amount**

\$31,358.00

**Funding Instrument Type**

Grant

**Assistance Listing  
Number****Assistance Listings Program Title**

16.738

Edward Byrne Memorial Justice Assistance Grant Program

**Statutory Authority**

Title I of Public Law 90-351 (generally codified at 34 U.S.C. 10101-10726), including subpart 1 of part E (codified at 34 U.S.C. 10151-10158); see also 28 U.S.C. 530C(a)

I have read and understand the information presented in this section of the Federal Award Instrument.

## Project Information

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

### Solicitation Title

2023 BJA FY 23 Edward Byrne Memorial Justice Assistance Grant (JAG) Program - Local Solicitation

### Awarding Agency

OJP

### Application Number

GRANT13946755

### Program Office

BJA

### Grant Manager Name

Fadumo Tahlil

### Phone Number

[202-598-9805](tel:202-598-9805)

### E-mail Address

Fadumo.Tahlil@usdoj.gov

### Project Title

Red Dot Optics Transition grant request

### Performance Period Start

#### Date

10/01/2022

### Performance Period End Date

09/30/2026

### Budget Period Start Date

10/01/2022

### Budget Period End Date

09/30/2026

## Project Description

The City of National City proposes to use the FY 23 local JAG funds to purchase Red Dot Sight Optics, Iron Sights and upgraded holsters.

I have read and understand the information presented in this section of the Federal Award Instrument.

## Financial Information

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

I have read and understand the information presented in this section of the Federal Award Instrument.

## Award Conditions

This award is offered subject to the conditions or limitations set forth in the Award Information, Project

## **Information, Financial Information, and Award Conditions.**

**1**

**Compliance with restrictions on the use of federal funds--prohibited and controlled equipment under OJP awards**

Consistent with Executive Order 14074, "Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety," OJP has prohibited the use of federal funds under this award for purchases or transfers of specified equipment by law enforcement agencies. In addition, OJP requires the recipient, and any subrecipient ("subgrantee") at any tier, to put in place specified controls prior to using federal funds under this award to acquire or transfer any property identified on the "controlled equipment" list. The details of the requirement are posted on the OJP web site at <https://www.ojp.gov/funding/explore/prohibited-and-controlled-equipment> (Award condition: Compliance with restrictions on the use of federal funds--prohibited and controlled equipment under OJP awards), and are incorporated by reference here.

**2**

**Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54**

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

**3**

**Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)**

The recipient (and any subrecipient at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The recipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

**4**

**Applicability of Part 200 Uniform Requirements**

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this FY 2022 award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2022 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this FY 2022 award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at <https://ojp.gov/funding/Part200UniformRequirements.htm>.

Record retention and access: Records pertinent to the award that the recipient (and any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which the recipient (and any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.334.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

## 5

**Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events**

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "DOJ Grants Financial Guide").

## 6

**Requirement for data on performance and effectiveness under the award**

The recipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

## 7

**Compliance with DOJ Grants Financial Guide**

References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance. The recipient agrees to comply with the DOJ Grants Financial Guide.

## 8

**Compliance with general appropriations-law restrictions on the use of federal funds (FY 2022)**

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2022, are set out at <https://www.ojp.gov/funding/Explore/FY22AppropriationsRestrictions.htm>, and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

## 9

**Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38**

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38 (as may be applicable from time to time), specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Currently, among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38, currently, also sets out rules and requirements that pertain to recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations.

The text of 28 C.F.R. Part 38 is available via the Electronic Code of Federal Regulations (currently accessible at <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.

## 10

### Effect of failure to address audit issues

The recipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

## 11

### Requirements of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

**Limited Exceptions.** In certain special circumstances, the U.S. Department of Justice ("DOJ") may determine that it will not enforce, or enforce only in part, one or more requirements otherwise applicable to the award. Any such exceptions regarding enforcement, including any such exceptions made during the period of performance, are (or will be during the period of performance) set out through the Office of Justice Programs ("OJP") webpage entitled "Legal Notices: Special circumstances as to particular award conditions" ([ojp.gov/funding/Explore/LegalNotices-AwardReqs.htm](http://ojp.gov/funding/Explore/LegalNotices-AwardReqs.htm)), and incorporated by reference into the award.

By signing and accepting this award on behalf of the recipient, the authorized recipient official accepts all material requirements of the award, and specifically adopts, as if personally executed by the authorized recipient official, all assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance.

Failure to comply with one or more award requirements – whether a condition set out in full below, a condition incorporated by reference below, or an assurance or certification related to conduct during the award period -- may result in OJP taking appropriate action with respect to the recipient and the award. Among other things, the OJP may withhold award funds, disallow costs, or suspend or terminate the award. DOJ, including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or -unenforceable, such provision shall be deemed severable from this award.

## 12

### Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

## 13

## Requirements related to "de minimis" indirect cost rate

A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

## 14

### Employment eligibility verification for hiring under the award

#### 1. The recipient (and any subrecipient at any tier) must--

A. Ensure that, as part of the hiring process for any position within the United States that is or will be funded (in whole or in part) with award funds, the recipient (or any subrecipient) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1).

B. Notify all persons associated with the recipient (or any subrecipient) who are or will be involved in activities under this award of both--

(1) this award requirement for verification of employment eligibility, and

(2) the associated provisions in 8 U.S.C. 1324a(a)(1) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens.

C. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and of the associated provisions of 8 U.S.C. 1324a(a)(1).

D. As part of the recordkeeping for the award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

#### 2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

#### 3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

#### 4. Rules of construction

##### A. Staff involved in the hiring process

For purposes of this condition, persons "who are or will be involved in activities under this award" specifically includes (without limitation) any and all recipient (or any subrecipient) officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.

##### B. Employment eligibility confirmation with E-Verify

For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the recipient (or any subrecipient) may choose to participate in, and use, E-Verify ([www.e-verify.gov](http://www.e-verify.gov)), provided an appropriate person authorized to act on behalf of the recipient (or subrecipient) uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded (in whole or in part) with award funds.

C. "United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United

States, and the Commonwealth of the Northern Mariana Islands.

D. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

E. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any recipient, any subrecipient at any tier, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1).

Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (<https://www.e-verify.gov/>) or email E-Verify at [E-Verify@dhs.gov](mailto:E-Verify@dhs.gov). E-Verify employer agents can email E-Verify at [E-VerifyEmployerAgent@dhs.gov](mailto:E-VerifyEmployerAgent@dhs.gov).

Questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

## 15

### OJP Training Guiding Principles

Any training or training materials that the recipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <https://www.ojp.gov/funding/implement/training-guiding-principles-grantees-and-subgrantees>.

## 16

### Determination of suitability to interact with participating minors

SCOPE. This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ)(or in the application for any subaward, at any tier), the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award (whether by the recipient, or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

The recipient, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at <https://ojp.gov/funding/Explore/Interact-Minors.htm> (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

## 17

### Potential imposition of additional requirements

The recipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the recipient is designated as "high-risk" for purposes of the DOJ high-risk grantee list.

## 18

### Required training for Grant Award Administrator and Financial Manager

The Grant Award Administrator and all Financial Managers for this award must have successfully completed an "OJP financial management and grant administration training" by 120 days after the date of the recipient's acceptance of the award. Successful completion of such a training on or after October 15, 2020, will satisfy this condition.

In the event that either the Grant Award Administrator or a Financial Manager for this award changes during the period of performance, the new Grant Award Administrator or Financial Manager must have successfully completed an "OJP financial management and grant administration training" by 120 calendar days after the date the Entity Administrator enters updated Grant Award Administrator or Financial Manager information in JustGrants. Successful completion of such a training on or after October 15, 2020, will satisfy this condition.

A list of OJP trainings that OJP will consider "OJP financial management and grant administration training" for

purposes of this condition is available at <https://onlinegmt.training.ojp.gov/>. All trainings that satisfy this condition include a session on grant fraud prevention and detection.

The recipient should anticipate that OJP will immediately withhold ("freeze") award funds if the recipient fails to comply with this condition. The recipient's failure to comply also may lead OJP to impose additional appropriate conditions on this award.

## 19

### Restrictions and certifications regarding non-disclosure agreements and related matters

No recipient or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

#### 1. In accepting this award, the recipient--

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

#### 2. If the recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

##### a. it represents that--

(1) it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

## 20

### Reclassification of various statutory provisions to a new Title 34 of the United States Code

On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified (that is, moved and renumbered) to a new Title 34, entitled "Crime Control and Law Enforcement." The

reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.

## 21

**Requirement to report actual or imminent breach of personally identifiable information (PII)**

The recipient (and any "subrecipient" at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient) -- (1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "Personally Identifiable Information (PII)" (2 CFR 200.1) within the scope of an OJP grant-funded program or activity, or (2) uses or operates a "Federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

## 22

**Requirement to disclose whether recipient is designated "high risk" by a federal grant-making agency outside of DOJ**

If the recipient is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to OJP by email at [OJP.ComplianceReporting@ojp.usdoj.gov](mailto:OJP.ComplianceReporting@ojp.usdoj.gov). For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the recipient's past performance, or other programmatic or financial concerns with the recipient. The recipient's disclosure must include the following: 1. The federal awarding agency that currently designates the recipient high risk, 2. The date the recipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.

## 23

**Encouragement of policies to ban text messaging while driving**

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

## 24

**All subawards ("subgrants") must have specific federal authorization**

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at <https://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

## 25

**Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed \$250,000**

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, \$250,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at <https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm> (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$250,000)), and are incorporated by reference here.

## 26

Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

## 27

Requirement to report potentially duplicative funding

If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by the DOJ awarding agency, must seek a budget-modification or change-of-project-scope Grant Award Modification (GAM) to eliminate any inappropriate duplication of funding.

## 28

Reporting potential fraud, waste, and abuse, and similar misconduct

The recipient, and any subrecipients ("subgrantees") at any tier, must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award-- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by--(1) online submission accessible via the OIG webpage at <https://oig.justice.gov/hotline/contact-grants.htm> (select "Submit Report Online"); (2) mail directed to: U.S. Department of Justice, Office of the Inspector General, Investigations Division, ATTN: Grantee Reporting, 950 Pennsylvania Ave., NW, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Investigations Division (Attn: Grantee Reporting) at (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <https://oig.justice.gov/hotline>.

## 29

Requirements related to System for Award Management and Universal Identifier Requirements

The recipient must comply with applicable requirements regarding the System for Award Management (SAM), currently

accessible at <https://www.sam.gov/>. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the recipient) the unique entity identifier required for SAM registration.

The details of the recipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at <https://ojp.gov/funding/Explore/SAM.htm> (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

## 30

### Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a recipient (or subrecipient) would or might fall within the scope of these prohibitions, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

## 31

### Justice Information Sharing

Information sharing projects funded under this award must comply with DOJ's Global Justice Information Sharing Initiative (Global) guidelines. The recipient (and any subrecipient at any tier) must conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at: [https://it.ojp.gov/gsp\\_grantcondition](https://it.ojp.gov/gsp_grantcondition). The recipient (and any subrecipient at any tier) must document planned approaches to information sharing and describe compliance with the GSP and appropriate privacy policy that protects shared information, or provide detailed justification for why an alternative approach is recommended.

## 32

### Avoidance of duplication of networks

To avoid duplicating existing networks or IT systems in any initiatives funded by BJA for law enforcement information sharing systems which involve interstate connectivity between jurisdictions, such systems shall employ, to the extent possible, existing networks as the communication backbone to achieve interstate connectivity, unless the recipient can demonstrate to the satisfaction of BJA that this requirement would not be cost effective or would impair the functionality of an existing or proposed IT system.

## 33

### Law enforcement task forces - required training

Within 120 days of award acceptance, each current member of a law enforcement task force funded with award funds

who is a task force commander, agency executive, task force officer, or other task force member of equivalent rank, must complete required online (internet-based) task force training. Additionally, all future task force members must complete this training once during the period of performance for this award, or once every four years if multiple OJP awards include this requirement.

The required training is available free of charge online through the BJA-funded Center for Task Force Integrity and Leadership ([www.ctfli.org](http://www.ctfli.org)). The training addresses task force effectiveness, as well as other key issues including privacy and civil liberties/rights, task force performance measurement, personnel selection, and task force oversight and accountability. If award funds are used to support a task force, the recipient must compile and maintain a task force personnel roster, along with course completion certificates.

Additional information regarding the training is available through BJA's web site and the Center for Task Force Integrity and Leadership ([www.ctfli.org](http://www.ctfli.org)).

### 34

#### Required monitoring of subawards

The recipient must monitor subawards under this award in accordance with all applicable statutes, regulations, award conditions, and the DOJ Grants Financial Guide, and must include the applicable conditions of this award in any subaward. Among other things, the recipient is responsible for oversight of subrecipient spending and monitoring of specific outcomes and benefits attributable to use of award funds by subrecipients. The recipient agrees to submit, upon request, documentation of its policies and procedures for monitoring of subawards under this award.

### 35

Any written, visual, or audio publications funded in whole or in part under this award, with the exception of press releases, shall contain the following statements: "This project was supported by Grant No. <AWARD\_NUMBER> awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice." The current edition of the DOJ Grants Financial Guide provides guidance on allowable printing and publication activities.

### 36

Any Web site that is funded in whole or in part under this award must include the following statement on the home page, on all major entry pages (i.e., pages (exclusive of documents) whose primary purpose is to navigate the user to interior content), and on any pages from which a visitor may access or use a Web-based service, including any pages that provide results or outputs from the service: "This Web site is funded in whole or in part through a grant from the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. Neither the U.S. Department of Justice nor any of its components operate, control, are responsible for, or necessarily endorse, this Web site (including, without limitation, its content, technical infrastructure, and policies, and any services or tools provided)." The full text of the foregoing statement must be clearly visible on the home page. On other pages, the statement may be included through a link, entitled "Notice of Federal Funding and Federal Disclaimer," to the full text of the statement.

### 37

#### Verification and updating of recipient contact information

The recipient must verify its Grant Award Administrator, Financial Manager, and Authorized Representative contact information in JustGrants, including telephone number and e-mail address. If any information is incorrect or has changed, the award recipient's Entity Administrator must make changes to contact information through DIAMD. Instructions on how to update contact information in JustGrants can be found at <https://justicegrants.usdoj.gov/training/training-entity-management>.

### 38

#### Compliance with National Environmental Policy Act and related statutes

Upon request, the recipient (and any subrecipient at any tier) must assist BJA in complying with the National Environmental Policy Act (NEPA), the National Historic Preservation Act, and other related federal environmental impact analyses requirements in the use of these award funds, either directly by the recipient or by a subrecipient. Accordingly, the recipient agrees to first determine if any of the following activities will be funded by the grant, prior to obligating funds for any of these purposes. If it is determined that any of the following activities will be funded by the award, the recipient agrees to contact BJA.

The recipient understands that this condition applies to new activities as set out below, whether or not they are being specifically funded with these award funds. That is, as long as the activity is being conducted by the recipient, a subrecipient, or any third party, and the activity needs to be undertaken in order to use these award funds, this condition must first be met. The activities covered by this condition are:

- a. New construction;
- b. Minor renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;
- c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;
- d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and
- e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

The recipient understands and agrees that complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. The recipient further understands and agrees to the requirements for implementation of a Mitigation Plan, as detailed at <https://bj.gov/Funding/nepa.html>, for programs relating to methamphetamine laboratory operations.

**Application of This Condition to Recipient's Existing Programs or Activities:** For any of the recipient's or its subrecipients' existing programs or activities that will be funded by these award funds, the recipient, upon specific request from BJA, agrees to cooperate with BJA in any preparation by BJA of a national or program environmental assessment of that funded program or activity.

39

Recipients utilizing award funds for forensic genealogy testing must adhere to the United States Department of Justice Interim Policy Forensic Genealogical DNA Analysis and Searching (<https://www.justice.gov/olp/page/file/1204386/download>), and must collect and report the metrics identified in Section IX of that document to BJA.

40

#### Establishment of trust fund

If award funds are being drawn down in advance, the recipient (or a subrecipient, with respect to a subaward) is required to establish a trust fund account. Recipients (and subrecipients) must maintain advance payments of federal awards in interest-bearing accounts, unless regulatory exclusions apply (2 C.F.R. 200.305(b)(8)). The trust fund, including any interest, may not be used to pay debts or expenses incurred by other activities beyond the scope of the Edward Byrne Memorial Justice Assistance Grant Program (JAG). The recipient also agrees to obligate the award funds in the trust fund (including any interest earned) during the period of performance for the award and expend within 90 days thereafter. Any unobligated or unexpended funds, including interest earned, must be returned to OJP at the time of closeout.

41

All State and Local JAG recipients must submit quarterly Federal Financial Reports (SF-425). Additionally, State JAG

and Local JAG Category Two (\$25K or more) must submit semi-annual performance reports through JustGrants and Local JAG Category One (Less than \$25K) must submit annual performance reports through JustGrants. Consistent with the Department's responsibilities under the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, the recipient must provide data that measure the results of its work. The recipient must submit quarterly performance metrics reports through BJA's Performance Measurement Tool (PMT) website: <https://bjapmt.ojp.gov/>. For more detailed information on reporting and other JAG requirements, refer to the JAG reporting requirements webpage (<https://bjapmt.ojp.gov/help/jagdocs.html>). Failure to submit required JAG reports by established deadlines may result in the freezing of grant funds and future High Risk designation.

## 42

### Required data on law enforcement agency training

Any law enforcement agency receiving direct or sub-awarded funding from this JAG award must submit quarterly accountability metrics data related to training that officers have received on the use of force, racial and ethnic bias, de-escalation of conflict, and constructive engagement with the public.

## 43

### Authorization to obligate (federal) award funds to reimburse certain project costs incurred on or after October 1, 2022

The recipient may obligate (federal) award funds only after the recipient makes a valid acceptance of the award. As of the first day of the period of performance for the award (October 1, 2022), however, the recipient may choose to incur project costs using non-federal funds, but any such project costs are incurred at the recipient's risk until, at a minimum - (1) the recipient makes a valid acceptance of the award, and (2) all applicable withholding conditions are removed by OJP (via an Award Condition Modification (ACM)). (A withholding condition is a condition in the award document that precludes the recipient from obligating, expending, or drawing down all or a portion of the award funds until the condition is removed.)

Except to the extent (if any) that an award condition expressly precludes reimbursement of project costs incurred "at-risk," if and when the recipient makes a valid acceptance of this award and OJP removes each applicable withholding condition through an Award Condition Modification (ACM), the recipient is authorized to obligate (federal) award funds to reimburse itself for project costs incurred "at-risk" earlier during the period of performance (such as project costs incurred prior to award acceptance or prior to removal of an applicable withholding condition), provided that those project costs otherwise are allowable costs under the award.

## 44

If award funds are used for DNA testing of evidentiary materials, any resulting eligible DNA profiles must be uploaded to the Combined DNA Index System ("CODIS," the DNA database operated by the FBI) by a government DNA laboratory with access to CODIS. With the exception of Forensic Genetic Genealogy, no profiles generated under this award may be entered or uploaded into any non-governmental DNA database without prior express written approval from BJA. Award funds may not be used for the purchase of DNA equipment and supplies unless the resulting DNA profiles may be accepted for entry into CODIS. Booking agencies should work with their state CODIS agency to ensure all requirements are met for participation in Rapid DNA (see National Rapid DNA Booking Operational Procedures Manual).

## 45

### Submission of eligible records relevant to the National Instant Background Check System

Consonant with federal statutes that pertain to firearms and background checks – including 18 U.S.C. 922 and 34 U.S.C. ch. 409 – if the recipient (or any subrecipient at any tier) uses this award to fund (in whole or in part) a specific project or program (such as a law enforcement, prosecution, or court program) that results in any court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the National Instant Background Check System (NICS), or that has as one of its purposes the establishment or improvement of records systems that contain any court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the NICS, the recipient (or subrecipient, if applicable) must ensure that all such court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the NICS are promptly made available to the NICS or to the "State" repository/database that is electronically available to (and accessed by) the NICS, and – when appropriate – promptly must update, correct, modify, or remove such NICS-

relevant "eligible records".

In the event of minor and transitory non-compliance, the recipient may submit evidence to demonstrate diligent monitoring of compliance with this condition (including subrecipient compliance). DOJ will give great weight to any such evidence in any express written determination regarding this condition.

46

Prohibition on use of award funds for match under BVP program

JAG funds may not be used as the 50% match for purposes of the DOJ Bulletproof Vest Partnership (BVP) program.

47

Certification of body armor "mandatory wear" policies, and compliance with NIJ standards

If recipient uses funds under this award to purchase body armor, the recipient must submit a signed certification that each law enforcement agency receiving body armor purchased with funds from this award has a written "mandatory wear" policy in effect. The recipient must keep signed certifications on file for any subrecipients planning to utilize funds from this award for ballistic-resistant and stab-resistant body armor purchases. This policy must be in place for at least all uniformed officers before any funds from this award may be used by an agency for body armor. There are no requirements regarding the nature of the policy other than it be a mandatory wear policy for all uniformed officers while on duty.

Ballistic-resistant and stab-resistant body armor purchased with award funds may be purchased at any threat level, make or model, from any distributor or manufacturer, as long as the body armor has been tested and found to comply with applicable National Institute of Justice ballistic or stab standards, and is listed on the NIJ Compliant Body Armor Model List. In addition, ballistic-resistant and stab-resistant body armor purchased must be made in the United States and must be uniquely fitted, as set forth in 34 U.S.C. 10202(c)(1)(A). The latest NIJ standard information and the NIJ Compliant Body Armor List may be found by following the links located on the NIJ Body Armor page: <https://nij.ojp.gov/topics/equipment-and-technology/body-armor>

48

Extreme risk protection programs funded by JAG must include, at a minimum: pre-deprivation and post-deprivation due process rights that prevent any violation or infringement of the Constitution of the United States, including but not limited to the Bill of Rights, and the substantive or procedural due process rights guaranteed under the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied to the States, and as interpreted by State courts and United States courts (including the Supreme Court of the United States). Such programs must include, at the appropriate phase to prevent any violation of constitutional rights, at minimum, notice, the right to an in-person hearing, an unbiased adjudicator, the right to know opposing evidence, the right to present evidence, and the right to confront adverse witnesses; the right to be represented by counsel at no expense to the government; pre-deprivation and post-deprivation heightened evidentiary standards and proof which mean not less than the protections afforded to a similarly situated litigant in Federal court or promulgated by the State's evidentiary body, and sufficient to ensure the full protections of the Constitution of the United States, including but not limited to the Bill of Rights, and the substantive and procedural due process rights guaranteed under the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied to the States, and as interpreted by State courts and United States courts (including the Supreme Court of the United States). The heightened evidentiary standards and proof under such programs must, at all appropriate phases to prevent any violation of any constitutional right, at minimum, prevent reliance upon evidence that is unsworn or unaffirmed, irrelevant, based on inadmissible hearsay, unreliable, vague, speculative, and lacking a foundation; and penalties for abuse of the program.

49

Expenditures prohibited without waiver

No funds under this award may be expended on the purchase of items prohibited by the JAG program statute, unless, as set forth at 34 U.S.C. 10152, the BJA Director certifies that extraordinary and exigent circumstances exist, making such expenditures essential to the maintenance of public safety and good order.

50

## **FFATA reporting: Subawards and executive compensation**

The recipient must comply with applicable requirements to report first-tier subawards ("subgrants") of \$30,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients (first-tier "subgrantees") of award funds. The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the OJP web site at <https://ojp.gov/funding/Explore/FFATA.htm> (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here.

This condition, including its reporting requirement, does not apply to-- (1) an award of less than \$30,000, or (2) an award made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

## **51**

### **Exceptions regarding Prohibited and Controlled Equipment under OJP awards**

Notwithstanding any provision to the contrary in the other terms and conditions of this award, including in the condition regarding "Compliance with restrictions on the use of federal funds--prohibited and controlled equipment under OJP awards," the requirements for the "Transfer/Sale of Award-Funded Controlled Equipment to Other LEAs" and the requirements for the "Transfer/Sale of Award-Funded Controlled Equipment to NON-LEAs" do not apply to this award.

## **52**

The recipient agrees that no funds under this grant award (including via subcontract or subaward, at any tier) may be used for unmanned aircraft systems (UAS), which includes unmanned aircraft vehicles (UAV), or for any accompanying accessories to support UAS.

## **53**

### **Initial period of performance; requests for extension.**

The recipient understands that for award amounts of less than \$25,000 under JAG (Category 1), the initial period of performance of the award is two years. The recipient further understands that any requests for an extension of the period of performance for an award of less than \$25,000 will be approved automatically for up to a total of two additional years, pursuant to 34 U.S.C. 10152(f) and in accordance with the program solicitation associated with this award.

Any request for an extension of the period of performance beyond a four-year award period will require approval, and the approval (if any) will be at the discretion of the Director of BJA.

## **54**

Applicants must ensure that Limited English Proficiency persons have meaningful access to the services under this program(s). National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI and the Safe Streets Act, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation when necessary. The U.S. Department of Justice has issued guidance for grantees to help them comply with Title VI requirements. The guidance document can be accessed on the Internet at [www.lep.gov](http://www.lep.gov).

## **55**

### **Cooperating with OJP Monitoring**

The recipient agrees to cooperate with OJP monitoring of this award pursuant to OJP's guidelines, protocols, and procedures, and to cooperate with OJP (including the grant manager for this award and the Office of Chief Financial Officer (OCFO)) requests related to such monitoring, including requests related to desk reviews and/or site visits. The recipient agrees to provide to OJP all documentation necessary for OJP to complete its monitoring tasks, including documentation related to any subawards made under this award. Further, the recipient agrees to abide by reasonable

deadlines set by OJP for providing the requested documents. Failure to cooperate with OJP's monitoring activities may result in actions that affect the recipient's DOJ awards, including, but not limited to: withholdings and/or other restrictions on the recipient's access to award funds; referral to the DOJ OIG for audit review; designation of the recipient as a DOJ High Risk grantee; or termination of an award(s).

## 56

### Use of program income

Program income (as defined in the Part 200 Uniform Requirements) must be used in accordance with the provisions of the Part 200 Uniform Requirements. Program income earnings and expenditures both must be reported on the quarterly Federal Financial Report, SF 425.

## 57

### Compliance with 28 C.F.R. Part 23

With respect to any information technology system funded or supported by funds under this award, the recipient (and any subrecipient at any tier) must comply with 28 C.F.R. Part 23, Criminal Intelligence Systems Operating Policies, if OJP determines this regulation to be applicable. Should OJP determine 28 C.F.R. Part 23 to be applicable, OJP may, at its discretion, perform audits of the system, as per the regulation. Should any violation of 28 C.F.R. Part 23 occur, the recipient may be fined as per 34 U.S.C. 10231(c)-(d). The recipient may not satisfy such a fine with federal funds.

## 58

### Protection of human research subjects

The recipient (and any subrecipient at any tier) must comply with the requirements of 28 C.F.R. Part 46 and all OJP policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.

## 59

### Confidentiality of data

The recipient (and any subrecipient at any tier) must comply with all confidentiality requirements of 34 U.S.C. 10231 and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. The recipient further agrees, as a condition of award approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, 28 C.F.R. 22.23.

## 60

The recipient agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this project.

## 61

The recipient understands that, in accepting this award, the Authorized Representative declares and certifies, among other things, that he or she possesses the requisite legal authority to accept the award on behalf of the recipient entity and, in so doing, accepts (or adopts) all material requirements that relate to conduct throughout the period of performance under this award. The recipient further understands, and agrees, that it will not assign anyone to the role of Authorized Representative during the period of performance under the award without first ensuring that the individual has the requisite legal authority.

## 62

In accepting this award, the recipient agrees that grant funds cannot be used for Facial Recognition Technology (FRT) unless the recipient has policies and procedures in place to ensure that the FRT will be utilized in an appropriate and responsible manner that promotes public safety, and protects privacy, civil rights, and civil liberties and complies with all applicable provisions of the U.S. Constitution, including the Fourth Amendment's protection against unreasonable searches and seizures and the First Amendment's freedom of association and speech, as well as other laws and

regulations. Recipients utilizing funds for FRT must make such policies and procedures available to DOJ upon request.

63

Withholding of funds for Required certification from the chief executive of the applicant government

The recipient may not expend or draw down any award funds until the recipient submits the required "Certifications and Assurances by the Chief Executive of the Applicant Government," properly-executed (as determined by OJP), and an Award Condition Modification has been issued to remove this condition.

I have read and understand the information presented in this section of the Federal Award Instrument.

## Award Acceptance

### Declaration and Certification to the U.S. Department of Justice as to Acceptance

By checking the declaration and certification box below, I—

- A. Declare to the U.S. Department of Justice (DOJ), under penalty of perjury, that I have authority to make this declaration and certification on behalf of the applicant.
- B. Certify to DOJ, under penalty of perjury, on behalf of myself and the applicant, to the best of my knowledge and belief, that the following are true as of the date of this award acceptance: (1) I have conducted or there was conducted (including by applicant's legal counsel as appropriate and made available to me) a diligent review of all terms and conditions of, and all supporting materials submitted in connection with, this award, including any assurances and certifications (including anything submitted in connection therewith by a person on behalf of the applicant before, after, or at the time of the application submission and any materials that accompany this acceptance and certification); and (2) I have the legal authority to accept this award on behalf of the applicant.
- C. Accept this award on behalf of the applicant.
- D. Declare the following to DOJ, under penalty of perjury, on behalf of myself and the applicant: (1) I understand that, in taking (or not taking) any action pursuant to this declaration and certification, DOJ will rely upon this declaration and certification as a material representation; and (2) I understand that any materially false, fictitious, or fraudulent information or statement in this declaration and certification (or concealment or omission of a material fact as to either) may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 34 U.S.C. §§ 10271-10273), and also may subject me and the applicant to civil penalties and administrative remedies under the federal False Claims Act (including under 31 U.S.C. §§ 3729-3730 and/or §§ 3801-3812) or otherwise.

### Agency Approval

<b>Title of Approving Official</b> Deputy Assistant Attorney General	<b>Name of Approving Official</b> Maureen Henneberg	<b>Signed Date And Time</b> 9/18/23 9:35 PM
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### Authorized Representative

Declaration and Certification

### Entity Acceptance

**Title of Authorized Entity Official**  
Corporal

**Name of Authorized Entity Official**  
Sal Gil

**Signed Date And Time**  
10/9/2023 4:46 PM

**INDIRECT COSTS (NON-FEDERAL)**

Description	Computation		Cost
	Base	Rate	
			\$0
<b>NON-FEDERAL TOTAL</b>			<b>\$0</b>

**INDIRECT COSTS NARRATIVE (NON-FEDERAL)**

	<b>TOTAL INDIRECT COSTS</b>	<b>\$0</b>
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**Budget Summary** – When you have completed the budget worksheet, transfer the totals for each category to the spaces below. Compute the total direct costs and the total project costs. Indicate the amount of Federal funds requested and the amount of non-Federal funds that will support the project.

Budget Category	Federal Request	Non-Federal Amounts	Total
A. Personnel	\$0	\$0	\$0
B. Fringe Benefits	\$0	\$0	\$0
C. Travel	\$0	\$0	\$0
D. Equipment	\$31,410	\$3,490	\$34,900
E. Supplies	\$0	\$0	\$0
F. Construction	\$0	\$0	\$0
G. Consultants/Contracts	\$0	\$0	\$0
H. Other	\$0	\$0	\$0
Total Direct Costs	\$31,410	\$3,490	\$34,900
I. Indirect Costs	\$0	\$0	\$0
<b>TOTAL PROJECT COSTS</b>	<b>\$31,410</b>	<b>\$3,490</b>	<b>\$34,900</b>

Federal Request	\$31,410
Non-Federal Amount	\$3,490
Total Project Cost	\$34,900

**Public Reporting Burden**

*Paperwork Reduction Act Notice: Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a current valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete and file this application is four (4) hours per application. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write the Office of Justice Programs, Office of the Chief Financial Officer, 810 Seventh Street, NW, Washington, DC 20531; and to the Public Use Reports Project, 1121-0188, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.*

**U.S. DEPARTMENT OF JUSTICE  
OFFICE OF JUSTICE PROGRAMS**

**Edward Byrne Memorial Justice Assistance Grant Program FY 2023 Local Solicitation**

**Certifications and Assurances by the Chief Executive of the Applicant Government**

On behalf of the applicant unit of local government named below, in support of that locality's application for an award under the FY 2023 Edward Byrne Memorial Justice Assistance Grant ("JAG") Program, and further to 34 U.S.C. § 10153(a), I certify to the Office of Justice Programs ("OJP"), U.S. Department of Justice ("USDOJ"), that all of the following are true and correct:

1. I am the chief executive of the applicant unit of local government named below, and I have the authority to make the following representations on my own behalf as chief executive and on behalf of the applicant unit of local government. I understand that these representations will be relied upon as material in any OJP decision to make an award, under the application described above, to the applicant unit of local government.
2. I certify that no federal funds made available by the award (if any) that OJP makes based on the application described above will be used to supplant local funds, but will be used to increase the amounts of such funds that would, in the absence of federal funds, be made available for law enforcement activities.
3. I assure that the application described above (and any amendment to that application) was submitted for review to the governing body of the unit of local government (*e.g.*, city council or county commission), or to an organization designated by that governing body, not less than 30 days before the date of this certification.
4. I assure that, before the date of this certification— (a) the application described above (and any amendment to that application) was made public; and (b) an opportunity to comment on that application (or amendment) was provided to citizens and to neighborhood or community-based organizations, to the extent applicable law or established procedure made such an opportunity available.
5. I assure that, for each fiscal year of the award (if any) that OJP makes based on the application described above, the applicant unit of local government will maintain and report such data, records, and information (programmatic and financial), as OJP may reasonably require.
6. I have carefully reviewed 34 U.S.C. § 10153(a)(5), and, with respect to the programs to be funded by the award (if any), I hereby make the certification required by section 10153(a)(5), as to each of the items specified therein.

\_\_\_\_\_  
Signature of Chief Executive of the Applicant Unit of  
Local Government

\_\_\_\_\_  
Date of Certification

\_\_\_\_\_  
Printed Name of Chief Executive

\_\_\_\_\_  
Title of Chief Executive

\_\_\_\_\_  
Name of Applicant Unit of Local Government

**RESOLUTION NO. 2023 -**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, AUTHORIZING THE ACCEPTANCE OF THE NATIONAL CITY POLICE DEPARTMENT'S GRANT AWARD OF \$ 31,358 FROM THE 2023 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM TO PURCHASE RED DOT PISTOL OPTICS AND HOLSTERS, AND AUTHORIZING THE ESTABLISHMENT OF AN APPROPRIATION AND CORRESPONDING REVENUE BUDGET**

**WHEREAS**, the Justice Assistance Grant Program provides States and local governments with critical funding necessary to support a range of program areas, including, but not limited to, law enforcement, prosecution, court programs, prevention, and education programs; and

**WHEREAS**, the Office of Justice Programs Bureau of Justice Assistance and the U.S. Department of Justice announced that the City of National City is eligible for a Grant Award of \$31,358 from the Fiscal Year 2023 Edward Byrne Memorial Justice Assistance Grant (JAG) Program – Local Solicitation, for the purchase of Red Dot Pistol Optics and Holsters; and

**WHEREAS**, the City is required to make the grant application available for review and public comment for no less than 30 days: and

**WHEREAS**, the JAG Program is a direct grant allocation program and does not require the City to allocate any upfront costs or matching funds.

**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 acceptance of the National City Police Department 2023 Edward Byrne Memorial Justice Assistance Grant Program Award of \$31,358 upon expiration of the 30-day review and public comment period, and authorizes establishing an appropriation and associated revenue budget of \$31,358 to purchase red dot pistol optics and holsters.

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

**PASSED and ADOPTED** this 7th day of November, 2023.

\_\_\_\_\_  
Ron Morrison, Mayor

ATTEST:

\_\_\_\_\_  
Shelley Chapel, MMC, City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
Barry J. Schultz, City Attorney



# AGENDA REPORT

**Department:** Police Department  
**Prepared by:** Alex Hernandez, Assistant Chief of Police  
**Meeting Date:** Tuesday, November 7, 2023  
**Approved by:** Ben Martinez, Interim City Manager

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**SUBJECT:**

Authorize Adding One (1) Full-Time Police Dispatch Supervisor and Removing One (1) Full-Time Police Dispatcher for Fiscal Year 2023-2024 and Onward.

**RECOMMENDATION:**

Adopt a Resolution Entitled, "Resolution of the City Council of National City, California, Authorizing the Addition of One (1) Police Dispatch Supervisor and Removal of One Police Dispatcher from the Authorized Positions of the City."

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

Not Applicable.

**EXPLANATION:**

The City Council authorizes all full-time and career part-time staff positions as part of the Annual Budget Process. A report of the current authorized positions in the adopted FY24 budget is enclosed as Exhibit A. Authorization provides the budget appropriations to fund the salary and benefits of the positions, along with the approval needed for the departments to recruit and hire staff to fill those positions. Departments are not allowed to hire full-time or career part-time permanent employees without authorization for the position.

For decades, the Police Department has struggled to recruit and retain qualified Police Dispatchers. The department, along with the City Manager's office and Human Resources, has been tackling this issue through a variety of changes, including the recruitment and retention bonus, revision of the assessment exam for entry-level candidates, increased recruitment marketing, continuous recruitment of lateral candidates, and training pay for part-time Police Dispatchers. Through the staff's recent efforts, the number of new recruits to the division is increasing. The problem is narrowing to a training and retention rather than a recruitment issue.

Currently, the structure of the Police Communications division is as follows: one Police Support Services Manager, two Senior Police Dispatchers, and thirteen Police Dispatchers. Part-time Police Dispatchers and part-time Call Takers are hired as needed and when time permits.

There is another classification, Police Dispatch Supervisor (classification specification attached as Exhibit B), that exists and has a City Council-approved salary schedule within the Municipal Employees Association salary schedule. The Police Dispatch Supervisor classification has not been used in recent years and is not currently authorized for the current fiscal year.

The Police Department is requesting that the City Council authorize the addition of one Police Dispatch Supervisor and the removal of one Police Dispatcher from the FY24 authorized positions. The Police Dispatcher Supervisor will fall between the Police Support Services

Manager and the Senior Police Dispatchers in the hierarchy of the division. This change will create an additional opening for internal promotion, with the hope that growth opportunities in responsibility and compensation will improve the retention of current Dispatch Center employees. If approved tonight, the City will hold a closed promotional recruitment to fill the Police Dispatch Supervisor position. Ten (10) of the thirteen (13) Police Dispatcher positions are currently filled, leaving room to remove one (1) authorized position with no impact on current staff. The total number of authorized positions within the division will not change.

A Police Dispatch Supervisor does cost the City more than a Police Dispatcher, an increase of approximately \$30,000 in total compensation per year. Because the Dispatch Center presently has vacancies, no additional budget appropriations are required in FY24 to fund this change. However, in FY25 and beyond, this change will increase the General Fund budget by approximately \$30,000 per year.

**FINANCIAL STATEMENT:**

Approval of this item will increase General Fund appropriations in FY25 and beyond by approximately \$30,000 per year. The City's five-year forecast is projecting deficits in FY25 and beyond, therefore the additional cost will come from the unassigned General Fund - Fund Balance.

**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 – FY24 Authorized Positions by Department  
Exhibit B – Police Dispatch Supervisor Classification Specification  
Exhibit C – Resolution



**AUTHORIZED POSITIONS BY DEPARTMENT**

	<b>FY 2022 Adopted</b>	<b>FY 2023 Adopted</b>	<b>FY 2024 Adopted</b>
<b>CITY COUNCIL</b>			
Confidential Assistant	1.00	1.00	
Councilmember	4.00	4.00	4.00
Executive Assistant IV			1.00
Mayor	1.00	1.00	1.00
<b>CITY COUNCIL Total</b>	<b>6.00</b>	<b>6.00</b>	<b>6.00</b>
<b>CITY CLERK</b>			
City Clerk	1.00	1.00	1.00
Deputy City Clerk	1.00	1.00	1.00
Executive Secretary	1.00	1.00	1.00
<b>CITY CLERK Total</b>	<b>3.00</b>	<b>3.00</b>	<b>3.00</b>
<b>CITY MANAGER</b>			
Assistant City Manager	1.00	1.00	1.00
City Manager	1.00	1.00	1.00
Community Development Spec II	1.00		
Community Development Spec III		1.00	1.00
Executive Assistant IV	1.00	1.00	1.00
Information Technology Analyst	1.00		
Information Technology Manager	1.00	1.00	1.00
Information Technology Technician	2.00	2.00	2.00
Management Analyst II	1.00	1.00	
Management Analyst III/PIO			1.00
Senior Office Assistant	1.00	1.00	1.00
Sr Info Technology Analyst		1.00	1.00
<b>CITY MANAGER Total</b>	<b>10.00</b>	<b>10.00</b>	<b>10.00</b>
<b>FINANCE</b>			
Accountant	2.00	2.00	2.00
Accounting Assistant	5.00	2.00	2.00
Administrative Technician	1.00	1.00	1.00
Budget Manager	1.00	1.00	1.00
Buyer	1.00	1.00	1.00
Director Of Admin Services	0.50	0.50	0.50
Financial Services Officer	1.00	1.00	1.00

\* Starting in FY2022 Hourly/Non-benefited positions are no longer included in FTE count. Budgets for hourly positions can be found in the individual department pages of Section III of the document.



**AUTHORIZED POSITIONS BY DEPARTMENT**

	<b>FY 2022 Adopted</b>	<b>FY 2023 Adopted</b>	<b>FY 2024 Adopted</b>
<b>Management Analyst II</b>			1.00
<b>Payroll Technician I</b>	1.00	1.00	1.00
<b>Payroll Technician II</b>		1.00	1.00
<b>Senior Accountant</b>	1.00	1.00	1.00
<b>Senior Accounting Assistant</b>	1.00	2.00	2.00
<b>FINANCE Total</b>	<b>14.50</b>	<b>13.50</b>	<b>14.50</b>
<b>CITY ATTORNEY</b>			
<b>Assistant City Attorney</b>	1.00	1.00	1.00
<b>City Attorney</b>	1.00	1.00	1.00
<b>Deputy City Attorney</b>	1.00	1.00	1.00
<b>Executive Assistant IV</b>	1.00	1.00	1.00
<b>CITY ATTORNEY Total</b>	<b>4.00</b>	<b>4.00</b>	<b>4.00</b>
<b>HUMAN RESOURCES</b>			
<b>Administrative Secretary</b>	1.00		
<b>Director Of Admin Services</b>	0.50	0.50	0.50
<b>Executive Assistant IV</b>		1.00	1.00
<b>Human Resources Manager</b>	1.00	1.00	1.00
<b>Management Analyst II</b>	1.00	1.50	1.50
<b>Senior Office Assistant</b>	1.00	1.00	1.00
<b>HUMAN RESOURCES Total</b>	<b>4.50</b>	<b>5.00</b>	<b>5.00</b>
<b>CITY TREASURER</b>			
<b>City Treasurer</b>	1.00	1.00	1.00
<b>CITY TREASURER Total</b>	<b>1.00</b>	<b>1.00</b>	<b>1.00</b>
<b>POLICE</b>			
<b>Administrative Secretary</b>	1.00	1.00	1.00
<b>Animal Regulations Officer</b>	2.00	3.00	2.00
<b>Assistant Chief Of Police</b>		1.00	1.00
<b>Community Services Officer</b>	2.00	2.00	2.00
<b>Crime &amp; Intelligence Analyst</b>			1.00
<b>Crime Analyst</b>	1.00	1.00	
<b>Crime Scene Specialist</b>	1.00	1.00	1.00
<b>Executive Assistant II</b>	1.00	1.00	1.00

\* Starting in FY2022 Hourly/Non-benefited positions are no longer included in FTE count. Budgets for hourly positions can be found in the individual department pages of Section III of the document.



**AUTHORIZED POSITIONS BY DEPARTMENT**

	<b>FY 2022 Adopted</b>	<b>FY 2023 Adopted</b>	<b>FY 2024 Adopted</b>
Information Technology Analyst	1.00	1.00	1.00
Management Analyst II		1.00	1.00
Police Captain	2.00	2.00	2.00
Police Chief	1.00	1.00	1.00
Police Corporal	21.00	21.00	21.00
Police Dispatcher	11.00	11.00	13.00
Police Investigator	1.00	1.00	1.00
Police Lieutenant	5.00	5.00	5.00
Police Officer	44.00	46.00	48.00
Police Operations Assistant	1.00	1.00	1.00
Police Records Clerk	5.00	5.00	5.00
Police Records Supervisor	1.00	1.00	1.00
Police Sergeant	13.00	13.00	13.00
Police Support Services Mgr.	1.00	1.00	1.00
Property & Evidence Spec I	1.00	1.00	1.00
Property & Evidence Spec II	1.00	1.00	1.00
Property & Evidence Supervisor	1.00	1.00	1.00
Senior Office Assistant	1.00	1.00	1.00
Senior Police Dispatcher	2.00	2.00	2.00
Stop Grant Office Coordinator	1.00	1.00	1.00
Training Coordinator	1.00	1.00	1.00
<b>POLICE Total</b>	<b>123.00</b>	<b>128.00</b>	<b>131.00</b>
<b>FIRE</b>			
Administrative Secretary	1.00	1.00	
Battalion Chief	1.00	1.00	1.00
Deputy Fire Marshal	1.00	1.00	1.00
Director Of Emergency Services	1.00	1.00	
Executive Secretary			1.00
Fire Battalion Chief	3.00	3.00	3.00
Fire Captain	12.00	12.00	12.00
Fire Chief			1.00
Fire Engineer	9.00	9.00	9.00
Fire Inspector	2.00	2.00	3.00
Firefighter	20.00	20.00	20.00

\* Starting in FY2022 Hourly/Non-benefited positions are no longer included in FTE count. Budgets for hourly positions can be found in the individual department pages of Section III of the document.



**AUTHORIZED POSITIONS BY DEPARTMENT**

	<b>FY 2022 Adopted</b>	<b>FY 2023 Adopted</b>	<b>FY 2024 Adopted</b>
Management Analyst III	1.00	1.00	1.00
Senior Office Assistant	1.00	1.00	1.00
<b>FIRE Total</b>	<b>52.00</b>	<b>52.00</b>	<b>53.00</b>
<b>BUILDING &amp; SAFETY</b>			
Building Official	1.00	1.00	1.00
Permit Technician	2.00	2.00	2.00
Senior Building Inspector	1.00	1.00	1.00
<b>BUILDING &amp; SAFETY Total</b>	<b>4.00</b>	<b>4.00</b>	<b>4.00</b>
<b>ENGINEERING &amp; PUBLIC WORKS</b>			
Administrative Secretary	1.00	1.00	1.00
Assistant Engineer-Civil	2.00	2.00	2.00
Associate Civil Engineer		1.00	1.00
Asst Director Engineering / PW		1.00	1.00
Building Trades Specialist	3.00	3.00	3.00
Civil Engineering Technician	1.00	1.00	1.00
Custodian	7.00	7.00	7.00
Director Of Pw/City Engineer	1.00	1.00	1.00
Equip. Maint. Supervisor	1.00	1.00	1.00
Equipment Mechanic	3.00	3.00	3.00
Equipment Operator	4.00	4.00	4.00
Executive Secretary	1.00	1.00	1.00
Facilities Maint. Supervisor	1.00	1.00	1.00
Lead Equipment Mechanic	1.00	1.00	1.00
Lead Tree Trimmer	1.00	1.00	2.00
Maintenance Worker	8.00	8.00	8.00
Management Analyst II	1.00	1.00	
Management Analyst III			1.00
Park Caretaker	4.00	4.00	4.00
Park Superintendent	1.00	1.00	1.00
Park Supervisor	1.00	1.00	1.00
Parks Equipment Operator	1.00	1.00	1.00
Permit Technician			1.00
Principal Civil Engineer	1.00		

\* Starting in FY2022 Hourly/Non-benefited positions are no longer included in FTE count. Budgets for hourly positions can be found in the individual department pages of Section III of the document.



**AUTHORIZED POSITIONS BY DEPARTMENT**

	<b>FY 2022 Adopted</b>	<b>FY 2023 Adopted</b>	<b>FY 2024 Adopted</b>
Senior Civil Engineering Tech	1.00	1.00	1.00
Senior Construction Inspector	1.00	1.00	1.00
Senior Equipment Operator	2.00	2.00	2.00
Senior Office Assistant	1.00	1.00	1.00
Senior Park Caretaker	4.00	4.00	4.00
Senior Traffic Painter	1.00	1.00	1.00
St & Wastewater Maint Super	1.00	1.00	1.00
Street Sweeper Operator	2.00	2.00	2.00
Supervising Custodian	1.00	1.00	1.00
Traffic Painter	1.00	1.00	1.00
Tree Trimmer	1.00	1.00	2.00
<b>ENGINEERING &amp; PUBLIC WORKS Total</b>	<b>60.00</b>	<b>61.00</b>	<b>64.00</b>
<b>HOUSING AND ECONOMIC DEVELOPMENT</b>			
Community Development Manager	1.00	1.00	1.00
Community Development Spec II	1.00	1.00	1.00
Dir Of Housing & Economic Dev	1.00	1.00	1.00
Executive Assistant IV	1.00	1.00	
Executive Secretary			1.00
Homelessness Outreach Coordinator		1.00	
Housing Assistant	2.00	2.00	2.00
Housing Inspector I	1.00		
Housing Programs Manager	1.00	1.00	1.00
Housing Specialist	5.00	5.00	5.00
Property Agent	1.00	1.00	1.00
Senior Accountant			1.00
Senior Housing Specialist	1.00	1.00	1.00
<b>HOUSING AND ECONOMIC DEVELOPMENT Total</b>	<b>15.00</b>	<b>15.00</b>	<b>15.00</b>
<b>NEIGHBORHOOD SERVICES</b>			
Administrative Secretary	1.00	1.00	1.00
Code Conformance Officer I		1.00	
Code Conformance Officer II	1.00	1.00	
Director Of Comm Development	1.00	1.00	1.00
Executive Secretary			1.00

\* Starting in FY2022 Hourly/Non-benefited positions are no longer included in FTE count. Budgets for hourly positions can be found in the individual department pages of Section III of the document.



**AUTHORIZED POSITIONS BY DEPARTMENT**

	<b>FY 2022 Adopted</b>	<b>FY 2023 Adopted</b>	<b>FY 2024 Adopted</b>
Graffiti Removal Assistant	1.00	1.00	1.00
Graffiti Removal Technician	1.00	1.00	1.00
Homelessness Outreach Coordinator			1.00
Housing Inspector I		1.00	1.00
Neighborhood Services Mgr	1.00	1.00	1.00
Parking Regulations Officer	3.00	3.00	3.00
Senior Office Assistant	1.00	1.00	1.00
Sr Code Conformance Officer			1.00
<b>NEIGHBORHOOD SERVICES Total</b>	<b>10.00</b>	<b>12.00</b>	<b>13.00</b>
<b>LIBRARY</b>			
Academic Enrichment Prog Coord	1.00	1.00	1.00
Administrative Secretary	1.00	1.00	1.00
Circulation Supervisor			1.00
Librarian			2.00
Library/Comm Svcs Director	0.50	0.50	0.50
Management Analyst II		0.50	0.50
Principal Library	1.00	1.00	1.00
Senior Librarian	1.00	1.00	1.00
Senior Library Technician	3.00	3.00	
<b>LIBRARY Total</b>	<b>7.50</b>	<b>8.00</b>	<b>8.00</b>
<b>COMMUNITY SERVICES</b>			
Community Services Manager		1.00	1.00
Executive Chef	1.00	1.00	1.00
Food Services Worker	0.75	0.75	0.75
Home Delivered Meals Coord	1.00	1.00	1.00
Home Delivered Meals Driver	1.50	1.50	2.00
Library/Comm Svcs Director	0.50	0.50	0.50
Management Analyst II		0.50	0.50
Nutrition Program Manager	1.00	1.00	
Nutrition Services Supervisor			1.00
Recreation Center Supervisor	2.75		
Recreation Program Coord			1.00
Recreation Superintendent	1.00		

\* Starting in FY2022 Hourly/Non-benefited positions are no longer included in FTE count. Budgets for hourly positions can be found in the individual department pages of Section III of the document.



**AUTHORIZED POSITIONS BY DEPARTMENT**

	<b>FY 2022 Adopted</b>	<b>FY 2023 Adopted</b>	<b>FY 2024 Adopted</b>
Recreation Supervisor		2.75	2.75
Senior Office Assistant	1.00	1.00	1.00
Sous Chef	1.00	1.00	1.00
<b>COMMUNITY SERVICES Total</b>	<b>11.50</b>	<b>12.00</b>	<b>13.50</b>
<b>PLANNING</b>			
Assistant Planner	1.00	1.00	1.00
Associate Planner	1.00	1.00	1.00
Community Health & Environ Planner			1.00
Executive Secretary	1.00	1.00	
Planning Manager		1.00	1.00
Planning Technician	1.00	1.00	1.00
Principal Planner	1.00	1.00	
<b>PLANNING Total</b>	<b>5.00</b>	<b>6.00</b>	<b>5.00</b>
<b>Grand Total</b>	<b>331.00</b>	<b>340.50</b>	<b>350.00</b>

\* Starting in FY2022 Hourly/Non-benefited positions are no longer included in FTE count. Budgets for hourly positions can be found in the individual department pages of Section III of the document.

<b>POLICE DISPATCH SUPERVISOR</b>	<b>CITY OF NATIONAL CITY</b>
<b>CLASS SPECIFICATION</b>	<b>Approved: July 9, 2015</b>

**DEFINITION**

Under direction, to train, evaluate, and supervise the work assigned to subordinate dispatchers in the Police Department’s Emergency Dispatch Unit; dispatch required equipment and personnel in accordance with standard policies and procedures as necessary; and perform related duties as required.

**DISTINGUISHING CHARACTERISTICS**

This is a working supervisory class that dispatches, assigns, and evaluates the activities of staff involved in the dispatching function. May be subject to shift work.

**EXAMPLES OF TYPICAL DUTIES**

Functions may include, but are not limited to, the following: supervise, direct, participate and oversee incoming service request by telephone on 911 emergency and business lines; obtain information on the nature of the request/emergency, the location, and telephone number on caller, name of caller and other pertinent information, remaining on the line with the victim in emergency, as appropriate and creating a Computer Aided Dispatch (CAD) record of the information; supervise, assign, and review the work of assigned staff; review and evaluate employees work performance; work with employees to correct deficiencies; implement discipline procedures when appropriate; participate in the selection of staff and provide or coordinate staff training in work procedures; plan, assign and coordinate work schedules; assist in the evaluation of operations and activities of assigned responsibilities; recommend and implement improvements and modifications for work methods and procedures; recommend and assist in the implementation of goals and objectives; assist in budget preparation regarding anticipated equipment, material and supply requirements and directs the requisitioning of materials, supplies and equipment for communication center; order, pick up, and deliver supplies; ensure adequate supply inventory; analyze requests for police service, determine priority ranking of each request and the kind and level of service to be dispatched in initial response; determine available units to dispatch; dispatch personnel and equipment according to standard operational procedures, instructions from a supervisor or by individual judgement as required; refer difficult or extremely serious calls to supervisor; listen to each radio transmission from police personnel in the field, acknowledging and complying with requests for action or information; place telephone calls to other police jurisdictions, City departments, City emergency crews, vehicle tow companies, ambulance services, coroner, relatives of victims, telephone and utility companies, alarm company, traffic signal maintenance and other services concerning an emergency; maintain detailed records of the time and nature of each call; operate Computer Aided Dispatch (CAD) system equipment, TDD and other office equipment; operate Teletype and computer terminal to check for registered owners of vehicles and other information; refer to maps and reference materials to secure information needed by personnel in the field and for the dispatch function; take reports and relay messages by radio or telephone; maintain a CAD log of radio calls received and transmitted; type, issue case numbers, log departmental activities and perform routine clerical work; may instruct other personnel in the techniques and use of communications equipment; may perform minor or routine upkeep and maintenance of equipment; build and maintain positive working relationships with co-workers, other City employees and the public using principles of good customer service; perform other duties related to this position.

### **MINIMUM QUALIFICATIONS**

**Training and Experience:** Any combination equivalent to training and experience that could likely provide the required knowledge, skills, and abilities will be qualifying. A typical way to obtain the required knowledge, skills, and abilities would be: Graduation from high school; and three (3) years of emergency service communications work (including radio and telephone) with a law enforcement agency.

**Knowledge and Skills in:** Proper operation and care of voice radio equipment; supervision principles and practices.

**Ability to:** Learn the rules and regulations of the Federal Communications Commission governing the operation of radio transmitters or receivers; type at a net rate of 40 words per minute from clear, legible copy; work under stress; exercise self-control and good judgment in emergency situations; study and maintain a knowledge of departmental policies and procedures, streets, and City geography; maintain clear and accurate records; follow written and oral instructions; speak clearly and distinctly; establish and maintain effective working relations with all levels of staff and the general public in routine as well as stressful situations.

### **LICENSES, CERTIFICATIONS, OR SPECIAL REQUIREMENTS**

Possession of an approved certificate, less than one (1) year old, indicating an ability to type at a net rate of 40 words per minute may be required.

**RESOLUTION NO. 2023 -**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, AUTHORIZING THE ADDITION OF ONE (1) POLICE DISPATCH SUPERVISOR AND REMOVAL OF ONE (1) POLICE DISPATCHER FROM THE AUTHORIZED POSITIONS OF THE CITY**

**WHEREAS**, the City Council of the City of National City adopts the list of authorized full-time and career part-time staff positions to be filled in conjunction with the annual budget; and

**WHEREAS**, City Council authorization of positions approves the budget appropriations for the related salary and benefits, along with approval for City departments to recruit and hire staff to fill those positions; and

**WHEREAS**, the National City Police Department, along with police departments nationwide, has struggled to fully staff the Police Dispatch Center; and

**WHEREAS**, the City is making strides in recruiting new Police Dispatchers; and

**WHEREAS**, the Police Department is focused on retaining the Dispatchers the City has worked hard to recruit and train; and

**WHEREAS**, the Police Department is requesting to add a Police Dispatch Supervisor and remove a Police Dispatcher position to create a larger hierarchy within the division and create an opportunity for internal promotion; and

**WHEREAS**, the total number of authorized positions within the Dispatch Center will remain the same, but the specific positions will shift; and

**WHEREAS**, an estimated annual cost of \$30,000 for the increased salary and benefits will be absorbed within the fiscal year 2023-2024 adopted budget for Police personnel services; and

**WHEREAS**, approval of the position change will increase General Fund appropriations in the Fiscal Year 2024-2025 and beyond by an estimated \$30,000 a year; and

**WHEREAS**, the increased cost will most likely come from the unassigned General Fund Fund balance.

**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 addition of one Police Dispatch Supervisor and removal of one Police Dispatcher from the authorized positions of the City.

**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 November, 2023.**

\_\_\_\_\_  
Ron Morrison, Mayor

**ATTEST:**

\_\_\_\_\_  
Shelley Chapel, MMC, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Barry J. Schultz, City Attorney



# AGENDA REPORT

**Department:** City Manager's Office  
**Prepared by:** Pedro Garcia, Economic Development Manager  
**Meeting Date:** Tuesday, November 7, 2023  
**Approved by:** Ben Martinez, Interim City Manager

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**SUBJECT:**

National City Chamber of Commerce Economic Development Agreement

**RECOMMENDATION:**

Adopt the Resolution Entitled, "Resolution of the City Council of the City of National City, California, Authorizing the Mayor to Execute an Agreement between the City of National City and the National City Chamber of Commerce for a Not-to-Exceed Amount of \$50,000 to Assist in Economic Development Services."

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

Not Applicable.

**EXPLANATION:**

The Chamber of Commerce has been supporting the National City business community for over 100 years and has functioned continuously as the City's largest civic organization. Their membership and support derives from more than 600 National City businesses and others throughout the San Diego region who are interested in advancing the commercial, industrial, and civic interests of the community.

The City of National City for many years has supported the National City Chamber of Commerce through shared goals of supporting our business community. The Chamber has also provided services to the City in support of the economic development goals adopted and prioritized by the City Council through a variety of programs.

On June 20, 2023, the City Council adopted the Fiscal Year 2024 budget allocating \$50,000 for the National City Chamber of Commerce to be used for economic development services.

City staff is returning to the City Council with an agreement between the City of National City and the National City Chamber of Commerce to assist the City with economic development services in the National City business community through workforce development, small business support, business visits, and tourism. The full scope of services is outlined in the agreement Exhibit A. The below list are primary economic development services that will be provided by the National City Chamber of Commerce.

1. Weekly business visits
2. Marketing workshops for National City businesses
3. Development and promotion of an Automotive Industry Directory
4. Discover National City website – tourism
5. Ongoing job postings for National City businesses

**FINANCIAL STATEMENT:**

Expenditures for this program will be from General Fund 001-403-476-650-0000 (City Manager Agency Contributions)

**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 - Agreement  
Exhibit B - Scope of Services  
Exhibit C - Resolution

**AGREEMENT  
BY AND BETWEEN  
THE CITY OF NATIONAL CITY  
AND  
NATIONAL CITY CHAMBER OF COMMERCE**

THIS AGREEMENT is entered into on this 7th day of November, 2023, by and between the CITY OF NATIONAL CITY, a municipal corporation (the “CITY”), and NATIONAL CITY CHAMBER OF COMMERCE, a non-profit (the “CONSULTANT”).

**R E C I T A L S**

**WHEREAS**, the CITY desires to employ a CONSULTANT to provide economic development services for businesses in the City of National City, California.

**WHEREAS**, the CITY has determined that the CONSULTANT is a non-profit organization and is qualified by experience and ability to perform the services desired by the CITY, and the CONSULTANT is willing to perform such services.

**NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:**

1. **ENGAGEMENT OF CONSULTANT.** The CITY agrees to engage the CONSULTANT to provide economic development services for businesses located in the City of National City, California, and the CONSULTANT agrees to perform the services set forth here in accordance with all terms and conditions contained herein.

The CONSULTANT represents that all services shall be performed directly by the CONSULTANT or under direct supervision of the CONSULTANT.

2. **EFFECTIVE DATE AND LENGTH OF AGREEMENT.** This Agreement will become effective on November 7, 2023. The duration of this Agreement is for the period of November 7, 2023 through November 6, 2024. Completion dates or time durations for specific portions of the project are set forth in Exhibit “A”. This Agreement may be extended by mutual agreement upon the same terms and conditions for an additional one (1) year term. The Parties may exercise up to three one-year extensions. Any extension of this Agreement must be approved in writing by the City Manager’s Office.

3. **SCOPE OF SERVICES.** The CONSULTANT will perform services as set forth in the attached Exhibit “A”.

The CONSULTANT shall be responsible for all research and reviews related to the work and shall not rely on personnel of the CITY for such services except as authorized in advance by the CITY. The CONSULTANT shall appear at meetings specified in Exhibit “A” to keep staff and City Council advised on the progress of the project.

The CITY may unilaterally, or upon request from the CONSULTANT, from time to time, reduce or increase the Scope of Services to be performed by the CONSULTANT under this Agreement. Upon doing so, the CITY and the CONSULTANT agree to meet in good faith

and confer for the purpose of negotiating a corresponding reduction or increase in the compensation associated with said change in services.

4. **PROJECT COORDINATION AND SUPERVISION.** City Manager's Office hereby is designated as the Project Coordinator for the CITY and will monitor the progress and execution of this Agreement. The CONSULTANT shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this Agreement for the CONSULTANT. National City Chamber of Commerce thereby is designated as the Project Director for the CONSULTANT.

5. **COMPENSATION AND PAYMENT.** The compensation for the CONSULTANT shall be based on monthly billings covering actual work performed. Billings shall include labor classifications, respective rates, hours worked, and materials, if any. The total cost for all work described in Exhibit "A" shall not exceed \$50,000. The compensation for the CONSULTANT'S work shall not exceed the rates set forth in Exhibit "A". Monthly invoices will be processed for payment and remitted within thirty (30) days from receipt of invoice, provided that work is accomplished consistent with Exhibit "A", as determined by the CITY.

The CONSULTANT shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred and shall make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection by the CITY, and for furnishing of copies to the CITY, if requested.

6. **ACCEPTABILITY OF WORK.** The CITY shall decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the acceptable completion of this Agreement, and the amount of compensation due. In the event the CONSULTANT and the CITY cannot agree to the quality or acceptability of the work, the manner of performance and/or the compensation payable to the CONSULTANT in this Agreement, the CITY or the CONSULTANT shall give to the other written notice. Within ten (10) business days, the CONSULTANT and the CITY shall each prepare a report which supports their position and file the same with the other party. The CITY shall, with reasonable diligence, determine the quality or acceptability of the work, the manner of performance and/or the compensation payable to the CONSULTANT.

7. **DISPOSITION AND OWNERSHIP OF DOCUMENTS.** The Memoranda, Reports, Maps, Drawings, Plans, Specifications, and other documents prepared by the CONSULTANT for this project, whether paper or electronic, shall: (1) be free from defects; (2) become the property of the CITY for use with respect to this project; and (3) shall be turned over to the CITY upon completion of the project, or any phase thereof, as contemplated by this Agreement.

Contemporaneously with the transfer of documents, the CONSULTANT hereby assigns to the CITY, and CONSULTANT thereby expressly waives and disclaims any copyright in, and the right to reproduce, all written material, drawings, plans, specifications, or other work prepared under this Agreement, except upon the CITY'S prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONSULTANT shall, upon request of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

The CONSULTANT agrees that the CITY may use, reuse, alter, reproduce, modify, assign, transfer, or in any other way, medium, or method utilize the CONSULTANT'S written work product for the CITY'S purposes, and the CONSULTANT expressly waives and disclaims any residual rights granted to it by Civil Code Sections 980 through 989 relating to intellectual property and artistic works.

Any modification or reuse by the CITY of documents, drawings, or specifications prepared by the CONSULTANT shall relieve the CONSULTANT from liability under Section 14, but only with respect to the effect of the modification or reuse by the CITY, or for any liability to the CITY should the documents be used by the CITY for some project other than what was expressly agreed upon within the Scope of Services of this project, unless otherwise mutually agreed.

8. **INDEPENDENT CONTRACTOR.** Both parties hereto in the performance of this Agreement will be acting in an independent capacity and not as agents, employees, partners, or joint venturers with one another. Neither the CONSULTANT nor the CONSULTANT'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 Agreement contemplates the personal services of the CONSULTANT and the CONSULTANT'S employees, and it is recognized by the parties that a substantial inducement to the CITY for entering into this Agreement was, and is, the professional reputation and competence of the CONSULTANT and its employees. Neither this Agreement nor any interest herein may be assigned by the CONSULTANT without the prior written consent of the CITY. Nothing herein contained is intended to prevent the CONSULTANT from employing or hiring as many employees, or SUBCONSULTANTS, as the CONSULTANT may deem necessary for the proper and efficient performance of this Agreement. All agreements by CONSULTANT with its SUBCONSULTANT(S) shall require the SUBCONSULTANT(S) to adhere to the applicable terms of this Agreement.

9. **CONTROL.** Neither the CITY, nor its officers, agents, or employees shall have any control over the conduct of the CONSULTANT or any of the CONSULTANT'S employees, except as set forth in this Agreement. The CONSULTANT, or the CONSULTANT'S agents, servants, or employees are not in any manner agents, servants, or employees of the CITY. The CONSULTANT and its agents, servants, and employees are wholly independent from the CITY, and CONSULTANT'S obligations to the CITY are solely prescribed by this Agreement.

10. **COMPLIANCE WITH APPLICABLE LAW.** The CONSULTANT, in the performance of the services to be provided herein, shall comply with all applicable state and federal statutes and regulations, and all applicable ordinances, rules, and regulations of the City of National City, whether now in force or subsequently enacted. The CONSULTANT and each of its SUBCONSULTANT(S), shall obtain and maintain a current City of National City business license prior to and during performance of any work pursuant to this Agreement.

11. **LICENSES, PERMITS, ETC.** The CONSULTANT represents and covenants that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. CONSULTANT must promptly produce a copy of any such license, permit, or approval to CITY upon request. The CONSULTANT represents and covenants

that the CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for the CONSULTANT to practice its profession.

12. **STANDARD OF CARE.**

A. The CONSULTANT, in performing any services under this Agreement, shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the CONSULTANT'S trade or profession currently practicing under similar conditions and in similar locations. The CONSULTANT shall take all special precautions necessary to protect the CONSULTANT'S employees and members of the public from risk of harm arising out of the nature of the work and/or the conditions of the work site.

B. Unless disclosed in writing before the date of this Agreement, the CONSULTANT warrants to the CITY that it is not now, nor has it for the five (5) years preceding, been debarred by a governmental agency or involved in debarment, arbitration, or litigation proceedings concerning the CONSULTANT'S professional performance or the furnishing of materials or services relating thereto.

C. The CONSULTANT is responsible for identifying any unique products, treatments, processes, or materials whose availability is critical to the success of the project the CONSULTANT has been retained to perform, within the time requirements of the CITY, or, when no time is specified, then within a commercially reasonable time. Accordingly, unless the CONSULTANT has notified the CITY otherwise, the CONSULTANT warrants that all products, materials, processes or treatments identified in the project documents prepared for the CITY are reasonably commercially available. Any failure by the CONSULTANT to use due diligence under this sub-section will render the CONSULTANT liable to the CITY for any increased costs that result from the CITY'S later inability to obtain the specified items or any reasonable substitute within a price range that allows for project completion in the time frame specified or, when not specified, then within a commercially reasonable time.

13. **NON-DISCRIMINATION PROVISIONS.** The CONSULTANT shall not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. The CONSULTANT will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

14. **CONFIDENTIAL INFORMATION.** The CITY may, from time to time, communicate to the CONSULTANT certain confidential information to enable the CONSULTANT to effectively perform the services to be provided herein. The CONSULTANT shall treat all such information as confidential and shall not disclose any part thereof without the prior written consent of the CITY. The CONSULTANT shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services to be provided herein. The foregoing obligation of this Section 14, however, shall not apply to any

part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of the CONSULTANT, hereafter disclosed in publicly available sources of information; (iii) is already in the possession of the CONSULTANT without any obligation of confidentiality; or (iv) has been or is hereafter rightfully disclosed to the CONSULTANT by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

The CONSULTANT shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this Agreement without the prior written consent of the CITY. In its performance hereunder, the CONSULTANT shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

CONSULTANT shall be liable to CITY for any damages caused by breach of this condition, pursuant to the provisions of Section 15.

15. **INDEMNIFICATION AND HOLD HARMLESS.** To the maximum extent provided by law, The CONSULTANT agrees to defend, indemnify and hold harmless the City of National City, its officers, officials, agents, 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, of or by anyone whomsoever, resulting from or arising out of the CONSULTANT'S performance or other obligations under this 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. CITY will cooperate reasonably in the defense of any action, and CONSULTANT shall employ competent counsel, reasonably acceptable to the City Attorney.

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

16. **EMPLOYEE PAYMENTS AND INDEMNIFICATION.**

16.1 **PERS Eligibility Indemnification.** If CONTRACTOR's employee(s) providing services under this Agreement claims, or is determined by a court of competent jurisdiction or the California Public Employees Retirement System ("PERS") to be eligible for enrollment in PERS of the CITY, CONTRACTOR shall indemnify, defend, and hold harmless CITY for the payment of any employer and employee contributions for PERS benefits on behalf of the employee as well as for payment of any penalties and interest on such contributions which would otherwise be the responsibility of the CITY.

CONTRACTOR'S employees providing service under this Agreement shall not: (1) qualify for any compensation and benefit under PERS; (2) be entitled to any benefits under PERS; (3) enroll in PERS as an employee of CITY; (4) receive any employer contributions paid by CITY for PERS benefits; or (5) be entitled to any other PERS-related benefit that would accrue to a CITY employee. CONTRACTOR's employees hereby waive any claims to benefits or compensation described in this Section 16. This Section 16 applies to CONTRACTOR notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary.

16.2 Limitation of CITY Liability. The payment made to CONTRACTOR under this Agreement shall be the full and complete compensation to which CONTRACTOR and CONTRACTOR's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither CONTRACTOR nor CONTRACTOR's officers, employees, agents, and subcontractors are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to CITY employees. The CITY will not make any federal or state tax withholdings on behalf of CONTRACTOR. The CITY shall not be required to pay any workers' compensation insurance on behalf of CONTRACTOR.

16.3 Indemnification for Employee Payments. CONTRACTOR agrees to defend and indemnify the CITY for any obligation, claim, suit, or demand for tax, retirement contribution including any contribution to PERS, social security, salary or wages, overtime payment, or workers' compensation payment which the CITY may be required to make on behalf of (1) CONTRACTOR, (2) any employee of CONTRACTOR, or (3) any employee of CONTRACTOR construed to be an employee of the CITY, for work performed under this Agreement. This is a continuing obligation that survives the termination of this Agreement.

17. WORKERS' COMPENSATION. The CONSULTANT shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Labor Code and all amendments thereto; and all similar State or federal acts or laws applicable; and shall indemnify, and hold harmless the CITY and its officers, employees, and volunteers from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description, including reasonable attorney's fees and defense costs presented, brought or recovered against the CITY or its officers, employees, or volunteers, for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by the CONSULTANT under this Agreement.

18. INSURANCE. The CONSULTANT, at its sole cost and expense, shall purchase and maintain, and shall require its SUBCONSULTANT(S), when applicable, to purchase and maintain throughout the term of this Agreement, the following 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 owned, non-owned, and hired vehicles. The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement shall be provided.

C. **Commercial General Liability Insurance**, with minimum limits of either \$2,000,000 per occurrence and \$4,000,000 aggregate, or \$1,000,000 per occurrence and \$2,000,000 aggregate with a \$2,000,000 umbrella policy, covering all bodily injury and property damage arising out of its operations, work, or performance under this Agreement. The policy shall name the CITY and its officers, agents, employees, and volunteers 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 "project" or "location" should be noted with specificity on an endorsement that shall be incorporated into the policy.

D. **Workers' Compensation Insurance** in an amount sufficient to meet statutory requirements covering all of CONSULTANT'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 Agreement.

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

E. The aforesaid policies shall constitute primary insurance as to the CITY, its officers, officials, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY'S Risk Manager, at the address listed in subsection G below, of cancellation or material change.

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

G. The Certificate Holder for all policies of insurance required by this Section 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: VII according to the current Best's Key Rating Guide, or a company of 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 List of Approved Surplus Line Insurers ("LASLI") and otherwise meet rating requirements.

I. This 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 CONSULTANT does not keep all insurance policies required by this Section 18 in full force and effect at all times during the term of this Agreement, the CITY may treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the 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 Section 18, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

K. If the CONSULTANT maintains broader coverage or higher limits (or both) than the minimum limits shown above, the CITY shall be entitled to the broader coverage or higher limits (or both) maintained by the CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

19. **LEGAL FEES.** If any party brings a suit or action against the other party arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out-of-court settlement, shall be entitled to have and recover of and from the other party all costs and expenses of suit, including attorneys' fees.

For purposes of determining who is to be considered the prevailing party, it is stipulated that attorney's fees incurred in the prosecution or defense of the action or suit shall not be considered in determining the amount of the judgment or award. Attorney's fees to the prevailing party if other than the CITY shall, in addition, be limited to the amount of attorney's fees incurred by the CITY in its prosecution or defense of the action, irrespective of the actual amount of attorney's fees incurred by the prevailing party.

20. **TERMINATION.**

A. This Agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon 60-day's written notice to the CONSULTANT. During said 60-day period the CONSULTANT shall perform all services in accordance with this Agreement.

B. This Agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this Agreement, misrepresentation by the CONSULTANT in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by the CITY.

C. Termination with or without cause shall be effected by delivery of written Notice of Termination to the CONSULTANT as provided for herein.

D. In the event of termination, all finished or unfinished Memoranda Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONSULTANT, whether paper or electronic, shall immediately become the property of and be delivered to the CITY, and the CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and other materials up to the effective date of the Notice of Termination, not to exceed the amounts payable hereunder, and less any damages caused the CITY by the CONSULTANT'S breach, if any. Thereafter, ownership of said written material shall vest in the CITY all rights set forth in Section 7.

E. The CITY further reserves the right to immediately terminate this Agreement upon: (1) the filing of a petition in bankruptcy affecting the CONSULTANT; (2) a reorganization of the CONSULTANT for the benefit of creditors; or (3) a business reorganization, change in business name or change in business status of the CONSULTANT.

21. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or telegraphed or cabled; or delivered or sent by telex, telecopy, facsimile or fax; and shall be deemed received upon the earlier of (i) if personally

delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility, (iii) if mailed by registered, certified or ordinary mail, five (5) days (ten (10) days if the address is outside the State of California) after the date of deposit in a post office, mailbox, mail chute, or other like facility regularly maintained by the United States Postal Service, (iv) if given by telegraph or cable, when delivered to the telegraph company with charges prepaid, or (v) if given by telex, telecopy, facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

To CITY: Ben Martinez  
Interim City Manager  
Office of the City Manager  
City of National City  
1243 National City Boulevard  
National City, CA 91950-4397

To CONSULTANT:  
Victor Gonzalez  
Chairman  
National City Chamber of Commerce  
City Of National City  
901 National City Boulevard  
National City, CA 91950-4397

Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Any notice, request, demand, direction or other communication sent by cable, telex, telecopy, facsimile or fax must be confirmed within forty-eight (48) hours by letter mailed or delivered as specified in this Section.

**22. CONFLICT OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS.** During the term of this Agreement, the CONSULTANT shall not perform services of any kind for any person or entity whose interests conflict in any way with those of the City of National City. The CONSULTANT also agrees not to specify any product, treatment, process or material for the project in which the CONSULTANT has a material financial interest, either direct or indirect, without first notifying the CITY of that fact. The CONSULTANT shall at all times comply with the terms of the Political Reform Act and the National City Conflict of Interest Code. The CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONSULTANT has a financial interest as defined in Government Code Section 87103. The CONSULTANT represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the CITY.

If checked, the CONSULTANT shall comply with all of the reporting requirements of the Political Reform Act and the National City Conflict of Interest Code. Specifically, the CONSULTANT shall file a Statement of Economic Interests with the City Clerk

of the City of National City in a timely manner on forms which the CONSULTANT shall obtain from the City Clerk.

The CONSULTANT shall be strictly liable to the CITY for all damages, costs or expenses the CITY may suffer by virtue of any violation of this Section 22 by the CONSULTANT.

23. **PREVAILING WAGES.** State prevailing wage rates may apply to work performed under this Agreement. State prevailing wages rates apply to all public works contracts as set forth in California Labor Code, including but not limited to, Sections 1720, 1720.2, 1720.3, 1720.4, and 1771. Consultant is solely responsible to determine if State prevailing wage rates apply and, if applicable, pay such rates in accordance with all laws, ordinances, rules, and regulations.

24. **ADMINISTRATIVE PROVISIONS.**

A. *Computation of Time Periods.* If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state, or legal holiday.

B. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

C. *Captions.* Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

D. *No Obligations to Third Parties.* Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

E. *Exhibits and Schedules.* The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes. To the extent any exhibits, schedules, or provisions thereof conflict or are inconsistent with the terms and conditions contained in this Agreement, the terms and conditions of this Agreement shall control.

F. *Amendment to this Agreement.* The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

G. *Assignment & Assumption of Rights.* CONSULTANT shall not assign this Agreement, in whole or in part, to any other party without first obtaining the written consent of CITY.

H. *Waiver.* The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

I. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California. The venue for any legal action arising under this Agreement shall be in either state or federal court in the County of San Diego, State of California.

J. *Audit.* If this Agreement exceeds ten-thousand dollars (\$10,000), the parties shall be subject to the examination and audit of the State Auditor for a period of three (3) years after final payment under the Agreement, per Government Code Section 8546.7.

K. *Entire Agreement.* This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the

parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

L. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

M. *Subcontractors or Subconsultants.* The CITY is engaging the services of the CONSULTANT identified in this Agreement. The CONSULTANT shall not subcontract any portion of the work, unless such subcontracting was part of the original proposal or is allowed by the CITY in writing. In the event any portion of the work under this Agreement is subcontracted, the subconsultant(s) shall be required to comply with and agree to, for the benefit of and in favor of the CITY, both the insurance provisions in Section 18 and the indemnification and hold harmless provision of Section 15 of this Agreement.

N. *Construction.* The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) each party and such party's counsel and advisors have reviewed this Agreement, (v) each party has agreed to enter into this Agreement following such review and the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

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

**CITY OF NATIONAL CITY**

**INSERT CO'S NAME IN BOLD, ALL CAPS**

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

By: \_\_\_\_\_  
Ron Morrison, Mayor

By: \_\_\_\_\_  
*(Name)*

\_\_\_\_\_  
*(Print)*

\_\_\_\_\_  
*(Title)*

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Barry J. Schultz,  
City Attorney

By: \_\_\_\_\_  
*(Name)*

\_\_\_\_\_  
*(Print)*

\_\_\_\_\_  
*(Title)*

## Scope of Work for City Grant of \$50,000.00

*This is a proposal for the scope of work for the City's support for the National City Chamber of Commerce. These are all economic development tasks whose primary goal is to attract more business from outside the City of National City, to help local businesses grow and improve the economic opportunities for local residents.*

- 1) **Weekly Business Visits in National City.** The aim of this program is to have a permanent schedule of visits to businesses in National City, with the goal of learning about the nature of the business and what services they need and what challenges they are facing.

**Goal: Increased Business Visits and support**

Deliverable: Visit 5 businesses every week, completing the attached survey for each business. This will begin in September 2023

The Chamber will share with the city the survey responses at the end of the month and a list of businesses visited in every district in National City.

- 2) **Marketing workshops for Local Businesses (Yelp, Social Media and Google)** to educate and empower our local businesses to market their businesses in the new era of social media marketing.

**Goal:** Increase Social media presence of local businesses.

**Deliverable:** Host a minimum of 4 Social media marketing workshops available to all businesses.

- 3) **Development, recruitment, and promotion of a new Automotive Directory for National City,** that will include businesses related to the Automotive industry in National City. This directory will be available in print and in a digital platform to promote many businesses in this sector. The goal is to bring awareness and new business to the City of National City's Automotive sector.

**Launch for business recruitment – September 2023**

Directory ready for distribution – January 2024

**Goal:** to have 40 automotive businesses in the first edition of this directory.

**Deliverable: Auto Directory**

**No Non-conforming businesses and to have a business license.**

- 4) **Maintenance and improvement of the website “Discover National City”** to be used as a promotional tool to bring more businesses to National City. By adding a minimum of 3 new Businesses every week to this website, community and city events, attractions, and blogs. This website will discover the many options for shopping and entertainment available in National City, especially people outside the city, bringing new business to these businesses. \*

We will prepare a list of the businesses that have been added every month, covering all the districts in National City. This is an ongoing task with no ending date.

**Goal:** Increase traffic to the website by 30% by the end of the 12 months

**Deliverable:** An updated and robust website including events happening in the City and links to select local businesses videos.

- 5) **Maintaining a listing of jobs available in National City on the NC Chamber of Commerce website.** The goal is to help local residents have access to jobs available in their own community, saving them transportation costs and easier access to good jobs. We currently have 125 jobs listed that are in National City.

**Goal:** Updated Job Openings on a monthly basis

**Deliverable:** to keep the list updated and have a minimum of 100 local jobs listed at any given time. This is an ongoing task. We can print out the monthly list of job offers at the end of the month.

We will request a list of jobs filled from the main employers to track the success for these efforts.

We will prepare a monthly report on each of these items so that the city can know the progress and impact that these activities have on businesses and the local community.

The National City Chamber of Commerce will issue a monthly invoice to the City for \$3,200.00 for 11 months and a final one of \$4,800.00 to round up the total to complete the \$40,000.00. In this way, the City would know the progress on a monthly basis for these tasks.

The City would also sponsor Chamber events for a total of \$10,000.00 for the year based on the attached sponsorship proposal.

If the Chamber does not send monthly reports on these items to support the scope of work, the City could revert to requesting hourly tasks to support invoicing.

\* Having an app is a useful tool for most businesses since it is an easier way for consumers to navigate the products. Since we are only providing information about National City, a website, which we already purchased and are constantly maintaining it, is the best way to promote National City.

The Chamber already invested in a couple of apps in the past, a directory for our members, Chamber upcoming events, and an interactive map of National City. We felt this action was not successful and most people didn't bother downloading our apps. When people are searching for any community items in National City, our website [DiscoverNationalcity.org](http://DiscoverNationalcity.org) and the Chamber website will show up on their search engine and we often get calls from visitors asking for more information.

**RESOLUTION NO. 2023 -**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, APPROVING AN AGREEMENT BETWEEN THE CITY OF NATIONAL CITY AND THE NATIONAL CITY CHAMBER OF COMMERCE FOR A NOT TO EXCEED AMOUNT OF \$50,000 FOR ECONOMIC DEVELOPMENT SERVICES**

**WHEREAS**, the National City Chamber of Commerce has been supporting the National City business community for over 100 years with support from over 600 National City businesses; and

**WHEREAS**, the City of National City for many years has supported the National City Chamber of Commerce through shared goals of supporting our business community; and

**WHEREAS**, on June 20, 2023, the City Council adopted the Fiscal Year 2024 budget allocating \$50,000 for the National City Chamber of Commerce to be used for economic development services; and

**WHEREAS**, the National City Chamber of Commerce will assist the City with economic development services in the National City business community through workforce development, small business support, business visits, and tourism; and

**WHEREAS**, City staff recommends City Council authorize the Mayor to execute an agreement between the City of National City and the National City Chamber of Commerce for a not-to-exceed amount of \$50,000 for economic development services.

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

**Section 1:** Authorizes the Mayor to execute an agreement between the City of National City and the National City Chamber of Commerce for a not-to-exceed amount of \$50,000 for economic development services.

**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 November, 2023.**

\_\_\_\_\_  
Ron Morrison, Mayor

**ATTEST:**

\_\_\_\_\_  
Shelley Chapel, MMC, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Barry J. Schultz, City Attorney



# AGENDA REPORT

**Department:** Housing Authority  
**Prepared by:** Angelita Palma, Housing Programs Manager  
**Meeting Date:** Tuesday, November 7, 2023  
**Approved by:** Ben Martinez, Interim City Manager

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**SUBJECT:**

Ratifying Prior Expenditures and Amendment No. 1 for Section 8 Software.

**RECOMMENDATION:**

Adopt the Resolution Entitled, "Resolution of the Community Development Commission-Housing Authority of the City of National City, California, Ratifying Prior Expenditures from Fiscal Year (FY) 2002 through FY 2024 Totaling \$292,349.49 and Master Agreement Amendment No. 1, Including a Not-to-Exceed Amount of \$35,030.00 for FY 2025, to Administer the Section 8 Housing Choice Voucher Program through Happy Software Inc., Now Known as MRI Software LLC."

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

N/A

**EXPLANATION:**

**Background**

HUD regulations require that a housing software program be used for the proper administration and management of the Section 8 Housing Choice Voucher (Section 8 HCV) Program. On June 18, 2002, through CDC Resolution 2002-31, the CDC authorized the purchase and utilization of software and services from Happy Software Inc., which was identified as the most qualified and experienced provider of such software and services. In 2018, Happy Software Inc. was acquired by MRI Software LLC, which continues to provide the same software, and services to its customers.

From FY 2002 through FY 2024, the Section 8 HCV Program has continued to purchase and utilize this software through Happy Software Inc. and MRI Software LLC. These expenditures have been paid through HUD Section 8 HCV grant funds. The expenditures other than those approved in CDC Resolution 2002-31 have totaled \$292,349.49. Staff recommends the City Council ratify the combined expenditures as the amount of funding exceeds the City's established limits for contracting and award authority.

The Housing Authority's Section 8 HCV Program secured pricing for software and services by MRI Software LLC for thirty-six (36) months through Amendment No. 1 (Exhibit "B") to the Master Agreement (Exhibit "A") expiring at the end of FY 2025. Staff recommends that the City Council ratify Amendment No. 1 to maintain the pricing at the not-to-exceed amount of \$35,030.00 for FY 2025. The Housing Authority will bring future agreements to the City Council for approval per policy.

**City Council Action**

The Resolution would: 1) ratify prior expenditures totaling \$292,349.49 for products and services required to administer the Section 8 Housing Choice Voucher Program previously through Happy Software Inc. and MRI Software LLC; 2) ratify Amendment No. 1 including a not-to-exceed amount of \$35,030.00 for services in FY 2025; and 3) authorize the City Manager or his designee to execute agreements and amendments with MRI Software LLC for products and services used to administer the Housing Authority’s Section 8 HCV Program.

**FINANCIAL STATEMENT:**

This action would ratify \$292,349.49 in prior Happy Software Inc. and MRI Software LLC expenditures from FY 2002 to 2024. The not-to-exceed amount of \$35,030.00 for MRI Software LLC software and services for FY 2025 as specified in Amendment No. 1 will be included in the FY 2025 budget using expenditure account 502-419-462-299-0000.

**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.

**ORDINANCE:**

Not Applicable

**EXHIBITS:**

- Exhibit A - MRI Software LLC Master Agreement
- Exhibit B – Software LLC Amendment No.1
- Exhibit C – Resolution MRI

## MASTER AGREEMENT

This Master Agreement is entered into between MRI Software company named in the attached Order Document (“MRI”) and the Client named in the Order Document, and the authorized representatives of the Parties hereby execute this Master Agreement to be effective as of the Effective Date, as defined in the Order Document. As used in this Agreement, “Party” means either Client or MRI, as appropriate, and “Parties” means Client and MRI.

### 1. PURPOSE AND SCOPE

**1.1 Master Agreement.** This Master Agreement establishes the general terms and conditions to which the Parties have agreed in order to facilitate the licensing of residential and/or commercial property management enterprise software, content, other products and/or the provision of related services. Additional product or service-specific terms and conditions are set forth in one or more Schedules (as further defined in Section 1.2 herein).

All references to the “**Master Agreement**” shall mean this document, exclusive of Schedules. All references to the “**Agreement**” wherever found shall include this Master Agreement, all Schedules, the Order Document and any attachments incorporated in the Schedules.

**1.2 Incorporation of Schedules.** This Master Agreement shall fully incorporate by reference the terms and conditions found in each of the Schedules indicated on the Order Document or incorporated into these terms

The Parties may execute, from time to time, additional Schedules under the terms of this Master Agreement.

#### 1.3 Incorporation of Order Documents.

“**Order Document**” means the document(s), regardless of its actual name, executed by the Parties which incorporates by reference the terms of this Master Agreement and applicable Schedules, and describes Client’s order-specific information, such as description of Software or Services ordered, license scope, use and restrictions, fees, milestones, and/or Third Party EULAs, if any.

At any time after execution of the initial Order Document, Client may purchase additional Software licenses or Services or otherwise expand the scope of such license or Services granted under an Order Document, upon MRI’s receipt and acceptance of a new Order Document specifying the foregoing.

**1.4 Owner.** The Software is designed to be used for residential and/or commercial property management. If the Client is not the owner of such property or not the owner of all such properties for which the Software or any Service is utilized; but rather, Client is the manager for the owner of such property (with the non-Client property owner defined as “Owner”), then Client represents that Client either: (i) is entering this Agreement directly in privity with MRI; or (ii) is the duly appointed agent of the Owner and has the authority to enter into and perform the Agreement and use the Software and Services pursuant to the terms set forth in the Agreement. Client shall at all times be solely liable for the payment of all fees and the observance of all obligations, terms and conditions of the Agreement, regardless of any action, inaction or non-payment by any Owner. Client shall keep MRI apprised in writing at all times of the identity and contact information of the Owner, and if Client’s relationship changes with respect to the Owner (by way of example and not by way of limitation, such as if Client’s agency or management relationship with Owner terminates). If Client’s relationship with an Owner or a particular property terminates for any reason, Client shall continue to be liable for any and all fees related to such Owner or property regardless of when such fees are billed by MRI. Client shall immediately notify MRI in the event of any change in ownership or control (including any change in control pursuant to a management contract) of Client, Owner or any of the properties, sites, or communities authorized for use of any Software or SaaS Service. Client shall undertake all reasonable efforts to assist in deactivating the ability of any such sold or transferred properties, sites and communities to use or benefit from any Software or SaaS Service. Client shall remain fully liable for the use of any Software or SaaS Service until proper notification is completed.]

**1.5 Administrators.** For the purposes of this Agreement, “**Administrators**” means the individual so designated by Client on the Order Document. An Administrator has full administrative privileges for all Software and Services, including without limitation (i) creating, deleting or modifying databases or user accounts; (ii) creating, deleting, copying, restoring or requesting copies of databases; (iii) requesting security and audit reporting; (iv) security class modification; and (v) site modification. Once named, the Administrator(s) shall have sole authority to instruct MRI and make decisions on behalf of Client regarding Client’s use of the Software or Services. MRI shall be entitled to rely upon any representation of the Administrator(s) without further verification of authority. MRI may, from time to time, in its sole discretion, require written documentation of Client verifying the authority or continued authority of any Administrator, which Client shall provide upon request. At least one (1) Administrator must be a Designated Support Contact. An Administrator must be an employee of the Client.

**1.6 Designated Support Contact.** For the purposes of this Agreement, “**Designated Support Contacts**” means the Client employees so designated by Client on the Order Document. The Client shall have the number of Designated Support Contacts as designated on the Order Document. Only a Designated Support Contact shall be permitted to contact MRI for any Maintenance and Support services and shall have the authority to (i) log case requests; and (ii) receive status updates on cases. A Designated Support Contact must be an employee of the Client.

**1.7 Client User.** For the purposes of this Agreement, “**Client User**” means a Client employee or Client Affiliate, acting directly on behalf of Client and using the Software or Services solely for the purpose of the Client’s internal business operations. If an Affiliate is a Client User, Client warrants that it has the authority to bind such Affiliate(s) to the terms of the Agreement and any applicable Schedule and further warrants that Client shall be jointly and severally responsible (with any such Affiliates) for a breach of such terms by its Affiliates. Client shall only permit Client Users to access and use any Software or Service and represents and warrants that all Client Users shall comply with the terms and conditions of use set forth in this Agreement and each such Client User shall be bound by a nondisclosure agreement with provisions that are at least as restrictive as the terms of this Agreement. Client shall indemnify and hold MRI harmless for all loss, damages, costs and expenses (including reasonable attorneys’ fees) incurred by MRI for any breach or other violation of this Agreement by a Client User. An independent contractor, agent or other third party acting on behalf of Client may be deemed a Client User upon prior written consent of MRI, which MRI shall determine in its sole discretion, and may require such independent contractor, agent or other third party to certify with or enter contractual terms with MRI acceptable to MRI. In no event shall the combined use of the Software or Services hereunder by Client and its Client Users exceed the Licensed Metrics authorized under the applicable Order Document.

### 2. DEFINITIONS

“**Affiliate**” means an entity controlling, controlled by or under common control with a Party to the Agreement where control means the ownership or control, directly or indirectly, of more than fifty percent (50%) of all the voting power of the shares (or other securities or rights) entitled to vote for the election of directors or other governing authority.

“**Client**” means the entity that has entered into this Agreement with MRI. “Client” also refers to Affiliates authorized to use the Software and Services in accordance with Section 1.7.

**“Client Data”** means any data, media, content, and information that Client provides, generates, transfers, uploads or makes available to MRI under the Agreement, whether printed, electronic, or in some other format. Information that is collected by the System as part of the Services shall be considered information that has been provided by the Client. Client Data shall include, without limitation, documents, data, spreadsheets, photographs, video, and other media. Client Data shall also include data and information belonging to Owner as well as Owner’s customers and Client’s customers. Feedback provided to MRI by the Client shall not be considered Client Data.

**“Content”** means any information, data, text, software, music, sound, photographs, graphics, video messages or other material to which Client is provided access through MRI or the Software.

**“Configurations”** means, regardless of whether such Configurations are performed by MRI, Client or Client User, (i) configurations implemented through use of the MRI application toolkit or other MRI approved industry standard toolkit, and not through source code change, or (ii) modifications to standard services reports. Notwithstanding any other provision in the Agreement, if Client has Configurations performed by a third party, such third party must be qualified as a Client User pursuant to Section 1.7 prior to the disclosure of any MRI Confidential Information to such third party.

**“Documentation”** means the user instructions, release notes, Functional Specifications, manuals and on-line help files in the form generally made available by MRI, regarding the use of the applicable Software.

**“Functional Specifications”** means those specifications of the MRI Software’s functionality as set forth in the MRI Software LLC and Affiliated companies Functional Specifications, which may be found on [www.mrisoftware.com/MRIfunctionalspecs.asp](http://www.mrisoftware.com/MRIfunctionalspecs.asp), which specifications may be updated from time to time by MRI upon posting new specifications at such web page address.

**“Intellectual Property”** means any and all intellectual property rights, recognized in any country or jurisdiction in the world, now or hereafter existing, and whether or not perfected, filed or recorded, including without limitation inventions, technology, patents rights (including patent applications and disclosures), copyrights, trade secrets, trademarks, service marks, trade dress, methodologies, procedures, processes, know-how, tools, utilities, techniques, various concepts, ideas, methods, models, templates, software, source code, algorithms, the generalized features of the structure, sequence and organization of software, user interfaces and screen designs, general purpose consulting and software tools, utilities and routines, and logic, coherence and methods of operation of systems, training methodology and materials, which MRI has created, acquired or otherwise has rights in, and may, in connection with the performance of Services hereunder, create, employ, provide, modify, create, acquire or otherwise obtain rights in.

**“License Metrics”** means the limitation on the usage of each of the Software and Maintenance and Support services as designated and/or defined in the applicable Order Document by a term such as the number of leases, units, assets, users and the like.

**“Maintenance and Support”** includes (i) phone assistance and workarounds so that the Software operates in material conformance with the Functional Specifications, and (ii) Updates, all of which are provided under MRI’s Maintenance and Support Policies (as may be amended by MRI from time to time) in effect at the time the Support is provided. For the avoidance of doubt, Maintenance and Support excludes Professional Services.

**“Maintenance and Support Policies”** means those policies and procedures listed in the Maintenance and Support Policies, that may also be found on MRI’s website at [www.mrisoftware.com/maintenanceandsupport](http://www.mrisoftware.com/maintenanceandsupport), which may be subject to update by MRI from time to time.

**“MRI Software”** means each MRI-developed and/or MRI-owned software product in machine readable object code (not source code), the Documentation for such product, and any Updates and Upgrades thereto (if purchased by Client).

**“Owner”** is defined in Section 1.4.

**“Professional Services”** means data conversion, implementation, site planning, configuration, integration and deployment of the Software or SaaS Services, training, project management and other consulting services.

**“Protected Materials”** means Software, Content, Services, Configurations, license keys and MRI’s or its licensors’ Intellectual Property or Confidential Information.

**“SaaS Services”** the provision of the Software and/or Content as a service which is hosted by MRI or its hosting providers and which is accessed by Client via the internet, as more fully described in the SaaS Services Schedule and associated Order Document(s).

**“Services”** means collectively (i) the Professional Services; (ii) Maintenance and Support, and (iii) SaaS Services.

**“Software”** means collectively the MRI Software and Third Party Software.

**“System”** means the total package of hardware and Software furnished and/or maintained by MRI.

**“Third Party EULA”** or **“EULA”**: the end user license agreement, if any, that accompanies or pertains to the Third Party Software, and that is incorporated into the Agreement, appended to the Order Document or is otherwise published by the third party supplier, and which governs the use of or access by Client to the applicable Third Party Software. A current list of Third Party EULAs may be found at [www.mrisoftware.com/EULA](http://www.mrisoftware.com/EULA), which may be updated from time to time.

**“Third Party Software”** means software in object code form, including Documentation, Updates and Upgrades (if purchased by Client), owned by an entity other than MRI which are to be provided to Client by MRI on a pass-through, reseller or OEM basis pursuant to the terms of the EULA.

**“Updates”** means a new version of the Software, if and when developed after the effective date of the Order Document, which MRI makes generally available to its customers as part of the Maintenance and Support. Updates include bug fixes, patches, error corrections, non-new platform changes, or minor modifications or revisions to the Software that enhance existing performance. Updates exclude Upgrades and new products, modules or functionality for which MRI generally charges a separate fee.

**“Upgrade”** means a new Software release that may contain (i) new applications; (ii) major functionality enhancements or improvements; and/or (iii) a new platform, which MRI designates as an Upgrade and for which MRI charges a separate license fee or, at MRI’s election, new modules or products, or major releases that include significant feature enhancements or significant architectural modifications for which MRI charges an incremental upgrade fee.

### 3. FINANCIAL TERMS

**3.1 Fees and Payment Terms.** Fees are specified in the applicable Order Document. Fees are exclusive of, and Client is responsible for, shipping costs.

Payment of all fees is due thirty calendar (30) days after the invoice date, unless otherwise agreed in the Order Document. Interest accrues on past due balances at the lesser of a one and a half percent (1½%) per month compounded or the highest rate allowed by law. Client is responsible for providing an accurate billing contact on the Order Document and updating that billing contact as needed from time to time such that MRI always has an accurate billing contact for Client.

If Client fails to make payments of any fees due under the Agreement, Client shall be in material breach of this Agreement. MRI will be entitled to suspend its

performance upon calendar ten (10) days' written notice to Client and/or to modify the payment terms, and to require full payment before any additional performance is rendered by MRI. Notwithstanding any of MRI's rights enumerated in Sections 3.1 or 9 of this Master Agreement, if Client fails to timely pay applicable fees under an Order Document, MRI shall be entitled to collect all past and current amounts due and owing, and to accelerate all future amounts to be due, such that all remaining periodic payments for the then current term of the applicable Order Document are immediately due and owing. Client shall be responsible to pay any collection expenses (including attorneys' fees) incurred by MRI.

Unless expressly provided otherwise, fees paid or payable for Software licenses, SaaS Services or Maintenance and Support are not contingent under any circumstances upon the performance of any Professional Services.

**3.2 Taxes.** Unless expressly provided otherwise, the prices in the Agreement do not include taxes. Client agrees to pay any taxes, other than those based on MRI's net income, arising out of the Agreement, including goods and services tax imposed on MRI in connection with supplies made under the Agreement. If Client is tax-exempt, Client agrees to send MRI a copy of its tax-exempt certificate prior to execution of a Schedule. Client agrees to indemnify MRI from any liability or expense incurred by MRI as a result of Client's failure or delay in paying taxes due.

**3.3 Travel Expenses.** Unless otherwise noted within the Order Document, MRI's reasonable travel and lodging expenses incurred by MRI in the performance of Services on Client's site will be billed separately at actual cost.

## 4. CONFIDENTIALITY

**4.1 Defined.** By virtue of the Agreement, the Parties may be exposed to or be provided with certain confidential and proprietary information of the other Party or third parties, including but not limited to information designated as confidential in writing or information which by its nature ought to be in good faith considered confidential and proprietary to the disclosing Party ("**Confidential Information**"). Confidential Information of MRI and/or its licensors includes but is not limited to the terms and conditions (but not the existence) of the Agreement, including without limitation all Order Documents, fees and charges, all trade secrets, software, source code, object code, specifications, documentation, business plans, customer lists and customer-related information, financial information, proposals, budgets as well as results of testing and benchmarking of the Software or Services, product roadmap, data and other information of MRI and its licensors relating to or embodied in the Software or Documentation. MRI's placement of a copyright notice on any portion of any Software will not be construed to mean that such portion has been published and will not derogate from any claim that such portion contains proprietary and confidential information of MRI.

**4.2 Non-Disclosure.** Each Party will protect the other Party's Confidential Information from unauthorized use or dissemination and use the same degree of care that each such Party uses to protect its own confidential information, but in no event less than a reasonable amount of care. Neither Party will use Confidential Information of the other Party for purposes other than those necessary to directly further the purposes of the Agreement. Neither Party will disclose to third parties Confidential Information of the other Party without prior written consent of such other Party. Notwithstanding anything in this Agreement to the contrary, Client agrees that, upon request by Owner, MRI may communicate directly with the Owner about all aspects of the Agreement, the Client Data, and any other Client Confidential Information, if applicable.

**4.3 Exceptions.** Information shall not be considered Confidential Information to the extent, but only to the extent, that the receiving Party can establish that such information (i) is or becomes generally known or available to the public through no fault of the receiving Party; (ii) was rightfully in the receiving Party's possession before receipt from the disclosing Party free of any obligation to keep it confidential; (iii) is lawfully obtained from a third party who has the right

to make such disclosure; or (iv) has been independently developed by the receiving Party without reference to any Confidential Information of the disclosing Party.

**4.4 Compelled Disclosure.** The receiving Party may disclose Confidential Information of the disclosing Party if it is compelled by law to do so, provided the receiving Party gives the disclosing Party sufficient prior notice of such compelled disclosure (to the extent legally permitted) to permit the disclosing Party a reasonable opportunity to object to the compelled disclosure and to allow the disclosing Party the opportunity to seek a protective order or other appropriate remedy. The receiving Party shall provide reasonable assistance, at the disclosing Party's cost, if the disclosing Party wishes to contest the disclosure.

**4.5 Remedy/Injunctive Relief.** The Parties acknowledge that disclosure of any Confidential Information may give rise to irreparable injury to the Party whose information is disclosed, which injury may be inadequately compensated in damages. Therefore, either Party may seek injunctive relief against the other Party's breach or threatened breach of this Section 4 as well as any other legal remedies that are available.

## 5. PRIVACY

The Parties agree to comply with the terms of the Data Protection and Security Schedule.

## 6. LIMITED RIGHTS AND OWNERSHIP

**6.1 Reservation of Rights.** All rights not expressly granted in the Agreement are reserved by MRI and its licensors. Client acknowledges that: (i) all Software is licensed and not sold and all Content is subscribed to and not sold; (ii) Client acquires only the right to use the Protected Materials and MRI, its licensors, and Content providers shall retain sole and exclusive ownership of all rights, title, and interest in the Protected Materials, including (whether developed by MRI, Client, Client User, or other third party) (a) Intellectual Property embodied in or associated with the Protected Materials, (b) deliverables and work product associated with the Protected Materials, and (c) all copies and derivative works thereof; and (iii) the Protected Materials, including the source and object codes, logic and structure thereof, constitute valuable trade secrets of MRI and its licensors. Client hereby assigns to MRI all right, title and interest in and to Configurations developed by Client, Client User or by any other third party on behalf of Client; however, Client shall retain a license to use such Configurations for so long as Client retains a license to use the Software or SaaS Services, as applicable, used in conjunction with such Configurations. Client agrees to secure and protect the Protected Materials consistent with the maintenance of MRI's and its licensors' rights therein, as set forth in this Master Agreement. If Client provides to MRI any ideas, proposal, suggestion or feedback, including without limitation ideas for new products, technologies, promotions, product names, product feedback and product improvements ("Feedback"), Client hereby give to MRI, without charge, royalties or other obligation, the right to make, have made, create derivative works, use, share and commercialize your Feedback in any way and for any purpose. Client agrees to execute such further instruments, and take such further actions as MRI may reasonably request, at MRI's expense, to apply for, register, perfect, confirm, and protect MRI's rights. Client shall reimburse MRI for any and all expenses that MRI may incur (including interest, attorneys' fees and other legal expenses) in connection with MRI's efforts to enforce its rights against Client with respect to the Protected Materials, or any of MRI's Intellectual Property rights in the event MRI prevails in such enforcement efforts.

**6.2 Restrictions.** Client shall not itself, or through any Affiliate, Client User, employee, consultant, contractor, agent or other third party: (i) sell, resell, distribute, host (except Client shall be permitted to host the MRI Software with respect to a perpetual software license), lease, rent, license or sublicense, in whole or in part, the Protected Materials; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or

other elements of the Software, including the license keys, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Protected Materials to any user other than Client Users; (iv) write or develop any derivative works based upon the Protected Materials, except for authorized Configurations; (v) modify, adapt, translate or otherwise make any changes to the Protected Materials or any part thereof; (vi) use the Protected Materials to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis, other than on behalf of Owner, if applicable; (vii) disclose or publish, without MRI's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Protected Materials; or (viii) otherwise use or copy the Protected Materials except as expressly permitted herein.

**6.3 Client Data.** Notwithstanding anything in this Agreement to the contrary, Client and/or Owner retains sole and exclusive ownership to any and all Client Data.

**6.4 License Grant by Client.** Client hereby grants to MRI a perpetual, non-cancellable, worldwide, non-exclusive right to utilize any data that arises from the use of the Protected Materials by Client whether disclosed on or prior to the Effective Date for any legitimate business purpose, including the right to sublicense such data to third parties, subject to all legal restrictions regarding the use and disclosure of such information.

**6.5 Enforcement.** Client shall (i) ensure that all users of Protected Materials comply with the terms and conditions of the Agreement, (ii) promptly notify MRI of any actual or suspected violation thereof and (iii) cooperate with MRI with respect to investigation and enforcement of the Agreement. The Software contains code-based protections that serve to prevent and remedy violations of the license restrictions. If the Software is hosted on Client's technology systems, MRI may access the Software remotely in order to ensure Client's compliance with the license terms and other restrictions of the Agreement.

**7. INDEMNIFICATION**

**7.1 Intellectual Property Infringement.** MRI will defend or settle, at its option and expense, any action, suit or proceeding brought against Client by a third party that the MRI Software or SaaS Services infringe a third party's UK, Australia or USA patent, registered copyright, or registered trademark ("IP Claim"). MRI will indemnify Client against all damages and costs finally awarded or those costs and damages agreed to in a monetary settlement of such action, which are attributable exclusively to such IP Claim, provided that Client: (i) promptly gives written notice of the IP Claim to MRI; (ii) gives MRI sole control of the defense and settlement of the IP Claim; (iii) provides MRI, at MRI's expense, with all available information and assistance relating to the IP Claim and cooperates with MRI and its counsel; (iv) does not compromise or settle such IP Claim; and (v) is not in material breach of any agreement with MRI.

**7.2 Indemnification Exceptions.** MRI has no obligation to the extent any IP Claim results from: (i) Client having modified the MRI Software or SaaS Services or used a release other than a current unaltered release of the MRI Software, if such an infringement would have been avoided by the use of a current unaltered release of the MRI Software, (ii) Content and/or any Third Party Software, (iii) Configurations or (iv) the combination, operation or use of the MRI Software or SaaS Services with software or data not provided by MRI.

**7.3 Infringement Remedies.** If it is adjudicated that an infringement of the MRI Software or SaaS Service by itself and used in accordance with the Agreement infringes any UK, Australia or USA patent, registered copyright, or registered trademark, MRI shall, at its option: (i) procure for Client the right to continue using the MRI Software or SaaS Service; (ii) replace or modify the same so it becomes non-infringing; or (iii) MRI shall terminate the applicable license or Service and shall refund to Client (a) with respect to a perpetual license to the MRI Software, the license fees for the affected Software, less 1/12 thereof for each month or portion thereof since the original Effective Date, or (b) with respect

to SaaS Services and/or limited term Software licenses, the pre-paid portion of the SaaS Services or term license fees paid to MRI for the affected MRI Software or Service. SECTIONS 7.1, 7.2 AND 7.3 STATE MRI'S ENTIRE OBLIGATION TO CLIENT AND CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF INFRINGEMENT.

**7.4 Client Indemnification.** Client shall defend MRI against any claim, demand, suit, or proceeding made or brought against MRI by a third party arising out of or related to (i) the Client Data; (ii) Client's or its users' use of the Software or the SaaS Services in violation of the Agreement; (iii) Client or any user infringing or misappropriating the Intellectual Property rights of a third party or violating applicable law; or (iv) Client's or its users' use or misuse of the Software or SaaS Service or Client's or its users' use or misuse of the Client Data (including, without limitation, accessing, providing access, using or distributing the Client Data) (each of the above a "Client Claim"). Client shall indemnify MRI for all damages and costs finally awarded against, and for reasonable attorneys' fees incurred by, MRI in connection with any Client Claim, or those costs and damages agreed to in a monetary settlement of such Client Claim; provided that MRI (a) promptly gives Client written notice of the Client Claim, (b) gives Client sole control of the defense and settlement of the Client Claim (provided that Client may not settle or defend any Client Claim unless it unconditionally releases MRI of all liability), and (c) provides Client all reasonable assistance, at Client's cost. For purposes of this Section 7.4 only, "MRI" shall include MRI and its Affiliates, and each of their members, owners, officers, directors, employees, agents, successors and assigns.

**8 DISCLAIMERS AND LIMITATION OF LIABILITY.**

**8.1 Disclaimer of Warranties.** THE WARRANTIES, IF ANY, SET FORTH IN THE SCHEDULES ARE IN LIEU OF, AND MRI, ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, CONDITIONS OR OTHER TERM EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ANY WARRANTY THAT ANY SOFTWARE, SAAS SERVICE, CONTENT, DELIVERABLES OR OTHER SERVICES ARE ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION OR THAT ALL ERRORS WILL BE CORRECTED; (ii) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, (iii) ANY WARRANTY, CONDITION OR OTHER TERM THAT CONTENT AND/OR THIRD PARTY SOFTWARE WILL BE ACCURATE, RELIABLE AND ERROR-FREE AND (iv) ANY AND ALL IMPLIED WARRANTIES, CONDITION OR OTHER TERM ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NO ADVICE, STATEMENT OR INFORMATION GIVEN BY MRI, ITS AFFILIATES, CONTRACTORS OR EMPLOYEES SHALL CREATE OR CHANGE ANY WARRANTY PROVIDED HEREIN. ALTHOUGH CERTAIN OF THE SOFTWARE AND CONTENT MAY BE DESIGNED TO HELP CLIENTS COMPLY WITH APPLICABLE LAWS AND REGULATIONS, MRI HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SUFFICIENCY OR ACCURACY OF THE SOFTWARE AND CONTENT IN THIS REGARD; MOREOVER, VARIOUS STATE LAWS MAY APPLY, AND THE SOFTWARE DOES NOT INCORPORATE STATE LAW REQUIREMENTS. ALL SUCH LAWS AND REGULATIONS MAY CHANGE FROM TIME TO TIME, AND THE SOFTWARE AND CONTENT MAY NOT BE UPDATED TO REFLECT SUCH CHANGES. CLIENT SHOULD CONSULT AN ATTORNEY WITH RESPECT TO COMPLIANCE WITH ALL APPLICABLE LAWS AND REGULATIONS.

**8.2 Connection Over Internet.** CLIENT ACKNOWLEDGES THAT USE OF OR CONNECTION TO THE INTERNET PROVIDES THE OPPORTUNITY FOR UNAUTHORIZED THIRD PARTIES TO CIRCUMVENT SECURITY PRECAUTIONS AND ILLEGALLY GAIN ACCESS TO THE SERVICES AND CLIENT DATA. ACCORDINGLY, MRI CANNOT AND DOES NOT GUARANTY THE PRIVACY, SECURITY OR AUTHENTICITY OF ANY INFORMATION SO TRANSMITTED OVER OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET.

**8.3 Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, MRI'S TOTAL LIABILITY (INCLUDING ATTORNEYS' FEES AWARDED UNDER THE AGREEMENT) TO CLIENT FOR ANY CLAIM BY CLIENT OR ANY THIRD PARTIES UNDER THE AGREEMENT, EXCLUDING LIABILITY PURSUANT TO SECTION 7 (Indemnification), WILL BE LIMITED TO (i) WITH RESPECT TO PERPETUAL SOFTWARE LICENSES OR PROFESSIONAL SERVICES, THE FEES PAID BY CLIENT FOR THE SOFTWARE OR SERVICE WHICH IS THE SUBJECT MATTER OF THE CLAIM LESS 1/36 THEREOF FOR EACH MONTH OR PORTION THEREOF SINCE THE EFFECTIVE DATE AND (ii) WITH RESPECT TO SAAS SERVICES, TERM LICENSES AND MAINTENANCE AND SUPPORT, THE FEES PAID FOR THE PRIOR TWELVE (12) MONTHS FOR THE SOFTWARE OR SERVICE WHICH IS THE SUBJECT MATTER OF THE CLAIM.

**8.4 Third Party Software and Content.** From time to time, MRI may utilize Third Party Software and Content in order to deliver the Software or Services to its Clients. Client's use of the Third Party Software and Content is subject to and Client shall comply with the terms of any applicable Third Party EULAs. The licensors of such Third Party Software are intended third party beneficiaries with rights to enforce the Third Party EULAs. MRI has no control over Third Party Software providers or the availability of the Third Party Software and Content. In its discretion, MRI may add, remove, and/or substitute any Third Party Software. THE PROVISION OF CONTENT IS SUBJECT TO AVAILABILITY FROM THIRD PARTY CONTENT PROVIDERS AND MRI SHALL HAVE NO LIABILITY SHOULD SUCH CONTENT BECOME UNAVAILABLE FOR ANY REASON OR IS NO LONGER AVAILABLE UNDER REASONABLE COMMERCIAL TERMS. PROVIDED THAT MRI IS OTHERWISE IN COMPLIANCE WITH ITS WARRANTY PROVISIONS UNDER THE APPLICABLE SCHEDULES, MRI MAKES NO WARRANTY WITH RESPECT TO ANY THIRD PARTY SOFTWARE OR ANY CONTENT; AND CLIENT'S SOLE REMEDY WITH RESPECT TO SUCH THIRD PARTY SOFTWARE SHALL BE PURSUANT TO THE ORIGINAL LICENSOR'S WARRANTY, IF ANY, TO MRI, TO THE EXTENT PERMITTED BY THE ORIGINAL LICENSOR. CONTENT AND THIRD PARTY SOFTWARE ARE MADE AVAILABLE ON AN "AS IS, AS AVAILABLE" BASIS.

**8.5 No Special Damages.** IN NO EVENT WILL MRI BE LIABLE TO CLIENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, TREBLE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, STAFF TIME, GOODWILL, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT MRI HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**8.6 Time to Bring Claim.** NO CLAIM ARISING OUT OF THE AGREEMENT, REGARDLESS OF FORM, MAY BE BROUGHT AGAINST MRI MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS OCCURRED.

**8.7 Survival.** THIS SECTION SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDY.

## 9. TERM AND TERMINATION

**9.1 Term.** The term of this Master Agreement shall commence on the Effective Date set forth above and shall continue in full force and effect until the expiration or termination of all Schedules, unless otherwise terminated earlier as provided hereunder.

**9.2 Termination.** Either Party may terminate the Agreement including all Schedules immediately upon written notice in the event that the other Party commits a non-remediable material breach of the Agreement, or if the other Party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching Party within thirty (30) calendar days of being

notified in writing of such breach, except for breach of Section 3.1 (Fees and Payment Terms) which shall have a ten (10) calendar day cure period.

Where a Party has a right to terminate the Agreement, the non-breaching Party may at its discretion either terminate the Agreement or the applicable Schedule. Schedules that are not terminated shall continue in full force and effect under the terms of this Master Agreement.

**9.3 Post-Termination Obligations.** Following termination of the Agreement or a Schedule (for whatever reason), Client shall certify that it has returned or destroyed all copies of the applicable Software, Content and Confidential Information of MRI and acknowledges that its rights to use the same are relinquished. Termination of this Agreement for any reason shall not excuse Client's obligation to pay in full any and all amounts due, nor shall termination by MRI result in a refund of fees paid. Client shall use its commercially reasonable efforts to remove all Client Data from any Software or SaaS Service prior to termination of the Agreement or applicable Schedule. Client may engage MRI to assist Client in removing such Client Data at MRI's then standard rates. If any Client Data remains in the Software or SaaS Service more than thirty (30) calendar days after the effective date of termination, MRI may, in its sole discretion and without notice, delete any and all Client Data. At any time before or after termination, if an Owner requests that any Client Data be provided directly to such Owner, Client agrees that MRI may transfer such Client Data directly to such Owner, and that MRI shall not be liable for any damages that result from the transfer of Client Data to an Owner.

## 10. GENERAL PROVISIONS

**10.1 Security** The Parties agree to comply with the security measures outlined in the Data Protection and Security Schedule attached.

**10.2 Force Majeure.** Neither Party shall incur any liability to the other Party on account of any loss, claim, damage or liability to the extent resulting from any delay or failure to perform all or any part of this Agreement (except for payment obligations), if and to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without any negligence on the part of the Party seeking protection under this Section. Such events, occurrences, or causes shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire or explosions ("Force Majeure Events"). Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

**10.3 Assignment.** MRI may novate, transfer, or assign the Agreement and all of its rights and obligations herein without Client's approval to its parent company or other affiliated company, to a successor by operation of law, or by reason of the sale or transfer of all or substantially all of its stock or assets to another entity. Neither Party may otherwise assign or transfer the Agreement without the prior written consent of the other Party.

**10.4 Notice of U.S. Government Restricted Rights.** If the Client hereunder is the U.S. Government, or if the Software is acquired hereunder on behalf of the U.S. Government with U.S. Government federal funding, notice is hereby given that the Software is commercial computer software and documentation developed exclusively at private expense and is furnished as follows: "U.S. GOVERNMENT RESTRICTED RIGHTS. Software delivered subject to the FAR 52.227-19. All use, duplication and disclosure of the Software by or on behalf of the U.S. Government shall be subject to this Agreement and the restrictions contained in subsection (c) of FAR 52.227-19, Commercial Computer Software - Restricted Rights (June 1987)".

**10.5 Export.** Client shall comply fully with all relevant export laws and regulations of the United States and other applicable jurisdictions to ensure that the Software is not exported, directly or indirectly, in violation of those laws.

**10.6 Non-solicitation.** During the term of this Master Agreement and for a period of one year following its termination, Client will not employ or solicit for employment directly or through other parties, without the MRI's written permission, any individual employed by MRI. If a Party breaches this Section 10.6, such Party shall pay to the non-breaching Party a sum equal to one-hundred fifty percent (150%) of the hired employee's annual salary while such employee was employed by the non-breaching Party, and such payment shall be made within thirty (30) calendar days of hiring such employee.

**10.7 Compliance.** During the term of this Master Agreement and for a period of one year following its termination, Client shall maintain and make available to MRI records sufficient to permit MRI or an independent auditor retained by MRI to verify, upon ten (10) calendar days' written notice, Client's full compliance with the terms and requirements of the Agreement. Such audit shall be performed during regular business hours. If such verification process reveals any noncompliance by Client with the Agreement, Client shall reimburse MRI for the reasonable costs and expenses of such verification process (including, but not limited to the fees of an independent auditor) incurred by MRI, and Client shall promptly cure any such noncompliance, including without limitation through the payment of any and all fees owed to MRI during the period of noncompliance; provided, however, that the obligations under this Section do not constitute a waiver of MRI's termination rights. Client acknowledges that the Software may include a license manager component to track usage of the Software and agrees not to impede, disable or otherwise undermine such license manager's operation.

**10.8 Notices.** Any notice required or permitted to be sent under the Agreement shall be delivered by hand; by overnight courier; by certified mail, return receipt requested; or in a conspicuous banner to the Client within the product, to the Parties first set forth in the Agreement or to such other address of the Parties designated in writing in accordance with this subsection.

**10.9 Relationship.** The Agreement is not intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither Party may bind the other Party or act in a manner which expresses or implies a relationship other than that of independent contractor.

**10.10 Invalidity.** If any provision of the Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**10.11 Survival.** The following provisions will survive any termination or expiration of the Agreement or a Schedule: Sections 1, 2, 3, 4, 6.1, 6.2, 6.5, 7, 8, 9, and 10.

**10.12 No Waiver.** Any waiver of the provisions of the Agreement or of a Party's rights or remedies under the Agreement must be in writing and signed by an authorized representative of each Party in order to be effective. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. The waiver by either of the Parties hereto of a breach or of a default under any of the provisions of the Agreement shall not be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. The rights and remedies herein provided are cumulative and none is exclusive of any other, or of any rights or remedies that any Party may otherwise have at law or in equity. Failure, neglect, or delay by a Party to enforce the provisions of the Agreement or its rights or remedies at any time, shall not be construed and shall not be deemed to be a waiver of such Party's rights under the Agreement and shall not in any way affect the validity of the whole or any part of the Agreement or prejudice such Party's right to take subsequent action.

**10.13 Entire Agreement.** The Agreement constitutes the Parties' entire agreement relating to its subject matter. It cancels and supersedes all prior or contemporaneous oral or written communications, agreements, requests for proposals, proposals, conditions, representations, and warranties, or other

communication between the Parties relating to its subject matter as well as any prior contractual agreements between the Parties. Client hereby releases and discharges MRI from any and all claims for relief, causes of action, or demands arising out of or in any way relating to any event, act or occurrence prior to the Effective Date of this Agreement. No modification to the Agreement will be binding unless in writing and includes a signature by an authorized representative of each Party. All pre-printed terms of any Client purchase order or other Client business processing document shall have no effect. Each Party represents and warrants to the other that: (i) it has full power, authority, and legal right to execute, deliver, and perform this Agreement, (ii) each signor is duly authorized and has legal capacity to execute and deliver this Agreement and (iii) this Agreement constitutes the legal, valid, and binding obligation of the Parties, enforceable in accordance with its terms.

**10.14 No Third Party Beneficiaries.** This Agreement is for the benefit of the Parties and their successors and permitted assigns, and (except as provide expressly elsewhere in the Agreement) does not confer any rights or benefits on any third party, including any employee of a Party, any client of a Party, or any employee of a client of a Party. Notwithstanding the above, the Parties acknowledge that all rights and benefits afforded to MRI under the Agreement shall apply equally to the owner of the Third Party Software with respect to the Third Party Software, and such third party is an intended third party beneficiary of the Agreement, with respect to the Third Party Software.

**10.15 Governing Law and Venue.** The Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without giving effect to its principles of conflict of laws. Any dispute shall be litigated in the state or federal courts located in the State of Ohio to whose exclusive jurisdiction the Parties hereby consent. For purposes of establishing jurisdiction in Ohio under this Agreement, each Party hereby waives, to the fullest extent permitted by applicable law, any claim that: (i) it is not personally subject to the jurisdiction of such court; (ii) it is immune from any legal process with respect to it or its property; and (iii) any such suit, action or proceeding is brought in an inconvenient forum. Each Party irrevocably waive its rights to trial by jury in any action or proceeding arising out of or relating to this Agreement or the transactions relating to its subject matter. The Parties agree that this contract is not a contract for the sale of goods; therefore, the Agreement shall not be governed by any codification of Article 2 or 2A of the Uniform Commercial Code, or any codification of the Uniform Computer Information Technology Act ("UCITA"), or any references to the United National Convention on Contracts for the International Sale of Goods.

**10.16 Legal Fees and Costs.** In the event of a dispute between the Parties regarding the enforcement of the Agreement, the prevailing Party in such dispute will be entitled to collect from the other Party the prevailing Party's reasonable legal fees, expert witness fees, and costs.

**10.17 Order of Precedence.** To the extent any terms and conditions of this Master Agreement conflict with the terms and conditions of any Schedule, the provisions of this Master Agreement shall control unless the Schedule expressly states the intent to supersede a specific portion of the Master Agreement.

In the event of a conflict between an Order Document and the Master Agreement, the Master Agreement shall prevail, provided, however, that such standard variable terms such as price, quantity, license scope and License Metrics, tax exempt status, payment terms, shipping instructions and the like shall be specified on each Order Document. All pre-printed terms of any Client purchase order or other business processing document shall have no effect.

**10.18 Headings and Drafting.** The headings in the Agreement shall not be used to construe or interpret the Agreement. The Agreement shall not be construed in favor of or against a Party based on the author of the document.

**10.19 Counterparts.** The Master Agreement and each Schedule may be executed in one or more counterparts, each of which shall constitute an

enforceable original of the Agreement, and that facsimile and/or pdf scanned copies of signatures shall be as effective and binding as original signatures.

**10.20 Treatment in the Event of Insolvency of Client.** The Parties acknowledge and agree that this Agreement is an executory contract as such term is defined in section 365 of the United States Bankruptcy Code ("USBC"). The Parties further acknowledge and agree that the Agreement does not provide a license of intellectual property as defined in section 101(35) of the USBC and that the provisions of Section 365(n) of the USBC are therefore not applicable. Client acknowledges that MRI will be harmed if this Agreement was

assigned to a competitor, direct or indirect, or any other party whose use of MRI Software or Services pursuant to the Agreement would be detrimental to the business and rights of MRI, and Client hereby grants MRI the right to consent to any proposed assignment of this Agreement in a bankruptcy and that the rights of consent to the assignment provided in section 365(c)(1) of the USBC shall be applicable to any proposed assignment of this Agreement in any bankruptcy case filed by Client.

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**END OF MASTER AGREEMENT**

## SAAS SERVICES SCHEDULE

This SaaS Services Schedule is entered into between MRI Software company named in the attached Order Document (“MRI”) and the Client named in the Order Document, and the authorized representatives of the Parties hereby execute this SaaS Services Schedule to be effective as of the Effective Date, as defined in the Order Document.

### 1. DEFINITIONS

Additional defined terms specific to this Schedule:

“**Error**”: a material failure of a hosted MRI Software to conform to its Functional Specifications that is reported by Client to and replicable by MRI.

“**Malicious Code**”: computer viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

### 2. TERM; RENEWAL; TERMINATION.

**2.1 Term and Renewal.** SaaS Services commence on the date specified in the Order Document and continue for the term set forth in the Order Document (“**Initial Term**”). Following the end of the Initial Term, SaaS Services shall automatically renew for the same length as the Initial Term (each renewal a “**Renewal Term**”) unless either Party gives written notice at least sixty (60) calendar days’ prior to the end of the Initial Term or any Renewal Term, as applicable, of its intention to not renew the SaaS Service. For all Renewal Terms, Client shall be required to migrate to the then latest Upgrade of the hosted Software. The pricing for the first twelve (12) months of any Renewal Term shall be provided by MRI in writing no less than ninety (90) calendar days’ prior to the end of the Initial Term or any Renewal Term. Notice to not renew the Initial Term or any Renewal Term shall be given in accordance with section 10.8 of the Master Agreement and shall be deemed given upon delivery to the non-cancelling Party. For the purposes of the pricing notice in this Section, email or first-class mail will suffice. The Initial Term and Renewal Terms are collectively referred to as the “**Term**”.

**2.2 Termination.** This Schedule may be terminated for cause by either Party in accordance with Section 9 of the Master Agreement. Sections 1 and 2 hereof and the surviving provisions of the Master Agreement shall survive expiration or termination of this Schedule. Upon termination of the SaaS Services, and provided Client is not in breach of any of its obligations under the Agreement, MRI will, upon Client’s written request and payment of the applicable fees, provide a backup copy of Client’s Data (a then-current fee schedule will be provided upon request).

### 3. GRANT OF USE

Subject to the timely payment of the applicable fees, the terms of this Schedule and the Master Agreement, MRI grants to Client, for the Term, the right to access and use the SaaS Services, as more fully described in the Order Document, solely for Client’s internal business purposes. Such access and use is subject to the terms of the Master Agreement, including without limitation the restrictions set forth in Section 6.2 of the Master Agreement.

SaaS Services purchased may be accessed by or used to manage no more than the number of License Metrics specified in the Order Document. Additional License Metrics may be purchased under an additional Order Document at the pricing in effect at the time the additional License Metrics are added, prorated for the remainder of the then-current Term. The added License Metrics shall have the same term as the then applicable Term. Unless stated otherwise in the Order Document, fees are based on Services and License Metrics purchased and not actual usage.

### 4. SERVICES

**4.1 SaaS Environment.** Client is solely responsible for obtaining and maintaining at its own expense, all equipment needed to access the SaaS Services, including but not limited to Client’s Internet access.

**4.2 SaaS Service Availability.** MRI shall use commercially reasonable efforts to make the SaaS Services available twenty-four (24) hours a day, seven (7) days a week, except for: (a) Scheduled Maintenance; (b) Client Error Incidents; (c) Emergency Maintenance; (d) any unavailability caused by circumstances beyond MRI’s reasonable control, including without limitation, Force Majeure Events; and (e) Internet service provider failures or delays. Scheduled Maintenance is defined as any maintenance performed during MRI’s then-current standard maintenance windows and any other maintenance of which Client is given at least eight (8) hours’ advance notice and which may, at MRI’s discretion, be provided via a SaaS Services posting. MRI may perform maintenance on some or all of the SaaS Service in order to upgrade hardware or software that operates or supports the SaaS Service, implement security measures, or address any other issues it deems appropriate for the continued operation of the SaaS Service. Client Error Incident is defined as any SaaS Service unavailability related to Client’s applications, Client Data, or Client’s equipment, or the acts or omissions of any user of the SaaS Service. Emergency Maintenance means downtime of the SaaS Service due to the application of urgent patches or fixes, or other urgent maintenance, or as recommended by MRI’s vendors, that is performed outside of Scheduled Maintenance.

Client acknowledges that MRI does not control the transfer of data over telecommunications facilities, including the Internet. MRI does not warrant secure operation of the SaaS Services or that it will be able to prevent third party disruptions of such Services. Client acknowledges further that the SaaS Services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. MRI is not responsible for any delays, delivery failures, or other damage resulting from such problems.

**4.3 Maintenance and Support Services.** Subject to Client’s timely payment of applicable SaaS Services fees, MRI will provide to Client the Maintenance and Support services for the Maintenance and Support plan indicated in the Order Document, under MRI’s Maintenance and Support policies in effect at the time the Services are provided for the level of Services ordered. MRI shall manage and install all Updates and Upgrades of the hosted Software.

Updates are provided when and if available, and MRI is under no obligation to develop any future programs or functionality. MRI is under no obligation to provide Maintenance and Support with respect to: (i) Software that has been altered or modified by anyone other than MRI or its licensors; (ii) a release for which Maintenance and Support has been discontinued; (iii) Software used other than in accordance with the Documentation; (iv) discrepancies that do not significantly impair or affect the operation of the SaaS Services; (v) any systems or programs not supplied by MRI; or (vi) Configurations.

For the avoidance of doubt, Updates provided under Maintenance and Support services do not include custom development, Upgrades, or Configurations regardless of whether such Configurations are performed by MRI or by Client.

MRI reserves the right to charge Client for any reintegration work required to make Configurations compatible with future versions/releases.

If an Error was corrected or is not present in a more current version of the Software, MRI shall have no obligation to correct such Errors in prior versions of the Software.

Subject to timely payment of the applicable fees, Maintenance and Support is provided for all Software, unless otherwise noted in the Order Document; provided, however, that with respect to Third Party Software, MRI's obligation is limited to using commercially reasonable efforts to obtain Maintenance and Support from the third party owner of such Software.

**4.4 Backups and Restoration Services.** Provided Client is not otherwise in breach of the Agreement, MRI will provide backup copies and/or database restoration, upon written request and subject to Client's payment of applicable fees for such service (a then-current fee schedule will be provided upon request).

**4.5 Exclusions.** Fees for SaaS Services do not include implementation, training and other Professional Services, such as project management, conversion, report writing, and external systems interface development. It is Client's responsibility to ensure that all appropriate users receive initial training services sufficient to enable Client to effectively use the SaaS Services. Failure to do so could result in increased service call fees if such service calls are deemed excessive as a result of insufficient training, at MRI's discretion.

**5. CERTAIN OBLIGATIONS**

**5.1 Passwords; Security.** Client is responsible for maintaining the confidentiality of all passwords and for ensuring that each password is used only by the authorized user. Client is entirely responsible for any and all activities that occur under Client's account. Client agrees to immediately notify MRI of any unauthorized use of Client's account or any other breach of security known to Client. MRI shall have no liability for any loss or damage arising from Client's failure to comply with these requirements. MRI will maintain Client passwords as confidential and will not disclose them to third parties.

**5.2 Client Data.** Client shall be solely responsible for the accuracy, quality, integrity and legality of Client Data and of the means by which it acquired Client Data.

**5.3 Acceptable Use.** Client acknowledges and agrees that MRI does not monitor or police the content of communications or data of Client or its users transmitted through the Services, and that MRI shall not be responsible for the content of any such communications or transmissions. Client shall use the Services exclusively for authorized and legal purposes, consistent with all

applicable laws and regulations. Client agrees not to post or upload any content or data which (a) is libellous, defamatory, obscene, pornographic, abusive, harassing or threatening; (b) contains Malicious Code; (c) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; or (d) otherwise violates any applicable law. Client further agrees not to interfere or disrupt networks connected to the Services, not to interfere with another entity's use and enjoyment of similar services and to comply with all regulations, policies and procedures of networks connected to the SaaS Services. Client shall be responsible for obtaining any necessary licenses, permits, and consents for MRI with respect to the installation, maintenance, and access to the System. MRI may remove any violating content posted on the Services or transmitted through the Services, without notice to Client. MRI may suspend or terminate any user's access to the SaaS Services upon notice in the event that MRI reasonably determines that such user has violated the terms and conditions of this Schedule.

**6. WARRANTIES AND DISCLAIMER**

**6.1 Limited Warranty.** During the Term, MRI warrants that the hosted MRI Software supplied to Client as part of the SaaS Services will be free of Errors.

**6.2 Remedies.** If the hosted MRI Software does not perform as warranted, MRI shall use commercially reasonable efforts to correct such Errors, as Client's exclusive remedy for any claim under this warranty. Client shall promptly notify MRI in writing of its claim. Provided that such claim is determined by MRI to be MRI's responsibility, MRI shall, within thirty (30) days of its receipt of Client's written notice, (i) correct such Error; (ii) provide Client with a plan reasonably acceptable to Client for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from MRI, then MRI or Client may terminate the affected SaaS Service, and Client will be entitled to a refund of the pre-paid portion of the fees paid for the affected SaaS Service. The preceding warranty cure shall constitute MRI's entire liability and Client's exclusive remedy for cure of the warranty set forth herein. If Client elects not to terminate the SaaS Service, Client waives all rights for the applicable warranty cure set forth herein.

**6.3 Exclusions.** MRI is not responsible for any claimed breach of any warranty set forth in Section 6.1 caused by: (i) modifications made to the hosted MRI Software by anyone other than MRI; (ii) the combination, operation or use of the hosted MRI Software with any items not certified by MRI; (iii) MRI's adherence to Client's specifications or instructions; (iv) Errors caused by or related to internet connections; (v) Client deviating from the hosted MRI Software operating procedures described in the Documentation; or (vi) Errors caused by Configurations.

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**END OF SAAS SERVICES SCHEDULE**

## LIMITED SOFTWARE LICENSE AND MAINTENANCE AND SUPPORT SCHEDULE

This Limited Software License and Maintenance and Support Schedule is entered into between MRI Software company named in the attached Order Document (“MRI”) and the Client named in the Order Document, and the authorized representatives of the Parties hereby execute this Limited Software License and Maintenance and Support Schedule to be effective as of the Effective Date, as defined in the Order Document.

### 1. DEFINITIONS

Additional defined terms specific to this Schedule:

“**Certified Operating Environment**” or “**COE**” means hardware, operating system, middleware, database products and other software on which the Software will operate, as set forth on [www.mrisoftware.com/COE](http://www.mrisoftware.com/COE) which may be updated from time to time by MRI upon posting new COE requirements at such web page address.

“**Delivery Date**” means (i) for electronic delivery: the date(s) on which each MRI Software is made available to Client for electronic download on MRI’s FTP site; or (ii) for physical delivery: the date(s) on which the Software, as contained in a physical media, is delivered to the common carrier for shipment to Client; whichever such date occurs first.

“**Error**” means a material failure of the MRI Software to conform to its Functional Specifications that is reported by Client to and replicable by MRI.

“**Territory**” means the certain geographic areas, specified in the Order Document, in which the Software may be used.

### 2. LICENSE

**2.1 License Grant.** Subject to the terms and conditions of this Schedule, the Order Document and the Master Agreement including without limitation the restrictions set forth in Section 6.2 of the Master Agreement and timely payment of the applicable fees, MRI hereby grants to Client a limited, non-exclusive, personal, non-sublicensable, and non-transferable license for the Term of this Agreement (subject to MRI’s termination rights as set forth herein) to (i) install, run and use the Software listed in the Order Document in the COE and in the Territory, solely for Client’s own business operations and solely as enabled by the license keys, and (ii) use the Documentation in connection with such use of the Software. The Software shall not be simultaneously loaded and operated on more than one hardware platform. Upon timely payment of all fees, Client shall receive an annual license key refresh.

The Software may be accessed by or used to manage no more than the number of License Metrics specified in the Order Document. Additional License Metrics may be purchased under an additional Order Document at the pricing in effect at the time the additional License Metrics are purchased. Unless stated otherwise in the Order Document, fees are based on License Metrics purchased and not actual usage.

**2.2 Third Party Software.** Use of the Third Party Software, if any, is subject to all terms and conditions of the applicable Third Party EULA, if any. Client shall use the Third Party Software solely in conjunction with the MRI Software and Client shall have no broader use rights with respect to the Third Party Software than it has to the MRI Software.

**2.3 Copies.** Notwithstanding any other provision in the Agreement, the license grant in Section 2.1 herein is for one (1) production copy and up to two (2) back-up copies. The back-up copies may be used by Client for testing, back-up or other non-production purposes. Client shall not use the back-up copies or any other copy of the Software for production purposes. If MRI determines, in its reasonable discretion, that Client is using multiple production copies in violation

of the Agreement, MRI may, in addition to any other remedies available to MRI under the Agreement, invoice Client the then current license fee for each additional production environment improperly in use by Client, which invoice Client shall be obligated to pay in full within thirty (30) calendar days of such invoice date. All Intellectual Property rights notices must be reproduced and included on any copies. Client shall maintain accurate and up-to-date records of the number and location of all copies of the Software and inform MRI in writing of such number and location upon request.

**2.4. Delivery.** Upon execution by Client; and receipt by MRI of (i) the applicable Order Document; and (ii) a purchase order from Client, a downloadable machine-readable copy of the Software, the applicable downloadable license keys, and a downloadable machine-readable copy of the Documentation shall be delivered to Client without undue delay. If Client requires physical delivery, shipment of Software, Documentation and applicable license keys is F.O.B Origin and includes one (1) production copy and one (1) back-up copy.

### 3. MAINTENANCE AND SUPPORT SERVICES

**3.1** Subject to Client’s timely payment of applicable Maintenance and Support fees, MRI will provide to Client the Maintenance and Support services for the Maintenance and Support plan indicated in the Order Document during the specified period. All licenses in Client’s possession must be supported under the same Maintenance and Support plan.

**3.2** Updates are provided if and when available and MRI shall notify Client of the availability of such Updates solely by posting such Updates on MRI’s client support portal. MRI is under no obligation to develop any future programs or functionality. MRI is under no obligation to provide Maintenance and Support with respect to: (i) Software that has been altered or modified by anyone other than MRI or its licensors; (ii) a release for which Maintenance and Support has been discontinued; (iii) Software used other than in accordance with the Documentation or other than on a COE; (iv) discrepancies that do not significantly impair or affect the operation of the Software; (v) any systems or programs not supplied by MRI; or (vi) Configurations.

For the avoidance of doubt, Updates provided under Maintenance and Support services are subsequent maintenance releases to the standard MRI Software, excluding Upgrades, custom development or Configurations regardless of whether such Configurations are performed by MRI or by Client, Client User or a third party. MRI reserves the right to charge Client for any reintegration work required to make Configurations compatible with future versions/releases.

If an Error was corrected or is not present in a more current version of the Software, MRI shall have no obligation to correct such Errors in prior versions of the Software.

**3.3** Subject to timely payment of the applicable fees, Maintenance and Support is provided for all Software, unless otherwise noted in the Order Document, provided however that with respect to Third Party Software, MRI’s obligation is limited to using commercially reasonable efforts to obtain Maintenance and Support from the third party owner of such Software.

**3.4** Maintenance and Support starts on the Effective Date and continues through the expiration of the initial term set forth in the Order Document (“**Initial**

**Term**). Following the end of the Initial Term, Maintenance and Support and the license grant under Section 2.1 shall automatically renew for the same length as the Initial Term (each renewal a **Renewal Term**), unless either Party gives written notice at least sixty (60) calendar days prior to the end of the Initial Term or any Renewal Term, as applicable, of its intention to not renew Maintenance and Support and the license grant. The pricing for the first twelve (12) months of any Renewal Term shall be provided in writing by MRI no less than ninety (90) days prior to the end of the Initial Term or any Renewal Term. Notice to not renew the Initial Term or any Renewal Term shall be given in accordance with section 10.8 of the Master Agreement and shall be deemed given upon delivery to the non-cancelling Party. For purposes of the pricing notice in this Section only, email or first-class mail will suffice. The Initial Term and Renewal Terms are collectively referred to as the **Term**.

**3.5** In the event that Client's Maintenance and Support is not renewed and is later reinstated, a reinstatement fee shall be assessed equal to 120% of the aggregate Maintenance and Support fee that would have been payable during the period of lapse. In order to reinstate Maintenance and Support, Client must Upgrade its Software to the most current release and pay for any applicable Upgrade fees.

**3.6** If ordered by Client, Maintenance and Support must be ordered for all Software and all associated License Metrics licensed by Client and its Affiliates. Client may not purchase or renew Maintenance and Support for less than all of the Software licensed by Client.

**3.7** Fees for Maintenance and Support do not include implementation, training and other Professional Services, such as project management, conversion, report writing, and external systems interface development.

**3.8** It is Client's responsibility to ensure that all appropriate users receive initial training services sufficient to enable Client to effectively use the Software. Failure to do so could result in additional Maintenance and Support fees if service requests are deemed excessive as a result of insufficient training, at MRI's discretion.

**3.9** The System will need to be installed on Client's servers and technology infrastructure. If utilizing Professional Services or Maintenance and Support in the installation of the System, Client shall ensure that MRI's assigned technical personnel are able to access the System remotely. Client shall be responsible for providing access through any security measures it deems necessary. MRI alone shall decide whether access to the System is sufficient for Maintenance and Support purposes. Certain functionality of the System may require connections to or interaction with MRI after such System is running on

Client's infrastructure, and Client agrees to permit and facilitate such connections and interaction. **System** means the total complement of hardware and Software furnished and/or maintained by MRI.

**4. WARRANTIES AND DISCLAIMERS**

**4.1 Limited Warranty.** MRI warrants that, for a period of thirty (30) calendar days from the Delivery Date of the initial version of the MRI Software, the MRI Software, as updated and used in accordance with the Documentation and in the COE, will be free of Errors.

**4.2 Remedies.** If the MRI Software does not perform as warranted, MRI shall use commercially reasonable efforts to correct such Errors, as Client's exclusive remedy for any claim under this warranty. Client shall promptly notify MRI in writing of its claim within the warranty period. Provided that such claim is determined by MRI to be MRI's responsibility, MRI shall, within thirty (30) days of its receipt of Client's written notice, (i) correct such Error; (ii) provide Client with a plan reasonably acceptable to Client for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from MRI, then MRI or Client may terminate the affected MRI Software license and Client will be entitled to a refund of the license fees paid for the affected MRI Software. The preceding warranty cure shall constitute MRI's entire liability and Client's exclusive remedy for cure of the warranty set forth herein. If Client elects not to terminate the license for the affected portion of the MRI Software, Client waives all rights for the applicable warranty cure set forth herein.

**4.3 Exceptions.** MRI is not responsible for any claimed breach of any warranty set forth in this section caused by: (i) modifications made to the MRI Software by anyone other than MRI; (ii) the combination, operation or use of the MRI Software with any items that are not part of the COE; (iii) Client's failure to use any new or corrected versions of the MRI Software made available by MRI; (iv) MRI's adherence to Client's specifications or instructions; (v) Client deviating from the MRI Software operating procedures described in the Documentation or (vi) Errors caused by Configurations.

**4.4 Third Party Software.** MRI warrants that it is an authorized distributor of the Third Party Software.

**5. TERMINATION**

**5.1** This Schedule and the licenses granted hereunder may be terminated by either Party for cause in accordance with section 9 of the Master Agreement. Section 1 and 5 hereof and the surviving provisions of the Master Agreement shall survive any such termination.

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**END OF LIMITED SOFTWARE LICENSE AND MAINTENANCE AND SUPPORT SCHEDULE**

## SPRINGBOARD SERVICES SCHEDULE

This Springboard Schedule (this "Schedule") is entered into between MRI Software LLC ("MRI") and the Client named in the attached Order Document. References to this Schedule shall be deemed to include the terms and conditions of the Master Agreement or any other such governing agreement between MRI and Client; provided, however, if any terms and conditions of the Master Agreement or governing agreement conflict with those contained in this Schedule, then this Schedule shall control. As used in this Schedule, "Party" means either Client or MRI, as appropriate, and "Parties" means Client and MRI. All capitalized terms used and not defined in this Schedule shall have the meanings ascribed to them in the Master Agreement.

### 1. DEFINITIONS

"**Hardware**" the physical equipment provided to the Client by MRI or its licensors, including without limitation, cameras, iPads, and scanners.

"**System**" means the total complement of hardware and Software furnished and/or maintained by MRI.

### 2. TERMINATION

This Schedule may be terminated for cause by either Party in accordance with Section 9 of the Master Agreement.

### 3. FOOTFALL COUNTING CLIENT OBLIGATIONS

**3.1** Client shall (i) provide MRI and/or its authorized representatives with reasonable access to the premises and furnish such information as MRI may reasonably request from time to time as necessary for MRI's performance of the Services and (ii) reasonably cooperate with the MRI in providing the Services. Client acknowledges that MRI's performance of the Services is dependent in part on the Client's cooperation and assistance. Any failure or delay in MRI's performance under the Agreement shall be excused and MRI shall have no liability if such failure or delay was caused by the Client's failure to provide cooperation or assistance in a timely manner. Client shall put into place conspicuous signage informing nearby persons of the use of cameras. Such signage must be reasonably understood to apply to all areas where the cameras could detect activity. Client shall not install or adjust any cameras utilizing the footfall offering in a way that captures locations which would not reasonably be understood to be covered by the aforementioned signage. Client shall not install or adjust any cameras utilizing the footfall offering in a way that captures locations in which a reasonable person would expect privacy. Such restriction applies to all cameras utilizing the footfall technology, whether provided by MRI, MRI's licensors or provided by the Client.

**3.2** Client shall grant to MRI a non-exclusive, royalty free license to use the Client Data and results of the footfall offering for benchmarking purposes available in the market. Client shall be responsible for obtaining all necessary licenses, permits, and consents for MRI with respect to the installation, maintenance, and access to the System at the Property.

**3.3** Client must from time-to-time permit MRI, its personnel and/or its duly authorized representatives' reasonable access and use of the premise, Client equipment and/or facilities for the purpose of providing the SaaS Services. MRI and its authorized representatives shall access the premises under this Agreement solely for the purposes of providing the Services and shall provide such on-site services in a professional and workmanlike manner. MRI personnel and its authorized representative shall comply with all health and safety rules and regulations and any other reasonable security requirements which Client has given MRI notice of applicable to its presence at the premises.

**3.4** If the Property, Client equipment and/or facilities are located at a third party's premises, Client shall promptly procure the grant of a license from such third party to MRI, permitting MRI, its personnel and/or its duly authorized representatives to enter upon such premises for the purpose of providing the Services.

**3.5** Client shall give immediate written notice to MRI in the event of any loss, accident or damage to the Hardware;

**3.6** Client shall make no alteration to the Hardware nor remove any existing component(s) from the Hardware without the prior written consent of MRI unless carried out to comply with any mandatory modifications required by law or any regulatory authority, in which case Client shall notify MRI as soon as reasonably practicable and allow MRI to make such modification itself;

**3.7** Client shall not move nor attempt to move any part of the Hardware without MRI's prior written consent;

**3.8** Client shall not attach, cause to be attached, or permit to be attached the Hardware to any land or building or otherwise in a permanent or immovable manner. Client acknowledges that it shall be responsible for all repairs required as a result of such attachment.

**3.9** Client shall comply with all reasonable safety and usage instructions provided by MRI as may be necessary to ensure that the Hardware is always safe and without risk to health when it is being used by a person for or on behalf of Client;

**3.10** In the event that an MRI representative is required to visit a premises to perform any of the Services, MRI shall be entitled to charge the Client for travel expenses, materials, and any access fees; and

**3.11** Client shall keep MRI fully informed of all material matters relating to the System.

### 4. HARDWARE

If the Client purchased Hardware from MRI under an applicable Order Document for SaaS Services, then the terms of this section 4 shall apply.

**4.1 Purchases.** The Client acknowledges that the fees outlined in the Order Document do not include shipping costs and the Client may be charged the shipping fees related to the Hardware products which it purchases. Upon the execution of an Order Document outlining the purchase of Hardware products, MRI or MRI's authorized representative and/or hardware provider, shall deliver the Hardware products to the Client. In the event that the purchased Hardware product is not promptly available, MRI may (i) switch the purchased Hardware product with a comparable product at no additional cost to the Client; (ii) notify the Client of the unavailability of the Hardware product and work together in good faith to resolve the unavailability; or (iii) terminate the SaaS Services and Hardware product portion of the applicable Order Document upon notice to the Client. Client specifically authorized MRI to provide the Client's Confidential Information to MRI's authorized representative and/or hardware provider, including without limitation, contact information of the Client and its employees.

**4.2 Limited Hardware Warranty.** Any warranties listed in the Master Agreement or Schedules shall not apply and this warranty contained within this Section 4.2 shall apply to hardware purchases.

MRI warrants that for a period of one (1) year from the date the Hardware is provided to the Client, that the Hardware will be free from material defects under normal and proper use. This warranty will be void if, in MRI's reasonable opinion, the defect was caused in whole or part by: (a) improper handling, use, operation, or testing by anyone other than MRI or its licensors; (b) failure to properly install or maintain the Hardware by anyone other than MRI or its licensors; (c) modification, alteration, or unauthorized repair by anyone other than MRI or its licensors; (d) use with products or components that are

incompatible with MRI's services; (e) Force Majeure events or acts of vandalism, sabotage, or hacking; (f) any other cause beyond normal usage in accordance with MRI's written instructions; or (g) defects outside of MRI's reasonable control. Seller's liability for breach of this hardware warranty will be limited to replacement, repair, or refund, in MRI's sole discretion, of any defective Hardware that have been properly stored, installed, used, and maintained, and have not been damaged in transit; provided that Client returns such Hardware to MRI without further damage, within (14) days of discovery of the alleged defect and subject to confirmation of the defect by MRI's inspection.

The Hardware warranty outlined in this Section 4 shall exclude any defects related to the MRI Software, Professional Services. MRI's entire liability and Client's exclusive remedy for this warranty will be limited to replacement or repair in MRI's sole discretion, of any defective Hardware; provided MRI is notified as soon as reasonably practicable, but not more than five (5) days after of discovery of the alleged defect and subject to confirmation of the defect by MRI.

**4.3 Hardware Access.** Client must take all necessary steps to ensure that MRI may enter premises and install or recover the Hardware both during the Term of this Agreement and for a reasonable period thereafter. This shall include procuring from any person having an interest in such Property, a waiver in writing and in favor of MRI of any rights such person may have or acquire in the System and a right for MRI to enter Property to remove the System. Client shall indemnify MRI on demand against all losses, costs, charges, damages, and expenses incurred as a result of the installation or removal of the System

except to the extent that such losses, costs, charges, damages and expenses result from a failure by MRI or its personnel to take due care and to comply with all reasonable instructions of the owner of the Property.

**4.4 Hardware Return.** Upon termination or cancellation of the SaaS Services which utilize the footfall offering, Client agrees to immediately return any Hardware provided by MRI or its representatives. Any Hardware not returned within thirty (30) days shall be subject to additional fees.

**5. LIABILITY**

Client assumes sole responsibility for results obtained and the conclusions drawn from the use of the Services. MRI shall have no liability for any actions taken at Client's direction.

**6. OWNERSHIP OF THE HARDWARE AND SYSTEM**

**6.1** The System shall at all times remain the property of MRI, and Client shall have no right, title or interest in or to the System except as otherwise provided in the Agreement.

**6.2** Risk in the System shall pass to Client either: (a) the date of installation by MRI; or (b) delivery to Client in the event that MRI is not performing Professional Services for Client. Client shall be required to obtain and maintain insurance in respect of any loss or damage caused to the System by a third party. The foregoing shall be applicable for the Term of the Agreement and until such time as the System is collected by or redelivered to MRI.

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**END OF SPRINGBOARD SERVICES SCHEDULE**

## PROFESSIONAL SERVICES SCHEDULE

This Professional Services Schedule is entered into between MRI Software company named in the attached Order Document ("MRI") and the Client named in the Order Document, and the authorized representatives of the Parties hereby execute this Professional Services Schedule to be effective as of the Effective Date, as defined in the Order Document.

### 1. SERVICES

**1.1 Work Authorizations/Statements of Work.** MRI will perform the mutually agreed upon Professional Services for Client described in one or more work orders, work authorizations, statements of work or Order Documents (individually and collectively an "SOW") as the parties may agree to in writing from time to time. Each SOW, once executed by the authorized representatives of the parties, shall become a part of the Agreement. Except as expressly stated elsewhere in this Schedule, in the event of a conflict between the terms of this Schedule and the terms of a SOW, the terms of this Schedule shall prevail.

**1.2 Change Orders.** Either party may propose a change order to add to, reduce or change the Professional Services ordered in the SOW. Each change order shall specify the change(s) to the Professional Services or deliverables, and the effect on the time of performance and on the fees owed to MRI, due to the change. Once executed by both parties, a change order shall become a part of the SOW.

**1.3 Costs.** Professional Services shall be provided on a time and materials ("T&M") basis at MRI's T&M rates in effect at the time the Professional Services are performed, unless otherwise specified in the applicable Statement of Work. On a T&M engagement, if an estimated total amount is stated in the applicable SOW, that amount is solely a good faith estimate for Client's budgeting and MRI's resource scheduling purposes and not a guarantee that the work will be completed for that amount. If Client wishes the MRI personnel to perform Professional Services at Client's site, Client agrees it shall give MRI at least two (2) weeks' prior notice so MRI can make appropriate travel arrangements. Professional Services performed at Client's site shall be billed to Client in minimum increments of eight (8) hours per day per MRI employee. Fees are based on services, including training services, provided during normal MRI business hours, Monday through Friday, 8:00 a.m. - 7:00 p.m. local time (MRI holidays excluded). Professional Services provided by MRI outside of normal MRI business hours will be subject to a premium service charge of one and one-half of the standard MRI list price for such services. Except as otherwise provided in Section 4.1 herein with respect to training services, if Client cancels a Professional Services engagement specified in an approved SOW less than ten (10) business days before the scheduled start date for such Professional Services, Client shall pay twenty-five percent (25%) of the total estimated costs for Professional Services scheduled for performance between five (5) and ten (10) business days of MRI's receipt of Client's cancellation and fifty percent (50%) of any Professional Services scheduled for performance within five (5) business days of such receipt.

**1.4 Delays/Costs Overruns.** In the event of any delay in Client's performance of any of the obligations set forth herein or any other delays caused by Client, the milestones, fees and date(s) set forth in the SOW shall be adjusted on a T&M basis as reasonably necessary to account for such delays, and the adjustment shall be made by change order in accordance with the provisions of Section 1.2 above.

### 2. PROJECT MANAGEMENT

**2.1 Responsibility.** MRI shall be responsible for securing, managing, scheduling, coordinating and supervising MRI personnel, including its subcontractors, in performing the Professional Services.

**2.2 Cooperation.** Client shall provide MRI with good faith cooperation and access to such information, facilities, personnel and equipment as may be reasonably required by MRI in order to provide the Professional Services,

including, but not limited to, providing security access, information, and software interfaces to Client's applications, and Client personnel, as may be reasonably requested by MRI from time to time. Client acknowledges and agrees that MRI's performance is dependent upon the timely and effective satisfaction of Client's responsibilities hereunder and timely decisions and approvals of Client in connection with the Professional Services. MRI shall be entitled to rely on all decisions and approvals of Client.

**2.3 Subcontractors.** MRI may subcontract or delegate any work under any SOW to any third party without Client's prior written consent; provided, however, that MRI shall remain responsible for the performance, acts and omissions of any such subcontractors.

**2.4 Client Data.** Client Data must be provided to MRI in a format approved by MRI or additional charges will apply. Client is responsible for the accuracy and completeness of its information and Client Data. MRI's performance is dependent on Client's timely provision of accurate and complete resources and information, including but not limited to detailed, precise and clear specifications for any deliverables.

**2.5 Access.** For installation of the System and for any Support of the System, Client shall ensure that MRI's assigned technical personnel are able to access the System remotely. Client shall be responsible for providing MRI access through any Client security measures. MRI alone shall decide whether access to the System is sufficient for installation purposes. Certain functionality of the System may require connections to or interaction with MRI after such System is running on Client's infrastructure, and Client agrees to permit and facilitate such connections and interaction.

If the Parties agree to Services on-site, then Client shall provide MRI and/or its authorized representatives with reasonable, legal, and safe access to the Client's premises and furnish such information as MRI may reasonably request from time to time as necessary for MRI's performance of the Services. MRI and its authorized representatives shall access the Client's physical premises under this Agreement only if agreed between the Parties and solely for the purposes of providing the Services. While providing Services on Client's premises, MRI personnel and its authorized representative shall comply with applicable laws and reasonable security requirements which Client has given MRI notice of and which relate to the Professional Services being delivered on site

**2.6 Testing of Projects.** Client shall test any deliverables, and notify MRI of all deficiencies relative to the applicable specifications for such work set forth in the applicable SOW within thirty (30) calendar days following MRI's delivery of such deliverables to Client ("**Notification Period**"). Subject to Client's timely notification and provided that the deficiencies are MRI's responsibility, MRI will re-perform the applicable Professional Services as required to meet the applicable specifications at no additional charge.

### 3. LICENSE AND OWNERSHIP

**3.1 Ownership.** Without prejudice to the provisions of Section 6 (Limited Rights and Ownership) of the Master Agreement, all Intellectual Property including all copies thereof in any Software, other products furnished by MRI and the results of the Professional Services performed by MRI including (without limitation) all deliverables, documentation, training materials, Configurations and all Intellectual Property embodied therein shall, subject to Section 3.2 below, vest solely and absolutely in MRI or its licensors. MRI may access the System remotely in order to copy Configurations to the Software or to otherwise ensure Client's compliance with the terms of this Section 3.1 and the Agreement.

**3.2 Limited License.** MRI grants Client, upon full payment of the applicable fees and charges, during the Term and subject to the restrictions set forth in Section 6.2 of the Master Agreement, a personal, nontransferable, nonexclusive, nonsublicensable, limited license to use the deliverables solely for Client's own internal business needs.

**4. SUPPLEMENTAL TERMS FOR TRAINING SERVICES**

**4.1 General. "Training Courses"** are defined as: classroom-based, live virtual, and/or self-paced e-learning courses provided by MRI's training division called MRI Learning Solutions. Training Courses and their respective prices, policies and schedules are subject to change without notice. Training Courses shall be provided by MRI to Client pursuant to the terms of an SOW. "Named Users" as used herein are defined as Client Users listed in the SOW that shall be eligible to receive Training Courses.

**4.2 Cancellation and Transfer Policies.**

**4.2.1 Client Training Course Cancellation Policy.** "Client Training Courses" means non-publicly offered Training Courses delivered specifically for Client and held at a mutually agreed upon time and location. Client Training Courses may be delivered in a physical classroom at a location determined by mutual agreement or through a live virtual classroom. Details regarding delivering Client Training Courses shall be set forth in an approved SOW. For Client Training Courses to be provided at an onsite classroom that are canceled by Client: (i) ten (10) or more business days prior to the course start date, MRI will provide a full refund or credit; or (ii) within the ten (10) business day period before the course start date, fifty percent (50%) of the course fee will be forfeited and MRI will provide the remainder as a refund or credit.

**4.2.2 Physical Classroom Public Training Course Cancellation Policy.** "Public Training Courses" means publicly offered Training Courses that are not delivered specifically for Client. Public Training Courses may be delivered in a physical classroom or through a live virtual classroom. Registered attendees for a physical classroom Public Training Course who cancel less than ten (10) business days prior to the course start date will forfeit all applicable Training Course fees; however, transfers to another person are permitted up to one (1) business day prior to the course start date. In order to transfer a physical classroom Public Training Course attendance spot, contact MRI Learning Solutions at 1.800.321.8770 ext. 1 or email [learning@mrisoftware.com](mailto:learning@mrisoftware.com). MRI reserves the right to cancel any physical classroom Public Training Course class up to ten (10) business days prior to the course start date for any reason. If MRI cancels a physical classroom Public Training Course class and is unable to reschedule the attendee, MRI will refund to such attendee all applicable Training Course fees. MRI assumes no responsibility for non-refundable airline tickets or other expenses that may be incurred due to cancellation of a physical classroom Public Training Course.

**4.2.3 Live Virtual Classroom Public Training Course Cancellation Policy.** Registered attendees for a live virtual classroom Public Training Course program will receive a web-conferencing invitation on the day prior to the start of the program. Registered attendees who cancel less than twenty-four (24) hours

before the scheduled start date and time will not be refunded any applicable Training Course fees. However, transfers to another person are permitted up to the starting time of the program. In order to transfer a live virtual classroom Public Training Course attendance spot, contact MRI Learning Solutions at 1.800.321.8770 ext. 1 or email [learning@mrisoftware.com](mailto:learning@mrisoftware.com). MRI reserves the right to cancel any live virtual classroom Public Training Course class for any reason. If MRI cancels a live virtual classroom Public Training Course class and is unable to reschedule the attendee, MRI will refund to such attendee all applicable Training Course fees.

**4.2.4 Self-Paced e-Learning Training Course Cancellation Policy.** "Self-Paced e-Learning Training Courses" means publicly offered Training Courses that have no set time or location, and can be taken by any person at any time at the MRI Learning Solutions website. Self-Paced e-Learning Training Courses are non-cancelable and applicable fees are non-refundable. All sales of Self-Paced e-Learning Training Courses are final and non-transferable.

**4.3 Use Limitations; Monitoring.** Unless otherwise explicitly agreed in writing by MRI, Client is only allowed user access rights to any Training Course up to the number of Named Users purchased as shown in an executed SOW. Client and Named Users may not share access rights, or any Training Course content, with others and may only access the Training Course for personal training use as specifically permitted. To the extent permitted by law, MRI may monitor, suspend or terminate Client's or any Named User's use of any Training Course and/or training account, or terminate this Schedule or the applicable SOW, or remove or disclose Client's or any Named User's information in order to ensure Client's and all Named Users' compliance with the Agreement or to otherwise protect MRI rights or rights of others. If Client or any Named User does not comply with the restrictions set forth in this Section 4.3, Client may be charged additional fees equivalent to the resulting usage fees for the related services incurred.

**4 TERMINATION**

This Schedule may be terminated in accordance with Section 9 of the Master Agreement.

Where the non-breaching Party has a right to terminate this Schedule, the non-breaching Party may at its discretion either terminate this Schedule, or the applicable SOW.

Upon termination for any reason, all work products, including all drafts and works in progress of deliverables, shall be delivered to Client. Upon MRI's receipt of a notice of termination, MRI shall cease and shall cause any agent or subcontractor to cease all work under the applicable SOW and minimize any additional costs or reimbursable expenses unless otherwise agreed in writing by the Parties. Except as may be expressly set forth in the applicable SOW, Client shall pay MRI fees for services performed to the date of termination on a T&M basis together with any expenses reasonably incurred in connection therewith. The Parties' obligations under this Section 5 and Section 3 of this Schedule and the surviving provisions of the Master Agreement shall survive any termination of this Schedule.

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**END OF PROFESSIONAL SERVICES SCHEDULE**

## DATA PROTECTION AND SECURITY SCHEDULE

This Data Protection and Security Schedule is entered into between MRI Software company outlined on the applicable Order Document (“MRI”) and the Client named in the Order Document, and the authorized representatives of the Parties hereby execute this Data Protection and Security Schedule to be effective as of the Effective Date, as defined in the Order Document. Capitalized terms not defined herein shall have the meaning set forth in the Agreement.

### 1. Definitions.

“**Controller**” means the natural or legal person which determines (individually or jointly or in common with others) the purposes for which and the manner in which any Client Personal Data are or will be Processed. For the purposes of this Agreement, the Client shall be deemed the Controller. Controller shall include a Business under the CCPA.

“**Data Breach**” shall mean a breach of security resulting from an act or omission by MRI, its employees or its subcontractors, leading to an accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise processed. For the purposes of this Agreement.

“**Data Protection Legislation**” means any applicable laws relating to the Processing, privacy, and use of Personal Data applicable to the Parties, might can include California Consumer Privacy Act (“CCPA”).

“**Personal Data**” shall mean any information relating to an identified or identifiable natural person (‘Data Subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person which is provided by the Client to MRI. The business information of the Client is not by itself deemed to be Personal Data, unless otherwise determined to be under applicable laws. Personal Data is deemed to be Confidential Information of Client.

“**Processing**” means any operation or set of operations which is performed on Personal Data or sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction and “Process” and “Processed” will be interpreted accordingly.

“**Processing Instructions**” means the written instructions for Processing Client Personal Data, as set out in this Schedule and in the Agreement, and otherwise as provided in writing by or on behalf of Client to MRI or a MRI Affiliate from time to time.

“**Processor**” means the natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of the Controller. For the purposes of this Agreement, MRI shall be deemed the Processor. Processor shall include a Service Provider under the CCPA.

“**Sub-contractor**” or “**Third Party**” means any third party engaged by MRI in provision of the Services or otherwise delivering any part of the Services.

### 2. Security

2.1. **General.** MRI shall ensure that it has in place appropriate technical and organizational measures to protect against unauthorized or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to the Personal Data, which are appropriate to the harm that might

result from the unauthorized or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures. During the Term of the Agreement, MRI shall maintain a documented information security plan (“Information Security Program”). MRI agrees to comply with all of its own requirements contained in such Information Security Program. MRI’s Information Security Program shall include, at a minimum, appropriate controls and measures in relation to: (1) physical security at all MRI locations involved in the provision of the Services; (2) technical security with respect to the Client Data in MRI’s possession; (3) organizational security arrangements regarding the employees and other representatives of MRI, its Affiliates, and its subcontractors, including training and awareness, staff vetting procedures and other security measures (e.g. use of passwords and security credentials); (4) securing Client Data contained within the SaaS Services; (5) Disaster Recovery and Business Continuity; (6) Vulnerability Testing and Security Audit; and (7) Data Breach Procedures. Additionally, MRI’s Information Security Program shall comply with all laws applicable to MRI related to its security programs. MRI may update its Information Security Program from time to time in its sole discretion. Upon the occurrence of a disaster, MRI must evaluate the cause of the disaster as soon as possible, attempt to remediate the cause, and, if the outage will be sustained or cannot be remediated promptly, take appropriate actions to minimize the impact of the Disaster to the Client, such as implementing the Disaster Recover/Business Continuity Plan. Client shall not be charged an additional fee for any disaster recovery services, including backups and database restorations, performed by MRI due to a Disaster (whether at the MRI hosting location, within the SaaS Services or otherwise). MRI shall evaluate the effectiveness of its Information Security Program on a commercially reasonable periodic basis, but no less frequently than annually and (if it, acting reasonably, considers it necessary to do so) update the same.

2.2. **Disaster Recovery and Business Continuity.** MRI shall implement and maintain a disaster recovery plan with contingency measures as are reasonable within its industry in light of the sensitivity of the Services which MRI provides (the “Disaster Recovery/Business Continuity Plan”). Upon the occurrence of a Disaster, MRI must promptly evaluate the cause of the Disaster, attempt to remediate the cause and, if the outage will be sustained or cannot be remediated promptly, then it will promptly implement the Disaster Recovery/Business Continuity Plan. Client shall not be charged an additional fee for any disaster recovery services, including backups and database restorations, performed by MRI due to a Disaster (whether at the MRI hosting location, within the SaaS Services or otherwise). MRI shall evaluate the effectiveness of its Disaster Recovery/Business Continuity Plan on a commercially reasonable periodic basis, but not less frequently than annually. MRI may modify the Disaster Recovery/Business Continuity Plan from time to time, in its sole discretion, provided that such modifications do not materially and negatively modify the services provided in the Disaster Recovery/Business Continuity Plan as of the execution of this Agreement.

2.3. **Vulnerability Testing and Security Audit.** MRI shall conduct regular penetration and vulnerability testing of its information technology infrastructure and networks, at a commercially reasonable frequency. Upon Client’s request, MRI shall provide a letter of attestation to Client that the testing occurred. MRI may modify the scope of such penetration and vulnerability testing provided however, that the scope shall not materially and negatively change from the execution of this Agreement. During the Term of

the Agreement, MRI shall comply with industry standard practices for audit and security procedures.

2.4. **Data Breach.** MRI will take commercially reasonable, but not less than industry standard, measures to protect the security of such Personal Data transferred by Client to MRI. In the event that MRI becomes aware or reasonably suspects that a Data Breach involving Client's Personal Data has occurred, MRI will without undue delay: (i) investigate the cause of the Data Breach; (ii) notify Client of the Data Breach and provide sufficient information to allow the Client to report the Data Breach and/or notify the data subject, if required; (iii) contain and remedy any Data Breach; (iv) take reasonable steps to mitigate the effects of and to minimize any damage resulting from the Data Breach; (v) reasonably assist Client in remediating or mitigating any potential damage from a Data Breach to the extent that such remediation or mitigation is within MRI's control; (vi) take reasonable steps to restore the security and integrity of any Systems used by MRI and/or its subcontractors to provide the Services; (vii) if the Data Breach resulted from Client's own actions the Client shall immediately, on demand, reimburse MRI for any costs incurred in relation to undertaking any of the foregoing and all costs, losses, damages, expenses or otherwise incurred by MRI to the extent that the same arise from such actions of the Client.

3. **Provision of Personal Data.** In addition to the terms and conditions set forth in the Agreement, Client agrees to only input into, transfer into the MRI Software and SaaS Services or provide access to MRI such Personal Data: (i) if and to the extent that Client is authorized to do so under applicable law, including obtaining any relevant consents from the Data Subject for such disclosure; (ii) if and to the extent that such Personal Data is necessary to enable MRI to provide the Services under this Agreement; (iii), and to do so only in fields specifically designed to house such Personal Data. MRI shall have no liability to Client, and Client shall indemnify MRI for all claims by third parties resulting from Client's storing Personal Data in non-designated fields. Client shall remove any Personal Data from its database(s) once it is no longer necessary for that purpose and may engage MRI (at MRI's then-current rates to assist in such deletion).

4. **Data Processing.** As Processor, MRI will only act upon and Process the Client's Personal Data for the purposes of performing its obligations under the Agreement or as outlined in MRI's Privacy Policy, subject to the Processing Instructions. MRI's Privacy Policy may be found at <https://www.mrisoftware.com/privacy-policy/>, and may be updated from time to time by MRI. Where Client is purchasing any of MRI's marketing products then MRI's Web Marketing Privacy Policy shall apply which may be found at <https://www.mrisoftware.com/webmarketingprivacypolicy> and which may be updated from time to time. Client's instruction to cease Processing Client Personal Data shall not alleviate Client's obligations under the Agreement, including without limitation, its payment obligations.

Additionally, MRI shall be permitted to Process Client Personal Data, without regard for the Processing Instructions, if required to do so by Data Protection Legislation; in such case, MRI shall promptly notify the Client of that legal requirement before Processing, unless that law prohibits such notification. If MRI is ever unsure as to the parameters or lawfulness of the Processing Instructions issued by Client, MRI will, as soon as reasonably practicable, revert to Client. MRI shall comply with its obligations as a Processor under the applicable Data Protection Legislation in relation to the Processing of Client Personal Data by it under this Agreement.

5. **Data Subject Requests.** MRI shall, at its option and subject to the requirements of the Data Protection Legislation, (i) respond directly to the request from the Data Subject, or (ii) forward to the Client any requests from Data Subjects in respect of Personal Data pursuant to Data Protection Legislation (including the ability to correct, delete, block or port Client Personal

Data and rights of access) and reasonably cooperate with the Client in complying with any such Data Subject's exercise of his/her rights in relation to such Personal Data as is Processed by MRI. Client may be required to make such requested modifications itself within the MRI system to fulfill the data subject request. For the purposes of responding to data subject requests, MRI shall be permitted to disclose information related to the Client as it relates to the data subject request.

6. **Duration of Processing.** Processing of the Client's Personal Data by MRI shall be for the Term of this Agreement, subject to restrictions outlined by Data Protection Legislation. Any Client Data remaining within the accessible SaaS Services beyond the expiration of the Term of this Agreement, shall be permanently deleted, without notice to Client. The Parties agree that the Personal Data, may be held in back up for up to one (1) year following the expiration of the Term. Client may engage MRI to return the Client Data, at MRI's then standard rates.

7. **Scope of Personal Data.** Client may provide and MRI may process the following types/categories of Personal Data for the following categories of Data Subject, or as otherwise provided to MRI by the Client:

Type of Data	Data Subjects Impacted
Personal Data;	Syndicators, developers and borrowers of the Client;
Contact Details;	
Financial Details;	Client's employees and staff;
Files, Images, or Videos;	Client's consultants or other professional experts;
Real estate investment data;	Client's resident, tenants, and customers
Ownership data;	Owners and property managers of the Client
Related party details	

8. **MRI personnel.** MRI shall ensure that its personnel and any Subcontractors will not Process the Client's Personal Data except in accordance with the provisions of this Schedule; and MRI will procure that the same are contractually obligated to maintain the security and confidentiality of any Client Personal Data. MRI shall take reasonable steps to ensure that the personnel Processing the Client's Personal Data receive adequate training on compliance with this Agreement and the Data Protection Legislation applicable to the Processing.

9. **Subcontractors.** The Client consents to MRI utilizing any of the sub-contractors listed on MRI's Service Providers/Subprocessor list, which may be found at [www.mrisoftware.com/subprocessors](http://www.mrisoftware.com/subprocessors). The MRI's Service Providers/Subprocessor list may be updated by MRI from time to time without the Client's prior approval, provided that MRI shall: (a) carry out adequate due diligence to ensure that the Sub-contractor is capable of providing the level of protection for Client Personal Data required by this Agreement; and (b) ensure that any additional or replacement Sub-contractors shall be contractually bound to obligations with respect to the Processing of Client Personal Data substantially similar to those to which MRI is bound by this Schedule.

10. **Compliance.** MRI shall maintain such records and information as are necessary to demonstrate its compliance with Data Protection Legislation in relation to the Processing of Personal Data on behalf of Client under this

Agreement, containing as a minimum the information required under Data Protection Legislation, which shall be made available to Client upon request. MRI shall reasonably cooperate with the Client in good faith to ensure compliance with its obligations under the Data Protection Legislation in respect of Personal Data taking into account the nature of Processing and the information available to MRI.

11. **Order of Precedence.** In case of any conflict or inconsistency between the provisions of this Schedule and the terms of the Master Agreement, the provisions contained in this Schedule shall prevail to the extent of the inconsistency, provided always that nothing in this Schedule shall permit MRI (or any sub-Processor) to handle Personal Data in a manner which is prohibited by this Agreement or by applicable law.

12. **California Terms.** Notwithstanding anything to the contrary in this Agreement, the following clause shall apply for Clients processing Personal Data of data subjects located in California:

- i. MRI shall not: (1) "Sell" or "Share" Personal Data as those terms are defined under Data Protection Legislation; (2) retain, use, disclose, or otherwise Process Personal Data except as necessary for the business purposes specified in the Agreement or this Schedule; (3) retain, use, disclose, or

otherwise Process Personal Data in any manner outside of the direct business relationship between Client and MRI except as necessary for the business purposes specified in the Agreement or this Schedule; or (4) combine any Personal Data with Personal Data that MRI receives from or on behalf of any other third party or collects from MRI's own interactions with Data Subjects, provided that MRI may so combine Personal Data for a purpose permitted under Data Protection Legislation if directed to do so by Client or as otherwise expressly permitted by the Data Protection Legislation.

- ii. MRI shall: (1) notify Client if MRI becomes aware that it is no longer able to meet its obligations under applicable Data Protection Legislation; and (2) take reasonable and appropriate steps to help ensure that Personal Data use is consistent with Client's obligations under applicable Data Privacy Legislation.

13. **Order of Precedence.** In case of any conflict or inconsistency between the provisions of this Schedule and the terms of the Master Agreement, the provisions contained in this Schedule shall prevail to the extent of the inconsistency, provided always that nothing in this Schedule shall permit MRI (or any sub-Processor) to handle Personal Data in a manner which is prohibited by this Agreement or by applicable law.

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**END OF DATA PROTECTION AND SECURITY SCHEDULE**

## PAYMENTS SCHEDULE

This Payments Schedule is entered into between the MRI Software company named in the associated Order Document (“MRI”) and the Client named in the Order Document, and the authorized representatives of the Parties hereby execute this Payments Schedule to be effective as of the Effective Date, as defined in the Order Document.

### 1. DEFINITIONS

Additional defined terms specific to this Schedule:

“**Banks**” shall mean such Bank(s) as identified by MRI in the Onboarding Documentation, and as may be updated from time to time by MRI on notice to the Client.

“**Bill Payment**” means any payment initiated through the MRI RentPayment product from the Payer to the Client.

“**Billing Statement**” means the statement of charges provided by the Client the Payer, indicating how much is owed and the due date of the payment.

“**ISO/MSP**” means an “independent sales organization” as defined in the Visa rules or “member service provider” as defined in the MasterCard rules. For the purposes of this Agreement and subject to the terms herein, MRI shall act as the ISO/MSP of the Bank for Payment Services.

“**Merchant Processing Agreement**” means the agreement entered into between MRI and Client authorizing Bank and Payment Providers to provide payment processing services to Client which can be found at <https://www.mrisoftware.com/MerchantProcessingAgreement>, and may be updated from time to time by MRI.

“**Onboarding Documentation**” means such documentation provided by MRI to Client as part of Client’s onboarding process to the Payment Services, including any applications, forms, instructions, and any other such documentation provided for review and/or completion by Client as a prerequisite to receiving the Payment Services.

“**OFAC**” shall mean the United States Office of Foreign Asset Control.

“**Payer**” means the individual who initiates payment to the Client.

“**Payment Instruction**” is the information provided by the Payer for a Bill Payment to be made to the Client.

“**Payment Providers**” means those payment providers who create the Payment Technology (as defined below) and are identified pursuant to the Merchant Processing Agreement. MRI may use any of its Payment Providers in the delivery of the MRI Payment product. Payment Providers includes, as applicable, the Banks.

“**Payment Services**” shall mean the certain web-based services offered by MRI’s Payment Providers through MRI as further described in Section 4.1 of this Schedule. For purposes of the Master Agreement, Payment Services shall be included in the definition of SaaS Services as listed in the SaaS Services Schedule of the Order Document and as further described in the Agreement.

“**Payment Technology**” means all of the Payment Provider’s proprietary and/or licensed technology, including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs, documentation, and other tangible or intangible technical materials or information.

“**Rules**” means the (i) applicable laws, rules and regulations; (ii) policies of Visa, MasterCard and other applicable card associations and the sponsoring bank(s) of MRI as they may be modified from time to time; (iii) by-laws, regulations and requirements that are promulgated by Visa or MasterCard or any other card association or network or combination of associations or networks, as may be modified from time to time; (iv) all rules, regulations and policies of the Payment

Provider as outlined in the Merchant Processing Agreement and associated documentation, as may be modified from time to time.

### 2. TERM; RENEWAL; TERMINATION.

**2.1 Term and Renewal.** Payment Services commence on the date specified in the Order Document and continue for the same Initial Term and Renewal Term as the SaaS Services. The Payment Services shall be renewed, billed, payable, and subject to any increases in conjunction with the Client’s current SaaS Fees.

**2.2 Termination.** This Schedule may be terminated for cause by either Party in accordance with Section 9 of the Master Agreement. Sections 1 and 2 hereof and the surviving provisions of the Master Agreement shall survive expiration or termination of this Schedule. Upon termination of the SaaS Services, and provided Client is not in breach of any of its obligations under the Agreement, MRI will, upon Client’s written request and payment of the applicable fees, provide a backup copy of Client’s Data (a then-current fee schedule will be provided upon request). Client shall not be relieved of its obligation to pay any and all Fees due prior to termination.

MRI shall, in its sole discretion, have the right to terminate the Schedule and the Payment Services portions of the applicable Order Documents immediately upon notice to Client, if: (i) the Client does not complete reasonable documentation presented to Client as part of MRI’s Onboarding Documentation in a timely manner; (ii) Client or is not approved by the Payment Providers; (iii) in the event that MRI, the Bank, or Payment Providers become subject to any state or federal government entity, regulatory agency or of MasterCard or Visa which would make continuation of the Payment Services under the Agreement impractical; (iv) in the event that MRI is no longer registered as an ISO or MSP with VISA or MasterCard respectively (for any reason); (v) in the event that the Bank no longer holds a license and/or membership with VISA or MasterCard; or (vi) in the event that the Bank is de-registered by VISA or MasterCard.

Additionally, the Payment Providers and Bank may, in their sole and exclusive discretion, terminate any Merchant Processing Agreement immediately upon notice to the Client. Client acknowledges and agrees that MRI has no liability and Client has no remedies against MRI for a decision of non-approval.

### 3. GRANT OF USE

Subject to Client’s approval as outlined in Section 4.2, MRI grants to Client a non-exclusive, non-transferable, limited right and license to access and use the Payment Services during the Term of the Agreement, as more fully described in the Order Document, solely for Client’s internal business purposes as more fully set out herein. Such access and use are subject to the terms of the Master Agreement and this Payment Schedule, including without limitation the restrictions set forth in Section 6.2 of the Master Agreement and payment obligations.

### 4. PAYMENT SERVICES

**4.1 Description.** The Payment Services provide an electronic gateway within which the Client may accept ACH, Check 21, debit card or credit card payments from Payer for goods or services rendered by the Client to the Payer, through a variety of channels by using the provided application program interface(s) (“API”).

Payment Services are contingent upon, and shall not be provided, if the Client is not approved for credit card payments by the Payment Providers in the sole discretion of the Payment Providers as further outlined in Section 4.2.

**4.2 Approval.** Client hereby consents to the Merchant Processing Agreement, and agrees to complete any other reasonable documentation presented to Client as part of MRI's Onboarding Documentation. Further details regarding the Merchant Processing Agreement may be found in the materials provided to Client as part of the Onboarding Documentation. MRI shall, on behalf of the Client, submit the Merchant Processing Agreement to the Payment Providers for consideration and approval. Client shall not receive access to the Payment Services until such Merchant Processing Agreement has been accepted and approved by the Bank and Payment Providers, as applicable.

Client expressly acknowledges that Bank and Payment Providers have the right, in their sole and exclusive discretion, to approve or disapprove any Merchant Processing Agreement or any part thereof, regardless of the form submitted. Client acknowledges and agrees that MRI has no liability and Client has no remedies against MRI for a decision of non-approval.

**4.3 Client's Authorizations.** Client authorizes MRI and the MRI Payment Providers to act on Client's behalf as reasonably necessary to provide the Payment Services, including without limitation, to facilitate the electronic receipt of invoices, electronic payments and remittances in connection with the Payment Services. Client authorizes MRI to use and disclose Client Data to the extent necessary to provide the Payment Services. Client specifically authorizes MRI to provide the Client's Confidential Information to the Payment Providers, including without limitation, contact information of the Client and its employees.

Client represents and warrants that: (i) Client has full authority to issue invoices, and Client's issuance of said invoices is in compliance with all applicable laws and regulations (including without limitation OFAC), for the payments being requested through the Payment Services; (ii) Client has received authorization from all Payers to accept the Payment; (iii) Client has authorized its financial institution(s) to accept the funds received through the Payment Services; (iv) it is familiar with and understands all of the Rules, and hereby expressly agrees that it will strictly abide by all such Rules at all times hereunder. Client hereby expressly agrees that it will indemnify and hold MRI harmless for any violation of the Rules by the Client or any of its Client Users; and (v) Client's instructions, requests or other communications given to MRI or through the Payment Services shall be regarded as legal endorsements and shall be deemed to have the same legal authority as a written authorization from Client signed by its authorized representative. MRI shall have no liability and Client agrees to indemnify MRI pursuant to Section 7.4 of the Master Agreement resulting from the refusal of any payee to accept payment through the Payment Services, the failure of Client to provide timely or accurate information (including invoices and payment instructions), or a breach by Client of its representations and warranties.

If MRI is required to respond to a subpoena, demand or request from OFAC or any other government or regulatory agency or card brand, Client shall provide such identifying information as may be reasonably necessary for compliance under applicable laws, rules, and regulations promulgated under OFAC or otherwise, including name, date of birth, address and identification number. MRI shall have no liability for disclosure of such information to agencies.

The Client acknowledges that MRI may contact the residents, applicants, and the employees of the Client, for any purpose related to the Services and by any contact method that is permitted under law. Client acknowledges that all users of the Services will be required to agree to terms of use for the Service prior to

use. Failure to agree to such terms shall result in a denial of service for that user and no refund shall be issued to the Client.

To the extent applicable, Client appoints MRI as its limited payments agent for the sole purpose of receiving, holding and settling payments to Client processed through the Payments Services for made through the through Check21 or any other applicable elements of the Payments Services. MRI will settle payments that are actually received by MRI to Client, less any fees and other obligations, and subject to this Schedule. MRI shall invoice Client in accordance with the Order Document for performing this settlement. Client agrees that a payment received by MRI, on behalf of Client, satisfies the Payer's obligation to make payment to Client, regardless of whether MRI actually settles such payment to Client. If MRI does not settle any such payments as described in this Schedule to Client, Client will have recourse only against MRI and not the Payer, as payment is deemed made by Payer to Client upon constructive or actual receipt of funds by MRI.

In accepting appointment as Client's limited payments agent, MRI assumes no liability for any acts or omission by Client, and Client understands that MRI's obligation to settle funds to Client is subject to and conditional upon the Payer's actual payment.

**4.4 SaaS Environment.** Client is solely responsible for obtaining and maintaining at its own expense, all equipment needed to access the Payment Services, including but not limited to Client's Internet access.

**4.5 SaaS Service Availability.** MRI shall use commercially reasonable efforts to maintain a Monthly Uptime Percentage of 99.99% for the Payment Services, except for: (a) any unavailability caused by circumstances beyond MRI's and its Payment Provider's reasonable control, including without limitation, Force Majeure Events; (b) Client Error Incidents; (c) Scheduled Maintenance; (d) Emergency Maintenance; (e) DNS propagation or issues outside of the control of the Payment Providers; (f) willful misconduct or misuse by the Client Users of the Payment Services; (g) email or web-delivery and transmission; and (h) Internet service provider failures. Monthly Uptime Percentage shall mean the percentage of time the Payment Services are available for access and use by Client as measured over the course of each calendar month during the Term.

Scheduled Maintenance is defined as any maintenance performed during MRI's then-current standard maintenance windows and any other maintenance of which Client is given at least forty-eight (48) hours advance notice. MRI may perform maintenance on some or all of the Payment Service in order to upgrade hardware or software that operates or supports the Payment Service, implement security measures, or address any other issues it deems appropriate for the continued operation of the Payment Service. To the extent practical, MRI shall perform Scheduled Maintenance between the hours of Friday, 6:00pm eastern time through Monday 6:00 am eastern time. Client Error Incident is defined as any Payment Service unavailability related to Client's applications, Client Data, or Client's equipment, or the acts or omissions of any user of the Payment Service. Emergency Maintenance means downtime of the Payment Service due to the application of urgent patches or fixes, or other urgent maintenance, recommended by MRI's vendors, that is performed outside of Scheduled Maintenance.

Client acknowledges that MRI does not control the transfer of data over telecommunications facilities, including the Internet. MRI does not warrant secure operation of the Payment Services or that it will be able to prevent third party disruptions of such Services. Client acknowledges further that the Payment Services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. MRI is not

responsible for any delays, delivery failures, or other damage resulting from such problems.

**4.6 Maintenance and Support Services.** Subject to Client's timely payment of applicable fees, MRI will provide to Client the Maintenance and Support services for the Maintenance and Support plan indicated in the Order Document, under MRI's Maintenance and Support policies in effect at the time the Services are provided for the level of Services ordered. MRI shall manage and install all Updates and Upgrades of the hosted Software. MRI may during the provision of Maintenance and Support Services for the Payment Services, require Client to work directly with its Payment Providers for Maintenance and Support Services; Client shall comply with such requests.

Updates are provided when and if available, and MRI is under no obligation to develop any future programs or functionality. MRI is under no obligation to provide Maintenance and Support with respect to: (i) Software that has been altered or modified by anyone other than MRI or its licensors; (ii) a release for which Maintenance and Support has been discontinued; (iii) Software used other than in accordance with the Documentation; (iv) discrepancies that do not significantly impair or affect the operation of the Payment Services; (v) any systems or programs not supplied by MRI; or (vi) Configurations.

For the avoidance of doubt, Updates provided under Maintenance and Support services do not include custom development, Upgrades, or Configurations regardless of whether such Configurations are performed by MRI or by Client. MRI reserves the right to charge Client for any reintegration work required to make Configurations compatible with future versions/releases.

If an Error was corrected or is not present in a more current version of the Software, MRI shall have no obligation to correct such Errors in prior versions of the Software.

Subject to timely payment of the applicable fees, Maintenance and Support is provided for all Software, unless otherwise noted in the Order Document; provided, however, that with respect to Third Party Software, MRI's obligation is limited to using commercially reasonable efforts to obtain Maintenance and Support from the third party owner of such Software.

**4.7 Backups and Restoration Services.** Provided Client is not otherwise in breach of the Agreement, MRI will provide backup copies and/or database restoration, upon written request and subject to Client's payment of applicable fees for such service (a then-current fee schedule will be provided upon request).

**4.8 Exclusions.** Fees for SaaS Services do not include implementation, training and other Professional Services, such as project management, conversion, report writing, and external systems interface development. It is Client's responsibility to ensure that all appropriate users receive initial training services sufficient to enable Client to effectively use the SaaS Services. Failure to do so could result in increased service call fees if such service calls are deemed excessive as a result of insufficient training, at MRI's discretion.

## 5. CERTAIN OBLIGATIONS

**5.1 Passwords; Security.** Client is responsible for maintaining the confidentiality of all passwords and for ensuring that each password is used only by the authorized user. Client is entirely responsible for any and all activities that occur under Client's account. Client agrees to immediately notify MRI of any unauthorized use of Client's account or any other breach of security known to Client. MRI shall have no liability for any loss or damage arising from Client's failure to comply with these requirements. MRI will maintain Client passwords as confidential and will not disclose them to third parties.

**5.2 Client Systems.** Client agrees to provide and maintain at its sole expense all Client Systems and is responsible for upgrading and configuring Client Systems to be and remain compatible with the Services and Avid Technology. Client is also responsible for confirming that all payment authorization rights are correctly configured and updated as needed.

**5.3 Acceptable Use.** Client acknowledges and agrees that MRI does not monitor or police the content of communications or data of Client or its users transmitted through the Payment Services, and that MRI shall not be responsible for the content of any such communications or transmissions. Client shall use the Payment Services exclusively for authorized and legal purposes, consistent with all applicable laws and regulations. Client agrees not to post or upload any content or data which (a) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (b) contains Malicious Code; (c) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; or (d) otherwise violates any applicable law. Client further agrees not to interfere or disrupt networks connected to the Payment Services, not to interfere with another entity's use and enjoyment of similar services and to comply with all regulations, policies and procedures of networks connected to the Payment Services. MRI may remove any violating content posted on the Payment Services or transmitted through the Payment Services, without notice to Client. MRI may suspend or terminate Client's access to the Payment Services (upon notice if such notice is permitted by applicable law enforcement or regulatory agencies) in the event that MRI reasonably determines that Client has violated the terms and conditions of this Schedule or as reasonably necessary to investigate or stop any suspicious, illegal or fraudulent activities. MRI shall not be liable under this Schedule with respect to the Client Systems and Client Data, including the failure by Client to timely provide them. Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and intellectual property rights to use, and the provision and maintenance of, all Client Systems and Client Data in connection with the Services.

## 6. WARRANTIES AND DISCLAIMER

**6.1 Limited Warranty.** The Payment Services will conform in material respects to the terms outlined in Section 4.1 above.

**6.2 Remedies.** If Client notifies MRI in writing of a breach of warranty during the Term, upon confirmation, MRI will use commercially reasonable efforts to correct the defect, which may include providing a work-around, patch or replacement technology of functional equivalence. Client agrees to use reasonable efforts to assist MRI in diagnosing, replicating and correcting defects or other issues concerning the Payment Services, which may include providing information and remote access to Client Systems, but only to the extent reasonably required to resolve the issue. The foregoing remedy is sole and exclusive for any breach of warranty claim. MRI makes no other representation, warranty, or guarantee as to the suitability, quality, reliability, timeliness, truth, availability, accuracy or completeness of the Services or any content. EXCEPT FOR THE EXPRESS WARRANTY GIVEN IN THIS SECTION, THE SERVICES AND ALL CONTENT ARE PROVIDED TO CLIENT STRICTLY ON AN "AS IS, AS AVAILABLE" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

**6.3 Exclusions.** Payments Service errors, defects, failures or other non-compliance caused, in whole or in part, by (a) Client's failure to comply with this Schedule; (b) the acts or omissions of any person other than MRI or its agents; (c) Client's modification of the Payment Services or any part thereof; (d) Client's use of the Payment Services or any part thereof in combination with any Client Systems and Client Data or systems or materials furnished by a third party; or (e) any other cause beyond MRI's reasonable control (e.g., computer viruses, hackers, failure of electric power, internet downtime) are excluded from the warranty.

**7. HARDWARE.** If the Client purchased Hardware from MRI, the terms in this Section 7 shall apply.

**7.1 Purchases.** The Client acknowledges that the fees outlined in the Order Document does not include shipping costs and the Client shall be charged the shipping fees related to the hardware products which it purchases. Upon the execution of an Order Document outlining the purchase of hardware products, MRI through its supplier, shall deliver the hardware products to the Client. In the event that the purchased product is not promptly available, MRI may (i) switch the purchased hardware product with a comparable product at no additional cost to the Client; (ii) notify the Client of the unavailability of the product and work together in good faith to resolve the unavailability; or (iii) terminate the hardware product portion of the applicable Order Document upon notice to the Client. Client specifically authorized MRI to provide the Client's Confidential Information to the hardware provider, including without limitation, contact information of the Client and its employees.

**7.2 Limited Hardware Warranty.** Any warranties listed in the Master Agreement or Schedules shall not apply and this warranty contained within this Section 7.2 shall apply to hardware purchases. If the Hardware products purchased by Client fail to operate during the Term, then MRI shall use all reasonable efforts to facilitate the repair or replacement of the Hardware form the original hardware supplier. In order to receive such repair or replacement,

Client must: (i) promptly notify MRI of a warranty claim or of a suspected warranty claim; and (ii) cooperate with request to access or return the defective hardware product. Such warranty shall not apply if the hardware products have been misused by the Client or its agents. The Client acknowledges that it may be charged a fee for critical repairs which must be performed promptly. The aforementioned warranty and remedy shall constitute the sole and exclusive remedy for a warranty claim on the hardware products.

**7.3 Maintenance and Support.** MRI may during the provision of Maintenance and Support Services for the hardware products, require Client to work directly with its hardware supplier; Client shall comply with such requests. The Client acknowledges that it may be charged a fee for critical repairs which must be performed promptly.

**8. THIRD-PARTY BENEFICIARIES AND GENERAL TERMS**

Notwithstanding any provision to the contrary contained in this Schedule, MRI and Client hereby acknowledge and agree that Payment Providers and its Affiliates are intended to be, and are hereby deemed to be, third-party beneficiaries to this Schedule with respect to the Payment Services, and all benefits of MRI hereunder shall inure to and benefit Payment Providers and its Affiliates. NOTWITHSTANDING THE FOREGOING OR ANY PROVISION TO THE CONTRARY CONTAINED IN THE MASTER AGREEMENT, THIS SCHEDULE OR ANY OTHER DOCUMENT, INCLUDING WITHOUT LIMITATION ANY ADDENDUM OR AMENDMENT ENTERED INTO BETWEEN CLIENT AND MRI, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF MRI, THE BANK, AND THE PAYMENT PROVIDERS (COLLECTIVELY) FOR THE PAYMENTS SERVICES AND ITS AFFILIATES ARISING FROM OR RELATED TO THE PAYMENTS SERVICES OR THIS SCHEDULE EXCEED IN AGGREGATE THE TOTAL AMOUNT OF FEES PAID BY CLIENT FOR THE PAYMENTS SERVICES WITHIN THE MOST RECENT TWELVE (12)-MONTH PERIOD DURING THE TERM.

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**END OF PAYMENTS SERVICES SCHEDULE**

## MRI VENDOR PAY SERVICES SCHEDULE

This Services Schedule for the MRI Vendor Pay powered by AvidXchange (this "Schedule") is entered into between MRI Software LLC ("MRI") and the Client named in the Order Document. References to this Schedule shall be deemed to include the terms and conditions of the Master Agreement between MRI and Client. As used in this Schedule, "Party" means either Client or MRI, as appropriate, and "Parties" means Client and MRI. Client has decided to purchase MRI Vendor Pay. Client acknowledges and agrees that MRI will utilize AvidXchange and/or other third parties in the performance of the Services and that references to MRI shall be deemed to include AvidXchange and/or such other third parties, as applicable. All capitalized terms used and not defined in this Schedule shall have the meanings ascribed to them in the Master Agreement.

### 1. DEFINITIONS

**"AvidPay"** is a payment platform which enables Client to pay vendors electronically.

**"AvidXchange Services"** means certain web-based services offered by MRI from AvidXchange, Inc. ("AvidXchange") that support the automation of Client's accounts payable process as more fully described in the associated Order Document. For purposes of the Master Agreement AvidXchange Services shall be included in the definition of SaaS Services.

**"Avid Technology"** means all of AvidXchange's proprietary and/or licensed technology, including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs, documentation, and other tangible or intangible technical materials or information.

**"Business Day"** means any calendar day, excluding Saturday, Sunday and holidays recognized by the US federal government.

**"Client Systems"** means all necessary systems, facilities and resources of any kind required to be provided by Client to effectively access and use the Services, including, as applicable, Client or third party communication lines, databases, software, hardware, firewalls, internet connections, routing and network addresses and configurations and key contacts for problem escalation.

**"Malicious Code"** means computer viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

**"OFAC"** means the US Department of Treasury Office of Foreign Assets Control.

**"Transaction"** means each payment or any other item processed via the AvidXchange Services on a fee per item basis. A transaction charge applies to each individual item submitted into the AvidXchange Services by Client.

### 2. TERM; RENEWAL; TERMINATION.

**2.1 Term and Renewal.** The Services commence on the date specified in the Order Document and continue for the term set forth in the Order Document ("**Initial Term**"). Following the end of the Initial Term, the Services shall automatically renew for the same length as the Initial Term (each renewal a "**Renewal Term**") unless either Party gives written notice at least sixty (60) calendar days prior to the end of the Initial Term or any Renewal Term, as applicable, of its intention to not renew the Services. The pricing for the first twelve (12) months of any Renewal Term shall be provided by MRI in writing no less than ninety (90) days prior to the end of the Initial Term or any Renewal Term. For the purposes of the pricing notice in this Section, email or first-class mail will suffice. The Initial Term and Renewal Terms are collectively referred to as the "**Term**."

**2.2 Termination.** This Schedule may be terminated for cause by either Party in accordance with Section 9 of the Master Agreement.

### 3. GRANT OF USE

MRI grants to Client a non-exclusive, non-transferable, limited right and license to use the AvidXchange Services, Avid Technology and AvidXchange Content solely for Client's own internal business purposes during the Term, subject to

Client's compliance with the terms and conditions of this Schedule, including payment of all applicable charges. Client agrees to accept all modifications to the AvidXchange Services made available to Client at no additional charge, including any updates, upgrades and fixes. Client acknowledges and agrees that all aggregated user data available from the AvidXchange Services, Avid Technology and AvidXchange Content that is not specific to and does not identify Client is owned exclusively by AvidXchange.

### 4. AVIDXCHANGE SERVICES

**4.1 Description.** The AvidXchange Services enable Client to deliver an electronic file of vendor payments approved by Client from Client's accounts payable system to the MRI Payment Network powered by AvidXchange. Upon receipt by the MRI Payment Network, the payments contained in the payment file will be separated by payment method (i.e., ACH credit entries, credit card and paper checks), and MRI will cause payments to be remitted in accordance with Client's payees' preferences using each payment method.

Client must provide approved payment files prior to 3:00 pm EST (or 2:00 pm EST for the Payables Lockbox service) for any payments to be initiated and debited from Client's accounts by the next Business Day. Checks will be printed and mailed the next Business Day. Payments can be expedited for an additional fee. Any payment exception or expedite request must be received by 5:00 pm EST on the same day the payment transmission was initiated. Client expressly agrees that MRI shall not be liable for any losses incurred by Client arising out of any delay in any wire transfer or processing of ACH debits or credits or any delay of the US Postal Service or other mail carrier, unless any such delay is caused solely by the intentional misconduct of MRI.

**4.2 Implementation.** MRI will facilitate the performance of certain tasks to activate the AvidXchange Service, as may be applicable: (a) project management, including resource allocation, regular status updates and ongoing collaboration with Client; (b) one-time migration of associated Client Data, including accounting codes, accounts and vendor information; (c) Client workflow configuration specific to Client specifications; (d) integration into Client's accounting system; (e) configuration of Client Data into the native format required for the AvidXchange Services and/or (f) training Client's designated users on the AvidXchange Services.

**4.3 Client's Authorizations.** Client authorizes MRI to act on Client's behalf as reasonably necessary to provide the AvidXchange Services, including without limitation, to facilitate the electronic receipt of invoices, electronic payments and remittances in connection with the AvidXchange Services, including communications with vendors and others by phone, mail or email. Client authorizes MRI: (i) to use and disclose Client Data to the extent necessary to provide the AvidXchange Services; (ii) for each Client payment request, including vendor ePayments, to make payments based on Client's requests submitted through the AvidXchange Services by electronic submission (ACH) or by paper check; and (iii) with respect to any ACH payment, to create an ACH debit from the associated Client bank account from which the payment transaction will originate. Client agrees to execute a reasonable and customary individual ACH authorization form for each bank account.

Client represents and warrants that (i) Client has full authority to authorize all payments requested through the AvidXchange Services; (ii) Client has authorized its financial institution(s) to withdraw, debit or charge the necessary

funds from Client's account(s) for all payments to be made via the AvidXchange Services; (iii) Client will request a payment transaction be made only when a sufficient collected balance is or will be available in Client's respective account at the anticipated time of withdrawal; (iv) Client's payment and remittance instructions are complete and accurate in all respects and in compliance with all applicable laws and regulations, including any requirements of OFAC; and (v) Client's instructions, requests or other communications given to MRI or through the AvidXchange Services shall be regarded as legal endorsements and shall be deemed to have the same legal authority as a written authorization from Client signed by its authorized representative. MRI shall have no liability and Client agrees to indemnify MRI pursuant to Section 7.4 of the Master Agreement resulting from the refusal of any payee to accept payment through the AvidXchange Services, the failure of Client to provide timely or accurate information (including invoices and payment instructions), or a breach by Client of its representations and warranties.

If MRI is required to respond to a subpoena, demand or request from OFAC or any other government agency, Client shall provide such identifying information as may be reasonably necessary for compliance under applicable laws and regulations promulgated under OFAC or otherwise, including name, date of birth, address and identification number. MRI shall have no liability for disclosure of such information to a government agency.

**5. CERTAIN OBLIGATIONS**

**5.1 Passwords; Security.** Client is responsible for maintaining the confidentiality of all passwords and for ensuring that each password is used only by the authorized user. Client is entirely responsible for any and all activities that occur under Client's account. Client agrees to immediately notify MRI of any unauthorized use of Client's account or any other breach of security known to Client. MRI shall have no liability for any loss or damage arising from Client's failure to comply with these requirements. MRI will maintain Client passwords as confidential and will not disclose them to third parties.

**5.2 Client Systems.** Client agrees to provide and maintain at its sole expense all Client Systems and is responsible for upgrading and configuring Client Systems to be and remain compatible with the Services and Avid Technology. Client is also responsible for confirming that all payment authorization rights are correctly configured and updated as needed.

**5.3 Acceptable Use.** Client acknowledges and agrees that MRI does not monitor or police the content of communications or data of Client or its users transmitted through the AvidXchange Services, and that MRI shall not be responsible for the content of any such communications or transmissions. Client shall use the AvidXchange Services exclusively for authorized and legal purposes, consistent with all applicable laws and regulations. Client agrees not to post or upload any content or data which (a) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (b) contains Malicious Code; (c) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; or (d) otherwise violates any applicable law. Client further agrees not to interfere or disrupt networks connected to the AvidXchange Services, not to interfere with another entity's use and enjoyment of similar services and to comply with all regulations, policies and procedures of networks connected to the AvidXchange Services. MRI may remove any violating content posted on the AvidXchange Services or transmitted through the AvidXchange Services, without notice to Client. MRI may suspend or terminate Client's access to the AvidXchange Services (upon notice if such notice is permitted by applicable law enforcement or regulatory agencies) in the event that MRI reasonably determines that Client has violated the terms and conditions of this Schedule or as reasonably necessary to

investigate or stop any suspicious, illegal or fraudulent activities. MRI shall not be liable under this Schedule with respect to the Client Systems and Client Data, including the failure by Client to timely provide them. Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and intellectual property rights to use, and the provision and maintenance of, all Client Systems and Client Data in connection with the Services.

**6. WARRANTIES AND DISCLAIMER**

**6.1 Limited Warranty.** The AvidXchange Services will conform in all material respects with the terms of this Schedule.

**6.2 Remedies.** If Client notifies MRI in writing of a breach of warranty during the Term, upon confirmation, MRI will use commercially reasonable efforts to correct the defect, which may include providing a work-around, patch or replacement technology of functional equivalence. Client agrees to use reasonable efforts to assist MRI in diagnosing, replicating and correcting defects or other issues concerning the AvidXchange Services, which may include providing information and remote access to Client Systems, but only to the extent reasonably required to resolve the issue. The foregoing remedy is sole and exclusive for any breach of warranty claim. MRI makes no other representation, warranty, or guarantee as to the suitability, quality, reliability, timeliness, truth, availability, accuracy or completeness of the Services or any content. EXCEPT FOR THE EXPRESS WARRANTY GIVEN IN THIS SECTION, THE SERVICES AND ALL CONTENT ARE PROVIDED TO CLIENT STRICTLY ON AN "AS IS, AS AVAILABLE" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

**6.3 Exclusions.** AvidXchange Service errors, defects, failures or other non-compliance caused, in whole or in part, by (a) Client's failure to comply with this Schedule; (b) the acts or omissions of any person other than MRI or its agents; (c) Client's modification of the AvidXchange Services or any part thereof; (d) Client's use of the AvidXchange Services or any part thereof in combination with any Client Systems and Client Data or systems or materials furnished by a third party; or (e) any other cause beyond MRI's reasonable control (e.g., computer viruses, hackers, failure of electric power, internet downtime) are excluded from the warranty.

**7. THIRD-PARTY BENEFICIARIES**

Notwithstanding any provision to the contrary contained in this Schedule, MRI and Client hereby acknowledge and agree that AvidXchange and its Affiliates are intended to be, and are hereby deemed to be, third-party beneficiaries to this Schedule with respect to the AvidXchange Services, and all benefits of MRI hereunder shall enure to and benefit AvidXchange and its Affiliates. NOTWITHSTANDING THE FOREGOING OR ANY PROVISION TO THE CONTRARY CONTAINED IN THIS SCHEDULE OR ANY OTHER DOCUMENT, INCLUDING WITHOUT LIMITATION ANY ADDENDUM OR AMENDMENT ENTERED INTO BETWEEN CLIENT AND MRI, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF AVIDXCHANGE AND ITS AFFILIATES ARISING FROM OR RELATED TO THE AVIDXCHANGE SERVICES OR THIS SCHEDULE EXCEED THE TOTAL AMOUNT OF FEES PAID BY CLIENT FOR THE AVIDXCHANGE SERVICES WITHIN THE MOST RECENT 12-MONTH PERIOD DURING THE TERM.

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**END OF MRI VENDOR PAY SERVICES SCHEDULE**

## NOTIFY + RESPONSE SCHEDULE

This Notify+Response Schedule is entered into between MRI Software company named in the attached Order Document (“MRI”) and the Client named in the Order Document, and the authorized representatives of the Parties hereby execute this Notify+Response Schedule to be effective as of the Effective Date, as defined in the Order Document. References to this Schedule shall be deemed to include the terms and conditions of the Master Agreement between MRI and Client. As used in this Schedule, “Party” means either Client or MRI, as appropriate, and “Parties” means Client and MRI. Client has decided to purchase Angus Notify+Response Module. Client acknowledges and agrees that MRI will utilize MIR3, Inc. and/or other third parties in the performance of the Services and that references to MRI shall be deemed to include MIR3, Inc. and/or such other third parties, as applicable. All capitalized terms used and not defined in this Schedule shall have the meanings ascribed to them in the Master Agreement.

**1. Definitions.** The following capitalized terms used in this Schedule shall have the meanings set forth below:

“**MRI Angus Technology**” means the proprietary products/services developed by MRI, including MRI’s commercial real estate operations optimization software called “MRI Angus”.

“**Authorized User**” means an affiliate, vendor, tenant, contractor or employee of Client, or an employee or contractor of such affiliate, vendor, tenant or contractor, that has been expressly authorized by Client to access and use the N+R Module in connection with one or more specified Client Properties accordance with this Schedule (an individual or entity who is configured to receive Notifications shall not be considered and Authorized User unless it has also expressly been granted access to the N+R Module as set forth above).

“**Blocked Number**” means a telephone number – provided to an Authorized User as a contact number for a Recipient – to which access by SMS has been blocked by a telephone carrier on the instructions of Client or the Recipient.

“**Content**” means the content, data, text, messages and other material contained in a Notification.

“**Client Properties**” means, collectively, the commercial buildings and/or other premises owned, operated, managed or occupied by Client that are expressly included from time to time in an applicable Order Document or this Schedule, or otherwise expressly identified by Client to MRI in writing from time to time during the Term.

“**MIR3 Technology**” means certain proprietary products/services developed by MIR3, Inc. for use in sending and receiving two-way text and voice notifications.

“**Notification**” means one of the messages issued by an Authorized User using the N+R Module.

“**Notify+Response Module**” or “**N+R Module**” means the product resulting from the integration, in part or in whole, of the MRI Angus Technology with the MIR3 Technology, that is made available by MRI to Client under the terms of this Schedule.

“**Recipient**” means any individual, business, or other organization that is configured to receive Notifications or is the intended recipient of Notifications.

## **2. TERM; RENEWAL; TERMINATION.**

**2.1 Term and Renewal.** The Services commence on the date specified in the Order Document and continue for the term set forth in the Order Document (“Initial Term”). Following the end of the Initial Term, the Services shall automatically renew for the same length as the Initial Term (each renewal a “Renewal Term”) unless either Party gives written notice at least sixty (60) calendar days prior to the end of the Initial Term or any Renewal Term, as applicable, of its intention to not renew the Services. The pricing for the first twelve (12) months of any Renewal Term shall be provided by MRI in writing no less than ninety (90) days prior to the end of the Initial Term or any Renewal

Term. For the purposes of the pricing notice in this Section, email or first-class mail will suffice. The Initial Term and Renewal Terms are collectively referred to as the “Term.”

**2.2 Termination.** This Schedule may be terminated for cause by either Party in accordance with Section 9 of the Master Agreement.

**3. Subscription Grant.** Subject to the terms and conditions of this Schedule, MRI grants to Client a non-exclusive, non-transferable, and non-sublicensable, limited right and license to use the MIR3 Technology, , or another substantially equivalent solution, N+R Module solely in conjunction with MRI’s proprietary MRI Angus technology during the Term.

**4. Prices and Payment.** Client will pay MRI for the N+R Module as outlined in the applicable Order Document. Pricing for SMS and Voice transactions is for North American numbers only. Reasonable additional fees will apply for International SMS or Voice transactions.

**5. Ownership.** Client acknowledges that MRI and its licensors and/or suppliers retain all right, title and interest in and to the original, and any copies, of the N+R Module, including but not limited to all intellectual property rights therein.

**6. Restrictions.** Client agrees that it shall not, and shall not allow any third party to (i) decipher, decompile, disassemble, modify, translate, reverse assemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas, algorithms, file formats, tags, specifications, architecture, or programming or interoperability interfaces of the N+R Module or any portion thereof, (ii) distribute, license, sublicense, assign, transfer, rent, host, lease, or sell use of the N+R Module, (iii) remove any product identification, copyright or other notices included with the N+R Module, or (iv) except as specified in the applicable user documentation, modify or incorporate the N+R Module into other software.

**7. Open Source Software.** Client understands that the N+R Module includes or uses open source software. Such open source software is sublicensed to Client for use solely in connection with the N+R Module and subject to the terms and conditions of the agreements referenced below, and, to the extent not in conflict with such agreements, the terms and conditions of this Schedule.

**8. DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET OUT ELSEWHERE IN THIS AGREEMENT, THE SERVICES AND ALL CONTENT ARE PROVIDED TO CLIENT STRICTLY ON AN “AS IS, AS AVAILABLE” BASIS. THERE ARE NO EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND IN RESPECT OF THE N+R MODULE, INCLUDING BUT NOT LIMITED TO IMPLIED OR STATUTORY WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OF UNINTERRUPTED OR ERROR-FREE SERVICE.

**9. LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, MRI’S AND ITS LICENSORS’ TOTAL LIABILITY

(INCLUDING ATTORNEYS' FEES AWARDED UNDER THE AGREEMENT) TO CLIENT FOR ANY CLAIM BY CLIENT OR ANY THIRD PARTIES UNDER THIS SCHEDULE, WILL BE LIMITED TO THE FEES PAID FOR THE PRIOR TWELVE (12) MONTHS.

**10. CONSEQUENTIAL DAMAGES.** IN NO EVENT SHALL MRI OR ITS LICENSORS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS SCHEDULE, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF REVENUES AND LOSS OF PROFITS, EVEN IF MRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**11. MRI'S Warranties and Representations.**

**11.1 Limited Warranty.** The N+R Module shall perform substantially in accordance with the specifications herein and MRI shall take the steps necessary to maintain the N+R Module accordingly.

**11.2 Remedies.** If Client notifies MRI in writing of a breach of warranty during the Term, upon confirmation, MRI will use commercially reasonable efforts to correct the defect, which may include providing a work-around, patch or replacement technology of functional equivalence. Client agrees to use reasonable efforts to assist MRI in diagnosing, replicating and correcting defects or other issues concerning the N+R Module, which may include providing information and remote access to Client Systems, but only to the extent reasonably required to resolve the issue. The foregoing remedy is sole and exclusive for any breach of warranty claim. MRI makes no other representation, warranty, or guarantee as to the suitability, quality, reliability, timeliness, truth, availability, accuracy or completeness of the Services or any content.

**11.3 Exclusions.** N+R Module errors, defects, failures or other non-compliance caused, in whole or in part, by (a) Client's failure to comply with this Schedule; (b) the acts or omissions of any person other than MRI or its agents; (c) Client's modification of the N+R Module or any part thereof; (d) Client's use of the N+R Module or any part thereof in combination with any Client Systems and Client Data or systems or materials furnished by a third party; or (e) any other cause beyond MRI's reasonable control (e.g., computer viruses, hackers, failure of electric power, internet downtime) are excluded from the warranty.

**12. Client's Warranties and Representations.** Client warrants and represents to MRI that:

(a) Client will be solely responsible for all content, data, text, messages and other material contained in a Notification (the "Content") created by Client and any Authorized User, and for the integrity and quality of such Content.

(b) Client will not send, and will not permit any Authorized User to send, any Notifications to a Recipient unless Client has obtained such Recipient's "opt-in" consent.

(c) Client will provide all Recipients with a simple mechanism for opting out of or unsubscribing from receiving Notifications, including information on how to "opt-out" or unsubscribe.

(d) Client will not send, and will not permit any Authorized User to send, Notifications to phone numbers that are emergency numbers and to other numbers that are not permitted under applicable law to be called using an automated system.

(e) Client will comply, and will require all Authorized Users to comply, with all applicable foreign, federal, provincial, state and local laws in the use of the N+R Module, including without limitation, the Fair Debt Collection Practices

Act (US), debt collection laws of Canada and its provinces, Federal Trade Commission (US), Industry Canada or any regulation of the US Securities and Exchange Commission or any stock exchange.

(f) Client will not send, and will not permit any Authorized User to send, any Content that Client or such Authorized User (as applicable) knows, or has reason to know, infringes another's rights in intellectual property, is invasive of another's right to privacy, or violates any privacy laws, privacy policies of Client or any other third parties or does anything that would justify a complaint to the Federal Communications Commission (US) or the Privacy Commissioner of Canada or a Canadian province or territory.

(g) Client will not, and will not permit any Authorized User, to (i) engage in or facilitate any unethical, deceptive or misleading practices in connection with the use of the N+R Module, (ii) use the N+R Module in connection with any junk email, junk phone messages, spamming or any unsolicited messages (commercial or otherwise); or (iii) provide, or knowingly allow any third parties to provide, content or other material to be transmitted in connection with or through the N+R Module which: is defamatory, obscene, pornographic or harmful to minors; promotes violence, discrimination, or illegal activities; or contains viruses, worms, cancelbots or any other harmful code or computer programs designed to disrupt the functionality of any computer software or hardware or telecommunications equipment.

(h) Client will not send, and will not permit any Authorized User to send, Short Message Service ("SMS") in binary format or any format other than text format.

(i) Client will maintain, and will require all Authorized Users to maintain, all security regarding their account ID, password, and connectivity with the N+R Module. Client will require all Authorized Users to be responsible for all Notifications transmitted through the N+R Module (except to the extent that a breach of security is caused by the N+R Module). Client will require all Authorized Users, if account IDs or passwords are stolen or otherwise compromised and used for malicious purposes, to be responsible for all Notifications sent using the stolen account information. Client will also require all Authorized Users to immediately change their account IDs or passwords to prevent continued malicious use of the accounts.

(j) Even though Client or a Recipient may have instructed its telephone carrier or carriers to block access by SMS to a Blocked Number, Client hereby authorizes MRI, and will require such Recipient to authorize MRI, solely in connection with the N+R Module, to unblock access by SMS to such Blocked Number, and Client hereby releases MRI from all liability to Client and the Recipient that may arise in consequence of MRI's unblocking of access to such Blocked Number.

**13. Modifications to Warranties.** Client's warranties and representations as set out in this Agreement are based on pass-through terms from third parties that supply telephony, facsimile and/or Short Message Service (SMS) transactions to MIR3, Inc. and MRI, and as such, MRI will be entitled to require Client to modify its warranties and representations upon 30 days written notice due to changes by such third-party suppliers.

**14. Failure to Comply.** Client's failure to comply with the warranties and representations set out in this Schedule could result in the termination of certain critical services from MRI's suppliers to MRI which would impact all MRI clients. Thus, in the event that Client breaches any of these warranties and representations, MRI may suspend the provision of the N+R Module to Client if, in MRI's reasonable determination, suspension is reasonably necessary to avoid liability or termination of a contract with one of MRI's suppliers.

**15. Liability for Content.** Under no circumstances will MRI or any of its licensors or suppliers be responsible for any loss, damage or liability arising out of the Content of any Notification, including any mistakes contained in the Content or the use or transmission of the Content, except to the extent that any Content is adversely affected by the N+R Module.

**16. Indemnity.** Client shall defend, indemnify, and hold harmless MRI and MIR3, Inc. and their affiliates, officers, directors, employees licensors, suppliers and agents from and against any and all damages, claims, fines, suits, proceedings, costs, liability, and expenses (including court costs and reasonable attorneys' fees and expenses), incurred in relation to (a) any failure by Client to fulfill its responsibilities to Authorized Users or Recipients; and (b) any claims, suits, or proceedings brought by any third party (including any Authorized User or Recipient) that arise from or relate to any breach by Client of any representations and warranties given by Client under this Agreement; and (c) any and all claims from Authorized Users, Recipients or other third parties arising

out of the breach of contract, gross negligence or willful misconduct of Client or its employees or agents.

**17. Amendment.** Client acknowledges that, MRI may amend this Schedule upon any new Release of the N+R Module by posting such updates to [www.mrisoftware.com/termsandconditions](http://www.mrisoftware.com/termsandconditions), but only to the extent reasonably required to ensure that the provisions of this Schedule remain consistent in all material respects with the provisions of MRI's license to use the MIR3 Technology.

**18. THIRD-PARTY BENEFICIARIES.** Notwithstanding any provision to the contrary contained in this Schedule, MRI and Client hereby acknowledge and agree that MIR3, Inc. and its Affiliates are intended to be, and are hereby deemed to be, third-party beneficiaries to this Schedule with respect to the MIR3 Technology, and all benefits of MRI hereunder shall enure to and benefit MIR3, Inc. and its Affiliates.

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**END OF NOTIFY + RESPONSE SCHEDULE**

**SELF-CERTIFICATION DOCUMENT**

I hereby certify that, \_\_\_\_\_ ("**Client**"), with a registered office located at \_\_\_\_\_

continues to utilize its License Software and/or SaaS Services in full conformity with the use rights and restrictions under its Agreement with MRI Software. Client agrees that submission of this Self-Certification does not waive any other audit rights granted to MRI under the Agreement.

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

MRI Client ID: \_\_\_\_\_

**Send Self-Certification Document to:**

Fax: 216-803-4339

Email: [legal@mrsoftware.com](mailto:legal@mrsoftware.com)

Mail: MRI Software, LLC

Attn: Legal Department

28925 Fountain Parkway

Solon, Ohio 44139

All documents must be received prior to its certification date.

MRI CONFIDENTIAL



AMENDMENT NO. 1

This Amendment No. 1 (this "Amendment") is made effective as of September 1, 2022 (the "Effective Date") by and between HAPPY Software, LLC, an MRI Software LLC Company, with its office at 28925 Fountain Parkway, Solon, OH 44139 ("MRI") and Client (collectively the "Parties" and each a "Party").

A. WHEREAS, MRI and Client entered into a certain Support Contract Renewal along with a Master Agreement and various Schedules incorporated therein effective September 1, 2019 as well as:

- a. Order Document #1 effective September 1, 2019
- b. Order Document #2 effective June 1, 2020
- c. Order Document #3 effective May 1, 2021 (collectively "the Agreement").

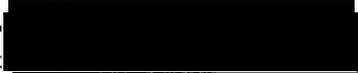
B. WHEREAS, MRI and Client desire to enter this Amendment and amend certain provisions of the Agreement.

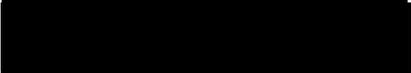
C. NOW, THEREFORE, for the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, MRI and Client hereby agree as follows:

Both Client and MRI agree that the Support Contract Renewal, effective September 1, 2019, shall be stricken and terminated, except that the MRI Terms and Conditions listed therein ([www.mrisoftware.com/termsandconditions](http://www.mrisoftware.com/termsandconditions)) shall not be stricken and shall continue in full force and effect. The Parties also agree to terminate Order Document #1-3. Both Parties further agree that a new Order Document, effective September 1, 2022, governed by the incorporated MRI Terms and Conditions of the Support Contract Renewal dated September 1, 2019, shall be added to the Agreement. All rights and obligations that arose prior to the Effective Date related to the original Order Document shall remain in full force and effect. All other provisions of the Agreement remain in full force and effect

**Community Development Commission  
of National City ("Client")  
140 E. 12<sup>th</sup> Street, Suite B  
Section 8 Rental Assistance Division  
National City, CA 91950**

**HAPPY Software, LLC, an MRI Software LLC  
Company ("MRI")  
28925 Fountain Parkway  
Solon, OH 44139**

Signature: 

Signature: 

Print Name: Marta Rios

Print Name: Roman Telerman

Title: Housing Programs Manager - HCV

Title: Chief Financial Officer



**ORDER DOCUMENT #4  
RECURRING SOFTWARE AND SERVICES**

This Order Document incorporates by reference and is governed by the terms and conditions of the Support Contract Renewal dated September 1, 2019 between MRI and Client and the Master Agreement, the SaaS Services Schedule, the Limited Software License Maintenance and Support Schedule, and the Professional Services Schedule incorporated therein (collectively, the "Agreement"), and this Order Document is effective as of September 1, 2022 (the "Effective Date"). Capitalized terms that are not otherwise defined in this Order Document shall have the meanings set forth in the Agreement. This Order Document is an offer to make an offer and does not constitute a valid contract between the Parties until countersigned by MRI. Any pricing terms in this Order Document are valid for thirty (30) days following issuance of this Order Document unless signed prior to that date.

Community Development Commission of National City  
("Client")  
140 E. 12<sup>th</sup> Street, Suite B  
Section 8 rental Assistance Division  
National City, CA 91950

MRI Software LLC ("MRI")  
28925 Fountain Parkway  
Solon, OH 44139

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

Print Name: Marta Rios

Title: Housing Programs Manager - HCV

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

Print Name: Roman Telerman

Title: Chief Financial Officer

The Parties accept and agree to this Order Document, as follows:

CLIENT CONTACT INFORMATION			
Administrator: <u>Marta Rios</u>	Technical Contact/Download Recipient: <u>Damon Dong</u>		
Address: <u>140 E. 12th Street, Suite B</u> <u>National City CA 91950</u>	Address: <u>140 E. 12th Street, Suite B</u> <u>National City CA 91950</u>		
E-mail: <u>mrios@nationalcityca.gov</u> Voice: <u>619-336-4259</u>	E-mail: <u>DDong@nationalcityca.gov</u> Voice: <u>619-336-4374</u>		
Fax: <u>619-477-3747</u> Cell: _____	Fax: <u>619-477-3747</u> Cell: _____		
Billing Contact: <u>same as above</u>			
Address: _____			
E-mail: _____ Voice: _____			
Fax: _____			



SAAS SERVICES			
Products	License Metric	Quantity	Territory
Happy			
AssistanceCheck-Online Assistance Portal	Named Users Units	Up to 11 Named Users Up to 1,344 Units	N. AMERICA
Database	Each	Up to 1 Production Database	N. AMERICA

LIMITED SOFTWARE LICENSE			
Products	License Metric	Quantity	Territory
Happy			
1099s and Payment History	Named Users Units	Up to 11 Named Users Up to 1,344 Units	N. AMERICA
Custom Forms	Named Users Units	Up to 11 Named Users Up to 1,344 Units	N. AMERICA
Direct Deposit	Named Users Units	Up to 11 Named Users Up to 1,344 Units	N. AMERICA
FileMTCS	Named Users Units	Up to 11 Named Users Up to 1,344 Units	N. AMERICA
iDIA System	Named Users Units	Up to 11 Named Users Up to 1,344 Units	N. AMERICA
Inspections	Named Users Units	Up to 11 Named Users Up to 1,344 Units	N. AMERICA
Occupancy	Named Users Units	Up to 11 Named Users Up to 1,344 Units	N. AMERICA
Payments	Named Users Units	Up to 11 Named Users Up to 1,344 Units	N. AMERICA
Remote Screen Sharing	Named Users Units	Up to 11 Named Users Up to 1,344 Units	N. AMERICA
Tenant Accounts Receivable (TARs)	Named Users Units	Up to 11 Named Users Up to 1,344 Units	N. AMERICA
Waiting List	Named Users Units	Up to 11 Named Users Up to 1,344 Units	N. AMERICA
Database	Each	Up to 1 Production Database	N. AMERICA

The Installation Site for the aforementioned Limited Software License Schedule is the address listed above unless specified otherwise.

**FEES, PAYMENT AND TERM**

Initial Term (1)	Effective Date	Annual Recurring Fees (2)
Thirty-Six (36) Months	September 1, 2022	\$30,457
<p>(1) The Initial Term and any Renewal Term are non-cancelable, subject to termination rights as set forth in the Agreement.</p> <p>(2) The fees listed in this table include the recurring fees related to the products and services in the tables listed above. MRI may, at any time after the first twelve (12) months of the Effective Date listed above, and in its sole discretion, modify the Fees upon ninety (90) calendar day prior written notice to Client. Notwithstanding the foregoing, the Fees shall not increase in each subsequent twelve (12) month period by more than the greater of (i) five and a half percent (5.5%); or (ii) the US Bureau of Labor Statistics Consumer Price Index (CPI-U) for the most recent year. A twelve (12) month period commences on the anniversary of the Effective Date. For purposes of notice in this footnote, email or first-class mail will suffice.</p>		
<p><b>Payment Terms:</b> Fees are due in U.S. Dollars annually in advance. Initial payment must be received by MRI prior to the Effective Date and any Renewal Term; MRI has no obligation to provide Services until such payment is received. For any fees due from the Client when exceeding the License Metrics listed above, Client shall be billed monthly in arrears for such overage in accordance with the terms of this Order Document. In no event shall Client be invoiced for fewer than the License Metrics listed or less than the Annual Recurring Fees (annualized) plus increase as outlined in footnote 2.</p>		

**LICENSE METRICS AND USE RIGHTS DEFINITIONS**

**Definitions:** The following definitions shall apply to the interpretation of this Order Document. If a definition is listed here and not listed within the foregoing tables or in additional Order Documents executed between the Parties, then that definition shall be disregarded.

A "Named User" license permits Clients to assign User IDs only to a fixed number of specifically named employee users or Affiliates, and simultaneous access to the licensed Program is limited to those specific named users.

A "Unit" is a space rented or designed to be rented to a tenant for residential use and is characterized by a unique tenant, a unique mailing address, or a unique physical location. "Units" include without limitation Conventional Units, Affordable Units, AHR Units and DHCR Units.

"Production Database" means access to an instance of the products listed in a live environment, to be used to production purposes. A production database does not imply a segregated instance or walled-off application.

**Use Rights:** The license to use the SaaS Service is priced based on Client's License Metrics as of the Effective Date of this Order Document and allows Client to use the Software to manage up to the quantity set forth above. Additional licenses must be purchased by Client in the event the number of actual License Metrics exceeds such licensed quantity. If Client's actual License Metrics exceed such licensed quantity, then MRI reserves the right to charge a premium fee for any additional License Metric used. Additional Contracts, if applicable, must be purchased in blocks of not less than ten percent (10%) of the Quantity listed above. The cost for these additional licenses will be at MRI's then-current fees. There shall be no fees adjustments or refunds for any actual License Metrics decreases. Fees (other than monthly user access fees) are based on quantity purchased, not Usage.

**Self-Certification:** Without prejudice to MRI's audit rights pursuant to the Agreement, Client will, by September 1<sup>st</sup> of each year, document and certify that use of the SaaS Services is in full conformity with the use rights granted hereunder. The Self-Certification Document can be found in the MRI Terms and Conditions.



**MAINTENANCE AND TECHNICAL SUPPORT**

**Maintenance and Support Level:** Standard Maintenance and Support is included in the Fees. In the event that Client has purchased enhanced support services, such enhanced will be indicated in the Enhanced Support Services table above and the product line for which it was purchased. If no such indication is made, then Client has not purchased enhanced support services.

**Designated Support Contacts:**

Maintenance and Support may only be requested by the two (2) Designated Support Contacts named below who must have successfully completed MRI's standard training course prior to (i) logging case requests; or (ii) receiving status updates on cases. Client may change these Designated Support Contacts from time to time, to other Client employees, by promptly delivering in writing to MRI the names and contact information of the new Designated Support Contacts (email is sufficient). The SaaS Services fees are related to the number of contacts; access to support by any additional contacts will be subject to additional fees.

One (1) Designated Support Contact must be the Administrator listed above in this Order Document.

The initial Designated Support Contacts of Client are:

Name: <u>MARTA RIOS</u>	Name: <u>Sue Pfeifer</u>
Title: <u>Housing Programs Manager</u>	Title: <u>Asst. Housing Specialist</u>
Phone: <u>619-336-4259</u>	Phone: <u>619-336-4263</u>
Address: <u>140 E. 12<sup>th</sup> Ste. B</u>	Address: <u>140 E. 12<sup>th</sup> ST. STE. B</u>
Email: <u>mrios@nationalcityca.gov</u>	Email: <u>spfeifer@nationalcityca.gov</u>

**RESOLUTION NO. 2023-**

**RESOLUTION OF THE COMMUNITY DEVELOPMENT COMMISSION-HOUSING AUTHORITY OF THE CITY OF NATIONAL CITY, CALIFORNIA, RATIFYING PRIOR EXPENDITURES FROM FISCAL YEAR (FY) 2002 THROUGH FY 2024 TOTALING \$292,349.49 AND MASTER AGREEMENT AMENDMENT NO. 1, INCLUDING A NOT-TO-EXCEED AMOUNT OF \$35,030.00 FOR FY 2025, TO ADMINISTER THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM THROUGH HAPPY SOFTWARE INC., NOW KNOWN AS MRI SOFTWARE LLC.**

**WHEREAS**, the Community Development Commission-Housing Authority (Housing Authority) of the City of National City administers the Section 8 Housing Choice Voucher (Section 8 HCV) Program, which is funded by the U.S. Department of Housing and Urban Development (HUD); and

**WHEREAS**, HUD regulations require that a housing software program be used for the proper administration and management of the Section 8 HCV; and

**WHEREAS**, In 2002, Happy Software Inc. was identified as the most qualified and experienced to provide software products and services required for the administration of the Housing Authority's Section 8 HCV Program; and

**WHEREAS**, Resolution 2002-31 approved an agreement with Happy Software, Inc. to purchase its products and services for the Section 8 HCV Program for one (1) year totaling \$25,744; and

**WHEREAS**, in 2018, Happy Software Inc. was acquired by MRI Software LLC; and

**WHEREAS**, the Section 8 HCV Program continues to utilize said housing software through MRI Software LLC; and

**WHEREAS**, purchases from FY 2002 to FY 2024 from Happy Software Inc. and MRI Software LLC were paid through HUD Section 8 HCV grant funds; and

**WHEREAS**, expenditures through FY 2024 other than those approved in Resolution 2002-31 for Happy Software Inc. and MRI Software LLC. Products and services have totaled \$292,349.49; and

**WHEREAS**, staff requests the ratification of the \$292,349.49 in prior years' expenditures; and

**WHEREAS**, staff requests the ratification of Amendment No. 1 to the Master Agreement with MRI Software LLC that includes a not-to-exceed amount of \$35,030.00 for MRI Software LLC products and services for FY 2025; and

**WHEREAS**, staff requests that the City Manager or his designee be authorized to execute agreements and amendments with MRI Software LLC for products and services used to administer the Housing Authority's Section 8 HCV Program.

**NOW, THEREFORE, COMMUNITY DEVELOPMENT COMMISSION-HOUSING AUTHORITY OF THE CITY OF NATIONAL CITY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:**

**Section 1:** Prior expenditures totaling \$292,349.49 for products and services required to administer the Section 8 Housing Choice Voucher Program previously through Happy Software Inc. and now MRI Software LLC are ratified.

**Section 2:** Amendment No. 1 to the Master Agreement with MRI Software LLC, including payment of the not-to-exceed amount of \$35,030.00 in FY 2025 is ratified.

**Section 3:** The City Manager or his designee is authorized to execute agreements and amendments with MRI Software LLC for products and services used to administer the Housing Authority's Section 8 HCV Program.

**Section 4:** The City Clerk shall certify the passage and adoption of this Resolution and enter it into the book of original Resolution.

**PASSED and ADOPTED this 7th day of November 2023**

\_\_\_\_\_  
Ron Morrison, Mayor

**ATTEST:**

\_\_\_\_\_  
Shelley Chapel, MMC, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Barry J. Schultz, City Attorney



# AGENDA REPORT

Department: Finance  
Prepared by: Kecia Carrasco, Accountant  
Meeting Date: Tuesday, November 7, 2023  
Approved by: Ben Martinez, Interim City Manager

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**SUBJECT:**

Investment transactions for the month ended August 31, 2023.

**RECOMMENDATION:**

Accept and file the Investment Transaction Ledger for the month ended August 31, 2023.

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

Not Applicable.

**EXPLANATION:**

In accordance with California Government Code Section 53646 and Section XIIA of the City of National City's investment policy, a monthly report shall be submitted to the legislative body accounting for transactions made during the reporting period.

The attached listing reflects investment transactions of the City of National City's investment portfolio for the month ending August 31, 2023.

**FINANCIAL STATEMENT:**

In this period, there were acquisitions of \$783,792.77 and dispositions of \$720,153.36.

**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

**EXHIBIT:**

Exhibit A – Investment Transaction Ledger



# City of National City

## MONTHLY ACCOUNT STATEMENT

AUGUST 1, 2023 THROUGH AUGUST 31, 2023

### Chandler Team:

For questions about your account, please call (800) 317-4747,  
or contact [operations@chandlerasset.com](mailto:operations@chandlerasset.com)

### Custodian

Bank of New York Mellon  
Lauren Dehner  
(904) 645-1918

**CHANDLER ASSET MANAGEMENT**  
chandlerasset.com

*Information contained herein is confidential. We urge you to compare this statement to the one you receive from your qualified custodian. Please see Important Disclosures.*



Transaction Type	Settlement Date	CUSIP	Quantity	Security Description	Price	Acq/Disp Yield	Amount	Interest Pur/Sold	Total Amount	Gain/Loss
<b>ACQUISITIONS</b>										
Purchase	08/01/2023	60934N807	8,509.50	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	8,509.50	0.00	8,509.50	0.00
Purchase	08/02/2023	60934N807	529.28	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	529.28	0.00	529.28	0.00
Purchase	08/06/2023	60934N807	1,091.25	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	1,091.25	0.00	1,091.25	0.00
Purchase	08/08/2023	60934N807	2,450.00	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	2,450.00	0.00	2,450.00	0.00
Purchase	08/09/2023	60934N807	387.50	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	387.50	0.00	387.50	0.00
Purchase	08/11/2023	60934N807	629,406.95	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	629,406.95	0.00	629,406.95	0.00
Purchase	08/12/2023	60934N807	4,687.50	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	4,687.50	0.00	4,687.50	0.00
Purchase	08/14/2023	3133EPSW6	725,000.00	FFCB Note 4.5% Due 8/14/2026	99.770	4.58%	723,332.50	0.00	723,332.50	0.00
Purchase	08/15/2023	60934N807	34,750.00	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	34,750.00	0.00	34,750.00	0.00
Purchase	08/15/2023	60934N807	483.08	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	483.08	0.00	483.08	0.00
Purchase	08/15/2023	60934N807	290.00	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	290.00	0.00	290.00	0.00
Purchase	08/15/2023	60934N807	305.50	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	305.50	0.00	305.50	0.00
Purchase	08/15/2023	60934N807	1,920.94	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	1,920.94	0.00	1,920.94	0.00
Purchase	08/15/2023	60934N807	5,977.08	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	5,977.08	0.00	5,977.08	0.00
Purchase	08/15/2023	60934N807	6,793.50	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	6,793.50	0.00	6,793.50	0.00
Purchase	08/15/2023	60934N807	13,111.33	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	13,111.33	0.00	13,111.33	0.00



Transaction Type	Settlement Date	CUSIP	Quantity	Security Description	Price	Acq/Disp Yield	Amount	Interest Pur/Sold	Total Amount	Gain/Loss
<b>ACQUISITIONS</b>										
Purchase	08/15/2023	60934N807	3,768.04	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	3,768.04	0.00	3,768.04	0.00
Purchase	08/15/2023	60934N807	5,212.75	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	5,212.75	0.00	5,212.75	0.00
Purchase	08/15/2023	60934N807	11,647.11	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	11,647.11	0.00	11,647.11	0.00
Purchase	08/18/2023	60934N807	9,128.20	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	9,128.20	0.00	9,128.20	0.00
Purchase	08/21/2023	60934N807	3,305.97	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	3,305.97	0.00	3,305.97	0.00
Purchase	08/21/2023	60934N807	7,168.09	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	7,168.09	0.00	7,168.09	0.00
Purchase	08/25/2023	60934N807	530.42	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	530.42	0.00	530.42	0.00
Purchase	08/25/2023	60934N807	2,310.00	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	2,310.00	0.00	2,310.00	0.00
Purchase	08/25/2023	60934N807	981.50	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	981.50	0.00	981.50	0.00
Purchase	08/25/2023	60934N807	10,246.55	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	10,246.55	0.00	10,246.55	0.00
Purchase	08/25/2023	60934N807	7,566.35	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	7,566.35	0.00	7,566.35	0.00
Purchase	08/31/2023	60934N807	11,234.38	Federated Investors Govt Oblig Fund Inst.	1.000	4.96%	11,234.38	0.00	11,234.38	0.00
<b>Subtotal</b>			<b>1,508,792.77</b>				<b>1,507,125.27</b>	<b>0.00</b>	<b>1,507,125.27</b>	<b>0.00</b>
Short Sale	08/14/2023	60934N807	-723,332.50	Federated Investors Govt Oblig Fund Inst.	1.000		-723,332.50	0.00	-723,332.50	0.00
<b>Subtotal</b>			<b>-723,332.50</b>				<b>-723,332.50</b>	<b>0.00</b>	<b>-723,332.50</b>	<b>0.00</b>
<b>TOTAL ACQUISITIONS</b>			<b>785,460.27</b>				<b>783,792.77</b>	<b>0.00</b>	<b>783,792.77</b>	<b>0.00</b>



Transaction Type	Settlement Date	CUSIP	Quantity	Security Description	Price	Acq/Disp Yield	Amount	Interest Pur/Sold	Total Amount	Gain/Loss
<b>DISPOSITIONS</b>										
Closing Purchase	08/14/2023	60934N807	-723,332.50	Federated Investors Govt Oblig Fund Inst.	1.000		-723,332.50	0.00	-723,332.50	0.00
<b>Subtotal</b>			<b>-723,332.50</b>				<b>-723,332.50</b>	<b>0.00</b>	<b>-723,332.50</b>	<b>0.00</b>
Sale	08/11/2023	91282CBV2	650,000.00	US Treasury Note 0.375% Due 4/15/2024	96.711	5.38%	628,621.09	785.86	629,406.95	-21,962.89
Sale	08/14/2023	60934N807	723,332.50	Federated Investors Govt Oblig Fund Inst.	1.000	4.89%	723,332.50	0.00	723,332.50	0.00
<b>Subtotal</b>			<b>1,373,332.50</b>				<b>1,351,953.59</b>	<b>785.86</b>	<b>1,352,739.45</b>	<b>-21,962.89</b>
Paydown	08/15/2023	43815BAC4	0.00	Honda Auto Receivables Trust 2022-1 A3 1.88% Due 5/15/2026	100.000		0.00	305.50	305.50	0.00
Paydown	08/15/2023	47787JAC2	0.00	John Deere Owner Trust 2022-A A3 2.32% Due 9/16/2026	100.000		0.00	290.00	290.00	0.00
Paydown	08/15/2023	47787NAC3	1,918.70	John Deere Owner Trust 2020-B A3 0.51% Due 11/15/2024	100.000		1,918.70	2.24	1,920.94	0.29
Paydown	08/15/2023	47788UAC6	5,958.83	John Deere Owner Trust 2021-A A3 0.36% Due 9/15/2025	100.000		5,958.83	18.25	5,977.08	1.14
Paydown	08/15/2023	47789QAC4	6,745.12	John Deere Owner Trust 2021-B A3 0.52% Due 3/16/2026	100.000		6,745.12	48.38	6,793.50	0.60
Paydown	08/15/2023	47800AAC4	0.00	John Deere Owner Trust 2022-B A3 3.74% Due 2/16/2027	100.000		0.00	483.08	483.08	0.00
Paydown	08/15/2023	58769KAD6	13,081.77	Mercedes-Benz Auto Lease Trust 2021-B A3 0.4% Due 11/15/2024	100.000		13,081.77	29.56	13,111.33	0.99
Paydown	08/15/2023	89236XAC0	3,763.36	Toyota Auto Receivables 2020-D A3 0.35% Due 1/15/2025	100.000		3,763.36	4.68	3,768.04	0.70
Paydown	08/15/2023	89237VAB5	5,207.97	Toyota Auto Receivables Trust 2020-C A3 0.44% Due 10/15/2024	100.000		5,207.97	4.78	5,212.75	0.40



Transaction Type	Settlement Date	CUSIP	Quantity	Security Description	Price	Acq/Disp Yield	Amount	Interest Pur/Sold	Total Amount	Gain/Loss
<b>DISPOSITIONS</b>										
Paydown	08/15/2023	89240BAC2	11,624.48	Toyota Auto Receivables Owners 2021-A A3 0.26% Due 5/15/2025	100.000		11,624.48	22.63	11,647.11	2.16
Paydown	08/18/2023	43813KAC6	9,113.43	Honda Auto Receivables Trust 2020-3 A3 0.37% Due 10/18/2024	100.000		9,113.43	14.77	9,128.20	1.34
Paydown	08/21/2023	43813GAC5	3,299.48	Honda Auto Receivables Trust 2021-1 A3 0.27% Due 4/21/2025	100.000		3,299.48	6.49	3,305.97	0.06
Paydown	08/21/2023	43815GAC3	7,082.30	Honda Auto Receivables Trust 2021-4 A3 0.88% Due 1/21/2026	100.000		7,082.30	85.79	7,168.09	1.49
Paydown	08/25/2023	05601XAC3	10,167.19	BMW Vehicle Lease Trust 2022-1 A3 1.1% Due 3/25/2025	100.000		10,167.19	79.36	10,246.55	1.52
Paydown	08/25/2023	09690AAC7	7,556.51	BMW Vehicle Lease Trust 2021-2 A3 0.33% Due 12/26/2024	100.000		7,556.51	9.84	7,566.35	0.78
Paydown	08/25/2023	3137FETN0	0.00	FHLMC K073 A2 3.35% Due 1/25/2028	100.000		0.00	530.42	530.42	0.00
Paydown	08/25/2023	3137FG6X8	0.00	FHLMC K077 A2 3.85% Due 5/25/2028	100.000		0.00	2,310.00	2,310.00	0.00
Paydown	08/25/2023	3137FGZT5	0.00	FHLMC K079 A2 3.926% Due 6/25/2028	100.000		0.00	981.50	981.50	0.00
<b>Subtotal</b>			<b>85,519.14</b>				<b>85,519.14</b>	<b>5,227.27</b>	<b>90,746.41</b>	<b>11.47</b>
<b>TOTAL DISPOSITIONS</b>			<b>735,519.14</b>				<b>714,140.23</b>	<b>6,013.13</b>	<b>720,153.36</b>	<b>-21,951.42</b>
<b>OTHER TRANSACTIONS</b>										
Interest	08/01/2023	46625HRY8	450,000.00	JP Morgan Chase Callable Note 1X 2/1/2027 3.782% Due 2/1/2028	0.000		8,509.50	0.00	8,509.50	0.00
Interest	08/06/2023	857477BR3	125,000.00	State Street Bank Callable Note Cont 2/6/2025 1.746% Due 2/6/2026	0.000		1,091.25	0.00	1,091.25	0.00



Transaction Type	Settlement Date	CUSIP	Quantity	Security Description	Price	Acq/Disp Yield	Amount	Interest Pur/Sold	Total Amount	Gain/Loss
<b>OTHER TRANSACTIONS</b>										
Interest	08/08/2023	037833EB2	700,000.00	Apple Inc Callable Note Cont 1/8/2026 0.7% Due 2/8/2026	0.000		2,450.00	0.00	2,450.00	0.00
Interest	08/09/2023	69371RR40	155,000.00	Paccar Financial Corp Note 0.5% Due 8/9/2024	0.000		387.50	0.00	387.50	0.00
Interest	08/12/2023	3137EAEP0	625,000.00	FHLMC Note 1.5% Due 2/12/2025	0.000		4,687.50	0.00	4,687.50	0.00
Interest	08/15/2023	438516CJ3	450,000.00	Honeywell Intl Callable Note Cont 01/15/2028 4.95% Due 2/15/2028	0.000		11,137.50	0.00	11,137.50	0.00
Interest	08/15/2023	9128282A7	1,000,000.00	US Treasury Note 1.5% Due 8/15/2026	0.000		7,500.00	0.00	7,500.00	0.00
Interest	08/15/2023	912828P46	1,300,000.00	US Treasury Note 1.625% Due 2/15/2026	0.000		10,562.50	0.00	10,562.50	0.00
Interest	08/15/2023	912828V98	360,000.00	US Treasury Note 2.25% Due 2/15/2027	0.000		4,050.00	0.00	4,050.00	0.00
Interest	08/15/2023	91282CCT6	800,000.00	US Treasury Note 0.375% Due 8/15/2024	0.000		1,500.00	0.00	1,500.00	0.00
Interest	08/31/2023	9128284Z0	675,000.00	US Treasury Note 2.75% Due 8/31/2025	0.000		9,281.25	0.00	9,281.25	0.00
Interest	08/31/2023	91282CFH9	125,000.00	US Treasury Note 3.125% Due 8/31/2027	0.000		1,953.13	0.00	1,953.13	0.00
<b>Subtotal</b>			<b>6,765,000.00</b>				<b>63,110.13</b>	<b>0.00</b>	<b>63,110.13</b>	<b>0.00</b>
Dividend	08/02/2023	60934N807	130,464.50	Federated Investors Govt Oblig Fund Inst.	0.000		529.28	0.00	529.28	0.00
<b>Subtotal</b>			<b>130,464.50</b>				<b>529.28</b>	<b>0.00</b>	<b>529.28</b>	<b>0.00</b>
<b>TOTAL OTHER TRANSACTIONS</b>			<b>6,895,464.50</b>				<b>63,639.41</b>	<b>0.00</b>	<b>63,639.41</b>	<b>0.00</b>



# AGENDA REPORT

Department: Finance  
Prepared by: Karla Apalategui, Sr. Accounting Assistant  
Meeting Date: Tuesday, November 7, 2023  
Approved by: Ben Martinez, Interim City Manager

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**SUBJECT:**

Warrant Register #11 for the period of 9/8/23 through 9/14/23 in the amount of \$607,705.26

**RECOMMENDATION:**

Ratify Warrants Totaling \$607,705.26

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

Not Applicable.

**EXPLANATION:**

Per Government Section Code 37208, below are the payments issued for period 9/8/23 – 9/14/23. 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>
Public Emp Ret System	230914	\$322,162.85	Service Period 8/22/23-9/4/23
Adminsure Inc	1852	\$115,109.46	WC Compensation Replenishment

**FINANCIAL STATEMENT:**

Warrant total \$607,705.26

**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

**EXHIBIT:**

Exhibit A - Warrant Register No. 11



**WARRANT REGISTER # 11  
9/14/2023**

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
<b>CMO</b>				
STAPLES BUSINESS ADVANTAGE	MOP 45704 OFFICE SUPPLIES / CMO	365183	9/14/23	186.99
<b>Total for Department</b>				<b>186.99</b>
<b>Housing/Section 8</b>				
CAHA	2022-2023 ANNUAL CAHA MEMBERSHIP RENEWAL	365147	9/14/23	900.00
<b>Total for Department</b>				<b>900.00</b>
<b>Police</b>				
CITY OF SAN DIEGO	PARKING CITATION OF NCPD VEH CA/8UKJ987	365150	9/14/23	52.50
GOVCONNECTION INC	PANASONIC COMPUTER	365154	9/14/23	5,660.39
LASER SAVER INC	CAU TONERS FOR PLOTTER	365158	9/14/23	2,700.59
MALLORY SAFETY & SUPPLY LLC	P&E NITRILE GLOVES	365160	9/14/23	12,859.70
CORNEJO	TRAINING REIM CHIA	365151	9/14/23	557.90
QUIROGA	TRAINING REIM CHIA	365174	9/14/23	451.09
SAN DIEGO REGIONAL PUBLIC	TRAINING PETTY CASH FELIPE GOMEZ	365176	9/14/23	8.00
<b>Total for Department</b>				<b>22,290.17</b>
<b>Engineering / PW's</b>				
AIRGAS USA LLC	MOP 45714 SAFETY SUPPLIES FY24-PW/STREET	365138	9/14/23	479.81
APS LIGHTING & SAFETY PRODUCTS	AUTO SUPPLIES FY24-PW/EQM	365142	9/14/23	8,272.47
BOOT WORLD	MOP 64096 SAFETY APPAREL FY24-PW	365146	9/14/23	1,314.74
CALIFORNIA ELECTRIC SUPPLY	MOP 45698 ELECTRIC SUPPLIES FY24-PW/FACI	365148	9/14/23	299.82
GRAINGER	MOP 65179 BUILDING SUPPLIES FY24-PW/FACI	365155	9/14/23	187.33
MASON'S SAW	MOP 45729 LANDSCAPE SUPPLIES FY24-PW/PAR	365161	9/14/23	117.32
MASTER PERFORMANCE	MOP 86883 AUTO PARTS FY24-PW/EQM	365162	9/14/23	489.18
O'REILLY AUTO PARTS	MOP 75877 AUTO SUPPLIES FY24-PW/EQM	365165	9/14/23	321.68
PACIFIC PRODUCTS & SERVICES	STREET SIGN SUPPLIES FY24-PW/STREETS	365166	9/14/23	1,482.53
PARTS AUTHORITY METRO	MOP 75943 AUTO SUPPLIES FY24-PW/EQM	365167	9/14/23	349.77
PARTS AUTHORITY METRO	MOP 75943 AUTO SUPPLIES FY24-PW/EQM	365168	9/14/23	142.73
PARTS AUTHORITY METRO	MOP 75943 AUTO SUPPLIES FY24-PW/EQM	365169	9/14/23	96.11
PARTS AUTHORITY METRO	MOP 75943 AUTO SUPPLIES FY24-PW/EQM	365170	9/14/23	10.15
PRO BUILD COMPANY	MOP 45707 GENERAL SUPPLIES FY24-PW/STREE	365172	9/14/23	1,795.42
PRUDENTIAL OVERALL SUPPLY	LAUNDRY SERVICES / PWS	365173	9/14/23	296.69
SASE COMPANY INC	STREET SUPPLIES FY24-PW/STREETS	365177	9/14/23	1,745.93
SDG&E	GAS AND ELECTRIC UTILITIES FOR STREETS F	365178	9/14/23	56.98
SITEONE LANDSCAPE SUPPLY LLC	MOP 69277 LANDSCAPE SUPPLIES FY24-PW	365181	9/14/23	204.75
SONSRAY MACHINERY LLC	PSO092388-2 AUTO SUPPLIES FY24-PW/EQM	365182	9/14/23	720.11
STAPLES BUSINESS ADVANTAGE	MOP 45704 OFFICE SUPPLIES / PW	365183	9/14/23	69.33
VALLEY INDUSTRIAL SPECIALTIES	MOP 46453 BUILDING SUPPLIES FY23-PW/FACI	365186	9/14/23	899.75
VISTA PAINT	MOP 68834 STREET PAINT SUPPLIES FY24-PW/	365188	9/14/23	435.98
WAXIE SANITARY SUPPLY	MISC JANITORIAL SUPPLIES FY24-PW/FACILIT	365189	9/14/23	3,362.27
WHITE CAP, LP	SAFETY SUPPLIES FY24-PW/STREETS	365190	9/14/23	486.37



**WARRANT REGISTER # 11  
9/14/2023**

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
WILLY'S ELECTRONIC SUPPLY	MOP 45763 ELECTRIC SUPPLIES FY24-PW/EQM	365191	9/14/23	67.57
WSP USA INC	T&A 90623 - 3410 VALLEY ROAD - ENG/PW	365192	9/14/23	6,537.64
<b>Total for Department</b>				<b>30,242.43</b>
<b><u>NSD</u></b>				
MARTINEZ	HOUSING RELOCATION RUSSELL MARTINEZ	365136	9/12/23	5,060.00
STAPLES BUSINESS ADVANTAGE	MOP 45704 OFFICE SUPPLIES / NSD	365183	9/14/23	714.91
<b>Total for Department</b>				<b>5,774.91</b>
<b><u>RISK</u></b>				
PILAPIL	LIABILITY CLAIM COST	365171	9/14/23	2,518.33
<b>Total for Department</b>				<b>2,518.33</b>
<b><u>Building/Planning</u></b>				
SILVER & WRIGHT LLP	SILVER & WRIGHT INVOICE	365180	9/14/23	6,364.39
<b>Total for Department</b>				<b>6,364.39</b>
<b><u>Fire</u></b>				
ACE UNIFORMS & ACCESSORIES INC	UNIFORMS, JACKETS, PATCHES, SEWING AND	365137	9/14/23	963.66
AMEDEE	REIMBURSEMENT TRAVEL EXPENSE, WALTER AME	365141	9/14/23	23.58
AT & T INC	MONTHLY PHONE SERVICES TO RECEIVE/FIRE	365143	9/14/23	2,482.98
ROBINSON	REIMBURSEMENT FOR POV MILEAGE, S ROBINSO	365175	9/14/23	1,008.13
<b>Total for Department</b>				<b>4,478.35</b>
<b><u>Community Services/Nutrition/Library</u></b>				
ALDEMCO	FOOD	365139	9/14/23	1,834.57
ALL FRESH PRODUCTS	CONSUMABLES	365140	9/14/23	1,164.92
PRUDENTIAL OVERALL SUPPLY	LAUNDRY & CONSUMABLES	365173	9/14/23	577.54
SYSCO SAN DIEGO INC	FOOD	365184	9/14/23	7,652.36
CASTILLO	RFW DJ/MC FOR AGE FRIENDLY DANCE	365149	9/14/23	2,450.00
JERRYS PHOTO BOOTH	RFW PHOTO BOOTH RENTAL FOR AGE FRIENDLY	365157	9/14/23	549.00
BAKER & TAYLOR	BAKER AND TAYLOR/BOOKS/FY24	365145	9/14/23	1,764.24
MIDWEST TAPE, LLC	MIDWEST TAPE/BLU-RAYS AND DVDS/FY24	365163	9/14/23	960.99
OLD TOWN TROLLEY TOURS	PARKS PASS GRANT/OLD TOWN TROLLEY/	365164	9/14/23	2,100.00
STAPLES BUSINESS ADVANTAGE	MOP 45704 OFFICE SUPPLIES / LIBRARY	365183	9/14/23	75.42
<b>Total for Department</b>				<b>19,129.04</b>
<b><u>MIS</u></b>				
AT&T	SBC - AT&T FOR FY24	365144	9/14/23	17,298.43
COX COMMUNICATIONS	COX DATA, VIDEO SERVICES FY24	365152	9/14/23	798.48
GRANICUS LLC	GOVACCESS - MAINTENANCE, HOSTING	365156	9/14/23	21,620.24



**WARRANT REGISTER # 11  
9/14/2023**

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
LEGAL FILES SOFTWARE, INC.	LEGAL FILES SUPPORT	365159	9/14/23	1,787.00
SHARP ELECTRONICS CORPORATION	SHARP INVOICE FY24	365179	9/14/23	4,446.76
TYLER TECHNOLOGIES INC	TYLER MUNIS / CAD	365185	9/14/23	9,750.31
VERIZON WIRELESS	VERIZON CELLULAR SERVICES FOR FY24	365187	9/14/23	12,223.53
WILLY'S ELECTRONIC SUPPLY	MOP 45763 ELECTRIC SUPPLIES FY24- MIS	365191	9/14/23	8.77
		<b>Total for Department</b>		<b>67,933.52</b>
			<b>A/P Warrant Total</b>	<b>159,818.13</b>
 <b>WIRED PAYMENTS</b>				
<b><u>Police</u></b>				
U S BANK	CREDIT CARD EXPENSES / PD	870809	9/8/23	3,035.46
<b><u>Engineering / PW's</u></b>				
U S BANK	SANDBAGS FOR HURICANE HILARY AUGUST 2023	123338	9/12/23	994.40
<b><u>Fire</u></b>				
U S BANK	CREDIT CARD EXPENSES / FIRE	123338	9/12/23	629.44
U S BANK	CREDIT CARD EXPENSES / FIRE	870809	9/8/23	5,460.52
<b><u>CMO</u></b>				
U S BANK	CREDIT CARD STATEMENT - FRANK PARRA	123338	9/12/23	495.00
<b><u>Finance</u></b>				
PUBLIC EMP RETIREMENT SYSTEM	SERVICE PERIOD 08/22/23 -09/04/23	230914	9/14/23	322,162.85
<b><u>Human Resources</u></b>				
ADMINSURE INC	WORKERS' COMPENSATION REPLENISHMENT	1852	9/11/23	115,109.46
	<b>GRAND TOTAL</b>			<b>607,705.26</b>



# AGENDA REPORT

Department: Finance  
Prepared by: Karla Apalategui, Sr. Accounting Assistant  
Meeting Date: Tuesday, November 7, 2023  
Approved by: Ben Martinez, Interim City Manager

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**SUBJECT:**

Warrant Register #12 for the period of 9/15/23 through 9/21/23 in the amount of \$2,130,294.40

**RECOMMENDATION:**

Ratify Warrants Totaling \$2,130,294.40

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

Not Applicable.

**EXPLANATION:**

Per Government Section Code 37208, below are the payments issued for period 9/15/23 – 9/21/23. 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>
SDG&E	365243	\$114,518.72	Gas & Electric for Facilities for FY24
City of Encinitas	365204	\$50,358.00	RSWA – Environmental Enhancement Fund
City of Vista	365209	\$77,648.00	RSWA – Environmental Enhancement Fund
Kimley Horn	365220	\$86,901.00	CIP 20-09 NC Eastside I-805 Communi-Eng

**FINANCIAL STATEMENT:**

Warrant total \$2,130,294.40

**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

**EXHIBIT:**

Exhibit A - Warrant Register No. 12



**WARRANT REGISTER # 12  
9/21/2023**

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
<b><u>City Attorney</u></b>				
STAPLES BUSINESS ADVANTAGE	MOP 45704 OFFICE SUPPLIES / CAO	365251	9/21/23	266.38
DEVANEY PATE MORRIS & CAMERON	LEGAL SERVICES / CAO	365213	9/21/23	2,643.62
<b>Total for Department</b>				<b>2,910.00</b>
<b><u>Police</u></b>				
ACE UNIFORMS & ACCESSORIES INC	NEW HIRE GEAR / POLICE	365194	9/21/23	1,652.01
CYRACOM INTERNATIONAL, INC	INTERPRETATION SERVICE	365212	9/21/23	138.45
FON JON PET CARE CENTER	BAUTISTA / DAVIS K9 FOOD	365216	9/21/23	366.35
MAN K9 INC	SEPTEMBER MANDATORY K9 TRAINING	365222	9/21/23	1,520.00
PC SPECIALISTS INC	MISC MIS EQUIP	365230	9/21/23	272.15
PORAC	RESERVE OFFICER LDF	365231	9/21/23	12.00
PRO BUILD COMPANY	MOP 20462 PD SUPPLIES	365234	9/21/23	626.96
QUAID HARLEY-DAVIDSON INC	2023 HARLEY DAVIDSON (GRANT FUNDED)	365236	9/21/23	37,042.11
S D COUNTY SHERIFF'S DEPT	JULY RANGE USE	365240	9/21/23	900.00
SAN DIEGO PET SUPPLY	MOP 02975 PD K9 SUPPLIES	365242	9/21/23	637.97
SMART SOURCE OF CALIFORNIA LLC	MOP 24302 PD PRINTING	365248	9/21/23	36.98
STAPLES BUSINESS ADVANTAGE	MOP 45704 OFFICE SUPPLIES / POLICE	365251	9/21/23	266.98
THOMSON REUTERS	INVESTIGATIONS SOFTWARE	365253	9/21/23	1,383.90
VCA MAIN ST ANIMAL HOSPITAL	K9 TYSON	365256	9/21/23	333.50
GONZALES	TRAINING POST ADV SUB PEER SUPPORT	365217	9/21/23	384.00
MCGOUGH	TRAINING ADV LDG ASSRT SPRV	365224	9/21/23	627.66
RUDE	TRAINING ADV LDG	365239	9/21/23	697.19
SHANAHAN	TRAINING ADV SUB ASSRTV SPRVSN	365247	9/21/23	621.85
<b>Total for Department</b>				<b>47,520.06</b>
<b><u>Engineering / PW's</u></b>				
AIRGAS USA LLC	MOP 45714 GENERAL SUPPLIES FY24-PW/SEWER	365195	9/21/23	254.36
HAAKER EQUIPMENT COMPANY	PARTS AND SMALL EQUIPMENT FY24-PW/EQM	365218	9/21/23	1,609.21
MASTER PERFORMANCE	MOP 86883 AUTO SUPPLIES FY24-PW/EQM	365223	9/21/23	439.37
NATIONAL CITY CAR WASH	CAR WASH SERVICES FOR FLEET FY24-PW/EQM	365225	9/21/23	1,298.70
PARTS AUTHORITY METRO	MOP 75943 AUTO SUPPLIES FY24-PW/EQM	365228	9/21/23	344.65
PARTS AUTHORITY METRO	MOP 75943 AUTO SUPPLIES FY24-PW/EQM	365229	9/21/23	221.15
POWERSTRIDE BATTERY CO INC	AUTO BATTERIES FY24-PW/EQM	365232	9/21/23	1,450.55
PRO BUILD COMPANY	MOP 20462 / SUPPLIES FOR PW'S	365234	9/21/23	626.25
PRUDENTIAL OVERALL SUPPLY	LAUNDRY	365235	9/21/23	211.74
RED WING BUSINESS	WORK BOOTS FOR STREETS FY24-PW/STREETS	365237	9/21/23	1,524.20
SAN DIEGO MECHANICAL ENERGY	MAINTENANCE OF PUMP STATIONS FY24-PW/SEW	365241	9/21/23	4,534.37
SDG&E	GAS AND ELECTRIC FOR FACILITIES FOR FY24	365243	9/21/23	114,518.72
SDG&E	GAS AND ELECTRIC UTILITIES FOR STREETS A	365244	9/21/23	11,255.75
SEDANO FORD OF LM, INC.	R&M CITY VEHICLES FY24-PW/EQM	365246	9/21/23	119.35
SOUTHWEST SIGNAL SERVICE	INTERSECTION MAINTENANCE FOR STREETS FY2	365250	9/21/23	22,519.79
STAPLES BUSINESS ADVANTAGE	MOP 45704 OFFICE SUPPLIES / PUBLIC WORKS	365251	9/21/23	418.57
UNDERGROUND SERVICE ALERT	UNDERGROUND SERVICE ALERT FY24-PW/SEWER	365255	9/21/23	515.57



**WARRANT REGISTER # 12  
9/21/2023**

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
VISTA PAINT	MOP 68834 STREET STRIPING SUPPLIES FY24-	365257	9/21/23	435.98
VULCAN MATERIALS COMPANY	ASPHALT MATERIALS FOR STREETS FY24-PW/ST	365258	9/21/23	710.38
WESTFLEX INDUSTRIAL	MOP 63850 SEWER LINE SUPPLIES FY24-PW	365259	9/21/23	50.00
WETMORES	MOP 80333 AUTO SUPPLIES FY24-PW/EQM	365260	9/21/23	568.70
WHITAKER BROTHERS	WIDMER T-LED-3 TIMESTAMP MACHINE FY24-PW	365261	9/21/23	1,183.41
WILLY'S ELECTRONIC SUPPLY	MOP 45763 ELECTRIC SUPPLIES FY24-PW/EQM	365262	9/21/23	33.28
ATLAS TECHNICAL CONSULTANTS,	CIP 19-20 SWEETWATER RD BIKEWAY- ENG/PW	365199	9/21/23	4,509.00
CANON SOLUTIONS AMERICA INC.	MNTENANCE EQPMNT BASE CHRGE- PRD 9/1/23	365201	9/21/23	134.53
CANTWELL	REFUND OF T&A 90529- ENG/PW	365202	9/21/23	16,000.00
D-MAX ENGINEERING INC	T&A 90617- 837 W 19TH ST- ENG/PW	365214	9/21/23	2,703.32
D-MAX ENGINEERING INC	CIP 19-20 SWEETWATER RD BIKEWAY- ENG/PW	365215	9/21/23	37.56
INNOVATIVE CONSTRUCTION	CIP 22-06 MLK COMM CNTR- ENG/PW	365219	9/21/23	10,071.00
KIMLEY HORN	CIP 20-09 NC EASTSIDE I-805 COMMUNI- ENG	365220	9/21/23	86,901.00
NOSAL	REFUND OF T&A 90656- ENG/PW	365226	9/21/23	4,269.74
NV5 INC	T&A 90645- 1300 WILSON AVE- ENG/PW	365227	9/21/23	185.40
SOLANA CENTER	SUPPORT SERVICES- ENG/PW	365249	9/21/23	395.00
			<b>Total for Department</b>	<b>290,050.60</b>
<b>Finance</b>				
ALLIANT INSURANCE SERVICES INC	RSWA - SPECIAL LIABILITY INS EFF 09/29/2	365198	9/21/23	6,071.76
BRINK'S INCORPORATED	TRANSPORTATION - BILLING PERIOD 09/01/23	365200	9/21/23	563.02
CITY OF DEL MAR	RSWA - PAYMENT FOR HHW EDUCATIONAL FY 23	365203	9/21/23	12,620.00
CITY OF ENCINITAS	RSWA - ENVIRONMENTAL ENHANCEMENT FUND	365204	9/21/23	50,358.00
CITY OF ESCONDIDO	RSWA - PAYMENT FOR HHW EDUCATIONAL FY 23	365205	9/21/23	7,000.00
CITY OF NATIONAL CITY	RSWA - ENVIRONMENTAL ENHANCEMENT FUND	365206	9/21/23	41,005.00
CITY OF POWAY	RSWA - ENVIRONMENTAL ENHANCEMENT FUND	365207	9/21/23	45,384.00
CITY OF SOLANA BEACH	RSWA - PAYMENT FOR HHW EDUCATIONAL FY 23	365208	9/21/23	14,985.00
CITY OF VISTA	RSWA - ENVIRONMENTAL ENHANCEMENT FUND	365209	9/21/23	77,648.00
STAPLES BUSINESS ADVANTAGE	MOP 45704 OFFICE SUPPLIES FINANCE	365251	9/21/23	445.86
WOODRUFF & SMART	RSWA - GENERAL MANAGER MONTHLY SEPT 2023	365263	9/21/23	6,500.00
			<b>Total for Department</b>	<b>262,580.64</b>
<b>NSD</b>				
ACE UNIFORMS & ACCESSORIES INC	ACE UNIFORMS / NSD	365194	9/21/23	150.85
			<b>Total for Department</b>	<b>150.85</b>
<b>CMO</b>				
2-1-1 SAN DIEGO	CITY OF NATIONAL CITY SUPPORT SERVICE -	365193	9/21/23	11,716.40
			<b>Total for Department</b>	<b>11,716.40</b>
<b>Planning / Building</b>				
ROE	TRAINING REIMB / GAS FOR CAR RENTAL	365238	9/21/23	50.00



**WARRANT REGISTER # 12  
9/21/2023**

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
		<b>Total for Department</b>		<b>50.00</b>
 <b><u>Community Services/Nutrition/Library</u></b>				
CONSTANT CONTACT INC	RFW CONSTANT CONTACT EMAIL PLUS	365210	9/21/23	1,122.00
YEH	REFUND FOR SUMMER CAMPERS	365265	9/21/23	270.00
ALDEMCO	FOOD	365196	9/21/23	4,105.62
ALL FRESH PRODUCTS	FOOD	365197	9/21/23	125.37
COZZINI BROS., INC.	KNIFE CLEANING SERVICE	365211	9/21/23	52.50
PRUDENTIAL OVERALL SUPPLY	LAUNDRY	365235	9/21/23	179.96
SEAPORT MEAT COMPANY	FOOD	365245	9/21/23	267.29
SYSCO SAN DIEGO INC	FOOD	365252	9/21/23	4,453.70
STAPLES BUSINESS ADVANTAGE	MOP 45704 OFFICE SUPPLIES / LIBRARY	365251	9/21/23	129.73
T'S & SIGNS INC	T'S & SIGNS/CITY GUIDE/FY24	365254	9/21/23	2,528.44
		<b>Total for Department</b>		<b>13,234.61</b>
 <b><u>Fire</u></b>				
L N CURTIS & SONS	AX7NP-NX-PS TFT, FNHF X 6NHF BALL / FIRE	365221	9/21/23	4,675.44
PREMIER PRINT SOURCE INC	10X10 CANOPY /FIRE	365233	9/21/23	893.40
		<b>Total for Department</b>		<b>5,568.84</b>
 <b><u>Housing/Section 8</u></b>				
WSP USA INC	FOCUSED GENERAL PLAN UPDATE	365264	9/21/23	28,471.49
		<b>Total for Department</b>		<b>28,471.49</b>
		<b>A/P Total</b>		<b>662,253.49</b>
 <b>PAYROLL</b>				
<b>Pay period</b>	<b>Start Date</b>	<b>End Date</b>	<b>Check Date</b>	
20	9/5/2023	9/18/2023	9/27/2023	<b>1,379,381.42</b>
 <b>WIRED PAYMENTS</b>				
<b><u>Engineering / PW's</u></b>				
U S BANK	US BANK AUGUST 2024- ENG/PW	957187	9/20/23	2,784.92
 <b><u>MIS</u></b>				
U S BANK	CREDIT CARD EXPENSES	167185	9/19/23	2,690.50
 <b><u>Human Resources</u></b>				
PAYCHEX BENEFIT TECH INC	BENETRAC ESR SERVICES BASE FEE - SEPTEMB	666248	9/15/23	660.71
 <b><u>Engineering / PW's</u></b>				



**WARRANT REGISTER # 12  
9/21/2023**

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
CITY NATIONAL BANK	ENERGY RETROFIT PROJECT LEASE PMT #54	1866	9/21/23	43,101.10
<b>Fire</b>				
U S BANK	CREDIT CARD EXPENSES	167185	9/19/23	97.35
U S BANK	US BANK AUGUST 2024- FIRE	957187	9/20/23	1,854.90
<b>City Attorney</b>				
U S BANK	CREDIT CARD EXPENSES / CAO	167185	9/19/23	63.81
<b>SECTION 8 HAPS</b>	<b>Start Date</b>	<b>End Date</b>		
	9/15/2023	9/21/2023		<b>37,406.20</b>
		<b>GRAND TOTAL</b>		<b><u>2,130,294.40</u></b>



# AGENDA REPORT

**Department:** Engineering  
**Prepared by:** Stephen Manganiello, Director of Public Works/City Engineer  
**Meeting Date:** Tuesday, November 7, 2023  
**Approved by:** Ben Martinez, Interim City Manager

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**SUBJECT:**

Second Reading and Adoption of Ordinance Establishing Speed Limits Based on Engineering and Traffic Surveys

**RECOMMENDATION:**

Adopt an Ordinance Establishing Speed Limits on Various Streets Based on Engineering and Traffic Surveys and Authorizing the Director of Public Works to Post Speed Limit Signs Consistent with the Recommendations of the Engineering and Traffic Surveys.

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

At their meeting on August 16, 2023, the Traffic Safety Committee voted unanimously in support of the recommendations of the Engineering and Traffic Surveys.

**EXPLANATION:**

At their Regular meeting on October 17, 2023, the City Council held a Public Hearing and introduced the Ordinance. Staff provided a presentation and responded to questions from the City Council. The following background is provided.

Section 22357 of the State of California Vehicle Code (CVC) permits local authorities to establish speed limits greater than the prima facie speed limit of 25 miles per hour (mph) when, on the basis of an engineering and traffic survey (E&TS), the local authority determines that a speed greater than 25 mph would facilitate the orderly movement of vehicular traffic and would be reasonable and safe. Section 627 of the CVC and Section 2B.13 of the California Department of Transportation (Caltrans) Manual on Uniform Traffic Control Devices (CA-MUTCD) outline the following criteria to be considered as part of conducting an E&TS:

- 1) Prevailing speeds as determined by traffic engineering measurements.
- 2) Accident Records.
- 3) Highway, traffic, and roadside conditions not readily apparent to the driver.
- 4) Residential Density.
- 5) Safety of bicyclists and pedestrians, with increased consideration for vulnerable pedestrian groups including children, seniors, persons with disabilities, users of personal assistive mobility devices, and the unhoused.

The process begins with establishing speed zones to protect the public from the unreasonable behavior of reckless, unreliable, or otherwise dangerous drivers. Speed zones are also established to advise drivers of road conditions or hazards that may not be readily apparent to a

reasonable driver. For that reason, a field review of related road/traffic variables is conducted which considers the analytical data and accident history of a particular roadway segment to determine a safe and reasonable speed limit. Next the criteria listed above in combination with other factors such as 85th percentile speed, pace, and incremental changes in speeds from one zone to the next, are analyzed using the methodologies established in the CVC and CA-MUTCD to recommend speed limits.

The CVC and CA-MUTCD recommend establishing speed limits at or near the 85th percentile speed, which is defined as the speed at or below which 85 percent of traffic is moving during free-flow conditions. Speed limits may, however, be established below the 85th percentile speed (within specified thresholds) if conditions are met for criteria 2) through 5) above. Speed limits established on this basis conform to the consensus of those who drive on the roadways as to what speed is reasonable and safe, and are not dependent on the judgment of one or a few individuals.

State Assembly Bills (AB) 43 and 1938, which went into effect on January 1, 2022 and January 1, 2023, respectively, provide local agencies greater flexibility in setting and reducing speed limits. For example, local agencies may establish a speed limit of 20 mph or 25 mph if criteria is met for defining a “business activity district”. The legislation required updates to the CVC and CA-MUTCD, the last of which was made available to the public in March 2023.

E&TS must be completed and certified by a registered professional Civil or Traffic Engineer at least once every 5, 7 or 14 years, in compliance with CVC Section 40802, to re-evaluate non-statutory speed limits on local roadways and allow for enforcement using radar, laser or other electronic devices. The previous Citywide E&TS for National City were completed in 2017. Recommended speed limits were subsequently adopted by City Council via ordinance in December 2017 and physically posted on the roadways by City Public Works crews shortly thereafter. Since over five years have passed, the National City Engineering & Public Works Department authorized STC Traffic (through an “On-Call” Professional Engineering Services contract) to conduct new E&TS for all Arterial and Collector roadways identified in the National City General Plan Circulation Element.

STC Traffic completed the E&TS for 106 individual roadway segments in accordance with the procedures established by Section 2B.13 of the CA-MUTCD and consistent with all applicable provisions of the CVC. Exhibit A includes figures highlighting the location of the study roadway segments, existing speed limits, changes to speed limits, and recommended speed limits. STC Traffic supported City staff with formal presentations to the Traffic Safety Committee on April 12, 2023 (preliminary findings) and August 16, 2023 (final recommendations). All members of the Traffic Safety Committee were present and voted unanimously in support of the recommendations of the E&TS at their meeting on August 16, 2023. The E&TS summary and recommendations is attached as Exhibit B. STC Traffic applied many of the provisions from AB 43 and AB 1938 to maintain or reduce speed limits, where applicable, including establishment of lower speed limits within a business activity district. If adopted by City Council, 81 speed limits will remain the same, 25 will decrease, and zero of the existing speed limits will increase. A copy of the full E&TS report and certification summary sheets are available in the Office of the City Engineer.

**FINANCIAL STATEMENT:**

Funding to purchase and install speed limit signs is available through the Public Works Streets Division M&O budget for traffic signs.

**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:**

Second Reading and Adoption

**EXHIBITS:**

Exhibit A – Speed Limit Figures

Exhibit B – Engineering and Traffic Survey Summary and Recommendations

Exhibit C – Ordinance

## Exhibit A

### Speed Limit Figures

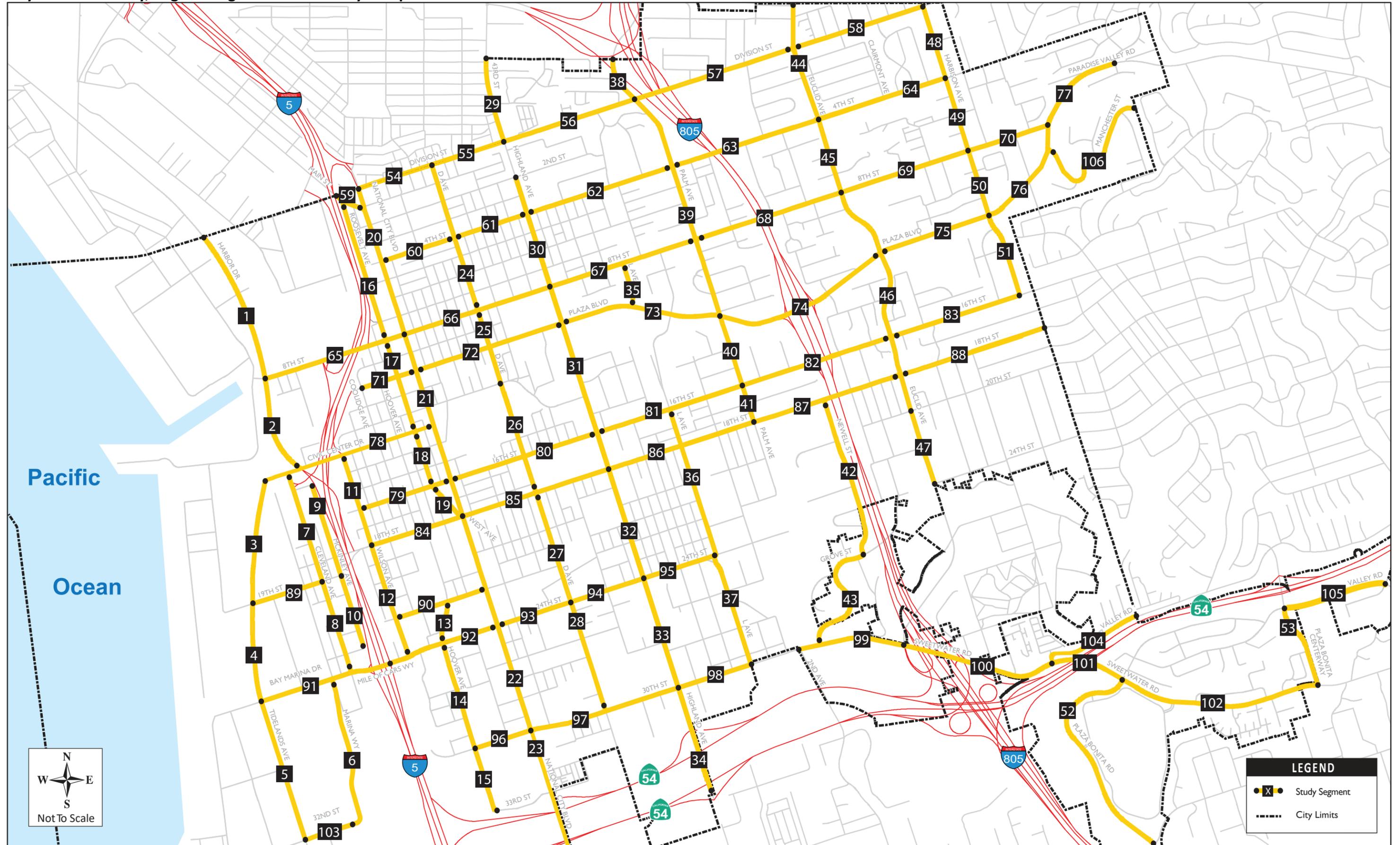


Figure 2-1  
Study Segment Locations



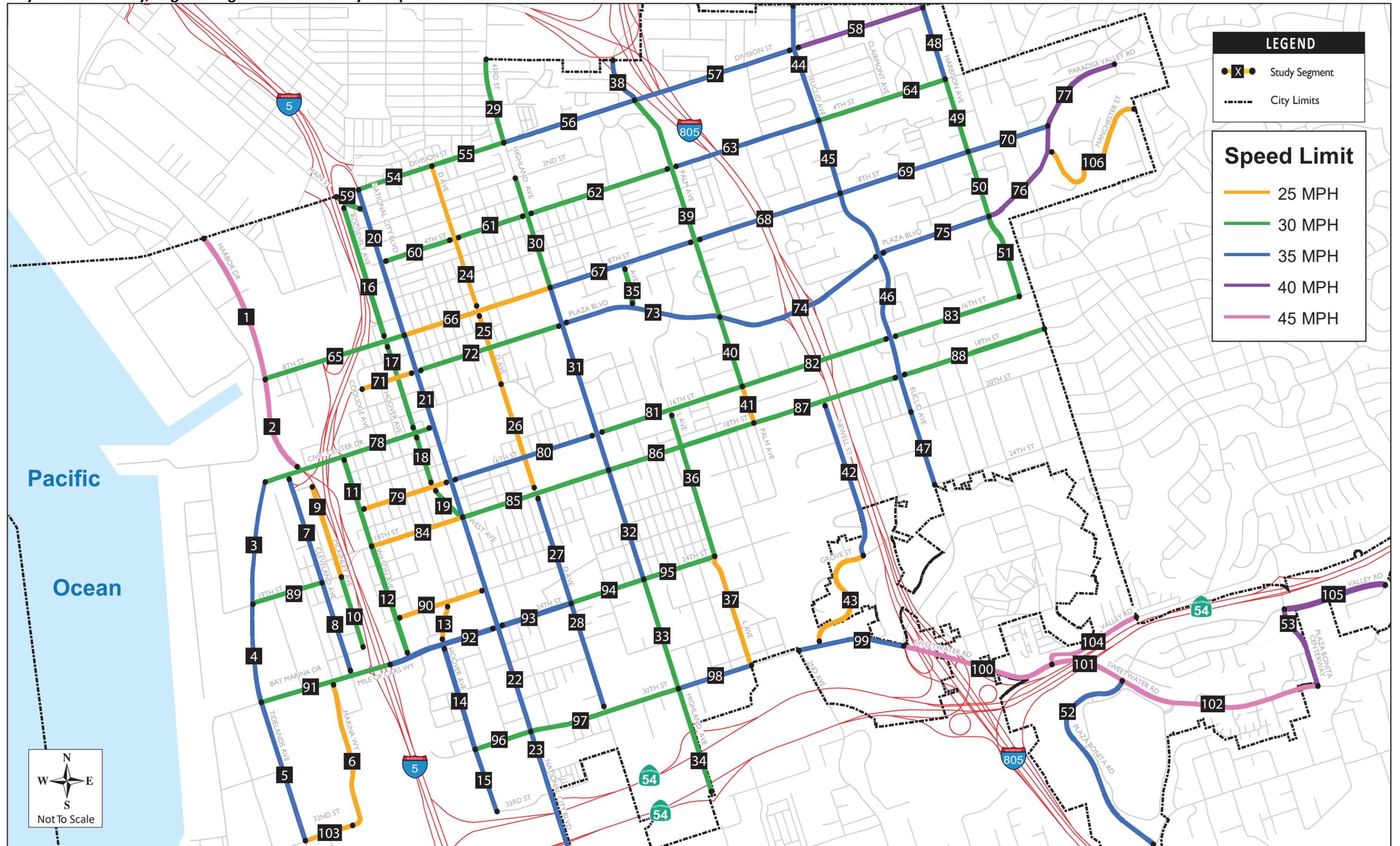
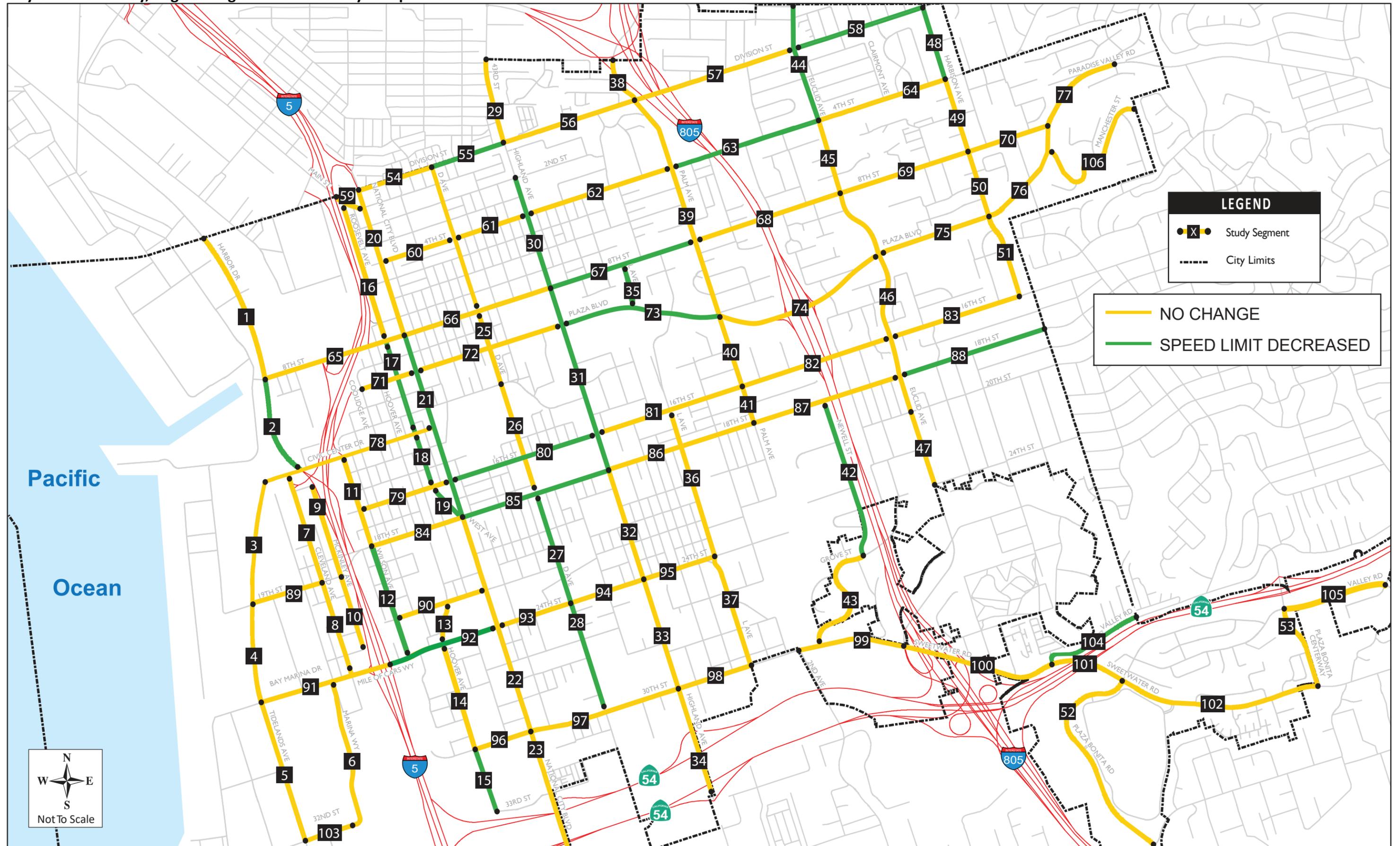


Figure 2-2  
Study Segment Existing Speed Limits





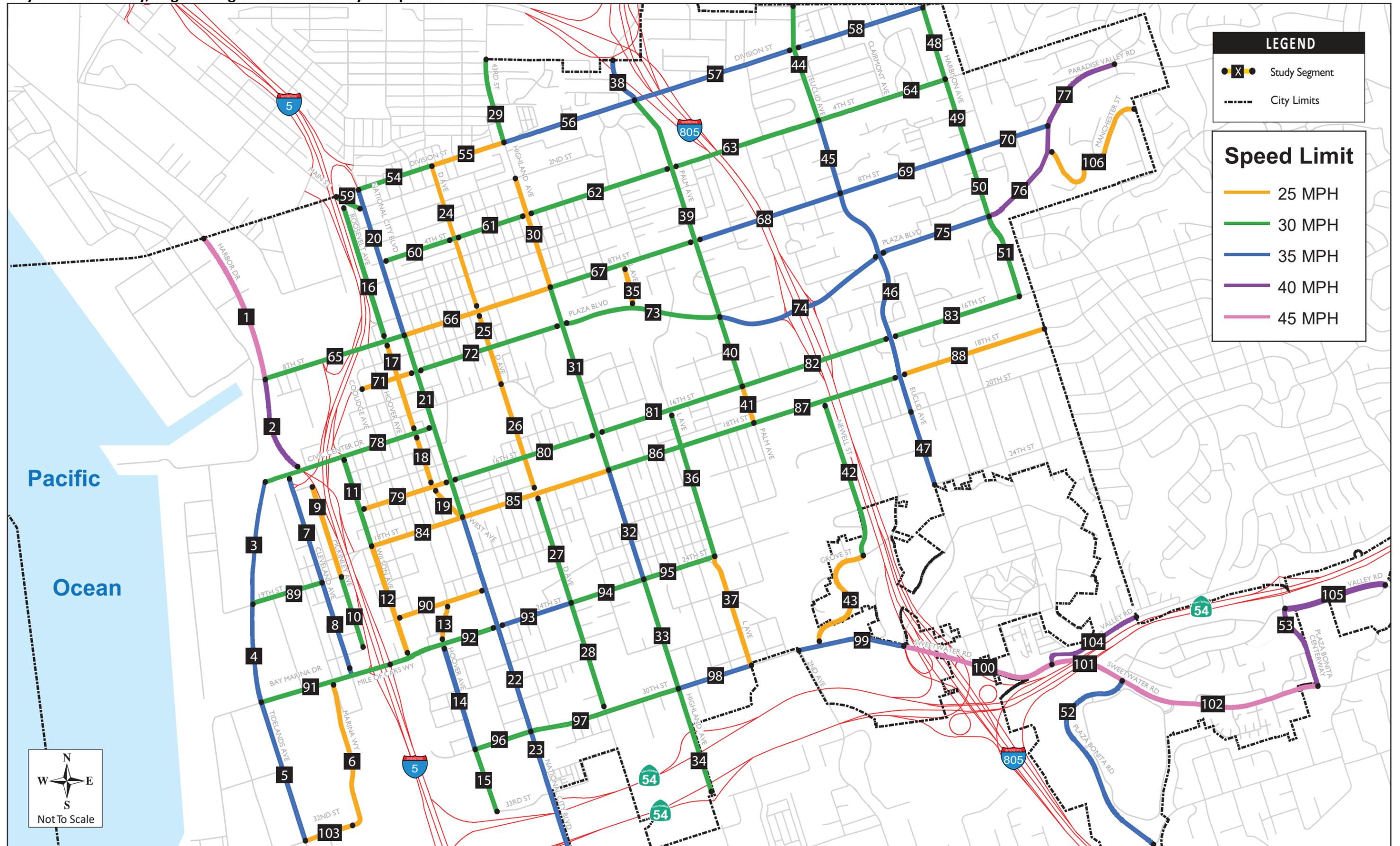


Figure 5-2 Study Segment Recommended Speed Limit Postings



## Exhibit B

# Engineering and Traffic Survey Summary and Recommendations

STREET LOCATION			POSTED SPEED LIMIT (MPH)	85TH PERCENTILE SPEED (MPH)	MEDIAN SPEED (MPH)	10 MPH PACE RANGE	PERCENT OF VEHICLES IN PACE	RECOMMENDED SPEED LIMIT (MPH)	RECOMMENDED ACTION	JUSTIFICATIONS/ COMMENTS
<b>Harbor Drive</b>										
1	N. City Limit	8th Street	45	49	45	39-48	74%	45	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
2	8th Street	Civic Center Drive	45	43	39	34-43	85%	40	Reduce to 40 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
<b>Tidelands Avenue</b>										
3	Civic Center Drive	19th Street	35	37	31	25-34	63%	35	No change	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)
4	19th Street	Bay Marina Drive	35	36	31	28-37	68%	35	No change	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)
5	Bay Marina Drive	32nd Street	35	36	32	26-35	72%	35	No change	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)
<b>Marina Way</b>										
6	Bay Marina Drive	32nd Street	25	33	28	24-33	74%	25	No change	Currently adopted speed limit or immediately prior adopted speed limit shall only be retained, by ordinance, if after completing an E&TS, local agency finds that the speed limit is still more than reasonable or safe, and that speed limit was established with an E&TS and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit (CVC 22358.8(a); CA-MUTCD Section 2B.13, Standard 12a).
<b>Cleveland Avenue</b>										
7	Civic Center Drive	19th Street	35	36	31	27-36	78%	35	No change	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)
8	19th Street	Bay Marina Drive	35	38	34	29-38	70%	35	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
<b>Mckinley Avenue</b>										
9	14th Street	19th Street	25	28	23	18-27	73%	25	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
10	19th Street	23rd Street	30	31	24	22-31	70%	30	No change	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)
<b>Wilson Avenue</b>										
11	Civic Center Drive	18th Street	30	38	32	29-38	68%	30	No change	Currently adopted speed limit or immediately prior adopted speed limit shall only be retained, by ordinance, if after completing an E&TS, local agency finds that the speed limit is still more than reasonable or safe, and that speed limit was established with an E&TS and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit (CVC 22358.8(a); CA-MUTCD Section 2B.13, Standard 12a).
12	18th Street	24th Street	30	30	25	21-30	83%	25	Reduce to 25 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - Safety of bicyclists and pedestrians, vulnerable pedestrian groups - Transit Station (CVC 627(c)(2); CA-MUTCD Section 2B.13, Option 29B).
<b>Hoover Avenue</b>										
13	22nd Street	Mile of Cars Way	25	28	24	21-30	84%	25	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
14	Mile of Cars Way	30th Street	35	38	33	29-38	72%	35	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
15	30th Street	33rd Street	35	32	27	23-32	80%	30	Reduce to 30 mph	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)

STREET LOCATION			POSTED SPEED LIMIT (MPH)	85TH PERCENTILE SPEED (MPH)	MEDIAN SPEED (MPH)	10 MPH PACE RANGE	PERCENT OF VEHICLES IN PACE	RECOMMENDED SPEED LIMIT (MPH)	RECOMMENDED ACTION	JUSTIFICATIONS/ COMMENTS
<b>Roosevelt Avenue</b>										
16	Division Street	8th Street	30	34	30	25-34	84%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
17	8th Street	Civic Center Drive	30	26	23	19-28	95%	25	Reduce to 25 mph	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)
18	Civic Center Drive	16th Street	30	30	24	20-29	69%	25	Reduce to 25 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - Accident rate higher than statewide average (CVC 627(b)(2); CA-MUTCD Section 2B.13, Option 16E).
<b>West Avenue</b>										
19	16th Street	18th Street	30	30	23	18-27	66%	25	Reduce to 25 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CA-MUTCD Section 2B.13, Option 16B (pace).
<b>National City Blvd</b>										
20	Division Street	8th Street	35	37	33	29-38	91%	35	No change	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)
21	8th Street	18th Street	35	36	32	28-37	87%	30	Reduce to 30 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627(c)(2); CA-MUTCD Section 2B.13, Option 29B (safety of bicyclists and pedestrians, vulnerable pedestrian groups - civic center, public library).
22	18th Street	30th Street	35	39	34	30-39	83%	35	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
23	30th Street	S. City Limit	35	41	35	30-39	81%	35	No change	Currently adopted speed limit or immediately prior adopted speed limit shall only be retained, by ordinance, if after completing an E&TS, local agency finds that the speed limit is still more than reasonable or safe, and that speed limit was established with an E&TS and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit (CVC 22358.8(a); CA-MUTCD Section 2B.13, Standard 12ag).
<b>D Avenue</b>										
24	Division Street	8th Street	25	29	26	22-31	96%	25	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
25	8th Street	12th Street	25	26	24	19-28	100%	25	No change	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)
26	12th Street	18th Street	25	31	28	24-33	94%	25	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627(c)(2); CA-MUTCD Section 2B.13, Option 29B (safety of bicyclists and pedestrians, vulnerable pedestrian groups - community park, youth center, senior housing, middle school).
27	18th Street	24th Street	35	37	32	28-37	68%	30	Reduce to 30 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627 (c)(1)(C); CA-MUTCD Section 2B.13, Option 29A.3 (residential density).
28	24th Street	30th Street	35	32	29	23-32	82%	30	Reduce to 30 mph	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)

STREET LOCATION			POSTED SPEED LIMIT (MPH)	85TH PERCENTILE SPEED (MPH)	MEDIAN SPEED (MPH)	10 MPH PACE RANGE	PERCENT OF VEHICLES IN PACE	RECOMMENDED SPEED LIMIT (MPH)	RECOMMENDED ACTION	JUSTIFICATIONS/ COMMENTS
<b>Highland Avenue</b>										
29	N. City Limit	Division St	30	38	33	29-38	77%	30	No change	Currently adopted speed limit or immediately prior adopted speed limit shall only be retained, by ordinance, if after completing an E&TS, local agency finds that the speed limit is still more than reasonable or safe, and that speed limit was established with an E&TS and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit (CVC 22358.8(a); CA-MUTCD Section 2B.13, Standard 12ag).
30	2nd Street	8th Street	30	35	31	25-34	78%	25	Reduce to 25 mph	Segment qualifies as a Business Activity District per CVC 22358.9 (b) (1,2, & 4).  (b)As used in this section, a "business activity district" is that portion of a highway and the property contiguous thereto that includes central or neighborhood downtowns, urban villages, or zoning designations that prioritize commercial land uses at the downtown or neighborhood scale and meets at least three of the following requirements in paragraphs (1) to (4), inclusive: (1)No less than 50 percent of the contiguous property fronting the highway consists of retail or dining commercial uses, including outdoor dining, that open directly onto sidewalks adjacent to the highway. (2)Parking, including parallel, diagonal, or perpendicular spaces located alongside the highway. (3)Traffic control signals or stop signs regulating traffic flow on the highway, located at intervals of no more than 600 feet. (4)Marked crosswalks not controlled by a traffic control device.
31	8th Street	18th Street	35	34	31	26-35	94%	30	Reduce to 30 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
32	18th Street	24th Street	35	39	35	31-40	88%	35	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
33	24th Street	30th Street	30	39	35	32-41	82%	30	No change	Currently adopted speed limit or immediately prior adopted speed limit shall only be retained, by ordinance, if after completing an E&TS, local agency finds that the speed limit is still more than reasonable or safe, and that speed limit was established with an E&TS and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit (CVC 22358.8(a); CA-MUTCD Section 2B.13, Standard 12ag).
34	30th Street	S. City Limit	30	37	32	28-37	83%	30	No change	Currently adopted speed limit or immediately prior adopted speed limit shall only be retained, by ordinance, if after completing an E&TS, local agency finds that the speed limit is still more than reasonable or safe, and that speed limit was established with an E&TS and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit (CVC 22358.8(a); CA-MUTCD Section 2B.13, Standard 12ag).
<b>L Avenue</b>										
35	8th Street	Plaza Boulevard	30	28	25	20-29	85%	25	Reduce to 25 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
36	16th Street	24th Street	30	34	29	25-34	78%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
37	24th Street	30th Street	25	30	27	23-32	87%	25	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627 (c)(1)(C); CA-MUTCD Section 2B.13, Option 29A.3 (residential density).

STREET LOCATION			POSTED SPEED LIMIT (MPH)	85TH PERCENTILE SPEED (MPH)	MEDIAN SPEED (MPH)	10 MPH PACE RANGE	PERCENT OF VEHICLES IN PACE	RECOMMENDED SPEED LIMIT (MPH)	RECOMMENDED ACTION	JUSTIFICATIONS/ COMMENTS
<b>Palm Avenue</b>										
38	I-805	Division Street	35	40	35	31-40	83%	35	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627(b)(2); CA-MUTCD Section 2B.13, Option 16E (accident rate).
39	Division Street	Plaza Boulevard	30	34	30	25-34	78%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
40	Plaza Boulevard	16th Street	30	34	30	27-36	83%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
41	16th Street	18th Street	25	30	26	22-31	79%	25	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627(b)(2); CA-MUTCD Section 2B.13, Option 16E (accident rate).
<b>Newell Street</b>										
42	18th Street	Prospect Street	35	34	29	26-35	75%	30	Reduce to 30 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
<b>Grove Street</b>										
43	Prospect Street	Sweetwater Road	25	30	27	23-32	79%	25	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627(b)(2); CA-MUTCD Section 2B.13, Option 16E (accident rate).
<b>Euclid Avenue</b>										
44	N. City Limit	4th Street	35	36	32	27-36	84%	30	Reduce to 30 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627(c)(2); CA-MUTCD Section 2B.13, Option 29B (safety of bicyclists and pedestrians, vulnerable pedestrian groups - community park).
45	4th Street	8th Street	35	39	34	31-40	77%	35	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
46	8th Street	20th Street	35	37	33	29-38	87%	35	No change	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)
47	20th Street	24th Street	35	40	34	30-39	74%	35	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627 (c)(1)(B); CA-MUTCD Section 2B.13, Option 29A.2 (residential density); CA-MUTCD Section 2B.13, Option 16B (pace).
<b>Harbison Avenue</b>										
48	Division Street	4th Street	35	35	30	26-35	76%	30	Reduce to 30 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627 (c)(1)(B); CA-MUTCD Section 2B.13, Option 29A.2 (residential density).
49	4th Street	8th Street	30	35	32	28-37	88%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627 (c)(1)(B); CA-MUTCD Section 2B.13, Option 29A.2 (residential density).
50	8th Street	Plaza Boulevard	30	37	33	27-36	76%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627(b)(2); CA-MUTCD Section 2B.13, Option 16E (accident rate).
51	Plaza Boulevard	16th Street	30	36	32	28-37	84%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627 (c)(1)(B); CA-MUTCD Section 2B.13, Option 29A.2 (residential density).

STREET LOCATION			POSTED SPEED LIMIT (MPH)	85TH PERCENTILE SPEED (MPH)	MEDIAN SPEED (MPH)	10 MPH PACE RANGE	PERCENT OF VEHICLES IN PACE	RECOMMENDED SPEED LIMIT (MPH)	RECOMMENDED ACTION	JUSTIFICATIONS/ COMMENTS
<b>Plaza Bonita Road</b>										
52	Sweetwater Road	Bonita Mesa Road	35	44	40	34-43	71%	35	No change	Currently adopted speed limit or immediately prior adopted speed limit shall only be retained, by ordinance, if after completing an E&TS, local agency finds that the speed limit is still more than reasonable or safe, and that speed limit was established with an E&TS and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit (CVC 22358.8(a); CA-MUTCD Section 2B.13, Standard 12a).
<b>Plaza Bonita Center Way</b>										
53	Valley Road	Sweetwater Road	40	47	42	39-48	85%	40	No change	Currently adopted speed limit or immediately prior adopted speed limit shall only be retained, by ordinance, if after completing an E&TS, local agency finds that the speed limit is still more than reasonable or safe, and that speed limit was established with an E&TS and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit (CVC 22358.8(a); CA-MUTCD Section 2B.13, Standard 12a).
<b>Division Street</b>										
54	National City Boulevard	D Avenue	30	35	28	27-36	64%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627(b)(2); CA-MUTCD Section 2B.13, Option 16E (accident rate); CVC 627 (c)(1)(A); CA-MUTCD Section 2B.13, Option 29A.1 (residential density).
55	D Avenue	Highland Avenue	30	32	29	25-34	94%	25	Reduce to 25 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627 (c)(1)(A); CA-MUTCD Section 2B.13, Option 29A.1 (residential density).
56	Highland Avenue	Palm Avenue	35	43	38	35-44	79%	35	No change	Currently adopted speed limit or immediately prior adopted speed limit shall only be retained, by ordinance, if after completing an E&TS, local agency finds that the speed limit is still more than reasonable or safe, and that speed limit was established with an E&TS and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit (CVC 22358.8(a); CA-MUTCD Section 2B.13, Standard 12a).
57	Palm Avenue	Euclid Avenue	35	40	36	32-41	85%	35	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - Safety of bicyclists and pedestrians, vulnerable pedestrian groups - schools (CVC 627(c)(2); CA-MUTCD Section 2B.13, Option 29B).
58	Euclid Avenue	Harbison Avenue	40	41	37	32-41	84%	35	Reduce to 35 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627 (c)(1)(C); CA-MUTCD Section 2B.13, Option 29A.3 (residential density).
<b>Main Street</b>										
59	I-5	National City Boulevard	30	35	30	27-36	86%	30	No change	Currently adopted speed limit or immediately prior adopted speed limit shall only be retained, by ordinance, if after completing an E&TS, local agency finds that the speed limit is still more than reasonable or safe, and that speed limit was established with an E&TS and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit (CVC 22358.8(a); CA-MUTCD Section 2B.13, Standard 12a).

STREET LOCATION			POSTED SPEED LIMIT (MPH)	85TH PERCENTILE SPEED (MPH)	MEDIAN SPEED (MPH)	10 MPH PACE RANGE	PERCENT OF VEHICLES IN PACE	RECOMMENDED SPEED LIMIT (MPH)	RECOMMENDED ACTION	JUSTIFICATIONS/ COMMENTS
<b>4th Street</b>										
60	National City Boulevard	D Avenue	30	35	31	27-36	88%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627(b)(2); CA-MUTCD Section 2B.13, Option 16E (accident rate); CVC 627 (c)(1)(B); CA-MUTCD Section 2B.13, Option 29A.2 (residential density).
61	D Avenue	Highland Avenue	30	34	30	25-34	81%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
62	Highland Avenue	Palm Avenue	30	36	32	27-36	80%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627 (c)(1)(C); CA-MUTCD Section 2B.13, Option 29A.3 (residential density).
63	Palm Avenue	Euclid Avenue	35	35	32	27-36	90%	30	Reduce to 30 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - Safety of bicyclists and pedestrians, vulnerable pedestrian groups -community park, recreation center (CVC 627(c)(2); CA-MUTCD Section 2B.13, Option 29B).
64	Euclid Avenue	Harbison Avenue	30	36	32	28-37	82%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - Safety of bicyclists and pedestrians, vulnerable pedestrian groups - hospital, senior housing, elementary school (CVC 627(c)(2); CA-MUTCD Section 2B.13, Option 29B).
<b>8th Street</b>										
65	Harbor Drive	National City Boulevard	30	35	30	27-36	83%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - Safety of bicyclists and pedestrians, vulnerable pedestrian groups - Transit Station (CVC 627(c)(2); CA-MUTCD Section 2B.13, Option 29B).
66	National City Boulevard	Highland Avenue	25	27	24	20-29	95%	25	No change	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)
67	Highland Avenue	Palm Avenue	35	37	33	28-37	87%	30	Reduce to 30 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - Safety of bicyclists and pedestrians, vulnerable pedestrian groups - church, preschool (CVC 627(c)(2); CA-MUTCD Section 2B.13, Option 29B).
68	Palm Avenue	Euclid Avenue	35	42	37	32-41	79%	35	No change	Currently adopted speed limit or immediately prior adopted speed limit shall only be retained, by ordinance, if after completing an E&TS, local agency finds that the speed limit is still more than reasonable or safe, and that speed limit was established with an E&TS and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit (CVC 22358.8(a); CA-MUTCD Section 2B.13, Standard 12a).
69	Euclid Avenue	Harbison Avenue	35	41	36	33-42	79%	35	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - Safety of bicyclists and pedestrians, vulnerable pedestrian groups - church, senior housing (CVC 627(c)(2); CA-MUTCD Section 2B.13, Option 29B).
70	Harbison Avenue	Paradise Valley Road/ Plaza Boulevard	35	38	34	30-39	86%	35	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
<b>Plaza Blvd</b>										
71	Coolidge Avenue	National City Boulevard	25	28	25	21-30	88%	25	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
72	National City Boulevard	Highland Avenue	30	35	31	26-35	73%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - Safety of bicyclists and pedestrians, vulnerable pedestrian groups - elementary school (CVC 627(c)(2); CA-MUTCD Section 2B.13, Option 29B).
73	Highland Avenue	Palm Avenue	35	32	28	25-34	93%	30	Reduce to 30 mph	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)
74	Palm Avenue	Euclid Avenue	35	37	34	30-39	91%	35	No change	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)
75	Euclid Avenue	Harbison Avenue	35	39	36	30-39	84%	35	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
76	Harbison Avenue	8th Street	40	42	38	34-43	90%	40	No change	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)

STREET LOCATION			POSTED SPEED LIMIT (MPH)	85TH PERCENTILE SPEED (MPH)	MEDIAN SPEED (MPH)	10 MPH PACE RANGE	PERCENT OF VEHICLES IN PACE	RECOMMENDED SPEED LIMIT (MPH)	RECOMMENDED ACTION	JUSTIFICATIONS/ COMMENTS
<b>Paradise Valley Road</b>										
77	8th Street	Plaza Entrada	40	44	39	35-44	83%	40	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
<b>Civic Center Drive</b>										
78	Harbor Drive	National City Boulevard	30	34	29	25-34	76%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
<b>16th Street</b>										
79	Wilson Avenue	National City Boulevard	25	26	22	18-27	91%	25	No change	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)
80	National City Boulevard	Highland Avenue	35	33	30	25-34	85%	30	Reduce to 30 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
81	Highland Avenue	Palm Avenue	30	35	31	26-35	87%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627 (c)(1)(C); CA-MUTCD Section 2B.13, Option 29A.3 (residential density).
82	Palm Avenue	Euclid Avenue	30	32	29	25-34	84%	30	No change	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)
83	Euclid Avenue	Harbison Avenue	30	34	30	26-35	87%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
<b>18th Street</b>										
84	Wilson Avenue	National City Boulevard	25	31	28	23-32	93%	25	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - Safety of bicyclists and pedestrians, vulnerable pedestrian groups - elementary school, church (CVC 627(c)(2); CA-MUTCD Section 2B.13, Option 29B).
85	National City Boulevard	Highland Avenue	30	32	28	25-34	89%	25	Reduce to 25 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - Safety of bicyclists and pedestrians, vulnerable pedestrian groups - elementary school, middle school (CVC 627(c)(2); CA-MUTCD Section 2B.13, Option 29B).
86	Highland Avenue	Palm Avenue	30	34	29	25-34	78%	30	No change	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)
87	Palm Avenue	Euclid Avenue	30	35	31	25-34	75%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - Safety of bicyclists and pedestrians, vulnerable pedestrian groups - elementary school (CVC 627(c)(2); CA-MUTCD Section 2B.13, Option 29B).
88	Euclid Avenue	Rachael Avenue	30	32	28	24-33	85%	25	Reduce to 25 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - Safety of bicyclists and pedestrians, vulnerable pedestrian groups - church (CVC 627(c)(2); CA-MUTCD Section 2B.13, Option 29B).
<b>19th Street</b>										
89	Tidelands Avenue	Cleveland Avenue	30	35	28	23-32	66%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627(b)(2); CA-MUTCD Section 2B.13, Option 16E (accident rate).
<b>22nd Street</b>										
90	Wilson Avenue	National City Boulevard	25	35	28	22-31	69%	25	No change	Currently adopted speed limit or immediately prior adopted speed limit shall only be retained, by ordinance, if after completing an E&TS, local agency finds that the speed limit is still more than reasonable or safe, and that speed limit was established with an E&TS and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit (CVC 22358.8(a); CA-MUTCD Section 2B.13, Standard 12a).
<b>Bay Marina Drive</b>										
91	Tidelands Avenue	I-5	30	35	31	26-35	82%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627(b)(2); CA-MUTCD Section 2B.13, Option 16E (accident rate).

STREET LOCATION			POSTED SPEED LIMIT (MPH)	85TH PERCENTILE SPEED (MPH)	MEDIAN SPEED (MPH)	10 MPH PACE RANGE	PERCENT OF VEHICLES IN PACE	RECOMMENDED SPEED LIMIT (MPH)	RECOMMENDED ACTION	JUSTIFICATIONS/ COMMENTS
<b>Mile of Cars Way</b>										
92	I-5	National City Boulevard	35	37	32	28-37	78%	30	Reduce to 30 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627(b)(2); CA-MUTCD Section 2B.13, Option 16E (accident rate).
<b>24th Street</b>										
93	National City Boulevard	D Avenue	35	39	35	31-40	78%	35	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
94	D Avenue	Highland Avenue	30	38	32	29-38	72%	30	No change	Currently adopted speed limit or immediately prior adopted speed limit shall only be retained, by ordinance, if after completing an E&TS, local agency finds that the speed limit is still more than reasonable or safe, and that speed limit was established with an E&TS and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit (CVC 22358.8(a); CA-MUTCD Section 2B.13, Standard 12ag).
95	Highland Avenue	L Avenue	30	34	29	25-34	75%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
<b>30th Street</b>										
96	Hoover Avenue	National City Boulevard	30	36	32	28-37	83%	30	No change	Currently adopted speed limit or immediately prior adopted speed limit shall only be retained, by ordinance, if after completing an E&TS, local agency finds that the speed limit is still more than reasonable or safe, and that speed limit was established with an E&TS and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit (CVC 22358.8(a); CA-MUTCD Section 2B.13, Standard 12ag).
97	National City Boulevard	Highland Avenue	30	37	32	28-37	74%	30	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - Safety of bicyclists and pedestrians, vulnerable pedestrian groups - high school (CVC 627(c)(2); CA-MUTCD Section 2B.13, Option 29B), Accident rate higher than statewide average (CVC 627(b)(2); CA-MUTCD Section 2B.13, Option 16E).
98	Highland Avenue	L Avenue	35	37	33	30-39	83%	35	No change	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)
<b>Sweetwater Road</b>										
99	2nd Avenue	I-805/Euclid Avenue	35	41	37	34-43	88%	35	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627(b)(2); CA-MUTCD Section 2B.13, Option 16E (accident rate).
100	I-805/Euclid Avenue	Valley Road	45	46	42	37-46	82%	45	No change	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)
101	Valley Road	Plaza Bonita Road	45	46	41	37-46	69%	45	No change	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)
102	Plaza Bonita Road	Plaza Bonita Center Way	45	48	43	39-48	79%	45	No change	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding up, the speed limit may be rounded down to the nearest 5 mph increment below the 85th percentile speed, if no further reduction is used (CVC 22358.6(c); CA-MUTCD Section 2B.13, Standard 12a, Option 2).
<b>32nd Street</b>										
103	Tidelands Avenue	Marina Way	25	33	26	23-32	64%	25	No change	Currently adopted speed limit or immediately prior adopted speed limit shall only be retained, by ordinance, if after completing an E&TS, local agency finds that the speed limit is still more than reasonable or safe, and that speed limit was established with an E&TS and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit (CVC 22358.8(a); CA-MUTCD Section 2B.13, Standard 12ag).
<b>Valley Road</b>										
104	Sweetwater Road	Calle Abajo	45	46	41	37-46	82%	40	Reduce to 40 mph	When the nearest 5 mph increment of the 85th-percentile speed would require a rounding down, the speed may be reduced by 5 mph from the nearest 5 mph increment of the 85th-percentile speed (CVC 22358.6(b); CA-MUTCD Section 2B.13, Standard 12a, Option 1) - CVC 627(b)(2); CA-MUTCD Section 2B.13, Option 16E (accident rate).
105	Plaza Bonita Center Way	San Miguel Court	40	45	39	34-43	61%	40	No change	Currently adopted speed limit or immediately prior adopted speed limit shall only be retained, by ordinance, if after completing an E&TS, local agency finds that the speed limit is still more than reasonable or safe, and that speed limit was established with an E&TS and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit (CVC 22358.8(a); CA-MUTCD Section 2B.13, Standard 12ag).
<b>Manchester Street</b>										
106	Plaza Boulevard	Angelo Drive	25	26	22	18-27	85%	25	No change	Speed limit shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic. (CVC 22358.6(a); CA-MUTCD Section 2B.13, Standard 12a)

**ORDINANCE NO. 2023 -**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, ESTABLISHING SPEED LIMITS ON VARIOUS STREETS BASED ON ENGINEERING AND TRAFFIC SURVEYS AND AUTHORIZING THE DIRECTOR OF PUBLIC WORKS TO POST SPEED LIMIT SIGNS CONSISTENT WITH THE RECOMMENDATIONS OF THE ENGINEERING AND TRAFFIC SURVEYS.**

**WHEREAS**, section 22357 of the State of California Vehicle Code (CVC) permits local authorities to establish speed limits greater than the prima facie speed limit of 25 miles per hour (mph) when, on the basis of an engineering and traffic survey (E&TS), the local authority determines that a speed greater than 25 mph would facilitate the orderly movement of vehicular traffic and would be reasonable and safe; and

**WHEREAS**, State Assembly Bills (AB) 43 and 1938, which went into effect on January 1, 2022 and January 1, 2023, respectively, provide local agencies greater flexibility in setting and reducing speed limits; and

**WHEREAS**, section 627 of the CVC and Section 2B.13 of the California Department of Transportation Manual on Uniform Traffic Control Devices (CA-MUTCD) outline the criteria to be considered as part of conducting an E&TS, including that an E&TS be completed and certified by a registered professional Civil or Traffic Engineer at least once every 5, 7 or 14 years, in compliance with CVC Section 40802, to re-evaluate non-statutory speed limits on local roadways and allow for enforcement using radar, laser or other electronic devices; and

**WHEREAS**, an E&TS for 106 individual roadway segments was completed in accordance with the procedures established by Section 2B.13 of the CA-MUTCD and consistent with all applicable provisions of the CVC, and formal presentations were made to the Traffic Safety Committee on April 12, 2023 (preliminary findings) and August 16, 2023 (final recommendations), where the Traffic Safety Committee ultimately voted unanimously in support of the recommendations of the E&TS at their meeting on August 16, 2023; and

**WHEREAS**, based on the findings and recommendations of the E&TS, 81 speed limits will remain the same, 25 will decrease, and zero of the existing speed limits will increase; and

**WHEREAS**, staff recommends the City Council authorize establishing speed limits on various streets based on the E&TS and authorize the Director of Public Works to post speed limit signs consistent with the recommendations of the E&TS.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, HEREBY ORDAINS AS FOLLOWS:**

**Section 1:** That, pursuant to authority under the California Vehicle Code including, but not limited to, sections 22357 and 40802, and on the basis of engineering and traffic surveys conducted and certified in accordance with applicable State law and regulations, the City Council hereby establishes the following recommended speed limits as reasonable and safe to facilitate the orderly movement of vehicular traffic on the portions of roadways within the City of National City, summarized in subsections “A” through “E” below, and authorizes the Director of Public Works to post speed limit signs consistent with the recommendations of the Engineering and Traffic Surveys:

A. Twenty-five miles per hour is declared and established as the prima facie speed limit on the following streets:

1. 8th Street from National City Boulevard to Highland Avenue
2. 16th Street from Wilson Avenue to National City Boulevard
3. 18th Street from Wilson Avenue to National City Boulevard
4. 18th Street from National City Boulevard to Highland Avenue
5. 18th Street from Euclid Avenue to Rachael Avenue
6. 22nd Street from Wilson Avenue to National City Boulevard
7. 32nd Street from Tidelands Avenue to Marina Way
8. “D” Avenue from Division Street to 8th Street
9. “D” Avenue from 8th Street to 12th Street
10. “D” Avenue from 12th Street to 18th Street
11. Division Street from “D” Avenue to Highland Avenue
12. Grove Street from Prospect Street to Sweetwater Road
13. Highland Avenue from 2nd Street to 8th Street
14. Hoover Avenue from 22nd Street to Mile of Cars Way
15. “L” Avenue from 8th Street to Plaza Boulevard
16. “L” Avenue from 24th Street to 30th Street
17. Manchester Street from Plaza Boulevard to Angelo Drive
18. Marina Way from Bay Marina Drive to 32nd Street
19. McKinley Avenue from 14th Street to 19th Street
20. Palm Avenue from 16th Street to 18th Street
21. Plaza Boulevard from Coolidge Avenue to National City Boulevard
22. Roosevelt Avenue from 8th Street to Civic Center Drive
23. Roosevelt Avenue from Civic Center Drive to 16th Street
24. West Avenue from 16th Street to 18th Street
25. Wilson Avenue from 18th Street to 24th Street

B. Thirty miles per hour is declared and established as the prima facie speed limit on the following streets:

1. 4th Street from National City Boulevard to “D” Avenue
2. 4th Street from “D” Avenue to Highland Avenue
3. 4th Street from Highland Avenue to Palm Avenue
4. 4th Street from Palm Avenue to Euclid Avenue
5. 4th Street from Euclid Avenue to Harbison Avenue

6. 8th Street from Harbor Drive to National City Boulevard
7. 8th Street from Highland Avenue to Palm Avenue
8. 16th Street from National City Boulevard to Highland Avenue
9. 16th Street from Highland Avenue to Palm Avenue
10. 16th Street from Palm Avenue to Euclid Avenue
11. 16th Street from Euclid Avenue to Harbison Avenue
12. 18th Street from Highland Avenue to Palm Avenue
13. 18th Street from Palm Avenue to Euclid Avenue
14. 19th Street from Tidelands Avenue to Cleveland Avenue
15. 24th Street from "D" Avenue to Highland Avenue
16. 24th Street from Highland Avenue to "L" Avenue
17. 30th Street from Hoover Avenue to National City Boulevard
18. 30th Street from National City Boulevard to Highland Avenue
19. Bay Marina Drive from Tidelands Avenue to I-5
20. Civic Center Drive from Harbor Drive to National City Boulevard
21. "D" Avenue from 18th Street to 24th Street
22. "D" Avenue from 24th Street to 30th Street
23. Division Street from National City Boulevard to "D" Avenue
24. Euclid Avenue from North City Limit to 4th Street
25. Harbison Avenue from Division Street to 4th Street
26. Harbison Avenue from 4th Street to 8th Street
27. Harbison Avenue from 8th Street to Plaza Boulevard
28. Harbison Avenue from Plaza Boulevard to 16th Street
29. Highland Avenue from National City Limit to Division Street
30. Highland Avenue from 8th Street to 18th Street
31. Highland Avenue from 24th Street to 30th Street
32. Highland Avenue from 30th Street to South City Limit
33. Hoover Avenue from 30th Street to 33rd Street
34. "L" Avenue from 16th Street to 24th Street
35. Main Street from I-5 to National City Boulevard
36. McKinley Avenue from 19th Street to 23rd Street
37. Mile of Cars Way from I-5 to National City Boulevard
38. National City Boulevard from 8th Street to 18th Street
39. Newell Street from 18th Street to Prospect Street
40. Palm Avenue from Division Street to Plaza Boulevard
41. Palm Avenue from Plaza Boulevard to 16th Street
42. Plaza Boulevard from National City Boulevard to Highland Avenue
43. Plaza Boulevard from Highland Avenue to Palm Avenue
44. Roosevelt Avenue from Division Street to 8th Street
45. Wilson Avenue from Civic Center Drive to 18th Street

C. Thirty-five miles per hour is declared and established as the prima facie speed limit on the following streets:

1. 8th Street from Palm Avenue to Euclid Avenue
2. 8th Street from Euclid Avenue to Harbison Avenue

3. 8th Street from Harbison Avenue to Paradise Valley Road/Plaza Boulevard
4. 24th Street from National City Boulevard to "D" Avenue
5. 30th Street from Highland Avenue to "L" Avenue
6. Cleveland Avenue from Civic Center Drive to 19th Street
7. Cleveland Avenue from 19th Street to Bay Marina Drive
8. Division Street from Highland Avenue to Palm Avenue
9. Division Street from Palm Avenue to Euclid Avenue
10. Division Street from Euclid Avenue to Harbison Avenue
11. Euclid Avenue from 4th Street to 8th Street
12. Euclid Avenue from 8th Street to 20th Street
13. Euclid Avenue from 20th Street to 24th Street
14. Highland Avenue from 18th Street to 24th Street
15. Hoover Avenue from Mile of Cars Way to 30th Street
16. National City Boulevard from Division Street to 8th Street
17. National City Boulevard from 18th Street to 30th Street
18. National City Boulevard from 30th Street to South City Limit
19. Palm Avenue from I-805 to Division Street
20. Plaza Bonita Road from Sweetwater Road to Bonita Mesa Road
21. Plaza Boulevard from Palm Avenue to Euclid Avenue
22. Plaza Boulevard from Euclid Avenue to Harbison Avenue
23. Sweetwater Road from 2nd Avenue to I-805/Euclid Avenue
24. Tidelands Avenue from Civic Center Drive to 19th Street
25. Tidelands Avenue from 19th Street to Bay Marina Drive
26. Tidelands Avenue from Bay Marina Drive to 32nd Street

D. Forty miles per hour is declared and established as the prima facie speed limit on the following streets:

1. Harbor Drive from 8th Street to Civic Center Drive
2. Paradise Valley Road from 8th Street to Plaza Entrada
3. Plaza Bonita Center Way from Valley Road to Sweetwater Road
4. Plaza Boulevard from Harbison Avenue to 8th Street
5. Valley Road from Sweetwater Road to Calle Abajo
6. Valley Road from Plaza Bonita Center Way to San Miguel Court

E. Forty-five miles per hour is declared and established as the prima facie speed limit on the following streets:

1. Harbor Drive from North City Limit to 8th Street
2. Sweetwater Road from I-805/Euclid Avenue to Valley Road
3. Sweetwater Road from Valley Road to Plaza Bonita Road
4. Sweetwater Road from Plaza Bonita Road to Plaza Bonita Center Way

**Section 2:** This Ordinance shall take effect and be in force thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days after its passage, it or a summary of it, shall be published once, with the names of the members of the City Council voting for and against the same in the Star News, a newspaper of general circulation published in the County of San Diego, California.

**Section 3:** The City Clerk shall certify to the adoption of this Ordinance and shall public in accordance with the law.

**INTRODUCED** at a regular meeting of the City Council of the City of National City, California, held on this 17<sup>th</sup> day of October, 2023.

**PASSED and ADOPTED this \_\_\_\_\_ of \_\_\_\_\_, 2023.**

\_\_\_\_\_  
Ron Morrison, Mayor

**ATTEST:**

\_\_\_\_\_  
Shelley Chapel, MMC, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Barry J. Schultz, City Attorney



# AGENDA REPORT

**Department:** Fire Department  
**Prepared by:** Walter Amedee, Management Analyst III  
**Meeting Date:** Tuesday, November 7, 2023  
**Approved by:** Ben Martinez, Interim City Manager

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**SUBJECT:**

Cost Recovery Fees for Fire Department Responses

**RECOMMENDATION:**

Adopt the Resolution Entitled “Resolution of the City Council of the City of National City, California, Amending Exhibit “A” of the National City Municipal Code Section 4.70.03 Relating to Recovering Costs for the Deployment of Emergency Services by the National City Fire Department.”

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

Not Applicable.

**EXPLANATION:**

The National City Fire Department’s emergency services responses to incidents increase each year due to additional requirements, such as those for environmental protection and hazard mitigation, which create additional demands on all operational aspects of the National City Fire Department services. The City of National City has utilized different methods to maintain a high level in the quality and capability of emergency services during times of increasing service demands. Maintaining an effective response by the National City Fire Department decreases the overall societal costs of incidents through timely and effective management of emergency situations, saving lives, and reducing property and environmental damage.

National City Fire Department Staff provided current personnel, vehicle, fuel, maintenance, equipment, and liability insurance costs to Fire Recovery USA to determine the actual cost rate per incident. A majority of motor vehicle incidents and other emergency and non-emergency services involve individuals not residing in the National City Fire Department’s service area. In most instances a cost recovery claim is filed with the responsible party(s) through their insurance carrier, and in a few circumstances, the responsible party(s) will be billed directly.

On June 1, 2010, the City of National City adopted Ordinance No. 2010-2341 which added Section 4.70, Emergency Response Cost Recovery Fee, to the National City Municipal Code to establish fees to help mitigate increased operational costs caused by responses to those incidents. The City of National City has collected \$207,368.57 in cost recovery fees based on 399 claims since adopting the ordinance. The National City Fire Department’s operational costs have increased over the years, but the Cost Recovery Fees authorized in Section 4.70.03 have not been updated since being adopted.

The City of National City desires to amend the cost recovery fee schedule as allowed by Section 4.70.03 Adoption of Fee Schedule for Recovery of Emergency Response Costs to reflect the current actual costs of the services, including personnel, supplies, support services, and equipment. Section 4.70.03 allows the City Council to amend, as needed, the schedule of fees

by resolution. The revised fee schedule is attached as Exhibit “A.” A comparison between the original and proposed new fee schedule is attached as Exhibit “B.”

Staff also requests the authority to increase the Cost Recovery Fees listed in Exhibit A annually based on the annual percentage change in the Consumer Price Index (CPI), as developed by the Bureau of Labor Statistics of the U.S. Department of Labor. The Cost Recovery Fees will be posted on the City’s website. Any needed fee adjustments that would exceed the CPI based change would be brought to the City Council for action.

**FINANCIAL STATEMENT:**

Cost recovery fees are posted to revenue account # 001-12125-3544.

**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. Published in The Star News, on the City’s website, and posted on Public Notice boards at City Hall.

**ORDINANCE:**

Not Applicable

**EXHIBITS:**

Exhibit A – Cost Recovery Fees

Exhibit B – Fee Comparison

Exhibit C – Resolution

## EXHIBIT A

### **COST RECOVERY FEES BASED ON PER HOUR**

The mitigation rates below are average “billing levels”, and are typical for the incident responses listed, however, when a claim is submitted, it may be itemized and based on the actual services provided.

These rates are based on actual costs using amortized schedules for apparatus (including useful life, equipment, repairs, and maintenance). Labor rates include an average department’s actual burdened labor costs and not just a firefighter's wage. These include wages, retirement, benefits, workers comp, etc.

#### **MOTOR VEHICLE INCIDENTS**

##### **Level 1 - \$584.00**

Provide hazardous materials assessment and scene stabilization. This will be the most common “billing level”. This occurs almost every time the fire department responds to an accident/incident.

##### **Level 2 - \$667.00**

Includes Level 1 services as well as clean up and material used (sorbents) for hazardous fluid clean up and disposal. We will bill at this level if the fire department has to clean up any gasoline or other automotive fluids that are spilled as a result of the accident/incident.

##### **Level 3 – CAR FIRE - \$813.00**

Provide scene safety, fire suppression, breathing air, rescue tools, hand tools, hose, tip use, foam, structure protection, and clean up gasoline or other automotive fluids that are spilled as a result of the accident/incident.

#### **ADD-ON SERVICES:**

##### **Extrication - \$1,757.00**

Includes heavy rescue tools, ropes, airbags, cribbing etc. This charge will be added if the fire department has to free/remove anyone from the vehicle(s) using any equipment. We will not bill at this level if the patient is simply unconscious and fire department is able to open the door to access the patient. This level is to be billed only if equipment is deployed.

##### **Creating a Landing Zone - \$537.00**

Includes Air Care (multi-engine company response, mutual aid, helicopter). We will bill at this level any time a helicopter landing zone is created and/or is utilized to transport the patient(s).

**Itemized Response:** You have the option to bill each incident as an independent event with custom mitigation rates, for each incident using, itemized rates deemed usual, customary and reasonable (UCR). These incidents will be billed, itemized per apparatus, per personnel, plus products and equipment used.

## **HAZMAT**

### **Level 1 - \$943.00**

**Basic Response:** Claim will include engine response, first responder assignment, perimeter establishment, evacuations, set-up and command.

### **Level 2 - \$3,369.00**

**Intermediate Response:** Claim will include engine response, first responder assignment, hazmat certified team and appropriate equipment, perimeter establishment, evacuations, set-up and command, Level A or B suit donning, breathing air and detection equipment. Set-up and removal of decon center.

### **Level 3 – \$7,953.00**

**Advanced Response:** Claim will include engine response, first responder assignment, hazmat certified team and appropriate equipment, perimeter establishment, evacuations, first responder set-up and command, Level A or B suit donning, breathing air and detection equipment and robot deployment. Set-up and removal of decon center, detection equipment, recovery and identification of material. Disposal and environment clean up. Includes above in addition to any disposal rates of material and contaminated equipment and material used at scene. Includes 3 hours of on scene time - **each additional hour @ \$381.00 per HAZMAT team.**

## **FIRES**

**Assignment - \$538.00 per hour, per engine / \$673.00 per hour, per truck**

### **Includes:**

- Scene Safety
- Investigation
- Fire / Hazard Control

This will be the most common “billing level”. This occurs almost every time the fire department responds to an incident.

**OPTIONAL: A fire department has the option to bill each fire as an independent event with custom mitigation rates.**

**Itemized, per person, at various pay levels and for itemized products use.**

## **ILLEGAL FIRES**

**Assignment - \$538.00 per hour, per engine / \$673.00 per hour, per truck**

When a fire is started by any person or persons that requires a fire department response during a time or season when fires are regulated or controlled by local or state rules, provisions or ordinances because of pollution or fire danger concerns, such person or persons will be liable for the fire department response at a cost not to exceed the actual expenses incurred by the fire department to respond and contain the fire. Similarly, if a fire is started where permits are required for such a fire and the permit was not obtained and the fire department is required to respond to contain the fire the responsible party will be liable for the response at a cost not to exceed the actual expenses incurred by the fire department. The actual expenses will include direct labor, equipment costs and any other costs that can be reasonably allocated to the cost of the response.

## **WATER INCIDENTS**

### **Level 1**

**Basic Response:** Claim will include engine response, first responder assignment, perimeter establishment, evacuations, first responder set-up and command, scene safety and investigation (including possible patient contact, hazard control). This will be the most common “billing level”. This occurs almost every time the fire department responds to a water incident.

**Billed at \$538 plus \$66 per hour, per rescue person.**

### **Level 2**

**Intermediate Response:** Includes Level 1 services as well as clean up and material used (sorbents), minor hazardous clean up and disposal. We will bill at this level if the fire department has to clean up small amounts of gasoline or other fluids that are spilled as a result of the incident.

**Billed at \$1,077 plus \$66 per hour, per rescue person.**

### **Level 3**

**Advanced Response:** Includes Level 1 and Level 2 services as well as D.A.R.T. activation, donning breathing apparatus and detection equipment. Set up and removal of decon center, detection equipment, recovery and identification of material. Disposal and environment clean up. Includes above in addition to any disposal rates of material and contaminated equipment and material used at scene.

**Billed at \$2,665 plus \$66 per hour per rescue person, plus \$134 per hour per HAZMAT team member.**

### **Level 4**

**Itemized Response:** You have the option to bill each incident as an independent event with custom mitigation rates for each incident using itemized rates deemed usual, customary and reasonable (UCR). These incidents will be billed, itemized, per trained rescue person, plus rescue products used.

## **BACK COUNTRY OR SPECIAL RESCUE**

**Itemized Response:** Each incident will be billed with custom mitigation rates deemed usual, customary and reasonable (UCR). These incidents will be billed, itemized per apparatus per hour, per trained rescue person per hour, plus rescue products used.

**Minimum billed \$538 plus \$66 per hour, per rescue person. Additional rates of \$538 per hour per response vehicle and \$66 per hour per rescue person.**

#### **CHIEF RESPONSE**

This includes the set-up of Command, and providing direction of the incident. This could include operations, safety, and administration of the incident.

**Billed at \$337 per hour.**

#### **MISCELLANEOUS / ADDITIONAL TIME ON-SCENE**

##### **ADDITIONAL TIME ON-SCENE** (for all levels of service)

Engine billed at \$538 per hour.

Truck billed at \$673 per hour.

Miscellaneous equipment billed at \$404.

#### **MITIGATION RATE NOTES**

The mitigation rates above are average “billing levels” for one hour of service, and are typical for the incident responses listed, however, when a claim is submitted, it may be itemized and based on the actual services provided.

These average mitigation rates were determined by itemizing costs for a typical run (from the time a fire apparatus leaves the station until it returns to the station) and are based on the actual costs, using amortized schedules for apparatus (including useful life, equipment, repairs, and maintenance) and labor rates (an average department’s “actual personnel expense” and not just a firefighter’s basic wage). The actual personnel expense includes costs such as wages, retirement, benefits, workers comp, insurance, etc.

## **EXHIBIT B**

### **COST RECOVERY FEES COMPARISON**

#### **MOTOR VEHICLE INCIDENTS**

##### **Level 1 - OLD \$435.00 NEW \$584.00**

Provide hazardous materials assessment and scene stabilization. This will be the most common "billing level". This occurs almost every time the fire department responds to an accident/incident.

##### **Level 2 - OLD \$495.00 NEW \$667.00**

Includes Level 1 services as well as clean up and material used (sorbents) for hazardous fluid clean up and disposal. We will bill at this level if the fire department has to clean up any gasoline or other automotive fluids that are spilled as a result of the accident/incident.

##### **Level 3 – CAR FIRE - OLD \$605.00 NEW \$813.00**

Provide scene safety, fire suppression, breathing air, rescue tools, hand tools, hose, tip use, foam, structure protection, and clean up gasoline or other automotive fluids that are spilled as a result of the accident/incident.

#### **ADD-ON SERVICES:**

##### **Extrication - NEW \$1,757.00**

Includes heavy rescue tools, ropes, airbags, cribbing etc. This charge will be added if the fire department has to free/remove anyone from the vehicle(s) using any equipment. We will not bill at this level if the patient is simply unconscious and fire department is able to open the door to access the patient. This level is to be billed only if equipment is deployed.

##### **Creating a Landing Zone - NEW \$537.00**

Includes Air Care (multi-engine company response, mutual aid, helicopter). We will bill at this level any time a helicopter landing zone is created and/or is utilized to transport the patient(s).

**Itemized Response:** You have the option to bill each incident as an independent event with custom mitigation rates, for each incident using, itemized rates deemed usual, customary and reasonable (UCR). These incidents will be billed, itemized per apparatus, per personnel, plus products and equipment used.

## HAZMAT

### **Level 1 - OLD \$700.00 NEW \$943.00**

**Basic Response:** Claim will include engine response, first responder assignment, perimeter establishment, evacuations, set-up and command.

### **Level 2 - OLD \$2,500.00 NEW \$3,369.00**

**Intermediate Response:** Claim will include engine response, first responder assignment, hazmat certified team and appropriate equipment, perimeter establishment, evacuations, set-up and command, Level A or B suit donning, breathing air and detection equipment. Set-up and removal of decon center.

### **Level 3 – OLD \$5,900.00 NEW \$7,953.00**

**Advanced Response:** Claim will include engine response, first responder assignment, hazmat certified team and appropriate equipment, perimeter establishment, evacuations, first responder set-up and command, Level A or B suit donning, breathing air and detection equipment and robot deployment. Set-up and removal of decon center, detection equipment, recovery and identification of material. Disposal and environment clean up. Includes above in addition to any disposal rates of material and contaminated equipment and material used at scene. Includes 3 hours of on scene time - **each additional hour @ OLD 300.00 NEW \$381.00 per HAZMAT team.**

## FIRES

**Assignment - OLD \$400.00 NEW \$538.00 per hour, per engine / NEW \$673.00 per hour, per truck Includes:**

- Scene Safety
- Investigation
- Fire / Hazard Control

This will be the most common “billing level”. This occurs almost every time the fire department responds to an incident.

**OPTIONAL: A fire department has the option to bill each fire as an independent event with custom mitigation rates.**

**Itemized, per person, at various pay levels and for itemized products use.**

## **ILLEGAL FIRES**

**Assignment - NEW \$538.00 per hour, per engine / NEW \$673.00 per hour, per truck**

When a fire is started by any person or persons that requires a fire department response during a time or season when fires are regulated or controlled by local or state rules, provisions or ordinances because of pollution or fire danger concerns, such person or persons will be liable for the fire department response at a cost not to exceed the actual expenses incurred by the fire department to respond and contain the fire. Similarly, if a fire is started where permits are required for such a fire and the permit was not obtained and the fire department is required to respond to contain the fire the responsible party will be liable for the response at a cost not to exceed the actual expenses incurred by the fire department. The actual expenses will include direct labor, equipment costs and any other costs that can be reasonably allocated to the cost of the response.

## **WATER INCIDENTS**

### **Level 1**

**Basic Response:** Claim will include engine response, first responder assignment, perimeter establishment, evacuations, first responder set-up and command, scene safety and investigation (including possible patient contact, hazard control). This will be the most common “billing level”. This occurs almost every time the fire department responds to a water incident.

**Billed at OLD \$400 NEW \$538 plus OLD \$50 NEW \$66 per hour, per rescue person.**

### **Level 2**

**Intermediate Response:** Includes Level 1 services as well as clean up and material used (sorbents), minor hazardous clean up and disposal. We will bill at this level if the fire department has to clean up small amounts of gasoline or other fluids that are spilled as a result of the incident.

**Billed at OLD \$800 NEW \$1,077 plus OLD \$50 NEW \$66 per hour, per rescue person.**

### **Level 3**

**Advanced Response:** Includes Level 1 and Level 2 services as well as D.A.R.T. activation, donning breathing apparatus and detection equipment. Set up and removal of decon center, detection equipment, recovery and identification of material. Disposal and environment clean up. Includes above in addition to any disposal rates of material and contaminated equipment and material used at scene.

**Billed at OLD \$2,000 NEW \$2,665 plus OLD \$50 NEW \$66 per hour per rescue person, plus OLD \$100 NEW \$134 per hour per HAZMAT team member.**

### **Level 4**

**Itemized Response:** You have the option to bill each incident as an independent event with custom mitigation rates for each incident using itemized rates deemed usual, customary and reasonable (UCR). These incidents will be billed, itemized, per trained rescue person, plus rescue products used.

## **BACK COUNTRY OR SPECIAL RESCUE**

**Itemized Response:** Each incident will be billed with custom mitigation rates deemed usual, customary and reasonable (UCR). These incidents will be billed, itemized per apparatus per hour, per trained rescue person per hour, plus rescue products used.

**Minimum billed OLD \$400 NEW \$538 plus OLD \$50 NEW \$66 per hour, per rescue person. Additional rates of OLD \$400 NEW \$538 per hour per response vehicle and OLD \$50 NEW \$66 per hour per rescue person.**

## **CHIEF RESPONSE**

This includes the set-up of Command, and providing direction of the incident. This could include operations, safety, and administration of the incident.

**Billed at OLD \$250 NEW \$337 per hour.**

## **MISCELLANEOUS / ADDITIONAL TIME ON-SCENE**

**ADDITIONAL TIME ON-SCENE** (for all levels of service)

Engine billed at OLD \$400 NEW \$538 per hour.

Truck billed at OLD \$500 NEW \$673 per hour.

Miscellaneous equipment billed at OLD \$300 NEW \$404.

## **MITIGATION RATE NOTES**

The mitigation rates above are average “billing levels” for one hour of service, and are typical for the incident responses listed, however, when a claim is submitted, it may be itemized and based on the actual services provided.

These average mitigation rates were determined by itemizing costs for a typical run (from the time a fire apparatus leaves the station until it returns to the station) and are based on the actual costs, using amortized schedules for apparatus (including useful life, equipment, repairs, and maintenance) and labor rates (an average department’s “actual personnel expense” and not just a firefighter’s basic wage). The actual personnel expense includes costs such as wages, retirement, benefits, workers comp, insurance, etc.

**RESOLUTION NO. 2023 –**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, AMENDING EXHIBIT “A” OF THE NATIONAL CITY MUNICIPAL CODE SECTION 4.70.03 RELATING TO RECOVERING COSTS FOR THE DEPLOYMENT OF EMERGENCY SERVICES BY THE NATIONAL CITY FIRE DEPARTMENT.**

**WHEREAS**, the National City Fire Department’s emergency services responses to incidents increase each year due to additional requirements, such as those for environmental protection and hazard mitigation, which create additional demands on all operational aspects of the National City Fire Department services; and

**WHEREAS**, the City of National City has utilized different methods to maintain a high level of quality of emergency service capability during times of increasing service demands; and

**WHEREAS**, maintaining an effective response by the National City Fire Department decreases the overall societal costs of incidents through timely and effective management of emergency situations, saving lives, and reducing property and environmental damage; and

**WHEREAS**, National City Fire Department Staff provided current personnel, vehicle, fuel, maintenance, equipment, and liability insurance costs to Fire Recovery USA to determine the actual cost rate per incident; and

**WHEREAS**, a majority of motor vehicle incidents and other emergency and non-emergency services involve individuals not residing in the National City Fire Department’s service area; and

**WHEREAS**, in most instances a cost recovery claim is filed to the responsible party(s) through their insurance carrier, and in a few circumstances, the responsible party(s) will be billed directly; and

**WHEREAS**, the City of National City adopted Ordinance No. 2010-2341 that added Section 4.70, Emergency Response Cost Recovery Fee, to the National City Municipal Code to establish fees to help mitigate increased operational costs caused by responses to those incidents; and

**WHEREAS**, the City of National City has collected \$207,368.57 in cost recovery fees based on 399 claims since adopting the ordinance; and

**WHEREAS**, the National City Fire Department operational costs have increased over the years, but the Cost Recovery Fees authorized in Section 4.70.03 have not been amended since being adopted on June 1, 2010; and

**WHEREAS**, the City of National City desires to amend the cost recovery fee schedule as allowed by Section 4.70.03 Adoption of Fee Schedule for Recovery of Emergency Response Costs to reflect the current actual costs of the services, including personnel, supplies, support services, and equipment; and

**WHEREAS**, Section 4.70.03 allows the City Council to amend, as needed, the schedule of fees by resolution; and

**WHEREAS**, the revised fee schedule is shown in Exhibit “A”, attached to the staff report, and a comparison between the original and proposed new fee schedule is provided in Exhibit B, attached to the staff report; and

**WHEREAS**, staff also requests the authority to increase the Cost Recovery Fees annually based on the annual percentage change in the Consumer Price Index (CPI), as developed by the Bureau of Labor Statistics of the U.S. Department of Labor; and

**WHEREAS**, the Cost Recovery Fees will be posted on the City’s website; and

**WHEREAS**, any needed fee adjustments that would exceed the CPI-based change would be brought to the City Council for action.

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

**Section 1.** The City Council hereby authorizes the amendment of the cost recovery fees identified in Exhibit A attached to the staff report.

**Section 2.** The City Council also hereby authorizes the amendment of the Cost Recovery Fees annually based on the annual percentage change in the Consumer Price Index (CPI), as developed by the Bureau of Labor Statistics of the U.S. Department of Labor.

**Section 3.** The City Clerk shall certify the passage and adoption of this Resolution and enter it into the book of original Resolutions.

**PASSED and ADOPTED this 7<sup>th</sup> day of November, 2023.**

\_\_\_\_\_  
Ron Morrison, Mayor

**ATTEST:**

\_\_\_\_\_  
Shelley Chapel, MMC, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Barry J. Schultz, City Attorney



# AGENDA REPORT

**Department:** Police Department  
**Prepared by:** Joseph Camacho, Police Sergeant  
**Meeting Date:** Tuesday, November 7, 2023  
**Approved by:** Ben Martinez, Interim City Manager

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**SUBJECT:**

Introduction of an Ordinance Amending National City Municipal Code Sections 10.70 – Police Regulated Business Regulations and 10.79 – Massage Establishments.

**RECOMMENDATION:**

Introduction and First Reading of an Ordinance Entitled, “An Ordinance of the City Council of the City of National City, California, Amending Chapters 10.70 – Police Regulated Business Regulations and 10.79 – Massage Establishments of the National City Municipal Code.”

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

Not Applicable.

**SUMMARY:**

Below is a brief summary of the recommended changes to the National City Municipal Code:

- Section 10.70 – Police Regulated Businesses Regulations
  - Minor updates and cleanup for clarity.
  - Inclusion of additional criteria for permit denial – the applicant for a massage establishment permit cannot have had a permit denied, suspended, or revoked for cause by any governmental agency or a massage practitioner certification denied, suspended, or revoked by the CAMTC.
  - The appeal procedures have been updated to be consistent with the City’s administrative appeal section.
  
- Section 10.79 – Massage Establishments
  - Updates to the definition section for additional clarity.
  - Updates to the massage establishment operating requirements:
    - It is unlawful for massage establishments to operate under any name that is not specified in the massage establishment permit issued.
    - Inclusion of limitations on who can be present in massage therapy rooms and in the waiting area.
  - Updates to massage establishment prohibited conduct:
    - Employment of a person lacking state certification as a receptionist without prior notification and approval by the City.
    - Operating after the sale or transfer of the massage establishment to a person not identified as the owner on the massage establishment permit application.

**EXPLANATION:**

The National City Police Department (NCPD) submitted the National City Municipal Code Sections regarding Police Regulated Business Regulations (NCCMC Section 10.70) and Massage Establishments (NCCMC Section 10.79) to the California Massage Therapy Council (CAMTC) for review to assist with the enforcement, regulation and removal of illicit massage parlors in National City.

CAMTC completed the review of the National City Municipal Code sections and returned their review to the National City Police Department with several recommended corrections, additions and modifications to the National City Municipal Code to aid the police department, code enforcement and the city attorney's office with the enforcement, regulation and removal of illicit massage parlors in National City.

NCPD forwarded the recommended corrections to the City Attorney's Office for review. The City Attorney's Office assisted by making the recommended corrections, additions and modifications to the National City Municipal Code to submit for approval to the City Council of the City of National City.

**FINANCIAL STATEMENT:**

Not Applicable.

**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:**

First Reading

**EXHIBITS:**

- Exhibit A – Ordinance – Redline Section 10.70 Police Regulated Business Regulations
- Exhibit B – Ordinance – Redline Section 10.79 Massage
- Exhibit C – Ordinance – Section 10.70 Police Regulated Business Regulations
- Exhibit D – Ordinance – Section 10.79 Massage

## *Chapter 10.70 POLICE REGULATED BUSINESS REGULATIONS*

### **10.70.010 Purpose and intent—Permit required.**

- A. It is the purpose and intent of the city council to establish procedures for permit issuance and regulation of certain businesses and activities as police regulated for the protection of the public health, safety, and welfare. Businesses identified in this Division X (Chapters 10.70 through 10.79) have a higher degree of potential for one or more types of illicit activity - prostitution, disorderly conduct, gambling, fraudulent practices, or the concealment or facilitation of transfers of stolen property. Therefore, regulation of the operations of these establishments is appropriate to protect legitimate business practice and the public health, safety and welfare.
- B. A business, activity or a performer or technician which is identified in Chapters 10.71 through 10.79 is designated a "regulated business," "regulated activity," "regulated performer" or "regulated technician," as the case may be, and the specific regulations applicable to their conduct are set out in Chapters 10.71 through 10.79. The procedures set out in this Chapter 10.70 shall uniformly govern the administration and appeals process regarding the issuance, denial, suspension, or revocation of any permit required to operate as a regulated business or activity or as a regulated performer or technician pursuant to Chapters 10.71 through 10.79.
- C. The issuance of a permit pursuant to this chapter does not excuse a regulated business, activity, performer, or technician from complying with any other revenue or regulatory requirement of this code or state law. A separate permit shall be required for each type of activity regulated by Chapters 10.71 through 10.79, unless otherwise provided. The issuance of a certificate or permit under other provisions of this code does not excuse compliance with or create a defense to any violation of the requirements of this chapter or Chapters 10.71 through 10.79, as applicable, or any other provisions of law or ordinance, including conditional use permits required under Title 18.
- D. It is unlawful for any person to operate a business or activity or perform or practice as a performer or technician regulated by this chapter and Chapters 10.71 through 10.79, as applicable, without a valid permit issued by the chief of police or designee, or to operate, perform or practice while the permit is suspended or revoked. Each day a violation of this section exists constitutes a separate misdemeanor.

(Ord. 2220 § 1(part), 2003: Ord. 2204 § 5 (part), 2002)

(Ord. No. 2019-2454, § 6, 1-22-2019)

### **10.70.020 Definitions.**

For purposes of Chapters 10.70 through 10.79, the following definitions shall apply:

- A. "Person" means and includes a natural person, a partnership, joint venture or a corporation.
- B. "Operator" means any person who supervises, manages, directs, organizes, controls, or in any other way is responsible for or in charge of the daily operation, conduct or activities of the regulated business or activity.
- C. "Owner" means any person or entity having an ownership interest in the establishment.
- D. "Responsible person" means any person who is an owner, operator, or manager, and includes any employee or agent in apparent charge of the premises for which the application is made or required or a permit is issued.

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- E. "Permit" means a permit issued by or under the authority of the chief of police or designee that authorizes activity regulated under Chapters 10.71 through 10.79.
  - F. "Permittee" means an owner to whom a permit issued by or under the authority of the chief of police or designee that authorizes activity regulated under Chapters 10.71 and 10.79.
  - G. "Applicant" means the natural person(s) who complete and sign an application pursuant to this chapter.

(Ord. 2220 § 1 (part), 2003: Ord. 2204 § 5 (part), 2002)

(Ord. No. 2019-2454, § 6, 1-22-2019)

### **10.70.030 Applications.**

- A. Any person required to obtain a permit pursuant to Chapters 10.71 through 10.79 shall file a written application with the chief of police or designee on a city-approved form, and pay the non-refundable fee set forth in the National City fee schedule, to recoup all investigative costs. The applicant shall provide proof of payment of any regulatory fees imposed by the state of California or county of San Diego contemporaneously with the filing. Written application forms prepared by the chief of police or designee may require the applicant to be photographed, finger printed and to provide, in addition to the information listed below, such other information as is reasonably necessary to carry out the purposes of this chapter. The application form shall be approved as to form by the city attorney. For massage establishments, the application shall be completed and signed by the owner of the proposed massage establishment, if a sole proprietorship; one general partner, if the owner is a partnership; or two officers, if the owner is a corporation.
- B. An applicant for a permit shall submit the following information:
  - 1. The full name of the business, including the name under which the business will be conducted;
  - 2. The address where the business is to be conducted;
  - 3. The applicant's full, true name, and any other names used;
  - 4. The applicant's date of birth;
  - 5. The applicant's present residential address and telephone number;
  - 6. The previous addresses of the applicant for the three years immediately prior to the date of the application and the dates of residence at each;
  - 7. Applicant's height, weight, color of eyes and hair;
  - 8. Three recent portrait photographs at least two inches by two inches taken within the preceding six months, which accurately depict the current appearance of the applicant;
  - 9. The applicant's driver's license and/or identification card issued by a state or federal governmental agency, or other photographic identification bearing a bona-fide seal of a foreign government;
  - 10. If the owner is a corporation, domestic stock, domestic non-profit, qualified foreign corporation, limited liability company, general partnership, or limited partnership, the application shall include the following:
    - a. A business entity status report issued by the California Secretary of State;
    - b. Organizational documents for the business entity including but not limited to a copy of the fictitious name statement and/or articles of incorporation;

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- c. Full name, date of birth, residential address, and business address for each officer and director;
  - d. The name, date of birth, and residence addresses of the responsible employee(s) to be principally in charge of the day-to-day operations of the establishment.
  - e. The full name of the owner, including any DBAs.
11. The tax identification number for the business;
  12. The name, address, email address, and telephone number of the real property owner where the business will be operated, and a copy of the lease or rental agreement, if applicable;
  13. The business license and permit history of the applicant, including whether the applicant when previously operating in this or another city or state under a certificate, license or permit, has had that certificate, license or permit suspended or revoked, the reason therefore, and the business activity or occupation subsequent to the suspension or revocation;
  14. For massage establishment businesses regulated under Chapter 10.79, a copy of the massage practitioner certificate issued by the California Massage Therapy Council pursuant to Chapter 10.5 of the California Business and Professions Code for each owner who has been issued a certificate, or a statement that such a certificate has not been issued or has been previously denied or revoked by the California Massage Therapy Council or cancelled with information regarding the reason therefore such revocation or cancellation;
  15. For massage establishment businesses regulated under Chapter 10.79, a list of all persons who will administer massage, including but not limited to employees and independent contractors. Such list shall include the full true name and any other names used, date of birth, residence address and copy of their driver's license or any other photo identification card issued by a state or federal agency, and a copy of the valid massage practitioner certificate issued by the California Massage Therapy Council pursuant to Chapter 10.5 of the California Business and Professions Code;
  16. For massage establishment businesses regulated under Chapter 10.79, all services must be described on the application for the permit;
  17. Business, occupation, or employment history of the applicant for the three years immediately preceding the date of the application;
  18. A list, broken down for each applicant, each responsible employee(s) to be principally in charge of the day-to-day operations of the establishment, and all partners if a partnership, or all officers and directors if a corporation, of all criminal convictions, including pleas of nolo contendere, within the preceding five years, including those dismissed or expunged pursuant to Penal Code section 1203.4, but excluding minor traffic violations, and the date and place of each such conviction, as well as a full explanation of the circumstances;
  19. A complete set of fingerprints taken for each owner if a sole proprietorship, or each natural person, including the owner and operator or person to be principally in charge of the day-to-day operations of the establishment; unless in the case of massage establishment businesses, they hold a valid massage practitioner certificate issued by the California Massage Therapy Council pursuant to Chapter 10.5 of the California Business and Professions Code;
  20. A signed statement authorizing the city, through its officers, agents, and employees, to conduct a background check of the applicant, owners(s), and natural persons to be principally in charge of the day-to-day operations to seek information and conduct an investigation into the truthfulness of the statements set forth in the application and to ensure continual compliance with all applicable provisions of the law;

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21. A signed acknowledgment that the owner(s) shall be responsible for the conduct of all employees or independent contractors working on the premises of the business and acknowledging that failure to comply with the provisions of this chapter or any local, state or federal law and, for massage establishment businesses regulated under Chapter 10.79, failure to comply with California Business and Professions Code section 4600 et seq., may result in the suspension, revocation, or denial of the permit;
  22. An acknowledgement that the applicant consents to periodic inspection of the regulated premises or activity, and that revocation of the permit may occur for any unjustified refusal to allow the same;
  23. An acknowledgement that the applicant has received a copy of Chapter 10.70 and any applicable chapter from Chapters 10.71 through 10.79 which regulate the business or activity of the applicant; and
  24. A signed statement by the applicant certifying under penalty of perjury that all information in the application is true and correct, and acknowledging that failure to be truthful may result in denial of the application.

(Ord. 2204 § 5 (part), 2002)

(Ord. No. 2019-2454, § 6, 1-22-2019)

#### **10.70.040 Investigation.**

The chief of police or designee, upon receipt of a written application for a permit and payment of the necessary fees shall promptly conduct an appropriate investigation to determine whether a permit should be issued in accordance with the provisions of this chapter. The chief of police or designee shall consider any relevant factual material relating to such application.

(Ord. 2204 § 5 (part), 2002)

(Ord. No. 2019-2454, § 6, 1-22-2019)

#### **10.70.050 Permit issuance or denial.**

- A. Issuance. The chief of police or designee may deny a permit application, based upon investigation and substantial evidence, if he or she finds one or more of any of the following:
  1. That the operation or the premises of the activity, as proposed by the applicant, would violate any applicable laws, including but not limited to the city's fire, building, zoning and health regulations; or
  2. That the applicant, any other person who will be directly engaged in the management and operation of the regulated business or activity, or an applicant who is to participate or perform services as a regulated technician or performer:
    - a. Has been convicted in any court of competent jurisdiction by a final judgment of any misdemeanor or felony, within the five years preceding the date of application, which rationally and reasonably relates to the conduct of the regulated activity; or
    - b. Has allowed acts to occur in any business operations for the preceding five years which would violate those sections of the Penal Code listed in Section 10.70.050A.2.d, or any provision of this chapter or Chapter 10.79, irrespective of a conviction or acquittal; or

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- c. Has had a permit to operate a business that is or would be regulated pursuant to Chapters 10.70 through 10.79 suspended or revoked in any jurisdiction, within the preceding five years; or
  - d. Within the five years immediately preceding the date of the filing of the application, has been convicted in a court of competent jurisdiction of any of the following offenses:
    - (1) An offense that requires registration under California Penal Code Section 290; or
    - (2) An offense which is a violation of Sections 311 through 311.7, 313.1, 314, 315, 316, 318 or 647(a), 647(b), 647(d), 647(h), ~~653.22~~, 653.23 or 290 of the California Penal Code; or
    - (3) An offense that is a reduction from any offense listed in Section 10.70.050A.2.d. (1) or (2) to some other offense under the Penal Code which would not require registration, pursuant to a plea of guilty negotiated prior to trial; or
    - (4) Any misdemeanor or felony involving theft of property; or
  - 3. That the applicant has made any false, misleading or fraudulent material statement of fact in the permit application, or any other related document required by the city in connection with the application; or
  - 4. The applicant has not complied with the provisions of this chapter and Chapter 10.79; or
  - 5. The applicant has had a massage establishment permit or other similar license or permit denied, suspended or revoked for cause by any governmental agency; or the applicant has any massage practitioner certification denied, suspended or revoked by the California Massage Therapy Council.
  - 5. For establishments regulated by Chapter 10.79, the applicant proposes to locate the massage establishment in the same building as a massage establishment that has surrendered its permit or had its permit revoked within five years of the application date because a person engaged in any criminal conduct and/or violation of this chapter or Chapter 10.79 while on the premises of the former massage establishment; or
  - 6. That the application is incomplete and the required information or documents were not submitted within twenty days of a request for the information or documents.
- B. Timeliness and Conditional Issuance of Permit. Upon receipt of a properly completed application, the chief of police or designee shall either approve or deny the application within thirty days. Failure to take action on a permit application within thirty days shall not result in an automatic approval. If the chief of police or designee is awaiting investigation results from another governmental agency within those thirty days, the chief of police or designee shall issue a revocable conditional permit on the thirtieth day if a local records check fails to disclose any disqualifying information and the operation would otherwise be in compliance with all other applicable laws and regulations; except that a revocable conditional permit shall not be issued to an escort or massage technician or operator until it affirmatively appears that there is no disqualifying information, in order to avoid the potential for physical harm to a potential patron pending final action. Any revocable conditional permit shall be revoked if further investigation discloses the existence of a disqualifying factor under this Section 10.70.050.
- C. An applicant whose application is denied based on subsection (A)(1) through (A)(5) of this section is not eligible to reapply for five years after notice of denial. An applicant whose application is denied for failure to comply with subsection (A)(6) is not eligible to reapply for one hundred eighty days after notice of denial.
- D. Permits must be exercised within one year of issuance or shall be deemed abandoned.
- E. A permit is deemed abandoned if the establishment which has exercised its permit ceases operations covered by the permit for one hundred eighty days.

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- F. A permit issued pursuant to this chapter shall not be operative until and unless all other required local, state, or federal licenses and permits have been obtained.

(Ord. 2204 § 5 (part), 2002)

(Ord. No. 2019-2454, § 6, 1-22-2019)

### 10.70.060 Notice of decision.

Upon taking final action to issue or deny a permit application, or to suspend or revoke a permit under Section 10.70.080, the chief of police or designee shall give written notice of decision and the reasons to the applicant or permittee and to any other person requesting such notice. The notice of decision shall inform the applicant or permittee of the right to appeal under Section 10.70.070 and the time limits prescribed for such review. The chief of police or designee shall file a proof of service with the city clerk establishing the method and date of service. The issuance of the notice of decision shall begin the running of any period of limitation for ~~city council or~~ judicial review under Section 10.70.070 as follows:

- A. Three calendar days after mailing a notice of decision to the address shown on the application by both first class mail, postage prepaid with return address clearly marked, and by certified mail, return receipt requested. Receipt of either by the addressee shall constitute service of notice. Actual receipt, however, shall not be a pre-requisite to the running of any period of limitation.
- B. Immediately upon personal service or personal delivery of the notice of decision to the applicant or permittee.

(Ord. 2204 § 5 (part), 2002)

(Ord. No. 2019-2454, § 6, 1-22-2019)

### 10.70.070 Appeal.

- A. Any applicant or permittee aggrieved by the decision of the chief of police or designee regarding the issuance, conditional issuance, suspension, revocation or denial of a permit, shall have a right to request a hearing to appeal or contest the decision to the city council pursuant to Section 1.42.020.
- ~~B. An appeal to the city council must be perfected within fifteen calendar days after the service of a notice of decision by filing a letter of appeal with the city clerk stating the basis for the appeal. An applicant or permittee filing an appeal shall pay a nonrefundable fee to the finance department at the time the appeal is filed. The amount of such fee shall be as determined from time to time by resolution of the city council. Upon receipt of the letter of appeal and proof of payment of the appeal fee, the city clerk shall set the matter for consideration by the city council at a regularly scheduled meeting as soon as reasonably practicable. The city clerk shall give the appealing party, and any other person requesting the same, at least five calendar days written notice of the time and place of such hearing.~~
- ~~C. At the time and place set for the hearing, the city council shall give the appealing party and any other interested party a reasonable opportunity to be heard and show cause why the determination of the chief of police or designee should not be upheld. After the chief of police or designee has presented the statement of facts upon which the determination was made, the burden to show that the action taken by the chief of police or designee was not based on substantial evidence, or was arbitrary, capricious, or unjustified shall be upon the appealing party. The determination of the city council shall be final and conclusive and shall constitute the exhaustion of administrative remedy. The written determination of the city council shall be served upon the appealing party by the city clerk. Service shall conform to Section 10.70.060, and shall~~

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~~govern the commencement of any period of limitation for judicial review under Code of Civil Procedure Sections 1094.6 or 1094.8, whichever is applicable.~~

(Ord. 2204 § 5 (part), 2002)

(Ord. No. 2019-2454, § 6, 1-22-2019)

### **10.70.080 Suspension and revocation.**

- A. The chief of police or designee may suspend or revoke any permit issued under the provisions of this chapter if he or she finds that:
1. The operation conducted by the permittee violates or has violated any applicable laws, including but not limited to the city's building, zoning and health regulations and Chapters 10.70 through 10.79, as applicable;
  2. ~~The applicant has failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state, and local wage and hour laws, including, but no limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local minimum wage ordinance or prevailing wage requirements. For the purposes of this subsection, a final court order or administrative action is one as to which there is no pending appeal and the time for filing an appeal has passed.~~
  3. The permittee, including a regulated performer or technician, or any other person who is directly engaged in the management and operation of the regulated business has, while the permit is in effect:
    - a. Allowed, committed or been convicted of an act that constitutes a violation of law which rationally and reasonably relates to the conduct of the regulated activity,
    - b. Allowed or committed acts listed in Section 10.70.050(A)(2) to occur at a regulated business, irrespective of adjudication, conviction or acquittal, or
    - c. Allowed a regulated performer or technician with a contagious or communicable disease to perform services under the auspices of the permittee; or
  4. The applicant or permittee had knowingly made a false, misleading, or fraudulent material statement of fact in the permit application or any other document required in connection with the application.
- B. The chief of police or designee shall serve the permittee with a written order stating the reasons for the suspension or revocation. The order may be for a limited period, not to exceed ninety days, or for permanent revocation. The order shall advise the permittee of appeal rights under Section 10.70.070. The chief of police or designee may issue the order without regard to the status of prosecution or finality of a conviction affecting a permittee, so long as the chief of police or designee has determined that sufficient facts exist to justify the suspension. The order shall be effective immediately if personally served, or three calendar days after it has been deposited in the course of regular transmission in the United States Postal Service.
- C. Except as provided under Section 10.70.080(D), immediately upon the order becoming effective, the permittee shall cease all operations under the permit and shall surrender the permit to the chief of police or designee.
- D. In lieu of issuing an order of suspension or revocation, the chief of police or designee may impose conditions of probation for a specified duration not to exceed one year, during which period the permittee shall be subject to the order of suspension or revocation if the chief of police or designee determines those conditions have been violated. If the permittee accepts the order of probation, no appeal shall be allowed under Section 10.70.070. If, however, the permittee objects to the terms of probation, probation shall not be

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allowed, the order of suspension or revocation shall take effect, and appeal rights of the permittee under Section 10.70.070 shall then be applicable.

- E. Only when an appeal is taken to the city council shall the order of suspension or revocation be stayed pending determination by the city council in the manner set forth in Section 10.70.070 of this chapter. The determination of the city council will be final and conclusive and constitute the exhaustion of administrative remedies. A written notice of decision of city council shall be served on the permittee in accordance with Section 10.70.060, and service shall begin the period of limitation for judicial review under Code of Civil Procedure Sections 1094.6 or 1094.8, whichever is applicable.
- F. Police permits issued for an establishment to conduct business regulated under Chapters 10.71 through 10.79 are separate from and independent of any conditional use permit that is required or issued under the provisions of Title 18 of this code. Revocation or suspension of a police permit shall not operate to revoke or suspend a conditional use permit, notwithstanding that the same or similar terms and conditions may be applicable to both permits. Revocation or suspension of a police permit affects only the authority of the establishment to provide or allow a particular form of entertainment or activity at the premises for which the police permit is issued. The establishment may continue to conduct all other business for which it is licensed or allowed by law to conduct, unless separate action is taken to abate the establishment as a public nuisance or to revoke or suspend any other issued permit, including a conditional use permit.

(Ord. 2220 § 1 (part), 2003; Ord. 2204 § 5 (part), 2002)

(Ord. No. 2019-2454, § 6, 1-22-2019)

### **10.70.090 Posting or exhibiting.**

- A. Permits issued to an operator shall be posted in plain view at the main entrance to the premises where the business or activity for which the permit is issued is conducted, and shall remain posted while the permit is in force.
- B. The massage establishment shall comply with the requirements in California Civil Code Section 52.6 related to the posting of information for victims of human trafficking.
- B. ~~Permits-Certificates~~ issued to a regulated performer or technician shall be carried on their person, except that the permit of a regulated performer or technician may instead be posted on the regulated premises together with the permit issued for the regulated business or activity.
- C. It is unlawful and a misdemeanor for any person subject to this chapter or Chapters 10.71 through 10.79 to fail to post or carry an issued permit or certificate as required by this section, or to fail to exhibit an issued permit or certificate upon demand of the chief of police or designee.

(Ord. 2204 § 5 (part), 2002)

(Ord. No. 2019-2454, § 6, 1-22-2019)

### **10.70.100 Inspection of premises.**

- A. Issuance of a police permit is conditional upon the premises regulated under Chapters 10.71 through 10.79 being available for reasonable inspection by the police department, the fire department, the health officer, or city code compliance officials following approval of the application and during the operating hours of the regulated business or activity. Refusal to allow reasonable inspection during operating hours upon demand of an authorized official is grounds for the suspension or revocation of an issued permit, or the denial of an

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application for a permit. No application shall be granted if the premises do not meet applicable requirements of law or ordinance.

- B. If necessary or appropriate, the official may obtain an inspection warrant after inspection has been denied. Inspection pursuant to an issued inspection warrant does not mitigate or exonerate the suspension or revocation of the permit.
- C. The county health officer is authorized to charge inspection fees established within the applicable fee schedule of the county of San Diego or the National City fee schedule.

(Ord. 2204 § 5 (part), 2002)

(Ord. No. 2019-2454, § 6, 1-22-2019)

### **10.70.110 Duration.**

Unless provided otherwise in Chapters 10.71 through 10.79, permits issued pursuant to this chapter remain valid until revoked, surrendered, or abandoned.

(Ord. 2204 § 5 (part), 2002)

(Ord. No. 2019-2454, § 6, 1-22-2019)

### **10.70.120 Transfer of permit.**

It is unlawful to transfer a permit from one person to another. It is unlawful to use a permit at another location except with the written approval of the chief of police or designee. An application for transfer of permit to another location shall be in writing and accompanied by a processing fee established in the National City fee schedule. The application for transfer shall contain the same information required for an initial application for a permit. Any transfer of a permit in violation of this Section 10.70.120 is void and shall confer no rights upon the transferee nor create any obligation upon the city to honor the transfer or to afford notification or appeal rights under Sections 10.70.060 or 10.70.070 to either the transferor or the transferee.

(Ord. 2204 § 5 (part), 2002)

(Ord. No. 2019-2454, § 6, 1-22-2019)

### **10.70.130 Transition provisions.**

- A. A business lawfully conducting business in the city as of the effective date of this Chapter 10.70 that is to be regulated by Chapters 10.71 through 10.79 will be issued an appropriate police permit by the chief of police or designee without further payment of fees, provided the business or activity was otherwise in compliance with the regulatory and fiscal provisions of the municipal code in effect immediately prior to the enactment of this ordinance. Permits issued pursuant to this Section 10.70.130(A) shall thereafter be fully subject to the provisions of Chapter 10.70 and Chapters 10.71 through 10.79, as applicable, regarding administration, operation and licensing.
- B. An existing business that does not meet the compliance standards for permit issuance under Section 10.70.130(A), and all new businesses commencing operations shall comply with Chapter 10.70 and Chapters 10.71 through 10.79, as applicable.

(Ord. 2204 § 5 (part), 2002)

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(Ord. No. 2019-2454, § 6, 1-22-2019)

**10.70.140 Notice of changes.**

- A. Permittees of establishments governed by Chapter 10.79 shall only allow persons certified by the California Massage Therapy Council to provide massages at, or in association with the establishment, and shall immediately notify the chief of police or designee, in writing, of any change to the list provided pursuant to Section 10.70.030(B)(14).

(Ord. No. 2019-2454, § 6, 1-22-2019)

**10.70.150 Public nuisance.**

Each regulated business or any business that is required to be regulated that operates in violation of Chapter 10.70 through 10.79, as may be applicable, is a public nuisance and may be enjoined civilly or administratively. In addition, and to the extent not expressly provided elsewhere in this code, it is unlawful and a misdemeanor to maintain a public nuisance.

(Ord. 2204 § 5 (part), 2002)

(Ord. No. 2019-2454, § 6, 1-22-2019)

**10.70.160 Violations and regulatory enforcement.**

Violation of any of the mandatory requirements or prohibitions contained in Chapters 10.70 through 10.79 are misdemeanors and constitute grounds for suspension or revocation of an issued permit, except that any requirement or prohibition designated as "regulatory only" will be treated only as grounds for suspension or revocation of an issued permit, and criminal prosecution may not occur for that violation.

(Ord. 2204 § 5 (part), 2002)

(Ord. No. 2019-2454, § 6, 1-22-2019)

**10.70.170 Severability.**

The city council declares that the invalidity of any section or portion of Chapters 10.70 through 10.79 shall not affect the validity of any other remaining section or portion; that the council would have adopted each of those remaining portions, notwithstanding any later declared invalidity. Any provision determined invalid under the preceding sentence may either be severed or, if it can be judicially interpreted in a way that could harmonize it with the remaining provisions, then it may be so judicially interpreted and, as interpreted, be applied so as to give full purpose, meaning, and effect to the remaining provisions.

(Ord. 2204 § 5 (part), 2002)

(Ord. No. 2019-2454, § 6, 1-22-2019)

## Chapter 10.79 MASSAGE ESTABLISHMENTS<sup>1</sup>

### 10.79.010 Title and administration.

This chapter may be referred to as the National City massage establishment ordinance. Issuance and administration of permits is governed by Chapter 10.70.

(Ord. No. 2019-2454, § 8, 1-22-2019)

### 10.79.020 Purpose and intent.

It is the purpose and intent of this chapter to provide for the orderly regulation of a massage establishment business in the city in order to protect the public health, safety, and welfare by promulgating minimum standards for the establishment and operation of those businesses and to prevent the facilitation of prostitution.

(Ord. No. 2019-2454, § 8, 1-22-2019)

### 10.79.030 Definitions.

Whenever in this chapter the following words or phrases are used, they shall mean as follows:

- A. "California Massage Therapy Council (CAMTC)" means the state organized non-profit organization created to regulate the massage industry set forth in Chapter 10.5 of Division 2 of the California Business and Professions Code, commencing with section 4600.
- B. "CAMTC certificate" means a current and valid certificate issued by the California Massage Therapy Council to a massage technician.
- C. "Compensation" means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.
- D. "Employee" means any person hired by a massage establishment who renders any service for the business/owner in exchange for any form of compensation from the business, including independent contractors.
- ~~EE.~~ "Massage" means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the body with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances or with or without such supplementary aids as rubbing alcohol, liniments, antiseptic, oils, powder, creams, lotions, ointments, or other preparations commonly used in this practice.
- ~~EF.~~ "Massage establishment" means an establishment where massage is administered.
- ~~EG.~~ "Massage practitioner," "massage technician," or "technician" means any person, including a holistic health practitioner as defined in subsection OH, who gives or administers to another person of the same or opposite gender, for any form of consideration, a "massage" as defined in this chapter.

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<sup>1</sup>Editor's note(s)—Ord. No. 2019-2454, § 6, adopted Jan. 22, 2019, amended Ch. 10.79 in its entirety to read as herein set out. Former Ch. 10.79, §§ 10.79.010—10.79.110, pertained to similar subject matter, and derived from Ord. 2204 § 8 (part), 2002; Ord. 2220 § 4, 2003).

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- ~~FH.~~ "Massage establishment operator" or "operator" means any person, including a holistic health practitioner as defined in subsection ~~OH~~, who operates an establishment to give or administer to another person of the same or opposite gender, for any form of consideration, a "massage" as defined in this chapter. This includes any person who supervises, manages, directs, organizes, controls, or in any other way is responsible for or in charge of the daily operation, conduct, or activities of a massage establishment.
- ~~GI.~~ "Massage practitioner certification" means a certification issued by the California Massage Therapy Council pursuant to Chapter 10.5 of the California Business and Professions Code.
- ~~J.~~ "Patron" means any individual that provides financial support to the massage establishment and receives or waiting to receive massage therapy services.
- ~~HK.~~ "Permit" under this chapter means an annual permit to operate a massage establishment as required by this code.
- ~~L.~~ "Sexually suggestive advertising" means advertising matter that depicts any portion of the human body or includes language in the text of such advertising that would reasonably suggest to prospective clients that any services is available other than those services listed are as an available service as described in compliance with the provisions of this chapter.
- ~~M.~~ "Sole Proprietorship" means a massage establishment where the owner owns one hundred percent of the business and has one or no other employees or independent contractors.
- ~~N.~~ The term "specified anatomical areas" means any of the following areas of the human body: pubic region, human genitals, perineum, anal region, and the areas of the female breasts that include the areola and the nipple.
- ~~Q.~~ "Holistic health practitioner" means a non-medical or other health care therapist who uses acupuncture (excluding "acupuncture") or a massage specialty and therapeutic approach in caring for clients, and who is not licensed by the state of California.
- ~~P.~~ "Visitor" means any individual not retained or employed by the massage establishment and not receiving or waiting to receive massage therapy services, but excluding law enforcement personnel or government officials performing governmental business.
- ~~Q.~~ "Working directly under the supervision" means that the person is an employee of the licensed person, is working at the same location as the licensed person, has his or her work supervised by the licensed person, and that the licensed person is present when the employee is performing massage. This exemption shall not apply if the business performs massage on persons for whom the licensed person does not provide professional services.

(Ord. No. 2019-2454, § 8, 1-22-2019)

#### **10.79.040 Massage operator permit required.**

- A. It is unlawful for any person to operate a massage establishment in or upon any premises within the city without first obtaining the permit from the Department of Public Safety as required by this chapter and Chapter 10.70, except as exempted by Section 10.79.170.
- B. A massage establishment police regulated permit required by this chapter and Chapter 10.70 shall be valid for one year, coinciding with the city business license effective and expiration dates. Permit renewal shall be made by the applicant within thirty days prior to the expiration of the permit. If an application for renewal of a permit and all required information is not timely received and the permit expires, no right or privilege to continue the massage establishment governed by Chapter 10.79 shall exist.

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- C. It is unlawful for the operator, owner, or other responsible person, of a massage establishment to employ or otherwise allow a person to perform massage for compensation on the premises, unless that person has a valid massage practitioner certification issued by the California Massage Therapy Council pursuant to Chapter 10.5 of the California Business and Professions Code or CAMTC certificate and unless that person is identified as an authorized massage practitioner on the permit issued pursuant to this chapter.
- D. The owner or operator of a massage establishment shall submit a revised list with the information specified in Section 10.70.030.B.15 to the police department within five business days upon any change to the list.

(Ord. No. 2019-2454, § 8, 1-22-2019)

#### **10.79.050 Massage technician's certification required.**

- A. It is unlawful for any person to perform services as a massage technician without a valid massage practitioner certification issued by the California Massage Therapy Council pursuant to Chapter 10.5 of the California Business and Professions Code.
- B. A massage practitioner certification does not authorize the operation of a massage establishment. Any person or massage technician who desires to operate a massage establishment must apply separately to the city for a permit and a business license.

(Ord. No. 2019-2454, § 8, 1-22-2019)

#### **10.79.060 Minimum facilities required.**

No permit to conduct a massage establishment shall be granted unless an inspection by the chief of police or designee and the county health officer and the fire and building officials demonstrates that the proposed establishment does or will comply with each of the following minimum requirements:

- A. A recognizable and legible sign is posted at the main entrance identifying the premises as a massage establishment;
- B. Minimum lighting of at least forty watts is provided in accordance with the building code of the city;
- C. Minimum ventilation is provided in accordance with the building code of the city;
- D. Equipment approved by the health department for disinfecting and sterilizing instruments used in performing acts of massage is provided;
- E. Hot and cold running water is provided at all times;
- F. Closed cabinets are provided, which cabinets shall be utilized for the storage of clean linen;
- G. Adequate dressing, locker, and toilet facilities are provided for patrons. A minimum of one dressing room containing a separate locker for each person to be served, which locker shall be capable of being locked, and a minimum of one toilet and one wash basin shall be provided by every massage establishment;
- H. All walls, ceilings, floors, pools, showers, bathtubs, steam rooms, and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wooden surfaces must be painted with a washable, mold resistant paint. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments and toilet rooms must be thoroughly cleaned and disinfected each day the business is in operation with a disinfectant approved by the

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health department. Bathtubs must be thoroughly cleaned and disinfected after each use with a disinfectant approved by the health department; and

- I. A minimum of one separate wash basin is provided in each massage establishment for the use of employees of any such establishment, which basin shall provide soap or detergent and hot and cold running water at all times, and is located within or as close as practicable to the area devoted to the performing of massage services. In addition, there must be provided at each washbasin sanitary towels placed in permanently installed dispensers.

(Ord. No. 2019-2454, § 8, 1-22-2019)

### **10.79.070 Massage establishment operating requirements.**

No person, association, partnership, or corporation may engage in, conduct or carry on, or permit to be engaged in, conducted or carried on the operation of a massage establishment unless each and all of the following requirements are met:

- A. Massage operations may only be carried on, and the premises may only be open, between the hours of 10:00 a.m. and 10:00 p.m.
- B. A list of services available and the cost of such services shall be posted in an open and conspicuous public place on the premises. The service shall be described in readily understandable language in English and may also then be described in any other language. No owner, operator, responsible managing employee, manager, permittee, or licensee in charge of or in control of the massage establishment shall permit and no massage technician shall offer or perform, any service other than those posted.
- ~~C.~~ It is unlawful for a massage establishment to operate under any name or conduct business under any designation not specified in the massage establishment permit issued pursuant to this chapter.
- ~~D.~~ The massage establishment business tax license, massage establishment permit, and a copy of the ~~permit-CAMTC certification~~ of each and every massage technician employed by or working in the establishment must be displayed in an open and conspicuous public place on the premises.
- ~~E.~~ Hot and cold running water under pressure shall be provided to all washbasins, bathtubs, showers, and similar equipment. Each washbasin shall be provided with soap or detergent and sanitary towels placed in permanently installed dispensers. A trash receptacle shall be provided in each toilet room.
- ~~F.~~ Clean and sanitary towels, sheets and linens shall be provided for each patron receiving massage services. No common use of towels or linens shall be permitted, and reuse is prohibited unless they have been first laundered. Heavy white paper may be substituted for sheets, provided that such paper is used once for each person and then discarded into a sanitary receptacle.
- ~~G.~~ Disinfecting agents and sterilizing equipment shall be available for any instruments used in performing any massage. Instruments will be disinfected or sterilized after each use.
- ~~H.~~ Pads used on massage tables shall be covered in a workmanlike manner with durable, washable plastic or other waterproof material.
- ~~I.~~ Each establishment shall provide to all patrons clean, sanitary, and opaque coverings capable of covering the patron's specified anatomical areas. Such coverings shall be used for one customer only and shall not be reused without first being cleaned.
- ~~J.~~ No owner, operator, responsible managing employee, manager, or permittee in charge of or in control of a massage establishment shall permit a massage to be given unless the patron's specified anatomical areas are covered during the entire massage by the covering referred to in subsection (~~H.~~).

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- ~~JK.~~ With the exception of bathrooms or dressing rooms not open to public view, no person or persons shall be permitted in any area within the massage establishment which is used in common by the patrons or which can be viewed by patrons from such an area, unless the specified anatomical areas of all persons within that area are fully covered.
- ~~KL.~~ It is unlawful for an owner, operator, responsible managing employee, manager, permittee in charge of or in control of a massage establishment to permit any massage technician to perform any service or task while in the presence of a patron or to be on the premises of a massage establishment during its hours of operation unless the massage technician is dressed in a manner that does not violate paragraph (10) of subdivision (a) of Section 4609 of the California Business and Professions Code.
- ~~LM.~~ Any person performing services as a massage technician must wear a visible CAMTC identification card and have a copy of their driver's license or any other photo identification card issued by a state or federal agency readily available for inspection by city or county investigating officials.
- ~~MN.~~ An operator or owner must be on the business premises at all times during hours of operation of the business.
- ~~NO.~~ For each massage service provided, every massage establishment shall keep a complete and legible written record of the following information: the date and hour that service was provided; the service received; the name or initials of the employee entering the information; and the name of the massage practitioner administering the service. Such records shall be open to inspection and copying by the chief of police or designee, or may be used by any massage practitioner or operator as records of service provided, but may not be provided to other parties by the massage practitioner or operator unless otherwise required by law. Such records shall be retained on the premises of the massage establishment for a period of two years and be immediately available for inspection during business hours.
- ~~OP.~~ Persons of a massage establishment outside the waiting area shall be a patron, employee, or the massage establishment owner or operator.
- ~~Q.~~ Visitors shall only be permitted in the waiting area; however, the following exceptions may apply:
  - a. The parent or guardian of a patron who is a minor may be present in the massage therapy room with that minor;
  - b. The minor of a patron may be present in the massage therapy room with the patron when necessary for the supervision of the minor; or
  - c. The conservator, aid, or other caretaker of a patron who is elderly or disabled may be present in the massage therapy room with that elderly or disabled person.
- ~~R.~~ No massage establishment located in a building or structure with exterior windows fronting a public street, highway, walkway or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs, blurs, or unreasonably darkens the view into the premises.
- ~~PS.~~ All signs shall be in accordance with the current ordinances of the City of National City.

(Ord. No. 2019-2454, § 8, 1-22-2019)

### **10.79.080 Massage establishment—Prohibited conduct.**

In addition to the conduct/activities, items, and/or substances prohibited by federal and state laws, the following conduct is prohibited at massage establishments:

- ~~A.~~ A.—The sale, service, or consumption of alcohol or marijuana; and

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- B. Operate under any name or conduct business under any designation not specified in the massage establishment permit issued pursuant to this chapter; and
  - C. The employment of a person lacking state certification as a receptionist without prior notification and approval by the license authority; and
  - A-D. Continue to operate following the sale or transfer of any interest in the massage establishment to a person who was not identified as an owner in the massage establishment permit application; and
  - E. Audio and/or video recording of, or monitoring of, the patron, the massage therapist, or the massage therapy, without the prior written consent of the patron; and
  - F. Residing in or at the massage establishment by any person including but not limited to the operator, owner, responsible person, or employee of the massage establishment; and
  - G. Advertising or marketing illegal activity, advertising or marketing sexually suggestive -content related to massage therapy, ~~or advertising or marketing sexual content~~ in the promotion of the massage establishment; and
  - H. Use or possession of adult-oriented merchandise, including "sex toys" and/or condoms, in any part of a massage establishment; and
  - I. Any sexual activity at a massage establishment; and
  - J. No owner, operator, responsible managing employee, manager, permittee, or licensee in charge of or in control of a massage establishment shall permit any person to massage or intentionally touch the specified anatomical areas of another person while performing the services of a massage technician.

(Ord. No. 2019-2454, § 8, 1-22-2019)

#### **10.79.090 Off-premises massage—Prohibited.**

It is unlawful for any person to engage in, conduct, carry on, or permit to be engaged in, conducted or carried on, massage, for any form of consideration, in any hotel room, motel room, guesthouse or other place of public accommodation. This section shall not be construed to prohibit:

- A. Maintaining a licensed massage establishment upon the premises of a place of public accommodation; or
- B. The holder of a massage practitioner certification issued by the California Massage Therapy Council pursuant to Chapter 10.5 of the California Business and Professions Code from giving or administering massages within hospitals, convalescent centers, rest homes, offices, or the private home of a patron. For the purposes of this section, offices and private homes shall not include hotel rooms, motel rooms, or guest houses.

(Ord. No. 2019-2454, § 8, 1-22-2019)

#### **10.79.100 Existing businesses—Regulated.**

The provisions of this chapter shall be applicable to all persons and businesses described in this chapter whether the described activities in the chapter were established before or after the effective date of this chapter. Any existing massage technician who performs massage and any massage establishment that employs or utilizes persons to perform massage within the jurisdiction of the city, that operates with a valid and current business license issued by the city and all other necessary approvals issued prior to the effective date of any amended regulations in this chapter or Chapter 10.70, and that operates in compliance with all local, state and federal laws,

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ordinances, rules and regulations, must be in full compliance with Chapters 10.70 and 10.79 no later than sixty days following the effective date of any new regulations.

(Ord. No. 2019-2454, § 8, 1-22-2019)

### 10.79.110 Exemptions.

This chapter shall not apply to:

- A. Physicians, surgeons, chiropractors, osteopaths, nurses, psychiatrists, psychologists, acupuncturists, physical therapists, family counselors or other health care professionals who are duly licensed to practice their respective professions by the state of California or who are permitted to practice temporarily under the auspices of an associate or establishment duly licensed by the state of California, pursuant to the Business and Professions Code and persons working directly under the supervision of such licensed persons;
- ~~B. — Nurses and other health care professionals who are registered or licensed under the laws of this state and administer a massage in the normal course of professional health care duties;~~
- ~~BC.~~ A trainer of any duly constituted amateur, semi-professional, or professional athlete or athletic team athletic team or athlete who administers massage in the normal course of training duties to the team or athlete and trainers in conjunction with a specific athletic event such as an outdoor road or bike race;
- D. Barbers, beauticians, cosmetologists, ~~and~~ estheticians, and other persons duly licensed to practice any healing art duly licensed under the laws of the state who administer a massage incidental to a barber or beauty service provided in the normal performance of their profession, and who perform massages only on the neck, face, and/or scalp of the customers. This exemption shall apply only if massage is provided from a fixed and permanent location of business;
- E. Therapeutic massage administered in or under the auspices of any health facility, hospital, nursing homes, sanitariums, or other establishment duly-licensed under California statutes in which the above-described persons practice their respective professions, provided the massages are given only by exempt individuals or persons acting under their supervision;
- F. Any bona fide personal fitness training centers, gymnasiums, athletic facilities or health clubs which offers tennis, racquetball, swimming or other sport activities and possesses a sauna or steam room. Massage shall only be administered to members of the athletic club by persons who are exempt under this section.

(Ord. No. 2019-2454, § 8, 1-22-2019)

### 10.79.120 Inspection by officials.

The city, county, or any investigating official shall have the right to enter the premises of the massage establishment from time to time during regular business hours to conduct reasonable inspections to enforce compliance with this chapter, Chapter 10.70, and with building, fire, electrical, plumbing, and/or state and local health and safety regulations.

No person shall refuse to permit or interfere with a lawful inspection of the massage establishment by city or county investigating officials.

(Ord. No. 2019-2454, § 8, 1-22-2019)

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**10.79.130 Unlawful massage establishment or operation.**

Any massage establishment operated, conducted or maintained contrary to the provisions of this chapter, Chapter 10.70 and/or state and federal laws shall be and the same is hereby declared to be unlawful and a public nuisance. The city attorney may, in addition to, or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for the abatement, removal, or enjoinder thereof, in any manner provided by law, including as provided in Chapter 10.70.

(Ord. No. 2019-2454, § 8, 1-22-2019)

**ORDINANCE NO. 2023-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY,  
CALIFORNIA, AMENDING CHAPTER 10.70 POLICE REGULATED BUSINESS  
REGULATIONS OF THE NATIONAL CITY MUNICIPAL CODE**

**WHEREAS**, the City of National City (the “City”), pursuant to police powers delegated to it by the California Constitution, has the authority to enact or amend laws that promote the public health, safety, and general welfare of its residence; and

**WHEREAS**, pursuant to the terms and provisions of the Government Code of the State of California, proceedings were duly initiated for the amendment of the National City Municipal Code; and

**WHEREAS**, the National City Police Department has requested that the National City Municipal Code (NCMC) Section 10.70 Police Regulated Business Regulations be reviewed and updated; and

**WHEREAS**, the National City Police Department submitted Section 10.70 of the NCMC to the California Massage Therapy Council (CAMTC) for review to which they have provided several recommended corrections, additions and modifications to aid the City of National City Police Department, Code Enforcement, and the City Attorney’s Office with enforcement, regulation, and removal of illicit massage parlors in the City of National City; and

**WHEREAS**, pursuant to a published 10-day notice of the adoption of said Ordinance, a public hearing was held by the City Council on November 7, 2023, and at said public hearing, all persons interested were given the opportunity to appear and be heard before the City Council.

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

**Section 1.** All protests, if any, against said amendment to the Municipal Code and each of them be and hereby are denied and overruled.

**Section 2.** Section 10.70 Police Regulated Business Regulations is hereby amended to read as follows in Attachment A attached to this Ordinance.

**Section 3.** This Ordinance shall take effect and be in force thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days after its passage, it or a summary of it, shall be published once, with the names of the members of the City Council voting for and against the same in the Star News, a newspaper of general circulation published in the County of San Diego, California.

**Section 5.** The City Clerk shall certify to the adoption of this Ordinance and shall publish in accordance with the law.

**INTRODUCED** at Regular Meeting of the City Council of the City of National City, held on this November 7, 2023

**PASSED and ADOPTED** this     day of     , 2023.

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Ron Morrison,  
Mayor

ATTEST:

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Shelley Chapel, MMC  
City Clerk

APPROVED AS TO FORM:

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Barry J. Schultz,  
City Attorney

## **Chapter 10.70 POLICE REGULATED BUSINESS REGULATIONS**

### **10.70.010 Purpose and intent—Permit required.**

- A. It is the purpose and intent of the city council to establish procedures for permit issuance and regulation of certain businesses and activities as police regulated for the protection of the public health, safety, and welfare. Businesses identified in this Division X (Chapters 10.70 through 10.79) have a higher degree of potential for one or more types of illicit activity - prostitution, disorderly conduct, gambling, fraudulent practices, or the concealment or facilitation of transfers of stolen property. Therefore, regulation of the operations of these establishments is appropriate to protect legitimate business practice and the public health, safety and welfare.
- B. A business, activity or a performer or technician which is identified in Chapters 10.71 through 10.79 is designated a "regulated business," "regulated activity," "regulated performer" or "regulated technician," as the case may be, and the specific regulations applicable to their conduct are set out in Chapters 10.71 through 10.79. The procedures set out in this Chapter 10.70 shall uniformly govern the administration and appeals process regarding the issuance, denial, suspension, or revocation of any permit required to operate as a regulated business or activity or as a regulated performer or technician pursuant to Chapters 10.71 through 10.79.
- C. The issuance of a permit pursuant to this chapter does not excuse a regulated business, activity, performer, or technician from complying with any other revenue or regulatory requirement of this code or state law. A separate permit shall be required for each type of activity regulated by Chapters 10.71 through 10.79, unless otherwise provided. The issuance of a certificate or permit under other provisions of this code does not excuse compliance with or create a defense to any violation of the requirements of this chapter or Chapters 10.71 through 10.79, as applicable, or any other provisions of law or ordinance, including conditional use permits required under Title 18.
- D. It is unlawful for any person to operate a business or activity or perform or practice as a performer or technician regulated by this chapter and Chapters 10.71 through 10.79, as applicable, without a valid permit issued by the chief of police or designee, or to operate, perform or practice while the permit is suspended or revoked. Each day a violation of this section exists constitutes a separate misdemeanor.

(Ord. 2220 § 1(part), 2003; Ord. 2204 § 5 (part), 2002) (Ord. No. 2019-2454, § 6, 1-22-2019)

### **10.70.020 Definitions.**

For purposes of Chapters 10.70 through 10.79, the following definitions shall apply:

- A. "Person" means and includes a natural person, a partnership, joint venture or a corporation.
- B. "Operator" means any person who supervises, manages, directs, organizes, controls, or in any other way is responsible for or in charge of the daily operation, conduct or activities of the regulated business or activity.
- C. "Owner" means any person or entity having an ownership interest in the establishment.
- D. "Responsible person" means any person who is an owner, operator, or manager, and includes any employee or agent in apparent charge of the premises for which the application is made or required or a permit is issued.

- E. "Permit" means a permit issued by or under the authority of the chief of police or designee that authorizes activity regulated under Chapters 10.71 through 10.79.
- F. "Permittee" means an owner to whom a permit issued by or under the authority of the chief of police or designee that authorizes activity regulated under Chapters 10.71 and 10.79.
- G. "Applicant" means the natural person(s) who complete and sign an application pursuant to this chapter.

(Ord. 2220 § 1 (part), 2003: Ord. 2204 § 5 (part), 2002) (Ord. No. 2019-2454, § 6, 1-22-2019)

### **10.70.030 Applications.**

- A. Any person required to obtain a permit pursuant to Chapters 10.71 through 10.79 shall file a written application with the chief of police or designee on a city-approved form, and pay the non-refundable fee set forth in the National City fee schedule, to recoup all investigative costs. The applicant shall provide proof of payment of any regulatory fees imposed by the state of California or county of San Diego contemporaneously with the filing. Written application forms prepared by the chief of police or designee may require the applicant to be photographed, finger printed and to provide, in addition to the information listed below, such other information as is reasonably necessary to carry out the purposes of this chapter. The application form shall be approved as to form by the city attorney. For massage establishments, the application shall be completed and signed by the owner of the proposed massage establishment, if a sole proprietorship; one general partner, if the owner is a partnership; or two officers, if the owner is a corporation.
- B. An applicant for a permit shall submit the following information:
  1. The full name of the business, including the name under which the business will be conducted;
  2. The address where the business is to be conducted;
  3. The applicant's full, true name, and any other names used;
  4. The applicant's date of birth;
  5. The applicant's present residential address and telephone number;
  6. The previous addresses of the applicant for the three years immediately prior to the date of the application and the dates of residence at each;
  7. Applicant's height, weight, color of eyes and hair;
  8. Three recent portrait photographs at least two inches by two inches taken within the preceding six months, which accurately depict the current appearance of the applicant;
  9. The applicant's driver's license and/or identification card issued by a state or federal governmental agency, or other photographic identification bearing a bona-fide seal of a foreign government;
  10. If the owner is a corporation, domestic stock, domestic non-profit, qualified foreign corporation, limited liability company, general partnership, or limited partnership, the application shall include the following:
    - a. A business entity status report issued by the California Secretary of State;
    - b. Organizational documents for the business entity including but not limited to a copy of the fictitious name statement and/or articles of incorporation;

- c. Full name, date of birth, residential address, and business address for each officer and director;
  - d. The name, date of birth, and residence addresses of the responsible employee(s) to be principally in charge of the day-to-day operations of the establishment.
  - e. The full name of the owner, including any DBAs.
11. The tax identification number for the business;
  12. The name, address, email address, and telephone number of the real property owner where the business will be operated, and a copy of the lease or rental agreement, if applicable;
  13. The business license and permit history of the applicant, including whether the applicant when previously operating in this or another city or state under a certificate, license or permit, has had that certificate, license or permit suspended or revoked, the reason therefore, and the business activity or occupation subsequent to the suspension or revocation;
  14. For massage establishment businesses regulated under Chapter 10.79, a copy of the massage practitioner certificate issued by the California Massage Therapy Council pursuant to Chapter 10.5 of the California Business and Professions Code for each owner who has been issued a certificate, or a statement that such a certificate has not been issued or has been previously denied or revoked by the California Massage Therapy Council with information regarding the reason therefore;
  15. For massage establishment businesses regulated under Chapter 10.79, a list of all persons who will administer massage, including but not limited to employees and independent contractors. Such list shall include the full true name and any other names used, date of birth, residence address and copy of their driver's license or any other photo identification card issued by a state or federal agency, and a copy of the valid massage practitioner certificate issued by the California Massage Therapy Council pursuant to Chapter 10.5 of the California Business and Professions Code;
  16. For massage establishment businesses regulated under Chapter 10.79, all services must be described on the application for the permit;
  17. Business, occupation, or employment history of the applicant for the three years immediately preceding the date of the application;
  18. A list, broken down for each applicant, each responsible employee(s) to be principally in charge of the day-to-day operations of the establishment, and all partners if a partnership, or all officers and directors if a corporation, of all criminal convictions, including pleas of nolo contendere, within the preceding five years, including those dismissed or expunged pursuant to Penal Code section 1203.4, but excluding minor traffic violations, and the date and place of each such conviction, as well as a full explanation of the circumstances;
  19. A complete set of fingerprints taken for each owner if a sole proprietorship, or each natural person, including the owner and operator or person to be principally in charge of the day-to-day operations of the establishment; unless in the case of massage establishment businesses, they hold a valid massage practitioner certificate issued by the California Massage Therapy Council pursuant to Chapter 10.5 of the California Business and Professions Code;

20. A signed statement authorizing the city, through its officers, agents, and employees, to conduct a background check of the applicant, owners(s), and natural persons to be principally in charge of the day-to-day operations to seek information and conduct an investigation into the truthfulness of the statements set forth in the application and to ensure continual compliance with all applicable provisions of the law;
21. A signed acknowledgment that the owner(s) shall be responsible for the conduct of all employees or independent contractors working on the premises of the business and acknowledging that failure to comply with the provisions of this chapter or any local, state or federal law and, for massage establishment businesses regulated under Chapter 10.79, failure to comply with California Business and Professions Code section 4600 et seq., may result in the suspension, revocation, or denial of the permit;
22. An acknowledgement that the applicant consents to periodic inspection of the regulated premises or activity, and that revocation of the permit may occur for any unjustified refusal to allow the same;
23. An acknowledgement that the applicant has received a copy of Chapter 10.70 and any applicable chapter from Chapters 10.71 through 10.79 which regulate the business or activity of the applicant; and
24. A signed statement by the applicant certifying under penalty of perjury that all information in the application is true and correct, and acknowledging that failure to be truthful may result in denial of the application.

(Ord. 2204 § 5 (part), 2002) (Ord. No. 2019-2454, § 6, 1-22-2019)

#### **10.70.040 Investigation.**

The chief of police or designee, upon receipt of a written application for a permit and payment of the necessary fees shall promptly conduct an appropriate investigation to determine whether a permit should be issued in accordance with the provisions of this chapter. The chief of police or designee shall consider any relevant factual material relating to such application.

(Ord. 2204 § 5 (part), 2002) (Ord. No. 2019-2454, § 6, 1-22-2019)

#### **10.70.050 Permit issuance or denial.**

- A. Issuance. The chief of police or designee may deny a permit application, based upon investigation and substantial evidence, if he or she finds one or more of any of the following:
  1. That the operation or the premises of the activity, as proposed by the applicant, would violate any applicable laws, including but not limited to the city's fire, building, zoning and health regulations; or
  2. That the applicant, any other person who will be directly engaged in the management and operation of the regulated business or activity, or an applicant who is to participate or perform services as a regulated technician or performer:
    - a. Has been convicted in any court of competent jurisdiction by a final judgment of any misdemeanor or felony, within the five years preceding the date of application, which rationally and reasonably relates to the conduct of the regulated activity; or
    - b. Has allowed acts to occur in any business operations for the preceding five years which would violate those sections of the Penal Code listed in Section

- 10.70.050A.2.d, or any provision of this chapter or Chapter 10.79, irrespective of a conviction or acquittal; or
- c. Has had a permit to operate a business that is or would be regulated pursuant to Chapters 10.70 through 10.79 suspended or revoked in any jurisdiction, within the preceding five years; or
  - d. Within the five years immediately preceding the date of the filing of the application, has been convicted in a court of competent jurisdiction of any of the following offenses:
    - (1) An offense that requires registration under California Penal Code Section 290; or
    - (2) An offense which is a violation of Sections 311 through 311.7, 313.1, 314, 315, 316, 318 or 647(a), 647(b), 647(d), 647(h), 653.23 or 290 of the California Penal Code; or
    - (3) An offense that is a reduction from any offense listed in Section 10.70.050A.2.d. (1) or (2) to some other offense under the Penal Code which would not require registration, pursuant to a plea of guilty negotiated prior to trial; or
    - (4) Any misdemeanor or felony involving theft of property; or
  3. That the applicant has made any false, misleading or fraudulent material statement of fact in the permit application, or any other related document required by the city in connection with the application; or
  4. The applicant has not complied with the provisions of this chapter and Chapter 10.79; or
  5. The applicant has had a massage establishment permit or other similar license or permit denied, suspended or revoked for cause by any governmental agency; or the applicant has any massage practitioner certification denied, suspended or revoked by the California Massage Therapy Council.
  5. For establishments regulated by Chapter 10.79, the applicant proposes to locate the massage establishment in the same building as a massage establishment that has surrendered its permit or had its permit revoked within five years of the application date because a person engaged in any criminal conduct and/or violation of this chapter or Chapter 10.79 while on the premises of the former massage establishment; or
  6. That the application is incomplete and the required information or documents were not submitted within twenty days of a request for the information or documents.
- B. **Timeliness and Conditional Issuance of Permit.** Upon receipt of a properly completed application, the chief of police or designee shall either approve or deny the application within thirty days. Failure to take action on a permit application within thirty days shall not result in an automatic approval. If the chief of police or designee is awaiting investigation results from another governmental agency within those thirty days, the chief of police or designee shall issue a revocable conditional permit on the thirtieth day if a local records check fails to disclose any disqualifying information and the operation would otherwise be in compliance with all other applicable laws and regulations; except that a revocable conditional permit shall not be issued to an escort or massage technician or operator until it affirmatively appears that there is no disqualifying information, in order to avoid the potential for physical harm to

a potential patron pending final action. Any revocable conditional permit shall be revoked if further investigation discloses the existence of a disqualifying factor under this Section 10.70.050.

- C. An applicant whose application is denied based on subsection (A)(1) through (A)(5) of this section is not eligible to reapply for five years after notice of denial. An applicant whose application is denied for failure to comply with subsection (A)(6) is not eligible to reapply for one hundred eighty days after notice of denial.
- D. Permits must be exercised within one year of issuance or shall be deemed abandoned.
- E. A permit is deemed abandoned if the establishment which has exercised its permit ceases operations covered by the permit for one hundred eighty days.
- F. A permit issued pursuant to this chapter shall not be operative until and unless all other required local, state, or federal licenses and permits have been obtained.

(Ord. 2204 § 5 (part), 2002) (Ord. No. 2019-2454, § 6, 1-22-2019)

#### **10.70.060 Notice of decision.**

Upon taking final action to issue or deny a permit application, or to suspend or revoke a permit under Section 10.70.080, the chief of police or designee shall give written notice of decision and the reasons to the applicant or permittee and to any other person requesting such notice. The notice of decision shall inform the applicant or permittee of the right to appeal under Section 10.70.070 and the time limits prescribed for such review. The chief of police or designee shall file a proof of service with the city clerk establishing the method and date of service. The issuance of the notice of decision shall begin the running of any period of limitation for judicial review under Section 10.70.070 as follows:

- A. Three calendar days after mailing a notice of decision to the address shown on the application by both first class mail, postage prepaid with return address clearly marked, and by certified mail, return receipt requested. Receipt of either by the addressee shall constitute service of notice. Actual receipt, however, shall not be a pre-requisite to the running of any period of limitation.
- B. Immediately upon personal service or personal delivery of the notice of decision to the applicant or permittee.

(Ord. 2204 § 5 (part), 2002) (Ord. No. 2019-2454, § 6, 1-22-2019)

#### **10.70.070 Appeal.**

- A. Any applicant or permittee aggrieved by the decision of the chief of police or designee regarding the issuance, conditional issuance, suspension, revocation or denial of a permit, shall have a right to request a hearing to appeal or contest the decision pursuant to Section 1.42.020.

(Ord. 2204 § 5 (part), 2002) (Ord. No. 2019-2454, § 6, 1-22-2019)

#### **10.70.080 Suspension and revocation.**

- A. The chief of police or designee may suspend or revoke any permit issued under the provisions of this chapter if he or she finds that:

1. The operation conducted by the permittee violates or has violated any applicable laws, including but not limited to the city's building, zoning and health regulations and Chapters 10.70 through 10.79, as applicable;
  2. The applicant has failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state, and local wage and hour laws, including, but no limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local minimum wage ordinance or prevailing wage requirements. For the purposes of this subsection, a final court order or administrative action is one as to which there is no pending appeal and the time for filing an appeal has passed.
  3. The permittee, including a regulated performer or technician, or any other person who is directly engaged in the management and operation of the regulated business has, while the permit is in effect:
    - a. Allowed, committed or been convicted of an act that constitutes a violation of law which rationally and reasonably relates to the conduct of the regulated activity,
    - b. Allowed or committed acts listed in Section 10.70.050(A)(2) to occur at a regulated business, irrespective of adjudication, conviction or acquittal, or
    - c. Allowed a regulated performer or technician with a contagious or communicable disease to perform services under the auspices of the permittee; or
  4. The applicant or permittee had knowingly made a false, misleading, or fraudulent material statement of fact in the permit application or any other document required in connection with the application.
- B. The chief of police or designee shall serve the permittee with a written order stating the reasons for the suspension or revocation. The order may be for a limited period, not to exceed ninety days, or for permanent revocation. The order shall advise the permittee of appeal rights under Section 10.70.070. The chief of police or designee may issue the order without regard to the status of prosecution or finality of a conviction affecting a permittee, so long as the chief of police or designee has determined that sufficient facts exist to justify the suspension. The order shall be effective immediately if personally served, or three calendar days after it has been deposited in the course of regular transmission in the United States Postal Service.
- C. Except as provided under Section 10.70.080(D), immediately upon the order becoming effective, the permittee shall cease all operations under the permit and shall surrender the permit to the chief of police or designee.
- D. In lieu of issuing an order of suspension or revocation, the chief of police or designee may impose conditions of probation for a specified duration not to exceed one year, during which period the permittee shall be subject to the order of suspension or revocation if the chief of police or designee determines those conditions have been violated. If the permittee accepts the order of probation, no appeal shall be allowed under Section 10.70.070. If, however, the permittee objects to the terms of probation, probation shall not be allowed, the order of suspension or revocation shall take effect, and appeal rights of the permittee under Section 10.70.070 shall then be applicable.
- E. Only when an appeal is taken to the city council shall the order of suspension or revocation be stayed pending determination by the city council in the manner set forth in Section 10.70.070 of this chapter. The determination of the city council will be final and conclusive and constitute the exhaustion of administrative remedies. A written notice of decision of city

council shall be served on the permittee in accordance with Section 10.70.060, and service shall begin the period of limitation for judicial review under Code of Civil Procedure Sections 1094.6 or 1094.8, whichever is applicable.

- F. Police permits issued for an establishment to conduct business regulated under Chapters 10.71 through 10.79 are separate from and independent of any conditional use permit that is required or issued under the provisions of Title 18 of this code. Revocation or suspension of a police permit shall not operate to revoke or suspend a conditional use permit, notwithstanding that the same or similar terms and conditions may be applicable to both permits. Revocation or suspension of a police permit affects only the authority of the establishment to provide or allow a particular form of entertainment or activity at the premises for which the police permit is issued. The establishment may continue to conduct all other business for which it is licensed or allowed by law to conduct, unless separate action is taken to abate the establishment as a public nuisance or to revoke or suspend any other issued permit, including a conditional use permit.

(Ord. 2220 § 1 (part), 2003: Ord. 2204 § 5 (part), 2002) (Ord. No. 2019-2454, § 6, 1-22-2019)

#### **10.70.090 Posting or exhibiting.**

- A. Permits issued to an operator shall be posted in plain view at the main entrance to the premises where the business or activity for which the permit is issued is conducted, and shall remain posted while the permit is in force.
- B. The massage establishment shall comply with the requirements in California Civil Code Section 52.6 related to the posting of information for victims of human trafficking.
- B. Certificates issued to a regulated performer or technician shall be carried on their person, except that the permit of a regulated performer or technician may instead be posted on the regulated premises together with the permit issued for the regulated business or activity.
- C. It is unlawful and a misdemeanor for any person subject to this chapter or Chapters 10.71 through 10.79 to fail to post or carry an issued permit or certificate as required by this section, or to fail to exhibit an issued permit or certificate upon demand of the chief of police or designee.

(Ord. 2204 § 5 (part), 2002) (Ord. No. 2019-2454, § 6, 1-22-2019)

#### **10.70.100 Inspection of premises.**

- A. Issuance of a police permit is conditional upon the premises regulated under Chapters 10.71 through 10.79 being available for reasonable inspection by the police department, the fire department, the health officer, or city code compliance officials following approval of the application and during the operating hours of the regulated business or activity. Refusal to allow reasonable inspection during operating hours upon demand of an authorized official is grounds for the suspension or revocation of an issued permit, or the denial of an application for a permit. No application shall be granted if the premises do not meet applicable requirements of law or ordinance.
- B. If necessary or appropriate, the official may obtain an inspection warrant after inspection has been denied. Inspection pursuant to an issued inspection warrant does not mitigate or exonerate the suspension or revocation of the permit.

C. The county health officer is authorized to charge inspection fees established within the applicable fee schedule of the county of San Diego or the National City fee schedule.

(Ord. 2204 § 5 (part), 2002) (Ord. No. 2019-2454, § 6, 1-22-2019)

#### **10.70.110 Duration.**

Unless provided otherwise in Chapters 10.71 through 10.79, permits issued pursuant to this chapter remain valid until revoked, surrendered, or abandoned.

(Ord. 2204 § 5 (part), 2002) (Ord. No. 2019-2454, § 6, 1-22-2019)

#### **10.70.120 Transfer of permit.**

It is unlawful to transfer a permit from one person to another. It is unlawful to use a permit at another location except with the written approval of the chief of police or designee. An application for transfer of permit to another location shall be in writing and accompanied by a processing fee established in the National City fee schedule. The application for transfer shall contain the same information required for an initial application for a permit. Any transfer of a permit in violation of this Section 10.70.120 is void and shall confer no rights upon the transferee nor create any obligation upon the city to honor the transfer or to afford notification or appeal rights under Sections 10.70.060 or 10.70.070 to either the transferor or the transferee.

(Ord. 2204 § 5 (part), 2002) (Ord. No. 2019-2454, § 6, 1-22-2019)

#### **10.70.130 Transition provisions.**

A. A business lawfully conducting business in the city as of the effective date of this Chapter 10.70 that is to be regulated by Chapters 10.71 through 10.79 will be issued an appropriate police permit by the chief of police or designee without further payment of fees, provided the business or activity was otherwise in compliance with the regulatory and fiscal provisions of the municipal code in effect immediately prior to the enactment of this ordinance. Permits issued pursuant to this Section 10.70.130(A) shall thereafter be fully subject to the provisions of Chapter 10.70 and Chapters 10.71 through 10.79, as applicable, regarding administration, operation and licensing.

B. An existing business that does not meet the compliance standards for permit issuance under Section 10.70.130(A), and all new businesses commencing operations shall comply with Chapter 10.70 and Chapters 10.71 through 10.79, as applicable.

(Ord. 2204 § 5 (part), 2002) (Ord. No. 2019-2454, § 6, 1-22-2019)

**10.70.140 Notice of changes.**

- A. Permittees of establishments governed by Chapter 10.79 shall only allow persons certified by the California Massage Therapy Council to provide massages at, or in association with the establishment, and shall immediately notify the chief of police or designee, in writing, of any change to the list provided pursuant to Section 10.70.030(B)(14).

(Ord. No. 2019-2454, § 6, 1-22-2019)

**10.70.150 Public nuisance.**

Each regulated business or any business that is required to be regulated that operates in violation of Chapter 10.70 through 10.79, as may be applicable, is a public nuisance and may be enjoined civilly or administratively. In addition, and to the extent not expressly provided elsewhere in this code, it is unlawful and a misdemeanor to maintain a public nuisance.

(Ord. 2204 § 5 (part), 2002) (Ord. No. 2019-2454, § 6, 1-22-2019)10.70.160 Violations and regulatory enforcement.

Violation of any of the mandatory requirements or prohibitions contained in Chapters 10.70 through 10.79 are misdemeanors and constitute grounds for suspension or revocation of an issued permit, except that any requirement or prohibition designated as "regulatory only" will be treated only as grounds for suspension or revocation of an issued permit, and criminal prosecution may not occur for that violation.

(Ord. 2204 § 5 (part), 2002) (Ord. No. 2019-2454, § 6, 1-22-2019)10.70.170 Severability.

The City Council declares that the invalidity of any section or portion of Chapters 10.70 through 10.79 shall not affect the validity of any other remaining section or portion; that the council would have adopted each of those remaining portions, notwithstanding any later declared invalidity. Any provision determined invalid under the preceding sentence may either be severed or, if it can be judicially interpreted in a way that could harmonize it with the remaining provisions, then it may be so judicially interpreted and, as interpreted, be applied so as to give full purpose, meaning, and effect to the remaining provisions.

(Ord. 2204 § 5 (part), 2002)(Ord. No. 2019-2454, § 6, 1-22-2019)

**ORDINANCE NO. 2023-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY,  
CALIFORNIA, AMENDING CHAPTER 10.79 MASSAGE ESTABLISHMENTS  
REGULATIONS OF THE NATIONAL CITY MUNICIPAL CODE**

**WHEREAS**, the City of National City (the “City”), pursuant to police powers delegated to it by the California Constitution, has the authority to enact or amend laws that promote the public health, safety, and general welfare of its residence; and

**WHEREAS**, pursuant to the terms and provisions of the Government Code of the State of California, proceedings were duly initiated for the amendment of the National City Municipal Code (NCMC); and

**WHEREAS**, the National City Police Department submitted Section 10.79 Massage Establishments of the NCMC to the California Massage Therapy Council (CAMTC) for review to which they have provided several recommended corrections, additions and modifications to aid the City of National City Police Department, Code Enforcement, and the City Attorney’s Office with enforcement, regulation, and removal of illicit massage parlors in the City of National City; and

**WHEREAS**, pursuant to a published 10-day notice of the adoption of said Ordinance, a public hearing was held by the City Council on November 7, 2023, and at said public hearing, all persons interested were given the opportunity to appear and be heard before the City Council.

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

**Section 1.** All protests, if any, against said amendment to the Municipal Code and each of them be and hereby are denied and overruled.

**Section 2.** Section 10.79 Massage Establishments is hereby amended to read as follows in Attachment A attached to this Ordinance.

**Section 3.** This Ordinance shall take effect and be in force thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days after its passage, it or a summary of it, shall be published once, with the names of the members of the City Council voting for and against the same in the Star News, a newspaper of general circulation published in the County of San Diego, California.

**Section 4.** The City Clerk shall certify to the adoption of this Ordinance and shall publish in accordance with the law.

**INTRODUCED** at Regular Meeting of the City Council of the City of National City,  
held on this November 7, 2023

**PASSED and ADOPTED** this    day of    , 2023.

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Ron Morrison,  
Mayor

ATTEST:

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Shelley Chapel, MMC  
City Clerk

APPROVED AS TO FORM:

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Barry J. Schultz,  
City Attorney

## ***Chapter 10.79 MASSAGE ESTABLISHMENTS<sup>1</sup>***

### **10.79.010 Title and administration.**

This chapter may be referred to as the National City massage establishment ordinance. Issuance and administration of permits is governed by Chapter 10.70.

(Ord. No. 2019-2454, § 8, 1-22-2019)

### **10.79.020 Purpose and intent.**

It is the purpose and intent of this chapter to provide for the orderly regulation of a massage establishment business in the city in order to protect the public health, safety, and welfare by promulgating minimum standards for the establishment and operation of those businesses and to prevent the facilitation of prostitution.

(Ord. No. 2019-2454, § 8, 1-22-2019)

### **10.79.030 Definitions.**

Whenever in this chapter the following words or phrases are used, they shall mean as follows:

- A. "California Massage Therapy Council (CAMTC)" means the state organized non-profit organization created to regulate the massage industry set forth in Chapter 10.5 of Division 2 of the California Business and Professions Code, commencing with section 4600.
- B. "CAMTC certificate" means a current and valid certificate issued by the California Massage Therapy Council to a massage technician.
- C. "Compensation" means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.
- D. "Employee" means any person hired by a massage establishment who renders any service for the business/owner in exchange for any form of compensation from the business, including independent contractors.
- E. "Massage" means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the body with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances or with or without such supplementary aids as rubbing alcohol, liniments, antiseptic, oils, powder, creams, lotions, ointments, or other preparations commonly used in this practice.
- F. "Massage establishment" means an establishment where massage is administered.
- G. "Massage practitioner," "massage technician," or "technician" means any person, including a holistic health practitioner as defined in subsection O, who gives or

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<sup>1</sup>Editor's note(s)—Ord. No. 2019-2454, § 6, adopted Jan. 22, 2019, amended Ch. 10.79 in its entirety to read as herein set out. Former Ch. 10.79, §§ 10.79.010—10.79.110, pertained to similar subject matter, and derived from Ord. 2204 § 8 (part), 2002; Ord. 2220 § 4, 2003).

administers to another person of the same or opposite gender, for any form of consideration, a "massage" as defined in this chapter.

- H. "Massage establishment operator" or "operator" means any person, including a holistic health practitioner as defined in subsection O, who operates an establishment to give or administer to another person of the same or opposite gender, for any form of consideration, a "massage" as defined in this chapter. This includes any person who supervises, manages, directs, organizes, controls, or in any other way is responsible for or in charge of the daily operation, conduct, or activities of a massage establishment.
- I. "Massage practitioner certification" means a certification issued by the California Massage Therapy Council pursuant to Chapter 10.5 of the California Business and Professions Code.
- J. "Patron" means any individual that provides financial support to a massage establishment and receives or waits to receive massage therapy services.
- K. "Permit" under this chapter means an annual permit to operate a massage establishment as required by this code.
- L. "Sexually suggestive advertising" means advertising that depicts any portion of the human body or includes language that would reasonably suggest to prospective clients that services other than those services listed are available.
- M. "Sole Proprietorship" means a massage establishment where the owner owns one hundred percent of the business and has one or no other employees or independent contractors.
- N. The term "specified anatomical areas" means any of the following areas of the human body: pubic region, human genitals, perineum, anal region, and the areas of the female breasts that include the areola and the nipple.
- O. "Holistic health practitioner" means a non-medical or other health care therapist who uses acupressure (excluding "acupuncture") or a massage specialty and therapeutic approach in caring for clients, and who is not licensed by the state of California.
- P. "Visitor" means any individual not retained or employed by the massage establishment and not receiving or waiting to receive massage therapy services, but excluding law enforcement personnel or government officials performing governmental business.
- Q. "Working directly under the supervision" means that the person is an employee of the licensed person, is working at the same location as the licensed person, has his or her work supervised by the licensed person, and that the licensed person is present when the employee is performing massage.

(Ord. No. 2019-2454, § 8, 1-22-2019)

#### **10.79.040 Massage operator permit required.**

- A. It is unlawful for any person to operate a massage establishment in or upon any premises within the city without first obtaining the permit from the Department of Public Safety as required by this chapter and Chapter 10.70, except as exempted by Section 10.79.170.
- B. A massage establishment police regulated permit required by this chapter and Chapter 10.70 shall be valid for one year, coinciding with the city business license effective and expiration dates. Permit renewal shall be made by the applicant within thirty days prior to the expiration of the permit. If an application for renewal of a permit and all required information is not timely

received and the permit expires, no right or privilege to continue the massage establishment governed by Chapter 10.79 shall exist.

- C. It is unlawful for the operator, owner, or other responsible person, of a massage establishment to employ or otherwise allow a person to perform massage for compensation on the premises, unless that person has a valid massage practitioner certification issued by the California Massage Therapy Council pursuant to Chapter 10.5 of the California Business and Professions Code and unless that person is identified as an authorized massage practitioner on the permit issued pursuant to this chapter.
- D. The owner or operator of a massage establishment shall submit a revised list with the information specified in Section 10.70.030.B.15 to the police department within five business days upon any change to the list.

(Ord. No. 2019-2454, § 8, 1-22-2019)

**10.79.050 Massage technician's certification required.**

- A. It is unlawful for any person to perform services as a massage technician without a valid massage practitioner certification issued by the California Massage Therapy Council pursuant to Chapter 10.5 of the California Business and Professions Code.
- B. A massage practitioner certification does not authorize the operation of a massage establishment. Any person or massage technician who desires to operate a massage establishment must apply separately to the city for a permit and a business license.

(Ord. No. 2019-2454, § 8, 1-22-2019)

**10.79.060 Minimum facilities required.**

No permit to conduct a massage establishment shall be granted unless an inspection by the chief of police or designee and the county health officer and the fire and building officials demonstrates that the proposed establishment does or will comply with each of the following minimum requirements:

- A. A recognizable and legible sign is posted at the main entrance identifying the premises as a massage establishment;
- B. Minimum lighting of at least forty watts is provided in accordance with the building code of the city;
- C. Minimum ventilation is provided in accordance with the building code of the city;
- D. Equipment approved by the health department for disinfecting and sterilizing instruments used in performing acts of massage is provided;
- E. Hot and cold running water is provided at all times;
- F. Closed cabinets are provided, which cabinets shall be utilized for the storage of clean linen;
- G. Adequate dressing, locker, and toilet facilities are provided for patrons. A minimum of one dressing room containing a separate locker for each person to be served, which locker shall be capable of being locked, and a minimum of one toilet and one wash basin shall be provided by every massage establishment;

- H. All walls, ceilings, floors, pools, showers, bathtubs, steam rooms, and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wooden surfaces must be painted with a washable, mold resistant paint. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments and toilet rooms must be thoroughly cleaned and disinfected each day the business is in operation with a disinfectant approved by the health department. Bathtubs must be thoroughly cleaned and disinfected after each use with a disinfectant approved by the health department; and
- I. A minimum of one separate wash basin is provided in each massage establishment for the use of employees of any such establishment, which basin shall provide soap or detergent and hot and cold running water at all times, and is located within or as close as practicable to the area devoted to the performing of massage services. In addition, there must be provided at each washbasin sanitary towels placed in permanently installed dispensers.

(Ord. No. 2019-2454, § 8, 1-22-2019)

#### **10.79.070 Massage establishment operating requirements.**

No person, association, partnership, or corporation may engage in, conduct or carry on, or permit to be engaged in, conducted or carried on the operation of a massage establishment unless each and all of the following requirements are met:

- A. Massage operations may only be carried on, and the premises may only be open, between the hours of 10:00 a.m. and 10:00 p.m.
- B. A list of services available and the cost of such services shall be posted in an open and conspicuous public place on the premises. The service shall be described in readily understandable language in English and may also then be described in any other language. No owner, operator, responsible managing employee, manager, permittee, or licensee in charge of or in control of the massage establishment shall permit and no massage technician shall offer or perform, any service other than those posted.
- C. It is unlawful for a massage establishment to operate under any name or conduct business under any designation not specified in the massage establishment permit issued pursuant to this chapter.
- D. The massage establishment business tax license, massage establishment permit, and a copy of the CAMTC certification of each and every massage technician employed by or working in the establishment must be displayed in an open and conspicuous public place on the premises.
- E. Hot and cold running water under pressure shall be provided to all washbasins, bathtubs, showers, and similar equipment. Each washbasin shall be provided with soap or detergent and sanitary towels placed in permanently installed dispensers. A trash receptacle shall be provided in each toilet room.
- F. Clean and sanitary towels, sheets and linens shall be provided for each patron receiving massage services. No common use of towels or linens shall be permitted, and reuse is prohibited unless they have been first laundered. Heavy white paper may be substituted for sheets, provided that such paper is used once for each person and then discarded into a sanitary receptacle.

- G. Disinfecting agents and sterilizing equipment shall be available for any instruments used in performing any massage. Instruments will be disinfected or sterilized after each use.
- H. Pads used on massage tables shall be covered in a workmanlike manner with durable, washable plastic or other waterproof material.
- I. Each establishment shall provide to all patrons clean, sanitary, and opaque coverings capable of covering the patron's specified anatomical areas. Such coverings shall be used for one customer only and shall not be reused without first being cleaned.
- J. No owner, operator, responsible managing employee, manager, or permittee in charge of or in control of a massage establishment shall permit a massage to be given unless the patron's specified anatomical areas are covered during the entire massage by the covering referred to in subsection (I).
- K. With the exception of bathrooms or dressing rooms not open to public view, no person or persons shall be permitted in any area within the massage establishment which is used in common by the patrons or which can be viewed by patrons from such an area, unless the specified anatomical areas of all persons within that area are fully covered.
- L. It is unlawful for an owner, operator, responsible managing employee, manager, permittee in charge of or in control of a massage establishment to permit any massage technician to perform any service or task while in the presence of a patron or to be on the premises of a massage establishment during its hours of operation unless the massage technician is dressed in a manner that does not violate paragraph (10) of subdivision (a) of Section 4609 of the California Business and Professions Code.
- M. Any person performing services as a massage technician must wear a visible CAMTC identification card and have a copy of their driver's license or any other photo identification card issued by a state or federal agency readily available for inspection by city or county investigating officials.
- N. An operator or owner must be on the business premises at all times during hours of operation of the business.
- O. For each massage service provided, every massage establishment shall keep a complete and legible written record of the following information: the date and hour that service was provided; the service received; the name or initials of the employee entering the information; and the name of the massage practitioner administering the service. Such records shall be open to inspection and copying by the chief of police or designee, or may be used by any massage practitioner or operator as records of service provided, but may not be provided to other parties by the massage practitioner or operator unless otherwise required by law. Such records shall be retained on the premises of the massage establishment for a period of two years and be immediately available for inspection during business hours.
- P. Persons of a massage establishment outside the waiting area shall be a patron, employee, or the massage establishment owner or operator.
- Q. Visitors shall only be permitted in the waiting area; however, the following exceptions may apply:
  - a. The parent or guardian of a patron who is a minor may be present in the massage therapy room with that minor;
  - b. The minor of a patron may be present in the massage therapy room with the patron when necessary for the supervision of the minor; or

- c. The conservator, aid, or other caretaker of a patron who is elderly or disabled may be present in the massage therapy room with that elderly or disabled person.
  - R. No massage establishment located in a building or structure with exterior windows fronting a public street, highway, walkway or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs, blurs, or unreasonably darkens the view into the premises.
  - S. All signs shall be in accordance with the current ordinances of the City of National City.
- (Ord. No. 2019-2454, § 8, 1-22-2019)

**10.79.080 Massage establishment—Prohibited conduct.**

In addition to the conduct/activities, items, and/or substances prohibited by federal and state laws, the following conduct is prohibited at massage establishments:

- A. The sale, service, or consumption of alcohol or marijuana; and
- B. Operate under any name or conduct business under any designation not specified in the massage establishment permit issued pursuant to this chapter; and
- C. The employment of a person lacking state certification as a receptionist without prior notification and approval by the license authority; and
- D. Continue to operate following the sale or transfer of any interest in the massage establishment to a person who was not identified as an owner in the massage establishment permit application; and
- E. Audio and/or video recording of, or monitoring of, the patron, the massage therapist, or the massage therapy, without the prior written consent of the patron; and
- F. Residing in or at the massage establishment by any person including but not limited to the operator, owner, responsible person, or employee of the massage establishment; and
- G. Advertising or marketing illegal activity, advertising or marketing sexually suggestive content related to massage therapy or in the promotion of the massage establishment; and
- H. Use or possession of adult-oriented merchandise, including "sex toys" and/or condoms, in any part of a massage establishment; and
- I. Any sexual activity at a massage establishment; and
- J. No owner, operator, responsible managing employee, manager, permittee, or licensee in charge of or in control of a massage establishment shall permit any person to massage or intentionally touch the specified anatomical areas of another person while performing the services of a massage technician.

(Ord. No. 2019-2454, § 8, 1-22-2019)

**10.79.090 Off-premises massage—Prohibited.**

It is unlawful for any person to engage in, conduct, carry on, or permit to be engaged in, conducted or carried on, massage, for any form of consideration, in any hotel room, motel room, guesthouse or other place of public accommodation. This section shall not be construed to prohibit:

- A. Maintaining a licensed massage establishment upon the premises of a place of public accommodation; or
- B. The holder of a massage practitioner certification issued by the California Massage Therapy Council pursuant to Chapter 10.5 of the California Business and Professions Code from giving or administering massages within hospitals, convalescent centers, rest homes, offices, or the private home of a patron. For the purposes of this section, offices and private homes shall not include hotel rooms, motel rooms, or guest houses.

(Ord. No. 2019-2454, § 8, 1-22-2019)

**10.79.100 Existing businesses—Regulated.**

The provisions of this chapter shall be applicable to all persons and businesses described in this chapter whether the described activities in the chapter were established before or after the effective date of this chapter. Any existing massage technician who performs massage and any massage establishment that employs or utilizes persons to perform massage within the jurisdiction of the city, that operates with a valid and current business license issued by the city and all other necessary approvals issued prior to the effective date of any amended regulations in this chapter or Chapter 10.70, and that operates in compliance with all local, state and federal laws, ordinances, rules and regulations, must be in full compliance with Chapters 10.70 and 10.79 no later than sixty days following the effective date of any new regulations.

(Ord. No. 2019-2454, § 8, 1-22-2019)

**10.79.110 Exemptions.**

This chapter shall not apply to:

- A. Physicians, surgeons, chiropractors, osteopaths, nurses, psychiatrists, psychologists, acupuncturists, physical therapists, family counselors or other health care professionals who are duly licensed to practice their respective professions by the state of California or who are permitted to practice temporarily under the auspices of an associate or establishment duly licensed by the state of California, pursuant to the Business and Professions Code and persons working directly under the supervision of such licensed persons;
- B. A trainer of any duly constituted amateur, semi-professional, or professional athlete or athletic team who administers massage in the normal course of training duties to the team or athlete and trainers in conjunction with a specific athletic event such as an outdoor road or bike race;
- D. Barbers, beauticians, cosmetologists, estheticians, and other persons duly licensed to practice any healing art under the laws of the state who administer a massage incidental to a barber or beauty service provided in the normal performance of their profession, and who perform massages only on the neck, face, and/or scalp of the customers. This

exemption shall apply only if massage is provided from a fixed and permanent location of business;

- E. Therapeutic massage administered in or under the auspices of any health facility, hospital, nursing homes, sanitariums, or other establishment duly licensed under California statutes in which the above-described persons practice their respective professions, provided the massages are given only by exempt individuals or persons acting under their supervision;
- F. Any bona fide personal fitness training centers, gymnasiums, athletic facilities or health clubs which offers tennis, racquetball, swimming or other sport activities and possesses a sauna or steam room. Massage shall only be administered to members of the athletic club by persons who are exempt under this section.

(Ord. No. 2019-2454, § 8, 1-22-2019)

#### **10.79.120 Inspection by officials.**

The city, county, or any investigating official shall have the right to enter the premises of the massage establishment from time to time during regular business hours to conduct reasonable inspections to enforce compliance with this chapter, Chapter 10.70, and with building, fire, electrical, plumbing, and/or state and local health and safety regulations.

No person shall refuse to permit or interfere with a lawful inspection of the massage establishment by city or county investigating officials.

(Ord. No. 2019-2454, § 8, 1-22-2019)

#### **10.79.130 Unlawful massage establishment or operation.**

Any massage establishment operated, conducted or maintained contrary to the provisions of this chapter, Chapter 10.70 and/or state and federal laws shall be and the same is hereby declared to be unlawful and a public nuisance. The city attorney may, in addition to, or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for the abatement, removal, or enjoinder thereof, in any manner provided by law, including as provided in Chapter 10.70.

(Ord. No. 2019-2454, § 8, 1-22-2019)



# AGENDA REPORT

**Department:** Administrative Services - Finance  
**Prepared by:** Paul Valadez, Budget Manager  
**Meeting Date:** Tuesday, November 7, 2023  
**Approved by:** Ben Martinez, Interim City Manager

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**SUBJECT:**

Fiscal Year 2024 First Quarter Budget Review

**RECOMMENDATION:**

Accept and File this Report, and Adopt a Resolution Entitled, "Resolution of the City Council of the City of National City, California, Authorizing Various Fiscal Year 2024 1st Quarter Budget Adjustments."

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

Not Applicable.

**EXPLANATION:**

**Summary**

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 2024.

**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 1<sup>st</sup> through September 30<sup>th</sup> for the current and prior years.

**1<sup>st</sup> Quarter Fiscal Year 2024**

The fiscal year 2024 adopted budget estimated a use of General Fund unassigned fund balance of \$1.1 million. 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 24	FY 23	change
Sales & Use Tax	\$1,800,980	\$ 1,966,351	(\$165,370)
District Transactions & Use Tax	1,166,816	1,221,101	(54,286)
Property Tax	54,853	60,077	(5,224)
Property Tax in Lieu of VLF	-	-	-
Other Revenues	3,726,595	3,074,144	652,451
<b>Total</b>	<b>\$6,749,244</b>	<b>\$ 6,321,673</b>	<b>(\$427,571)</b>

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 2024 sales & use tax and district transaction & use tax revenues are \$200,000 lower than fiscal year 2023's through the end of the first quarter. Although it is too early to draw definitive conclusions from this limited data, staff will review this information with the City's sales tax consultant to determine whether an adjustment to our sales tax projections is warranted.

Fiscal year 2024 property tax revenue for the first quarter, consisting primarily of payments related to unsecured and supplemental property tax bills, is \$5,000 lower than that of fiscal year 2023 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 \$8.6 million in fiscal year 2024 compared to \$8.2 million in fiscal year 2023.

First quarter fiscal year 2024 revenues in the "Other Revenues" category are \$0.7 million higher than for fiscal year 2023 at the same point in time. While the overall increase is spread across many accounts within the category, the primary increases are in refunds and reimbursements, franchise fees, and permits.

## Expenditures

Expenditure Type	FY 24	FY 23	change
Personnel Services	\$9,278,153	\$10,349,625	(\$1,071,472)
Maintenance & Operations (M&O)	850,155	819,340	30,815
Capital Projects	133,121	10,861	122,261
Internal Service Charges	2,376,576	2,095,456	281,120
<b>Total</b>	<b>\$ 12,638,006</b>	<b>\$13,275,281</b>	<b>\$(637,275)</b>

Although Personnel Services costs in the General Fund are \$1.1 million less than fiscal year 2023 through the first quarter, the primary driver of this is the absence of an unfunded accrued liability ("UAL") payment towards the City's annual pension contribution in fiscal year 2024. If we disregard savings from the UAL payment, standard personnel expenditures saw a combined increase of \$1.3 million due to compensation increases authorized as part of the labor group agreements, 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 2024 Maintenance & Operations expenditures as of September 30<sup>th</sup> are \$31,000 higher than in fiscal year 2023. 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 \$122,000 higher than first quarter 2023 due to miscellaneous facilities upgrades and traffic system improvements that took place in the first quarter of 2024.

Internal service charges for the first quarter of fiscal year 2024 are \$281,000 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, as well as increased maintenance and replacement costs for the City's vehicle fleet.

### **Conclusion / Budgetary Outlook**

As noted above, the adopted fiscal year 2024 budget estimated the use of General Fund unassigned fund balance of \$1.0 million. 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.

### **FINANCIAL STATEMENT:**

If approved, the recommended General Fund budget adjustments will result in additional General Fund appropriations of \$146,000. The appropriation adjustments for the other funds combined total \$133,000, funded by available fund balances in the respective funds.

### **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 – Budget Adjustment Detail

Exhibit B – Resolution

**Q1 SUPPLEMENTAL APPROPRIATION REQUESTS -Summary  
Fiscal Year 2024**

<b>Fund</b>	<b>Expenditure</b>	<b>Revenue</b>	<b>Net</b>
<b>General Fund</b>			
<b>Fire</b>			
Requests from Various City Departments for CPR Classes	\$ 6,500	\$	6,500
<b>Fire Total</b>	<b>\$ 6,500</b>	<b>\$</b>	<b>6,500</b>
<b>City Manager's Office</b>			
Signage and Façade Improvement Program for ARTS	\$ 25,000	\$	25,000
Drinking water for the Finance Department	\$ 1,200	\$	1,200
<b>City Manager's Office Total</b>	<b>\$ 26,200</b>	<b>\$</b>	<b>26,200</b>
<b>Police Department</b>			
Membership costs omitted from the adopted budget.	\$ 11,113	\$	11,113
<b>Police Department Total</b>	<b>\$ 11,113</b>	<b>\$</b>	<b>11,113</b>
<b>Neighborhood Services</b>			
Additional training and travel to accommodate new staff.	\$ 2,000	\$	2,000
Special code prosecution services from Silver & Wright LLC	\$ 100,000	\$	100,000
<b>Neighborhood Services Total</b>	<b>\$ 102,000</b>	<b>\$</b>	<b>102,000</b>
<b>General Fund Total</b>	<b>\$ 145,813</b>	<b>\$ -</b>	<b>\$ 145,813</b>
<b>Parking Authority Fund</b>			
<b>Neighborhood Services</b>			
Due to additional upcoming training.	\$ 2,000	\$	2,000
<b>Neighborhood Services Total</b>	<b>\$ 2,000</b>	<b>\$</b>	<b>2,000</b>
<b>Parking Authority Fund Total</b>	<b>\$ 2,000</b>	<b>\$</b>	<b>2,000</b>
<b>Housing Authority Fund</b>			
<b>Housing</b>			
FY24 reduction so that cumulative expenditures will align wih total PLHA award	\$ (4,874)	\$	(4,874)
<b>Housing Total</b>	<b>\$ (4,874)</b>	<b>\$</b>	<b>(4,874)</b>
<b>Housing Authority Fund Total</b>	<b>\$ (4,874)</b>	<b>\$ -</b>	<b>(4,874)</b>

**Q1 SUPPLEMENTAL APPROPRIATION REQUESTS -Summary**  
**Fiscal Year 2024**

<b>Fund</b>		<b>Expenditure</b>		<b>Revenue</b>		<b>Net</b>
<b>Liability Insurance Fund</b>						
<b>City Attorney</b>						
Property Program - invoices higher than initial estimate	\$	25,566		\$		25,566
General Liability Program - invoices higher than initial estimate	\$	109,850		\$		109,850
<b>City Attorney Total</b>	\$	<b>135,416</b>		\$		<b>135,416</b>
<b>Liability Insurance Fund Total</b>	\$	<b>135,416</b>	\$	-	\$	<b>135,416</b>

**RESOLUTION NO. 2023 -**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, AUTHORIZING VARIOUS FISCAL YEAR 2024 1st QUARTER BUDGET ADJUSTMENTS**

**WHEREAS**, on June 20, 2023, the City Council of the City of National City adopted Resolution No. 2023-98, adopting the budget for fiscal year 2024; 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 November 7, 2023; and

**WHEREAS**, the City Manager has requested approval of the Recommended 1st quarter Budget Adjustments ("Exhibit A"); and

**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 fiscal year 2024 recommended 1st quarter budget adjustments ("Exhibit A") and authorizes the City Manager to make the associated adjustments to the Fiscal Year 2024 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.

**PASSED and ADOPTED this 7th day of November, 2023.**

\_\_\_\_\_  
Ron Morrison, Mayor

**ATTEST:**

\_\_\_\_\_  
Shelley Chapel, MMC, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Barry J. Schultz, City Attorney



# AGENDA REPORT

**Department:** City Manager's Office  
**Prepared by:** Ben Martinez, City Manager  
**Meeting Date:** Tuesday, November 7, 2023  
**Approved by:** Ben Martinez, Interim City Manager

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**SUBJECT:**

Consideration of a Project Labor Agreement with the San Diego Building and Construction Trades Council and Associated Craft Unions.

**RECOMMENDATION:**

Adopt a Resolution Entitled, "Resolution of the City Council of the City of National City, California, Authorizing Entering into a Project Labor Agreement with the San Diego Building and Construction Trades Council and Associated Craft Unions."

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

Not Applicable.

**EXPLANATION:**

**Background**

On September 7, 2021, the City Council formed an ad-hoc committee, consisting of former Mayor Sotelo-Solis and former Councilmember Rios, related to a potential Project Labor Agreement ("PLA") with the San Diego Building and Construction Trades Council (the "Trades Council") and directed that the committee report back to the City Council. On December 7, 2021, the committee reported back and recommended directing staff to enter into PLA negotiations with the Trades Council. The City Council accepted the committee's recommendation to direct staff to enter into negotiations with the Trades Council for a PLA.

**PLA History and Negotiations**

In general, the purpose of PLAs has been to assist awarding agencies such as the City of National City in providing on time, conflict-free project completions. PLAs spell out the specific terms and conditions that govern the employment of labor on covered projects, with the goal of reducing overall construction costs by helping to ensure that the work on a covered project will be completed efficiently, cooperatively, economically and without interruption. PLAs generally include, among other requirements, prohibitions on picketing and work stoppages. PLAs may also serve the community through targeted hiring and apprenticeship training, including for individuals with barriers to employment in their background. Under the proposed PLA, contractors and subcontractors would still be required to comply with all applicable federal, state, and local laws and regulations regarding the payment of prevailing wages and other similar requirements for public works projects.

City staff (including the City Manager's Office, City Attorneys' Office, and Public Works/Engineering) and representatives from the Trades Council negotiated the PLA for consideration and possible approval by the City Council. In negotiating the PLA, City staff reviewed and considered similar PLAs adopted by other agencies in the region and met with

representatives of some of those agencies. If approved, the PLA will be applicable to public projects that have a construction value of at least \$1,000,000. Key conditions of the PLA include:

- A 3-year term with an automatic 3-year extension at the parties' option, for a total term of 6 years.
- Exceptions for certain projects to proceed outside of the PLA, including:
  - Upon a 4/5 of the City Council, where it determined that implementation of a project under the PLA would result in substantial inefficiency or impracticability (e.g., the City Council may exclude a project if the PLA would jeopardize the City's eligibility to receive state or federal grant funding);
  - If the City does not receive at least 3 bids for a covered project;
  - Where all bids for a project bid under the PLA exceed the engineer's estimate by 10% or greater.
- At the City Council's discretion, the PLA may be amended to include provisions from future project labor agreements negotiated by other cities (with a population of 100,000 or less) that are more favorable or beneficial.

**FINANCIAL STATEMENT:**

The financial impact of requiring City projects to comply with the requirements of a PLA are unknown at this time. The impacts, if any, will not be known until application of the PLA to particular project(s).

**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 - Agreement

Exhibit B - Resolution

**CITY OF NATIONAL CITY  
PROJECT LABOR AGREEMENT**

**Effective Date: \_\_\_\_\_, 202\_**

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**CITY OF NATIONAL CITY**  
**PROJECT LABOR AGREEMENT**

This Project Labor Agreement (hereinafter the “PLA” or “Agreement”) is entered into this \_\_ day of \_\_\_\_\_ 202\_ by and between the San Diego Building and Construction Trades Council (hereinafter the “Council”), and the signatory Craft Unions (hereinafter, together with the Council, collectively, the “Union” or “Unions”), and the City of National City (“City”).

**ARTICLE 1**

**RECITALS**

WHEREAS, the City desires the completion of the Covered Projects in a professional, safe, efficient, and economical manner, without undue delay or work stoppages; and

WHEREAS, the timely, efficient, economical and successful completion of the Covered Projects is of the utmost importance to the City; and

WHEREAS, large numbers of workers of various skills will be required in the performance of the construction work on Covered Projects, including workers affiliated with and/or represented by the Unions; and

WHEREAS, it is recognized that on construction projects with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption is substantial without an overriding commitment to maintain continuity of work; and

WHEREAS, the Parties agree that by establishing and stabilizing wages, hours, and working conditions for the workers employed on Covered Projects, a satisfactory, continuous, and harmonious relationship will exist among labor and management that will lead to the efficient and economical completion of Covered Projects; and

WHEREAS, in recognition of the special needs of the Covered Projects and to maintain a spirit of harmony, cooperative labor-management relations, peace, and stability during the term of this PLA, the Parties agree to establish effective and binding methods for the settlement of all misunderstandings, disputes and grievances without any strikes, slowdowns, work interruptions, or disruption of Covered Projects, and the Contractors agree not to engage in any lockout; and

WHEREAS, the City places high priority upon the development of comprehensive programs for the recruitment, training, and employment of local residents, and also recognize the ability of local Apprenticeship Programs to provide meaningful and sustainable careers in the building and construction industry. The Parties will encourage local residents to participate in Covered Projects through programs and procedures jointly developed to prepare and encourage such individuals for entrance into Apprenticeship Programs and formal employment on the Covered Projects through the referral programs sponsored and/or supported by the Parties to this PLA; and

WHEREAS, it is further understood that the City shall actively administer and apply the obligations of this PLA.

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

## **ARTICLE 2**

### **DEFINITIONS**

Capitalized terms utilized in this PLA which are not otherwise defined herein shall have the meanings ascribed to said terms below.

“Agreement” means this Project Labor Agreement (PLA).

“Applicable Prevailing Wage Determination” means the prevailing wage determinations applicable to a Covered Project issued by the Department of Industrial Relations pursuant to the California Labor Code.

“Apprentice” means an apprentice properly registered in an Apprenticeship Program for the time they are employed on a Covered Project.

“Apprenticeship Program” as used in this PLA shall be defined as an apprenticeship program approved by the California Division of Apprenticeship Standards (DAS).

“Contractor” means the Prime Contractor and any subcontractor of any tier awarded Covered Work. The term “Contractor” includes any individual, firm, partnership, corporation, owner operator, consultant or combination thereof, including joint ventures, performing Covered Work.

“Core Employees” are defined in Article 4, Section 4.6 (e).

“Council” means the San Diego County Building & Construction Trades Council.

“Covered Contract” means a prime contract or subcontract awarded for performance of Covered Work, or an individual job order constituting a Covered Project as defined below.

“Covered Project” means a construction project with a prime contract awarded by the City with an estimated construction contract award value of \$1,000,000 or greater. “Covered Projects” also includes individual task orders valued at \$100,000 or greater for Surveyors and/or Building/Construction Inspectors and/or Field Soils and Material Testers (Inspectors) that are related to a Covered Project.

“Covered Work” means construction work in furtherance of a Covered Project, other than work excluded pursuant to specific exemptions set forth in this PLA.

“Joint Labor-Management Apprenticeship Program” means a Joint Labor-Management Apprenticeship Program approved by the State of California DAS as provided for in the Schedule A’s.

“Party” means the City, Council, and each Union.

“Prime Contractor” means the contractor awarded a Covered Contract in privity directly with the City.

“Project Labor Coordinator” means the designee of the City, either from its own staff (including, but not limited to, the City Engineer) and/or an independent entity acting on behalf of the City, to monitor compliance with this PLA and assist with developing, implementing and administering the requirements, policies and programs referenced herein.

“Schedule A’s” means the local master labor agreements of the Unions.

“Union” or “Unions” means any labor organization signatory to this Agreement acting on their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have, through their officers, executed this Agreement.

“Veteran” means a veteran or the eligible spouse of a veteran of the United States Armed Forces, under Section 2(a) of the Jobs for Veterans Act (38 U.S.C. 4215[a]).

“Workforce Dispatch Request Form” means the project-specific form by which Contractors request workers from the Union hiring halls on Covered Projects, an example of which is attached as Attachment B-1.

## **ARTICLE 3**

### **SCOPE OF THE AGREEMENT**

#### **Section 3.1** Scope.

(a) This Agreement covers, without limitation, all on-site site preparation, surveying, construction, alteration, demolition, installation, improvement, landscaping, painting or repair of buildings, structures and other works, and related activities for the Covered Project that is within the craft jurisdiction of one of the Unions and which is directly part of the Covered Project, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary HVAC, landscaping, temporary fencing, pipelines (including those in linear corridors built to serve the Project), pumps, and pump stations. On-site work includes work done solely for the Covered Project in temporary yards, dedicated sites, or other areas provided that they are adjacent to the Covered Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Covered Project.

(b) This Agreement applies to any start-up, calibration, commissioning, performance testing, repair, maintenance or operational revisions to systems and/or subsystems for the Project that are required as part of a Covered Contract, including warranty work performed after completion, unless such work is performed by City employees. Covered Work includes all onsite physical craft work that is part of startup and commissioning, including, but not limited to, system flushes and testing, loop checks, rework and modifications, and functional and operational testing up to and including the final running test. It is understood that the City's personnel and/or its representatives, together with the manufacturer's and/or vendor's representatives, and/or plant operating personnel may supervise and direct the startup, commissioning, rework, and modification activity, and that the onsite physical craft work is typically performed as part of a joint effort with these representatives and personnel. A manufacturer or its representatives may perform industry standard startup and commissioning work to satisfy its guarantee or warranty on a piece of equipment, and such work will be exempt from the Project Labor Agreement to the extent the work is excluded by Section 3.2(b) and/or Section 3.2(d).

(c) This Agreement covers all on-site fabrication work over which Contractors possess the right of control (including work done for a Covered Project in any temporary yard or area established for the Covered Project). This

Agreement also covers off-site fabrication to the extent that it is covered by existing Master Agreements in effect at the time of the execution of this PLA. All fabrication work over which a Contractor possesses the right of control, including without limitation, the fabrication of medical gas piping, air-handling systems and ducts, and HVAC sheet metal work, and which is traditionally claimed as on-site fabrication shall be performed on-site. Purchase of manufactured items from a genuine manufacturing facility for the supply of products is not considered fabrication and not subject to this PLA.

(d) On-site construction shall also include the site of any batch plant constructed solely to supply materials to the Project. Construction trucking work for the delivery of ready-mix, asphalt, aggregate, sand, or other fill or material which are directly incorporated into the construction process as well as the off-hauling of debris and excess fill, material and/or mud, shall be covered by the terms and conditions of this Agreement to the fullest extent allowed by law and by the prevailing wage determinations of the California Department of Industrial Relations.

**Section 3.2** Exclusions. Items specifically excluded from the scope of this PLA include the following:

(a) Work of non-manual employees, including but not limited to, superintendents, supervisors, staff engineers, quality control and quality assurance personnel, timekeepers, mail carriers, clerks, office workers, messengers, guards, safety personnel, emergency medical and first aid technicians, and other professional, engineering, administrative, supervisory, and management employees; and

(b) All employees of the City, Project Labor Coordinator, design teams (including, but not limited to, architects, engineers, and master planners), or any other consultants for the City (including, but not limited to, project managers and construction managers and their employees where not engaged in Covered Work) and their subconsultants, and other employees of professional service organizations, not performing manual labor within the scope of this PLA. Notwithstanding the foregoing, however, this exclusion shall not apply to surveying and inspection services on a Covered Project, within the State of California's general prevailing wage determination for Field Surveyors and/or Building/Construction Inspectors and Field Soils and Material Tester, when this work is performed under a Covered Contract or under a professional services agreement. This shall also specifically include such work where it is referred to by utilization of such terms as "quality control" or "quality assurance." Every

Surveyor and Inspector performing under the wage classifications of Field Surveyors and/or Building/Construction Inspectors and Field Soils and Material Tester (Inspectors) on Covered Work pursuant to a professional services agreement or a construction contract shall be bound to all applicable requirements of this Agreement regardless of the manner in which the work was awarded; and

(c) Any work performed by state, county, city, or other governmental bodies, or their contractors (other than work within the scope of this PLA undertaken by contractors to the City); or by private utilities, or their contractors; and

(d) Work performed by employees of a manufacturer or vendor necessary to install, commission and/or maintain such manufacturer's or vendor's warranty or guarantee and provided that the warranty agreement is the manufacturer's or vendor's usual and customary warranty agreement for such equipment and is consistent with industry practice. Any work to be excluded pursuant to this subsection (d) shall be identified and discussed at the relevant pre-job conference. Upon request from the Council, the City shall review with the vendor whether installation or application may be performed pursuant to terms of the PLA without affecting the status of the warranty; and

(e) Specialized or technical work requiring specialized training, unique skills, or a level of specific technical experience which employees represented by the Unions do not possess. At least ten (10) working days' notice shall be given to the Council before any work is performed pursuant to this exemption; and

(f) Laboratory testing work; and

(g) Non-construction support services contracted by the City, Project Labor Coordinator, or Contractor in connection with a Covered Project; and

(h) Contracts for which there are less than three (3) unrelated, qualified bidders for a Covered Contract, in which case the City reserves the right to reject all bids and readvertise the contract not as a Covered Project or Covered Contract and not subject to this PLA; and

(i) Non-construction support services contracted by the City in connection with Covered Projects; and

(j) Emergency work; and

(k) Substantial impracticality or inefficiency. The City may exclude any work constituting a Covered Project upon a 4/5 vote of its City Council finding and

determining that said work as a Covered Project would result in a substantial inefficiency or impracticality; and

(l) If the lowest apparent responsive and responsible bid is ten percent (10%) or greater than the engineer's estimate, in which case the City reserves the right to reject all bids and readvertise the contract not as a Covered Project or Covered Contract and not subject to this PLA; and

(m) All off-site manufacturing, fabrication, maintenance, and handling of materials, equipment, or machinery; and

(n) All operation of equipment and machinery owned or controlled by the City.

**Section 3.3** Awarding of Contracts.

Notwithstanding any obligation, term, duty or condition contained herein to the contrary, this Agreement shall be subject to all applicable laws, including the California Public Contract Code. The City shall maintain absolute and sole discretion regarding the application and the related enforcement of said laws.

(a) The City has the absolute right to bid or award Covered Contracts regardless of delivery method to any Contractor notwithstanding the existence or non-existence of any agreements between such Contractor and any Union, provided only that such Contractor is willing, ready, and able to execute a Letter of Assent as set forth in Attachment A hereto, and comply with this PLA in performance of Covered Work.

(b) Each Union shall enroll in the electronic bidding system used at the time of bidding (currently, PlanetBids) and provide the listing information to all Union contractors able to provide services to the trades required of the project. Each Union contractor may provide bids to each prime bidding contractor in accordance with California law and the bidding documents. Union prime contractors may bid the project in accordance with California law and the bidding documents.

(c) It is agreed that all Contractors who have been awarded a contract for Covered Work shall be required to accept and be bound by the terms and conditions of this PLA. Contractors shall evidence their acceptance of this Agreement by executing a Letter of Assent as set forth in Attachment A hereto. No Contractor shall commence Covered Work without first providing a copy of the signed Letter of Assent to the Project Labor Coordinator.

(d) The City and all Contractors awarded Covered Work agree that to the extent permitted by law and consistent with the economy and efficiency of construction and operation, they will use best efforts to purchase materials, equipment, and supplies that will not create labor strife. Under all circumstances, however, the City and Contractors shall retain the absolute right to select Contractors for the award of contracts and subcontracts on all Covered Projects.

(e) Project funding-source restrictions. Notwithstanding anything contained in this PLA to the contract, the City shall comply with any and all restrictions related to any funding source for project work including, but not limited to, federal, state or local (e.g., County of San Diego, State of California Department of Transportation, or San Diego Association of Governments) regulations.

**Section 3.4** Schedule A's.

(a) The provisions of this PLA, including the Schedule A's (which are the local Master Labor Agreements of the signatory Unions having jurisdiction over Covered Work, as such may be changed from time to time consistent with Section 21.3, and which are incorporated herein by reference), shall apply to the work covered by this PLA. Where a subject covered by the provisions of this PLA is also covered by a Schedule A, the provisions of this PLA shall prevail. Where a subject is covered by a provision of a Schedule A and not covered by this PLA, the provisions of the Schedule A shall govern. Any dispute as to the applicable source between this PLA and any Schedule A shall be resolved under the procedures established in Article 10.

(b) It is understood that this PLA, together with the referenced Schedule A's, constitutes a self-contained, stand-alone agreement and, by virtue of having become bound to this PLA, the Contractor will not be obligated to sign any other local, area, or national collective bargaining agreement as a condition of performing work within the scope of this PLA (provided, however, that the Contractor may be required to sign a uniformly applied non-discriminatory Participation or Subscription Agreement at the request of the trustees or administrator of a trust fund established pursuant to Section 302 of the Labor Management Relations Act, and to which such Contractor may be bound to make contributions under this PLA, provided that such Participation or Subscription Agreement does not purport to bind the Contractor beyond the terms and conditions of this PLA and/or expand its obligation to make contributions pursuant thereto). It shall be the responsibility of the Prime Contractor to have each of its Contractors of any tier sign the documents with the appropriate Union prior to the Contractor beginning work on Covered Projects.

- Section 3.5** The Parties agree that this PLA will be made available to, and will fully apply to, any successful bidder for Covered Work, without regard to whether that successful bidder performs work at other sites on either a Union or non-Union basis. This PLA shall not apply to any work of any Contractor other than that on Covered Projects specifically covered by this PLA.
- Section 3.6** Binding Signatories Only. This PLA and Letter of Assent shall only be binding on Contractors in the performance of Covered Work, and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such Contractors.
- Section 3.7** Other Work. Nothing contained herein shall be interpreted to prohibit, restrict, or interfere with the performance of any other operation, work, or function not covered by this PLA, which may be performed by City employees or contracted for by City for its own account, on its property, or in and around Covered Project sites.
- Section 3.8** Separate Liability. It is understood that the liability of the Contractor(s) and the liability of the separate Unions under this PLA shall be several and not joint. The Unions agree that this PLA does not have the effect of creating any joint employment status between or among the City or Project Labor Coordinator and/or any Contractor.
- Section 3.9** Completed Covered Projects. As portions of Covered Projects are completed, this PLA shall have no further force or effect on such items or areas except where the Contractor is directed by the City or its representatives to engage in repairs, modification and/or check-out functions required by its contract(s) with the City.
- Section 3.10** Except for all work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement, and the National Cooling Tower Agreement, all instrument calibrations work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Article 7 (Work Stoppages and Lockouts), Article 8 (Work Assignments and Jurisdictional Disputes) and Article 10 (Settlement of Grievances and Disputes) of this PLA, which shall apply to such work.

## ARTICLE 4

### UNION RECOGNITION AND EMPLOYMENT

**Section 4.1** Recognition. The Contractors recognize the Unions as the exclusive bargaining representative for the employees engaged in Covered Work. Such recognition does not extend beyond the period when the employee is engaged in Covered Work.

**Section 4.2** Contractor Selection of Employees. The Contractors shall have the right to determine the competency of all employees, the number of employees required, the duties of such employees within their craft jurisdiction, and shall have the sole responsibility for selecting employees to be laid off, consistent with this Article. The Contractors shall also have the right to reject any applicant referred by a Union for any reason, subject to any reporting time requirements of the applicable Schedule A; provided, however, that such right is exercised in good faith and not for the purpose of avoiding the Contractors' commitment to employ qualified workers through the procedures endorsed in this PLA.

**Section 4.3** Referral Procedures.

(a) For signatory Unions to this Agreement having a job referral system contained in a Schedule A, the Contractor agrees to comply with such system and it shall be used exclusively by such Contractor, except as modified by this PLA. Such job referral system will be operated in a nondiscriminatory manner and in full compliance with federal, state, and local laws and regulations that require equal employment opportunities and non-discrimination.

(b) The local Unions will exert their best efforts to recruit and refer sufficient numbers of skilled craft workers to fulfill the labor requirements of the Contractor, including specific employment obligations to which the Contractor may be legally and/or contractually obligated; and to refer Apprentices as requested to develop a larger, skilled workforce. The Unions will work to identify and refer competent craft persons as needed for Covered Work, and to identify individuals, particularly local residents, for entrance into Apprenticeship Programs, or participation in other identified programs and procedures to assist individuals in qualifying and becoming eligible for such Apprenticeship Programs, all maintained to increase the available supply of skilled craft personnel for Covered Projects.

(c) The Union shall not knowingly refer an employee currently employed by a Contractor on a Covered Project to any other Contractor.

**Section 4.4** Non-Discrimination in Referral, Employment, and Contracting. The Unions and Contractors agree that they will not discriminate against any employee or applicant for employment on the basis of sex, race, ethnicity, color, ancestry, religious creed, national origin, sexual orientation, physical disability, mental disability, medical condition, age, marital status, denial of family care leave, genetic information, gender, gender identity, gender expression, military and veteran status, criminal records, past incarceration, previous status as a foster youth, political affiliation or membership in a labor organization in hiring and dispatching workers for the Covered Projects. The Parties and Contractors will ensure that the evaluation and treatment of their employees, members, and applicants for employment or membership are free from such discrimination and harassment.

**Section 4.5** Employment of Local Residents.

(a) In recognition of the City’s mission to serve its residents, the Unions and Contractors agree that, to the extent allowed by law, and as long as they possess the requisite skills and qualifications, the Unions shall first refer for Covered Projects permanent residents of zip codes 91950, 91951 and 91947 (“qualifying zip codes”) at the time of initial employment on a Covered Project or Veterans residing anywhere.

(b) To facilitate the dispatch of Local Residents, as well as all Contractor requests for referral and dispatch of workers from the applicable Union referral system, the Parties will develop and utilize a Workforce Dispatch Request Form for Covered Projects.

(c) It is the Parties’ goal that at least 80% of the total craft hours to be performed on a Covered Project shall be performed by residents of San Diego County, graduates of, or recipients of a GED from a school in San Diego County residing anywhere, or Veterans residing anywhere, of which 5% should be from qualifying zip codes or graduates of, or recipients of a GED from, Sweetwater High School residing anywhere, or Veterans residing anywhere.

**Section 4.6** Core Employees. This Section only applies to Contractors who are not directly signatory to an applicable Schedule A.

(a) The Parties recognize the City’s interest in promoting competition and inclusion of disadvantaged business enterprises (DBEs) which may not be signatory to a current Schedule A. For purposes of this Section, DBEs shall be as defined by the United States Department of Transportation, as

that definition may be amended from time to time. (*See, e.g.,* <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/definition-disadvantaged-business-enterprise>; *see also* Appendix E to Part 26 of 49 CFR Part 26.) In order to promote participation and attract DBEs to work under this Agreement, and subject to the limitations set forth below, each Contractor that is a DBE may employ up to five (5) Core Employees per craft on a Covered Project, alternating with Core Employees and Union referrals (first a Core Employee, then a referral from the appropriate Union hiring hall, then a Core Employee, and so on). After five (5) Core Employees have been employed, all additional employees in the affected trade or craft shall be requested and referred from the appropriate Union hiring hall.

The preceding Core Employee hiring procedures for DBEs are subject to the following limitation:

(1) Each Contractor is limited to utilizing the preceding Core Employee hiring procedure on one Covered Project.

(b) Contractors who are not otherwise signatory to a current Schedule A may employ, as needed, a Core Employee first, then a referral from the appropriate Union hiring hall, then a second Core Employee, then a second employee through the referral system, then a third Core Employee, and so on, until a maximum of three (3) Core Employees are employed per craft on the Project. Thereafter, all additional employees in the affected trade or craft shall be requested and referred from the appropriate Union hiring hall in accordance with this Article.

(b) Section 4.6 only applies to Contractors who are not directly signatory to a current Schedule A for the craft worker in its employ and is not intended to limit the transfer provisions of the Schedule A of any trade. As part of this process, and in order to facilitate the contract administration procedures, as well as appropriate fringe benefit fund coverage, all Contractors shall require their Core Employees and any other persons employed other than through the referral process, to register with the appropriate Union hiring hall, if any, prior to their first day of employment working under the Construction Contract at the Project site. The registration process shall be administered by the Contractors and Union reasonably, but without impacting the Project schedule.

(c) Prior to each Contractor performing any work on a Covered Project, each Contractor shall provide a list of Core Employees to the Project Labor Coordinator and the Council. After submitting the Core Employee list prior to commencing work on that Covered Project, Contractors shall not make any

changes or substitutions to the Core Employee list for the duration of that Covered Project without prior agreement by the Parties, unless one or more Core Employees retires, changes employer, resigns or is terminated.

(d) Upon request by any Party to this Agreement, the Contractor hiring any Core Employee shall provide satisfactory proof (i.e., payroll records, quarterly tax records, and such other documentation) evidencing the Core Employee's qualification as a Core Employee to the Project Labor Coordinator and the Council.

(e) Core Employees must meet the following eligibility requirements to qualify for employment on Covered Projects:

(1) A Core Employee must be a journeyman and appear on the Contractor's active payroll for at least ninety (90) of the last one-hundred-eighty (180) working days prior to being designated as a Core Employee. The date a Core Employee is designated is the date the Core Employee list is submitted to the Project Labor Coordinator and Council prior to the Contractor commencing work; and

(2) A Core Employee must possess any license required by state or federal law for the Covered Work to be performed; and

(3) A Core Employee must have the ability to safely perform the basic functions of the applicable trade; and

(4) A Core Employee must be a resident of San Diego, Imperial, Riverside or Orange Counties.

(f) In addition to the Core Employee provisions set forth herein, all Contractors may avail themselves of any opportunity provided for in the applicable Schedule A's to call for specific employees by name.

(g) During any layoffs or reductions in workforce, Contractors shall lay off employees in an order and manner consistent with the Core Employee hiring procedures and maintain the required Core Employee-to-Union referral ratios required by this Section for the duration of the Project.

**Section 4.7** Time for Referral. If any Union's registration and referral system does not fulfill the requirements for specific classifications of covered employees (including Local Residents) requested by any Contractor within forty-eight (48) hours (excluding Saturdays, Sundays, and holidays), that Contractor may employ Core Employees without reference to the ratio requirements in Section 4.6 or use

employment sources other than the Union registration and referral services, and may employ applicants from any other available source. The Contractor shall promptly inform the Union of any applicants hired from other sources, and such applicants shall register with the appropriate hiring hall, if any.

**Section 4.8** Lack of Referral Procedure. If a signatory local Union does not have a job referral system as set forth in Section 4.3 above, the Contractors shall give the Union equal opportunity to refer applicants. The Contractors shall notify the Union of employees so hired, as set forth in Section 4.7.

**Section 4.9** Union Membership. Employees are not required to become or remain union members, or pay dues or fees to a union, as a condition of performing Covered Work under this Agreement. Employers shall make and transmit all deductions for union dues, fees, and assessments that have been authorized by employees in writing in accordance with the applicable Schedule A. Nothing in this Section 4.9, however, is intended to supersede independent requirements in applicable local union agreements such as those in Schedule A as to those Employers that are otherwise signatory to those agreements and as to the employees of those Employers who are performing Covered Work.

**Section 4.10** Foremen. The selection and number of craft foremen and/or general foremen shall be the responsibility of the Contractor, consistent with the Schedule A's. All foremen shall take orders exclusively from the designated Contractor representatives. Craft foremen shall be designated as working foremen at the request of the Contractors.

## ARTICLE 5

### UNION ACCESS AND STEWARDS

**Section 5.1** Access to Project Sites. Authorized representatives of the Union shall have access to Covered Projects, provided that they do not interfere with the work of employees and further provided that such representatives fully comply with posted visitor, security, and safety rules.

**Section 5.2** Stewards.

(a) Each signatory local Union shall have the right to dispatch a working journeyman as a steward for each shift, and shall notify the Contractor in writing of the identity of the designated steward or stewards prior to the assumption of such person's duties as steward. Such designated steward or

stewards shall not exercise any supervisory functions. There will be no non-working stewards. Stewards will receive the regular rate of pay for their respective crafts.

(b) In addition to his/her work as an employee, the steward should have the right to receive, but not to solicit, complaints or grievances and to discuss and assist in the adjustment of the same with the employee's appropriate supervisor. Each steward should be concerned only with the employees of the steward's Contractor and not with the employees of any other Contractor. The Contractor will not discriminate against the steward in the proper performance of his/her Union duties.

(c) When a Contractor has multiple, non-contiguous work locations at one site, the Contractor may request and the Union shall appoint such additional working stewards as the Contractor requests to provide independent coverage of one or more such locations. In such cases, a steward may not service more than one work location without the approval of the Contractor.

(d) The stewards shall not have the right to determine when overtime shall be worked or who shall work overtime.

**Section 5.3** Steward Layoff/Discharge. The Contractor agrees to notify the appropriate Union twenty-four (24) hours before the layoff of a steward, except in the case of disciplinary discharge for just cause. If the steward is protected against such layoff by the provisions of the applicable Schedule A, such provisions shall be recognized when the steward possesses the necessary qualifications to perform the remaining work. In any case in which the steward is discharged or disciplined for just cause, the appropriate Union will be notified immediately by the Contractor, and such discharge or discipline shall not become final (subject to any later filed grievance) until twenty-four (24) hours after such notice has been given; provided, however, that during the 24-hour period before the discipline or discharge becomes final, the steward will be considered suspended pending investigation without pay.

**Section 5.4** Employees on Non-Covered Projects. On work where the personnel of the City may be working in close proximity to the construction activities covered by this PLA, the Union agrees that the Union representatives, stewards, and individual workers will not interfere with City personnel, or with personnel employed by any other employer not a Party to this PLA.

## ARTICLE 6

### WAGES AND BENEFITS

**Section 6.1** Wages. At a minimum, all employees covered by this PLA shall be classified in accordance with work performed and paid the hourly wage rates and benefits for those classifications in compliance with the applicable Prevailing Wage Determination established pursuant to the California Labor Code by the California Department of Industrial Relations.

**Section 6.2** Benefits.

(a) Payment of Benefits. For all employees performing Covered Work, Contractors shall pay all fringe benefits and other required employer contributions to the established Union employee benefit funds in the amounts required by the applicable Schedule A. In addition, the Contractors and Unions agree that only such bona fide employee benefits that accrue to the direct benefit of the employees (such as pension and annuity, health and welfare, vacation, apprenticeship, and training funds) shall be included in this requirement and required to be paid by the Contractor on Covered Projects.

(c) Where applicable, the Contractor adopts and agrees to be bound by the written terms of the applicable, legally established, Union trust agreement(s) specifying the detailed basis how payments will be made into, and benefits paid out of, such trust funds for its employees. The Contractor authorizes the sponsoring Parties to such trust funds to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the Contractor. The Contractor obligations to the applicable Union benefit fund(s) and trust agreement(s) are limited to work performed on Covered Work. The Union benefit funds and trust agreement(s) applicable to each Contractor are determined by the pre-job conference and Union work assignment process described in Articles 8 and 16.

(d) Each Contractor is required to certify to the Project Labor Coordinator that it has paid all benefit contributions due and owing to the appropriate Union trust(s) and benefit funds prior to the receipt of its final payment and/or retention. Further, upon timely notification by a Union to the Project Labor Coordinator, the Project Labor Coordinator shall work with any Contractor who is delinquent in payments to assure that proper benefit contributions are made, to the extent of requesting the City or the prime Contractor to withhold payments otherwise due

such Contractor, until such contributions have been made or otherwise guaranteed.

**Section 6.3** Wage Premiums, with the exception of shift premiums, shall not be applicable to work performed under this PLA, except to the extent provided for in any applicable prevailing wage determination. The types of wage premiums that will not apply to the Project include, but are not limited to, pay based on height of work, hazard pay, scaffold pay, and special skills, except to the extent provided for in any prevailing wage determination. Similarly, there will be no wage premiums based on staggered start times or start times that are earlier or later than set forth in the applicable Schedule A, with the exception of shift premiums.

**Section 6.4** Compliance with Prevailing Wage Laws. All complaints regarding possible prevailing wage violations may be referred to the Project Labor Coordinator or Labor Compliance Program, if any, for referral to the Department of Industrial Relations, State Labor Commissioner.

## ARTICLE 7

### **WORK STOPPAGES AND LOCKOUTS**

**Section 7.1** No Work Stoppages or Disruptive Activity. The Council and the Unions signatory hereto agree that neither they, nor their respective officers, agents or representatives, shall incite or encourage, condone or participate in any strike, walk-out, slowdown, picketing, observation of picket lines, or other activity of any nature or kind whatsoever, for any cause or dispute whatsoever with respect to or any way related to Covered Work, or which interferes with or otherwise disrupts Covered Work, including, but not limited to, economic strikes, unfair labor practice strikes, safety strikes, sympathy strikes, and jurisdictional dispute strikes, whether or not the underlying dispute is arbitrable. Any such actions by the Council, or any Union, or their members, agents, representatives, or the employees they represent shall constitute a material violation of this PLA. The Council and the Union shall take all steps necessary to obtain compliance with this Article.

**Section 7.2** Employee Violations. The Contractor may discharge any employee violating Section 7.1 above, and any such employee will not be eligible for rehire under this PLA.

**Section 7.3** Standing to Enforce. Any Contractor affected by an alleged violation of Section 7.1 shall have standing and the right to enforce the obligations established therein.

**Section 7.4** Expiration of Schedule A's. If a collective bargaining agreement between a signatory Contractor and one or more of the Union(s) expires before the Contractor completes the performance of a Contract for Covered Work, and the Union or the Contractor gives notice of demand for a new or modified collective bargaining agreement, the Unions agree that they will not strike the Contractor on the Project, and the Union and the Contractor agree that the expired collective bargaining agreement will continue in full force and effect for the Covered Work until a new or modified collective bargaining agreement is reached between the Union and the Contractor. If the new or modified collective bargaining agreement reached between the Union and the Contractor provides that any terms of the collective bargaining agreement shall be retroactive, the Contractor agrees to comply, consistent with the terms of this PLA and the Prevailing Wage Statute, with any retroactive terms of the new or modified collective bargaining agreement which are applicable to employees of said Contractor that are employed on the Project within seven (7) days at no cost to the City. All employees shall continue to work and to perform all their obligations with respect to Covered Work despite the expiration of a Schedule A agreement. Should a Contractor engaged in Covered Work enter into an interim agreement with the Unions for work being performed elsewhere after the expiration, and before the renewal of a local collective bargaining agreement forming the basis for Schedule A, such interim agreement shall be utilized by that Contractor for Covered Work, subject to the provisions of Section 21.3.

**Section 7.5** No Lock Outs. Contractors shall not cause, incite, encourage, condone or participate in any lock-out of employees with respect to Covered Work during the term of this PLA. The term "lock-out" refers only to a Contractor's exclusion of employees in order to secure collective bargaining advantage, and does not refer to the discharge, termination, or lay off of employees by the Contractor for any reason in the exercise of rights pursuant to any provision of this PLA, or any other agreement, nor does "lock-out" include the City's decision to stop, suspend, or discontinue any Covered Project or any portion thereof for any reason.

**Section 7.6** Best Efforts to End Violations.

(a) If a Contractor contends that there is any violation of this Article, it shall, prior to invoking the procedures of Section 7.7, provide written notification to the Council of the involved Union(s) and to the Project Labor Coordinator, setting forth the facts which the Contractor contends violates this Article. The Council and the leadership of the involved Union(s) will immediately instruct, order, and use their best efforts to cause the cessation of any violation of the Article.

(b) If the Union contends that any Contractor has violated this Article, it will notify the Contractor and the Project Labor Coordinator, setting forth the facts which the Union contends violate this Article, prior to invoking the procedures of Section 7.7. The Project Labor Coordinator shall promptly order the involved Contractor(s) to cease any violation of the Article.

**Section 7.7** Expedited Enforcement Procedure. Any Party, and affected Contractors, may institute the following procedures, in lieu of or in addition to any other action at law or equity, when a breach of this Article is alleged.

(a) The Party invoking this procedure shall notify Robert M. Hirsch, who has been selected by the negotiating Parties, and whom the Parties agree shall be the permanent arbitrator under this procedure, and if Mr. Hirsch is unavailable, shall notify John Kagel, who has been selected as the alternate arbitrator under this procedure. If the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, then a selection shall be made from the list of arbitrators as set forth in Article 10. Notice to the arbitrator shall be by the most expeditious means available, with notices to the Parties alleged to be in violation, and to the Project Labor Coordinator and the Council. For purposes of this Article, written notice may be given by email, facsimile, hand delivery, or overnight mail and will be deemed effective upon receipt.

(b) Upon receipt of said notice, the arbitrator named above or his/her alternate shall sit and hold a hearing within seventy-two (72) hours if it is contended that the violation still exists, but not sooner than twenty-four (24) hours after notice has been dispatched to the Council of the involved Union(s) and/or Contractor as required by Section 7.6, above.

(c) The arbitrator shall notify the Parties of the place and time chosen for this hearing, which may be a Zoom proceeding or the equivalent. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all Parties. A failure of any Party or Parties to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.

(d) The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred, and if so, whether the arbitrator shall order the applicable union(s) to return to work. The arbitrator shall have no authority to consider any matter in justification, explanation, or mitigation of such violation or to award damages, (except for damages as set forth in Section 7.8 below) which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing and may be issued

without an opinion. If any Party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the award. The arbitrator may order cessation of the violation of this Article and other appropriate relief, and such award shall be served on all Parties by hand, facsimile, email or registered mail upon issuance. The amount of liquidated damages pursuant to Section 7.8 below shall be determined at a second hearing scheduled by the arbitrator within thirty (30) days of the first hearing to determine if a violation of this Article has occurred.

(e) Such arbitration award(s) shall be final and binding on all Parties and may be enforced by any court of competent jurisdiction upon the filing of this PLA and all other relevant documents referred to herein above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other Party. In any judicial proceeding to obtain a temporary order enforcing the arbitrator's award as issued under Section 7.7(d) of this Article, all Parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any Party's right to participate in a hearing for a final order of enforcement. The court's order or orders enforcing the arbitrator's award shall be sent to all disputing parties.

(f) The fees and expenses of the arbitrator shall be equally divided between the Party or Parties initiating this procedure and the respondent Party or Parties.

**Section 7.8** Liquidated Damages.

(a) If the arbitrator determines in accordance with Section 7.7 above that a work stoppage has occurred, the respondent Union(s) shall, within eight (8) hours of receipt of the Award, direct all the employees they represent on the project to immediately return to work. If the craft(s) involved do not return to work by the beginning of the next regularly scheduled shift following such eight (8) hour period after receipt of the arbitrator's Award, and the respondent Union(s) have not complied with their obligations to immediately instruct, order, and use their best efforts to cause a cessation of the violation and return the employees they represent to work, then the non-complying Union(s) found in violation of Section 7.7 shall each pay liquidated damages in accordance with subsection (c) below.

(b) If the arbitrator determines in accordance with Section 7.7 above that a lock out has occurred, the respondent Contractor(s) found in violation of Section 7.7 shall pay liquidated damages in accordance with subsection (c) below.

(c) The Parties agree that project delays caused by violations of this Article will cause the City to sustain damages. They agree that it would be impractical or

extremely difficult to fix the amount of such damages. Therefore, the Parties agree that, in the event of a breach of either of these provisions, the Party in breach shall pay to the impacted parties the sum of \$10,000 per shift from the time the arbitrator determines that a delay has occurred until the arbitrator determines that the project is no longer disrupted. If the breaching party is a Union, the liquidated damages will be paid to the Prime Contractor and other affected Contractors as determined by the Arbitrator. If the breaching party is a Contractor, the liquidated damages will be apportioned among the affected employees and the benefit funds as determined by the Arbitrator. The payment of liquidated damages, when made, shall constitute a damages remedy for the delay specified, but shall not prevent the impacted party or parties from seeking an injunction or equitable relief, including termination of this PLA. Payment of these sums as liquidated damages is not intended as a forfeiture or penalty within the meaning of California Civil Code sections 3275 or 3369, but instead, is intended to constitute liquidated damages to the affected party or parties pursuant to section 1671 of the California Civil Code.

**Section 7.9** Payroll and Benefit Delinquencies. Notwithstanding other provisions of this PLA, it shall not be a violation of this PLA for any Union to withhold the services of its members from a Contractor who fails to timely pay its weekly payroll in accordance with the applicable Schedule A, or fails to make timely payments to the applicable Union benefit funds. This Section 7.9 does not inhibit or affect responsibilities of the Council and the Union under Section 7.1 to refrain from picketing or other disruption of Covered Projects.

Prior to withholding its members' services for the Contractor's failure to meet its weekly payroll, the Union shall give at least five (5) calendar days written notice of such failure to pay by certified mail, and by facsimile or email transmission to the involved Contractor, Prime Contractor and Project Labor Coordinator. The Prime Contractor, together with the involved Contractor and affected Union, shall meet within five (5) working days after the written notice of such failure to pay was sent to attempt to resolve the payroll delinquency. If the payroll delinquency remains unresolved, then the affected Union may withhold the services of its members from the involved Contractor. Upon the payment of all monies due and then owing for wages, the Union shall direct its members to immediately return to work and the Contractor shall return all such members back to work.

Prior to withholding its members' services for the Contractor's failure to make timely payments to the applicable Union benefit funds, the Union shall give at least thirty (30) days written notice of such failure to pay by certified mail, and by facsimile or email transmission to the involved Contractor, the Prime Contractor

and Project Labor Coordinator. The Prime Contractor, together with the involved Contractor and affected Union, shall meet within five (5) working days after the written notice of such failure to pay was sent to attempt to resolve the delinquency. If the delinquency remains unresolved, then the affected Union may withhold the services of its members from the involved Contractor. Upon payment by the delinquent Contractor of all monies due and then owing for employee benefit contributions, the Union shall direct its members to immediately return to work and the Contractor shall return all such members back to work.

Nothing in this section should be construed to prevent the Union having jurisdiction over the involved work from submitting a grievance under the procedures of Article 10 for any alleged or actual violations of Article 6 or referring any alleged or actual prevailing wage violation to the Project Labor Coordinator and Department of Industrial Relations for review and enforcement, in accordance with Section 6.4.

The City shall have the right to replace any delinquent Contractor in accordance with the terms and conditions of the applicable prime contract with the City and applicable law.

The City is not liable for any unpaid benefits or wages, or damages that flow from non-payment of either, regardless of any action or failure to act by the City.

## **ARTICLE 8**

### **WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES**

**Section 8.1** No Jobsite Disruption. There will be no strikes, work stoppages, picketing, sympathy strikes, slowdowns, or other interference with the work because of jurisdictional disputes between Unions. The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for Settlement of Jurisdictional Disputes in the Construction Industry (the “Plan”) or any successor Plan.

**Section 8.2** All jurisdictional disputes on this project shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted by the Building and Construction Trades Department. Decisions rendered shall be final and binding and conclusive on the Contractors and Unions parties to this PLA.

All jurisdictional disputes shall be resolved without the occurrence of any of the activities prohibited in Article 7 (Work Stoppages and Lockouts), and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

**Section 8.2.1** If a dispute arising under this Article involves the Southwest Regional Council of Carpenters or any of its subordinate bodies, an arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of Thomas Pagan, Thomas Angelo, Robert Hirsch, and John Kagel, and the arbitrator's hearing on the dispute shall be held at the offices of the Council within fourteen (14) days of the selection of the arbitrator. All other procedures shall be as specified in the Plan.

**Section 8.3** Failure to Comply. If any Union or Contractor fails to immediately and fully comply with the final decision rendered by the Plan, affected Union(s) or Contractor(s) may seek legal redress for such conduct, including, but not limited to, injunctive relief and/or damages.

**Section 8.4** Labor Pre-job Conference. It is required that a pre-job conference be held not later than fourteen (14) calendar days prior to the start of work by each Contractor for the Project in accordance with the procedure described in Article 16.

## ARTICLE 9

### MANAGEMENT RIGHTS

**Section 9.1** Contractor and City Rights. The Contractors and the City have the sole and exclusive right and authority to oversee and manage construction operations on Covered Projects without any limitations unless expressly limited by a specific provision of this PLA. In addition to the following and other rights of the Contractors enumerated in this PLA, the Contractors expressly reserve their management rights and all the rights conferred upon them by law. The Contractor's rights include, but are not limited to, the right to:

- (a) Plan, direct, and control operations of all work; and
- (b) Hire, promote, transfer, and lay off their own employees, respectively, as deemed appropriate to satisfy work and/or skill requirements; and
- (c) Promulgate and require all employees to observe reasonable job rules and security and safety regulations; and

- (d) Discharge, suspend, or discipline their own employees for just cause; and
- (e) Utilize, in accordance with City approval, any work methods, procedures, or techniques, and select, use, and install any types or kinds of materials, apparatus, or equipment, regardless of source of manufacture or construction; and
- (f) Assign and schedule work at their discretion; and
- (g) Assign overtime, determine when it will be worked and the number and identity of employees engaged in such work, subject to such provisions in the applicable Schedule A(s) requiring such assignments be equalized or otherwise made in a nondiscriminatory manner.

**Section 9.2** Specific City Rights. In addition to the following and other rights of the City and Prime Contractor enumerated in this PLA, the City expressly reserves its management rights and all the rights conferred on it by law and contract. The City's rights (and those of the Project Labor Coordinator on its behalf) include, but are not limited to the right to:

- (a) Inspect any construction site or facility to ensure that the Contractor follows the applicable safety and other work requirements; and
- (b) At its sole option, terminate, delay, and/or suspend any and all portions of Covered Projects at any time; prohibit some or all work on certain days or during certain hours of the day to accommodate the ongoing operations of the City and/or to mitigate the effect of ongoing Covered Work on businesses and residents in the neighborhood of the Covered Project sites; and/or require any other operational or schedule changes it deems necessary, in its sole judgment, to meet Project deadlines and remain a good neighbor to those in the area of the Covered Project. (In order to permit the Contractors and Unions to make appropriate scheduling plans, City will use best efforts to provide the Project Labor Coordinator and the affected Contractor[s] and Union[s] with reasonable notice of any changes it requires pursuant to this section); and
- (c) Approve any work methods, procedures, and techniques used by Contractors whether or not these methods, procedures, or techniques are part of industry practices or customs; and
- (d) Investigate and process complaints or disagreements, through its Project Labor Coordinator.

**Section 9.3** Use of Materials. Subject to the terms of this Agreement, there shall be no limitations or restrictions by the Union upon a Contractor's choice of materials or

design, nor, regardless of source or location, upon the full use and utilization of equipment, machinery, packaging, precast, prefabricated, prefinished, preassembled or modular materials, products, tools, or other labor-saving devices, subject to the application of the California Public Contract and Labor Codes. Generally, the onsite installation or application of such items shall be performed by the craft having jurisdiction over such work.

**Section 9.4** Special Equipment, Warranties, and Guaranties.

- (a) It is recognized that certain equipment of a highly technical and specialized nature may be installed at Covered Project sites. The nature of the equipment, together with the requirements for manufacturer's warranties, may dictate that it be prefabricated, pre-piped, and/or pre-wired and that it be installed under the supervision and direction of the manufacturer's personnel. The Unions agree that such equipment is to be installed without incident.
- (b) The Parties recognize that the Contractor will initiate from time to time the use of new technology, equipment, machinery, tools, and other labor-savings devices and methods of performing Covered Work. The Unions agree that they will not restrict the implementation of such devices or work methods. The Unions will accept and will not refuse to handle, install, or work with any standardized and/or catalogue parts, assemblies, accessories, prefabricated items, preassembled items, partially assembled items, modular products or materials, whatever their source of manufacture or construction.
- (c) If any disagreement between the Contractor and the Unions concerning the methods of implementation or installation of any equipment, device, or item, or method of work arises, or whether a particular part or pre-assembled item is a standardized or catalog part or item, the work will proceed as directed by the Contractor, and the Parties shall immediately consult over the matter. If the disagreement is not resolved, the affected Union(s) shall have the right to proceed through the procedures set forth in Article 10.

**ARTICLE 10**

**SETTLEMENT OF GRIEVANCES AND DISPUTES**

**Section 10.1** Cooperation and Harmony on Site.

- (a) This PLA is intended to establish and foster continued close cooperation between management and labor. The Council shall assign a representative to this

Project for the purpose of assisting the local Unions, and working with the Project Labor Coordinator, together with the Contractors, to complete construction of the Covered Projects economically, efficiently, continuously, and without any interruption, delays, or work stoppages.

(b) The Project Labor Coordinator, the Contractors, Unions, and employees, collectively and individually, realize the importance to all Parties of maintaining continuous and uninterrupted performance of Covered Work, and agree to resolve all disputes in accordance with the grievance provisions set forth in this Article or, as appropriate, those of Article 7 or 8.

(c) The Project Labor Coordinator shall observe the processing of grievances under this Article and Articles 7 and 8, including the scheduling and arrangement of facilities for meetings, selection of the arbitrator from the agreed-upon panel to hear the case, and any other administrative matters necessary to facilitate the timely resolution of any dispute; provided, however, it is the responsibility of the principal Parties to any pending grievance to ensure the time limits and deadlines are met.

**Section 10.2** Processing Grievances. Any disputes arising out of and during the term of this PLA involving its interpretation and application, and all disputes involving the interpretation or application of the applicable Schedule A's, but not alleged violations of Articles 7 or 8, shall be considered a grievance and subject to resolution under the following procedures.

Step 1. (a) Employee Grievances. When any employee subject to the provisions of this PLA feels aggrieved by an alleged violation of this PLA or the applicable Schedule A, the employee shall, through his local Union business representative or job steward, within ten (10) working days after the occurrence of the violation, give notice to the work site representative of the involved Contractor stating the provision(s) alleged to have been violated, the details of the alleged violation and the remedy sought to resolve the matter. A grievance shall be considered null and void if notice of the grievance is not given within the ten (10) day period. A business representative of the local Union or the job steward and the work site representative of the involved Contractor shall meet and endeavor to adjust the matter within ten (10) working days after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving Party may, within ten (10) working days thereafter, pursue Step 2 of this grievance procedure provided the grievance is reduced to writing, setting forth the relevant information, including a short description thereof, the date on which the alleged violation occurred, and the provision(s) of the applicable agreement

alleged to have been violated. Grievances and disputes settled at Step 1 shall be non-precedential except as to the Parties directly involved.

(b) Union or Contractor Grievances. Should the Union(s) or any Contractor have a dispute with the other Party(ies) and, if after conferring within ten (10) working days after the disputing Party knew or should have known of the facts or occurrence giving rise to the dispute, a settlement is not reached within five (5) additional working days, the dispute shall be reduced to writing and processed to Step 2 in the same manner as outlined in Step 1(a) above for the adjustment of an employee complaint.

Step 2. The business manager of the involved local Union or his designee, together with the site representative of the involved Contractor, and the labor relations representative of the Project Labor Coordinator shall meet within seven (7) working days of the referral of the dispute to this second step to arrive at a satisfactory settlement thereof. If the Parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days after the initial meeting at Step 2.

Step 3. (a) If the grievance shall have been submitted but not resolved under Step 2, either the Union or Contractor Party may request in writing to the Project Labor Coordinator (with copy[ies] to the other Party[ies]) within seven (7) calendar days after the initial Step 2 meeting, that the grievance be submitted to an arbitrator selected from the agreed-upon list below, on a rotational basis in the order listed. Those arbitrators are: (1) Robert M. Hirsch; (2) Kenneth Perea; (3) Sara Adler; (4) John Kagel; (5) Michael Prihar; (6) Michael Rappaport; and (7) Fred Horowitz. The decision of the arbitrator shall be final and binding on all Parties, and the costs and expenses of such arbitrations shall be borne equally by the involved Contractor(s) and the involved Union(s).

(b) Failure of the grieving Party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the Parties involved at the particular step where the extension is agreed upon. The arbitrator shall have the authority to make decisions only on issues presented and shall not have the authority to change, amend, add to, or detract from any of the provisions of this PLA or the applicable Schedule A.

**Section 10.3** Limit on Use of Procedures. Procedures contained in this Article shall not be applicable to any alleged violation of Article 7 or 8, with a single exception that any employee discharged for violation of Section 7.2 may resort to the procedures of this Article to determine only if he/she was, in fact, engaged in that violation.

**Section 10.4** Notice. The Project Labor Coordinator shall be notified by the involved Contractor of all actions at Steps 2 and 3, and further, the Project Labor Coordinator shall, upon its own request, be permitted to participate fully in all proceedings at such steps.

## **ARTICLE 11**

### **COMPLIANCE**

**Section 11.1** Compliance with All Laws. The Council and all Unions, Contractors, and their employees shall comply with all applicable federal and state laws, ordinances, and regulations including, but not limited to, those relating to safety and health, employment, and applications for employment. All employees shall comply with the safety regulations established by the City, the Project Labor Coordinator, and the Contractor. Employees must promptly report any injuries or accidents to a supervisor.

## **ARTICLE 12**

### **SAFETY AND PROTECTION OF PERSON AND PROPERTY**

**Section 12.1** Safety.

(a) It shall be the responsibility of each Contractor to ensure safe working conditions and employee compliance with all applicable safety laws and regulations and any safety rules contained herein or established by City, the Prime Contractor, or the Contractor. It is understood that employees have an individual obligation to use diligent care to perform their work in a safe manner and to protect themselves and the property of the Contractor and the City.

(b) All Parties and Contractor employees shall be bound by the safety, security, and visitor rules established by CalOSHA, the Prime Contractor, Contractor and the City. These rules will be published and posted. An employee's failure to satisfy his/her obligations under this Section will subject him/her to discipline, up to and including discharge.

**Section 12.2** Drug and Alcohol Testing Policy. The Parties agree to adopt the Drug and Alcohol Testing Policy attached hereto as Attachment C, which is the exclusive Drug and Alcohol Testing Policy for the Project, except when the prime contract designates special funding source requirements.

**Section 12.3** Inspection. All inspections shall be performed in accordance with the requirements in the prime contract.

## ARTICLE 13

### **TRAVEL, SUBSISTENCE AND PARKING**

**Section 13.1** Travel expenses, travel time, subsistence allowances and/or zone rates, and parking reimbursements shall not be applicable to work under this PLA, except to the extent provided for in any applicable prevailing wage determination. Parking for employees covered by this PLA shall be provided by the Contractor(s) according to the provision of the applicable Schedule A's.

## ARTICLE 14

### **APPRENTICES**

**Section 14.1** Importance of Training. The Parties recognize the need to maintain continuing support of the programs designed to develop adequate numbers of competent workers in the construction industry, the obligation to capitalize on the availability of the local workforce in the area served by the City, and the opportunities to provide continuing work on Covered Projects for Local Residents. To these ends, and consistent with any laws or regulations, the Parties will facilitate, encourage, and assist Local Residents to commence and progress in Apprenticeship Programs and/or apprenticeship readiness programs in the construction industry leading to participation in such Joint-Labor Management Apprenticeship Programs. The Project Labor Coordinator, the Contractors, the City, and the Council and Unions, will work cooperatively to identify, or establish and maintain, effective programs and procedures for persons interested in entering the construction industry and which will help prepare them for entry into Apprenticeship Programs. Apprentices, if utilized, must be enrolled in a California Apprenticeship Council-approved Program.

**Section 14.2** Use of Apprentices.

(a) The Unions and Contractors agree to cooperate in referring and employing Apprentices up to the maximum percentage allowed by the State Labor Code and the standards of each Joint Labor-Management Apprenticeship Program. The minimum ratios for Apprentice to journey person hours worked shall be in compliance, at a minimum, with the applicable provisions of the California Labor

Code relating to utilization of Apprentices. The City, unless otherwise required by law, shall encourage such utilization, and, both as to Apprentices and the overall supply of experienced workers, the Project Labor Coordinator will work with the Council, Apprenticeship Programs, and Contractors to assure appropriate and maximum utilization of Apprentices and the continuing availability of both Apprentices and journeypersons.

(b) The Parties and Contractors will comply with all applicable laws and regulations in the request for dispatch and employment of Apprentices.

(c) The Parties agree that Apprentices will not be dispatched to Contractors working under this PLA unless there is a journeyperson or other Contractor employee working on the Project where the Apprentice is to be employed who is qualified to assist and oversee the Apprentice's progress through the program in which he/she is participating.

**ARTICLE 15**

**LEGAL ACTION**

**Section 15.1** Legal Action. The City, Council and Unions recognize the substantial legal costs (including all attorney's fees and associated disbursements) that might accrue with regard to any legal challenge over this PLA and related to claims directly challenging the legality of this PLA, or a particular section or language that has been adopted herein. In the event of a legal challenge, the Council, on behalf of itself and affiliated Unions, agrees to seek to intervene in the legal action and actively participate in the litigation or other action to defend the legality of this PLA, or a particular section or language herein. The failure of the Council to seek to intervene in the legal action and actively participate to defend the legality of this PLA will constitute a material breach of this PLA. In the event the Council is denied leave to intervene in the legal action, the Council shall have its counsel coordinate with counsel for the City, at the Council's own expense, regarding how the Council can best support the City's legal position.

**ARTICLE 16**

**PRE-JOB CONFERENCE**

**Section 16.1** Each Contractor is required to conduct a pre-job conference with the Unions not later than fourteen (14) calendar days prior to commencing work. The purpose of

the conference will be to, among other things, convey craft manpower needs, the schedule of work for the Covered Project, project work rules, and propose preliminary Union work assignments. The Project Labor Coordinator may work with the Prime Contractor and Council to facilitate the scheduling of all pre-job conferences, but ensuring each Contractor conducts a pre-job conference in accordance with this Agreement is the responsibility of the Prime Contractor. All preliminary Union work assignments shall be disclosed by each Contractor at a pre-job conference. Should there be work within the scope of a Construction Contract for a Covered Project that was not previously assigned at a pre-job conference, or additional work be added to the scope of a Covered Project, the Contractor(s) performing such work will conduct a separate pre-job conference. Any Union in disagreement with a proposed assignment shall notify the affected Contractor of its position in writing, with a copy sent to the Project Labor Coordinator, within seven (7) calendar days after the pre-job conference occurred. Within seven (7) calendar days after the period allowed for Union notices of disagreement with the Employer's proposed assignments, but prior to the commencement of any work, the Employer shall make final assignments in writing with copies sent to the Project Labor Coordinator and Council.

**Section 16.2** A Contractor's failure to conduct a pre-job conference in accordance with this PLA is considered a breach of contract, and any affected Union may pursue a grievance under Article 10 of this PLA to seek a remedy for such a violation. Provided, however, if the Contractor has conducted a pre-job conference in accordance with this PLA, that Contractor is not required to participate in any additional pre-job conferences or mark-up meetings related to the original scope(s) of work assigned at the pre-job conference.

**Section 16.3** The Project Labor Coordinator may attend and facilitate each pre-job conference. At each pre-job conference, the Unions shall address the programs, goals and outcomes related to Local Resident employment.

## ARTICLE 17

### **LABOR/MANAGEMENT AND COOPERATION**

**Section 17.1** Labor/Management Collaboration Meetings. The Parties will conduct periodic labor/management cooperation meetings, which will be chaired jointly by a designee of the City and a designee of the Council. The co-chairs shall determine the frequency and scheduling of the meetings with the assistance of the Project Labor Coordinator. The purpose of the meetings shall be to update the Parties

about the progress and schedule of Covered Projects, promote harmonious and stable labor management relations, ensure effective and constructive communication between labor and management Parties, advance the proficiency of work in the industry, and to evaluate and ensure an adequate supply of skilled labor for all Covered Projects. All Parties will be invited to attend the labor/management cooperation meetings. Substantive grievances or disputes shall not be reviewed or discussed by this Committee but shall be processed pursuant to the provisions of the appropriate Article.

## **ARTICLE 18**

### **SAVINGS AND SEPARABILITY**

**Section 18.1** Savings Clause. It is not the intention of the City, the Project Labor Coordinator, Contractor, or the Union Parties to violate any laws governing the subject matter of this PLA. The Parties hereto agree that in the event any provision of this PLA is finally held or determined to be illegal or void as being in contravention of any applicable law or regulation, the remainder of the PLA shall remain in full force and effect unless the part or parts so found to be void are wholly inseparable from the remaining portions of this PLA. Further, the Parties agree that if and when any provision(s) of this PLA is finally held or determined to be illegal or void by a court of competent jurisdiction, the Parties will promptly enter into negotiations concerning the substantive effect of such decision for the purposes of achieving conformity with the requirements of any applicable laws and the intent of the Parties hereto. If the legality of this PLA is challenged and any form of injunctive relief is granted by any court, suspending temporarily or permanently the implementation of this PLA, then the Parties agree that all Covered Projects that would otherwise be covered by this PLA should be continued to be bid and constructed without application of this PLA so that there is no delay or interference with the ongoing planning, bidding, and construction of any Covered Projects.

**Section 18.2** Effect of Injunctions or Other Court Orders. The Parties recognize the right of the City to withdraw, at its absolute discretion, the utilization of the PLA as part of any bid specification should a court of competent jurisdiction issue any order, or any applicable statute that could result, temporarily or permanently, in delay of the bidding, awarding, and/or construction on the Project.

## ARTICLE 19

### WAIVER

**Section 19.1** Waiver. A waiver of or a failure to assert any provisions of this PLA by any or all of the Parties hereto shall not constitute a waiver of such provision for the future. Any such waiver shall not constitute a modification of the PLA or a change in the terms and conditions of the PLA and shall not relieve, excuse or release any of the Parties from any of their rights, duties, or obligations hereunder.

## ARTICLE 20

### AMENDMENTS

**Section 20.1** Amendments. The provisions of this PLA can be renegotiated, supplemented, rescinded, or otherwise altered only by mutual agreement in writing, hereafter signed by the Parties.

**Section 20.2** Most Favored Nation. In the event that any city with a population of 100,000 or less (as of the effective date of this PLA) executes a project labor agreement with the Council, the City shall maintain an option, in its sole and exclusive discretion, to amend this PLA to contain substantively all of the provisions as that of said project labor agreement.

## ARTICLE 21

### DURATION OF THE PLA

**Section 21.1** Duration. This Agreement shall be effective thirty (30) days after the date when it has been executed by both the Council and the City. The Agreement shall continue in full force and effect for a term of three (3) years after the initial effective date (provided, however, it shall continue in effect for all work awarded prior to such termination date until the completion of such work). At the end of the initial three (3) year term, this PLA shall automatically renew for an additional term of three (3) years unless either Party provides written notice to the other at least sixty (60) days before the expiration date of its intention to renegotiate or terminate the PLA.

**Section 21.2** Turnover and Final Acceptance of Completed Work.

Turnover and final acceptance of Completed Work shall be in accordance with the requirements of the prime contract and City policy. As areas and systems of the Covered Project are inspected and construction-tested and/or approved and accepted by the City or third parties with approval of the City, the PLA shall have no further force or effect on such items or areas, except when the Contractor is directed by the City to engage in repairs, modifications or warranty work required by its Contract(s) with the City or the Prime Contractor.

**Section 21.3** Continuation of Schedule A's. Schedule A's incorporated as part of this PLA shall continue in full force and effect with regard to Covered Work, until the Schedule A is modified by parties thereto.

The Parties agree to recognize and implement all applicable changes on their effective dates, except as otherwise provided by this PLA; provided, however, that any such provisions negotiated in said collective bargaining agreements will not apply to work covered by this PLA if such provisions are less favorable to the Contractor under the PLA than those uniformly required of Contractors for construction work normally covered by those agreements in San Diego County; nor shall any provision be recognized or applied if it may be construed to apply exclusively or predominantly to work covered by this PLA. Any disagreement between the Parties over the incorporation into a Schedule A of any such provision agreed upon in a negotiation of the local collective bargaining agreement that is the basis for a Schedule A shall be resolved under the procedures established in Article 10.

**Section 21.4** Final Termination. Final termination of all obligations, rights, and liabilities, and disagreements shall occur upon action by the City Council of the City of National City of final acceptance of the project and resolution of all matters concerning the Covered Project.

**ARTICLE 22**

**HELMETS TO HARDHATS**

**Section 22.1** Veterans Entry into Building and Construction Trades. The Parties recognize a desire to facilitate the entry into the building and construction trades of Veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter the "Center")

and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment, and construction aptitude, referral to Apprenticeship Programs or hiring halls, counseling and mentoring, support network, employment opportunities, and other needs as identified by the Parties.

**Section 22.2** Integrated Database. The Unions and Contractors agree to coordinate with the Center to create and maintain an integrated database of Veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project.

In witness whereof, the Parties have caused this Project Labor Agreement for the City to be executed as of the date and year above stated.

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

SAN DIEGO BUILDING AND CONSTRUCTION  
TRADES COUNCIL

By: \_\_\_\_\_

Carol Kim, Business Manager

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

CITY OF NATIONAL CITY

By: \_\_\_\_\_

Ron Morrison, Mayor

Approved as to form: \_\_\_\_\_

Barry J. Schultz, City Attorney

SIGNATORY UNIONS AND  
(See Attached)

SIGNATORY UNIONS

By: \_\_\_\_\_ By: \_\_\_\_\_  
: \_\_\_\_\_  
Allied Workers Local 5 Boilermakers Local 92

By: \_\_\_\_\_ By: \_\_\_\_\_  
: \_\_\_\_\_  
Bricklayer & Allied Crafts Local 4 Cement Masons Local 500 / Area 744

By: \_\_\_\_\_ By: \_\_\_\_\_  
: \_\_\_\_\_  
Electrical Workers Local 569 Elevator Constructors Local 18

By: \_\_\_\_\_ By: \_\_\_\_\_  
: \_\_\_\_\_  
Painters and Allied Trades Local 1399 Iron Workers Local 229

By: \_\_\_\_\_ By: \_\_\_\_\_  
: \_\_\_\_\_  
Laborers Local 89 Plasterers Local 200

By: \_\_\_\_\_ By: \_\_\_\_\_  
: \_\_\_\_\_  
Plaster Tenders Local 1414 Operating Engineers Local 12

By: \_\_\_\_\_ By: \_\_\_\_\_  
: \_\_\_\_\_  
Plumbers & Pipefitters Local 230 Road Sprinkler Fitters Local 669

By: \_\_\_\_\_ By: \_\_\_\_\_  
: \_\_\_\_\_  
Roofers & Waterproofers Local 45 Sheet Metal Workers' Local 206

By: \_\_\_\_\_ By: \_\_\_\_\_  
: \_\_\_\_\_  
Laborers Local 1184 Teamsters Local 166

By: \_\_\_\_\_ By: \_\_\_\_\_  
: \_\_\_\_\_  
Laborers Local 345 Tradeshow & Sign Crafts Local 831



**ATTACHMENT A – LETTER OF ASSENT**

To be signed by all Contractors awarded work covered by the Project Labor Agreement prior to commencing work.

[CONTRACTOR’S LETTERHEAD]

DATE

City Engineer  
1243 National City Blvd  
National City, CA 91950

Attention: \_\_\_\_\_

**Re: City of National City Project Labor Agreement**

Dear Sir:

This is to confirm that [Name of Company] agrees to be party to and bound by the City of National City Project Labor Agreement, effective \_\_\_\_\_, 2023, as such Agreement may from time to time be amended by the negotiating Parties or interpreted pursuant to its terms. Such obligation to be a Party and bound by this Agreement shall extend to all work covered by the Agreement undertaken by this Company on the Project pursuant to [Contract No. \_\_\_\_\_], and this Company shall require all of its subcontractors of whatever tier to be similarly bound for all work within the scope of the Agreement by signing and furnishing to you an identical Letter of Assent prior to their commencement of work.

Sincerely,

[Name of Construction Company]

By:

[Name and Title of Authorized Executive]

[Copies of this Letter must be submitted to the Project Labor Coordinator and to the Council consistent with Article 3, Section 3.3]

**ATTACHMENT B-1 – WORKFORCE DISPATCH REQUEST FORM**



# PROJECT LABOR AGREEMENT (PLA)

## Workforce Dispatch Request Form

**CONTRACTOR USE ONLY** **Contractor Information**

Requesting Contractor

Phone:

Fax:

Email:

**Job Site Information**

Project Name:

Address:

Job Superintendent:

Work Request Start Date & Time:

Estimated Work Duration:

**Contractor Requirements**

Employee Classification	Requested Skills, Experience, Certifications and/or Equipment to Be Utilized
-------------------------	--

Indicate Level	Craft/Classification	Quantity	
Journeyman <input type="checkbox"/>			
Apprentice <input type="checkbox"/>			

**UNION USE ONLY** **Dispatch Information**

Name of Applicant(s) Dispatched:

Date of Dispatch:

**UNION DISPATCHER: PLEASE CIRCLE THE ZIP CODE OF THE DISPATCHED WORKER(S)**

<b>Tier One Zip Codes (National City)</b>	91947	91950	91951					
	91901	91902	91903	91905	91906	91908	91909	91910
	91911	91912	91913	91914	91915	91917	91931	91934
<b>Tier Two Zip Codes (San Diego County)</b>	91935	91941	91942	91943	91944	91945	91948	91950
	91962	91963	91977	91978	91979	91980	92003	92004
	92007	92008	92009	92010	92011	92014	92019	92020
	92021	92024	92025	92026	92027	92028	92029	92036
	92037	92040	92054	92055	92056	92057	92058	92059
	92060	92061	92064	92065	92066	92067	92069	92070
	92071	92075	92078	92081	92082	92083	92084	92086
	92091	92093	92096	92101	92102	92103	92104	92105
	92106	92107	92108	92109	92110	92111	92113	92114
	92115	92116	92117	92119	92120	92121	92122	92123
	92124	92126	92127	92128	92129	92130	92131	92134
	92135	92136	92139	92140	92145	92147	92155	92158
	92159	92160	92161	92163	92164	92165	92166	92167
	92168	92169	92170	92171	92172	92174	92175	92176
	92177	92179	92182	92187	92536	92672	91916	

**Tier One (National City) Zip Codes:** 4% of contractor's total workforce by craft (5% of SD County Residents)

**Tier Two (SD County) Zip Codes:** 80% of contractor's total workforce by craft

**Veteran Status:** Names of Applicants with Verified DD 214 Forms:

**District Graduate Status:** Names of Applicants with Diploma or GED from Sweetwater H.S.:

**ATTACHMENT B-2 – CONTRACTOR CORE WORKFORCE FORM**



# PROJECT LABOR AGREEMENT (PLA) Contractor Core Workforce Form

**CONTRACTOR USE ONLY****Contractor Information**

Requesting Contractor

Phone:

Fax:

Email:

**Job Site Information**

Project Name:

Address:

Job Superintendent:

Work Request Start Date &amp; Time:

Estimated Work Duration:

**Union Registration****Employee Classification****Contractors Workforce Information  
Name and Zip Code of Applicant****Indicate Level****Craft/Classification**

Journeyman

**UNION USE ONLY****Dispatch Information**

Applicant's Information Reviewed By:

Date of Union Registration (Referral):

**UNION DISPATCHER: PLEASE CIRCLE THE COUNTY OF RESIDENCE OF THE  
DISPATCHED WORKER****SAN DIEGO COUNTY****IMPERIAL COUNTY****RIVERSIDE COUNTY****ORANGE COUNTY****San Diego, Imperial, Riverside or Orange Counties:** Maximum of 3 core workers**Note to Dispatching Agent:** Please fax a copy of the form to the PLA Coordination Team at: **[insert fax number here]**

## **ATTACHMENT C – DRUG AND ALCOHOL TESTING POLICY**

The Parties recognize the problems that drug and alcohol abuse have created in the construction industry and the need to develop drug and alcohol abuse prevention programs. Accordingly, the Parties agree that in order to enhance the safety of the workplace and to maintain a drug and alcohol-free work environment, individual Contractors shall require applicants or employees to undergo drug and alcohol testing in accordance with this PLA and this policy, Attachment C – Drug and Alcohol Testing Policy, hereafter “Policy.”

1. It is understood that the use, possession, transfer, or sale of illegal drugs, narcotics, or other unlawful substances, as well as being under the influence of alcohol and the possession of or consuming alcohol is absolutely prohibited while employees are on the Contractor’s job premises or while working on any jobsite in connection with work performed under the PLA.
2. No Contractor may implement a drug and alcohol testing program that does not conform in all respects to the provisions of this Policy.
3. No Contractor may implement drug and alcohol testing at any jobsite unless written notice is given to the Union setting forth the location of the jobsite, a description of the project under construction, and the name and telephone number of the Prime Contractor's project manager. Said notice shall be provided at the pre-job conferences for each Covered Project. Failure to give such notice shall make any drug and alcohol testing engaged in by the Contractor a violation of the Agreement and subject to the Article 10 grievance procedure.
4. A Contractor who elects to implement drug and alcohol testing pursuant to this Policy shall require all craft employees on the Covered Project to be tested. With respect to individuals who become employed on the Covered Project subsequent to the proper implementation of a valid drug and alcohol testing program, such test shall be administered upon the commencement of employment on the project, whether by referral from a Union Dispatch Office, transfer from another project, or another method. Individuals who were employed on the project prior to proper implementation of a valid drug and alcohol testing program may only be subjected to testing for the reasons set forth in paragraphs 5(g)(1) through 5(g)(3) and paragraphs 6(a) through 6(e) of this Policy. Refusal to undergo such testing shall be considered sufficient grounds to deny employment on the project.
5. The following procedure shall apply to all drug and alcohol testing:
  - a. The Contractor may request urine samples only. The applicant or employee shall not be observed when the urine specimen is given. An applicant or employee, at his or her sole option, shall, upon request, receive a blood test in lieu of a urine test. No employee of the Contractor shall draw blood from a bargaining unit employee, touch or handle

- urine specimens, or in any way become involved in the chain of custody of urine or blood specimens. A Union Business Representative, subject to the approval of the individual applicant or employee, shall be permitted to accompany the applicant or employee to the collection facility to observe the collection, bottling, and sealing of the specimen.
- b. A Contractor may request an applicant or employee promptly, within four (4) hours of the Contractor's request, perform an alcohol breathalyzer test at a certified laboratory only, and cutoff levels shall be those mandated by applicable state or federal law.
  - c. The testing shall be done by a laboratory approved by the Substance Abuse & Mental Health Services Administration (SAMHSA), which is chosen by the Contractor and the Union.
  - d. An initial test shall be performed using the Enzyme Multiplied Immunoassay Technique (EMIT). In the event a question or positive result arises from the initial test, a confirmation test must be utilized before action can be taken against the applicant or employee. The confirmation test will be by Gas Chromatography/Mass Spectrometry (GC/MS). Cutoff levels for both the initial test and confirmation test will be those established by SAMHSA and this Policy. Should these SAMHSA levels be changed during the course of the PLA or new testing procedures are approved, then these new regulations will be deemed as part of this existing PLA. Confirmed positive samples will be retained by the testing laboratory in secured long-term frozen storage for a minimum of one (1) year. Handling and transportation of each sample must be documented through strict chain-of-custody procedures.
  - e. In the event of a confirmed positive test result, the applicant or employee may request, within forty-eight (48) hours, a sample of his/her specimen from the testing laboratory for purposes of a second test to be performed at a second laboratory, designated by the Union and approved by SAMHSA. The retest must be performed within ten (10) days of the request. Chain of custody for this sample shall be maintained by the Contractor between the original testing laboratory and the Union's designated laboratory. Retesting shall be performed at the applicant's or employee's expense. In the event of conflicting test results, the Contractor may require a third test, at the Contractor's expense.
  - f. If, as a result of the above testing procedure, it is determined that an applicant or employee has tested positive, this shall be considered sufficient grounds to deny the applicant or employee his/her employment on the project.
  - g. No individual who tests negative for drugs and alcohol pursuant to the above procedure and becomes employed on the project shall again be subjected to drug and alcohol testing with the following exceptions:
    - 1) Employees who are involved in industrial accidents resulting in damage to plant, property, or equipment or injury to him/her or others may be tested for drugs or alcohol pursuant to the procedures stated hereinabove.
    - 2) The Contractor may test employees following thirty (30) days' advance written notice to the employee(s) to be tested and to the applicable Union. Notice to the applicable Union shall be sent by certified mail to the affected Union with a copy

to the Project Labor Coordinator. Such testing shall be pursuant to the procedures stated hereinabove.

- 3) The Contractor may test an employee where the Contractor has reasonable cause to believe that the employee is impaired from performing his/her job. Reasonable cause shall be defined as being aberrant or unusual behavior, the type of which is a recognized and accepted symptom of impairment (e.g., slurred speech, unusual lack of muscular coordination). Such behavior must be actually observed by at least two (2) persons, one (1) of whom shall be a supervisor who has been trained to recognize the symptoms of drug and alcohol abuse or impairment and the other of whom shall be the Job Steward. If the Job Steward is unavailable or there is no Job Steward on the Covered Project, the other person shall be a member of the applicable Union's bargaining unit. Testing shall be pursuant to the procedures stated hereinabove. Employees who are tested pursuant to the exceptions set forth in this paragraph and who test positive will be removed from the Contractor's payroll.
- h. Applicants or employees who do not test positive shall be paid for all time lost while undergoing drug and alcohol testing. Payment shall be at the applicable wage and benefit rates set forth in the applicable Union's Master Labor Agreement. Applicants who have been dispatched from the Union and who are not put to work pending the results of a test will be paid waiting time until such time as they are put to work. It is understood that an applicant must pass the test as a condition of employment. Applicants who are put to work pending the results of a test will be considered probationary employees.
6. The Contractors will be allowed to conduct periodic jobsite drug and alcohol testing on the Project under the following conditions:
  - a. The entire jobsite must be tested, including any employee or subcontractor's employee who worked on that project three (3) working days before or after the date of the test;
  - b. Jobsite testing cannot commence sooner than fifteen (15) days after start of the work on the project;
  - c. Prior to start of periodic testing, a Business Representative will be allowed to conduct an educational period on company time to explain periodic jobsite testing program to affected employees;
  - d. Testing shall be conducted by an SAMHSA-certified laboratory, pursuant to the provisions set forth in paragraph 5 hereinabove.
  - e. Only two (2) periodic tests may be performed in a twelve (12)-month period.
7. It is understood that the unsafe use of prescribed medication, or where the use of prescribed medication impairs the employee's ability to perform work, is a basis for the Contractor to remove the employee from the jobsite.
8. Any grievance or dispute that may arise out of the application of this Policy shall be subject to the grievance and arbitration procedures set forth in the PLA.

9. The establishment or operation of this Policy shall not curtail any right of any employee found in any law, rule, or regulation. Should any part of this Policy be found unlawful by a court of competent jurisdiction or a public agency having jurisdiction over the Parties, the remaining portions of the Agreement shall be unaffected, and the Parties shall enter negotiations to replace the affected provision.
10. Present employees, if tested positive, shall have the prerogative for rehabilitation program at the employee's expense. When such program has been successfully completed, the Contractor shall not discriminate in any way against the employee. If work for which the employee is qualified exists, he/she may be reinstated.
11. The Contractor agrees that results of urine and blood tests performed hereunder will be considered medical records held confidential to the extent permitted or required by law. Such records shall not be released to any persons or entities other than designated Contractor representatives and the applicable Union. Such release to the applicable Union shall only be allowed upon the signing of a written release by the employee, and the information contained therein shall not be used to discourage the employment of the individual applicant or employee on any subsequent occasion.
12. Employees who seek voluntary assistance for substance abuse may not be disciplined for seeking such assistance. Requests from employees for such assistance shall remain confidential and shall not be revealed to other employees or management personnel without the employee's consent. Employees enrolled in substance abuse programs will be subject to all Contractor rules, regulations, and job performance standards with the understanding that an employee enrolled in such a program is receiving treatment for an illness.
13. The Contractor shall indemnify and hold the Union harmless against any and all claims, demands, suits, or liabilities that may arise out of the application of this Policy.
14. This Policy shall constitute the only Policy in effect between the Parties concerning drug and alcohol abuse, prevention, and testing. Any modifications thereto must be accomplished pursuant to collective bargaining negotiations between the Parties.

## SPECIMEN REPORTING CRITERIA

Initial Test Analyte	Initial Test Cutoff <sup>1</sup>	Confirmatory Test Analyte	Confirmatory Test Cutoff Concentration
Marijuana metabolites (THCA) <sup>2</sup>	50 ng/ml <sup>3</sup>	THCA	15 ng/ml
Cocaine metabolite (Benzoylecgonine)	150 ng/ml <sup>3</sup>	Benzoylecgonine	100 ng/ml
Codeine/ Morphine	2000 ng/ml	Codeine Morphine	2000 ng/ml 2000 ng/ml
Hydrocodone/ Hydromorphone	300 ng/ml	Hydrocodone Hydromorphone	100 ng/ml 100 ng/ml
Alcohol	0.02%	Ethanol	0.02%
Oxycodone/ Oxymorphone	100 ng/ml	Oxycodone Oxymorphone	100 ng/ml 100 ng/ml
6-Acetylmorphine	10 ng/ml	6-Acetylmorphine	10 ng/ml
Phencyclidine	25 ng/ml	Phencyclidine	25 ng/ml
Amphetamine/ Methamphetamine	500 ng/ml	Amphetamine Methamphetamine	250 ng/ml 250 ng/ml
MDMA <sup>4</sup> /MDA <sup>5</sup>	500 ng/ml	MDMA MDA	250 ng/ml 250 ng/ml
Initial Test Analyte	Initial Test Cutoff	Confirmatory Test Analyte	Confirmatory Test Cutoff Concentration
Barbiturates	300 ng/ml	Barbiturates	200 ng/ml
Benzodiazepines	300 ng/ml	Benzodiazepines	300 ng/ml
Methadone <sup>6</sup>	300 ng/ml	Methadone	100 ng/ml
Methaqualone	300 ng/ml	Methaqualone	300 ng/ml
Propoxyphene	300 ng/ml	Propoxyphene	100 ng/ml

<sup>1</sup> For grouped analytes (i.e., two or more analytes that are in the same drug class and have the same initial test cutoff):

**Immunoassay:** The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

**Alternate technology:** Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (i.e., equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.

<sup>2</sup> An immunoassay must be calibrated with the target analyte, 9-tetrahydrocannabinol-9- carboxylic acid (THCA).

<sup>3</sup> **Alternate technology (THCA and benzoylecgonine):** The confirmatory test cutoff must be used for an alternate technology initial test that is specific for the target analyte (i.e., 15 ng/ml for THCA, 100 ng/ml for benzoylecgonine).

<sup>4</sup> Methylenedioxyamphetamine (MDMA)

<sup>5</sup> Methylenedioxyamphetamine (MDA)

<sup>6</sup> Employees with a prescription for methadone who are using the medication as prescribed, and are not impaired and can safely perform their work, will not be considered to have violated this Policy.

**MEMORANDUM OF UNDERSTANDING REGARDING  
“QUICK” DRUG SCREENING TESTS PURSUANT TO  
ATTACHMENT C – DRUG AND ALCOHOL TESTING POLICY**

It is hereby agreed between the Parties hereto that a Contractor who has otherwise properly implemented drug and alcohol testing, as set forth in the Policy, shall have the right to offer an applicant or employee a "quick" drug screening test. This “quick” screen test shall consist either of the “ICUP” urine screen or similar test or an oral screen test. The applicant or employee shall have the absolute right to select either of the two “quick” screen tests, or to reject both and request a full drug test.

An applicant or employee who selects one of the "quick" screen tests, and who passes the test, shall be put to work immediately. An applicant or employee who fails the "quick" screen test, or who rejects the "quick" screen tests, shall be tested pursuant to the procedures set forth in the Policy. The sample used for the "quick" screen test shall be discarded immediately upon conclusion of the test. An applicant or employee shall not be deprived of any rights granted to them by the Policy as a result of any occurrence related to the “quick” screen test.

**RESOLUTION NO. 2023 -**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, AUTHORIZING ENTERING INTO A PROJECT LABOR AGREEMENT WITH THE SAN DIEGO BUILDING AND CONSTRUCTION TRADES COUNCIL AND ASSOCIATED CRAFT UNIONS.**

**WHEREAS**, the City of National City (“City”) has a significant interest in the timely, efficient, and cost-effective completion of its public works projects; and

**WHEREAS**, larger public works projects, including those over \$1 million, can require a large number of workers of various skills in the performance of the construction work, including workers affiliated with and/or represented by labor unions; and

**WHEREAS**, it is recognized that on construction projects with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption is substantial without an overriding commitment to maintain continuity of work; and

**WHEREAS**, the City desires to reduce the risk of labor disputes by entering into a Project Labor Agreement (“PLA”) establishing and stabilizing wages, hours, and working conditions for the workers employed on certain projects, as well as establishing methods to resolve any disputes without strikes or other disruptions, with the goal that a satisfactory, continuous, and harmonious relationship will exist among labor and management that will lead to the efficient and economical completion of projects; and

**WHEREAS**, the City places a high priority upon the development of comprehensive programs for the recruitment, training, and employment of local residents and to encourage residents to participate in available apprenticeship programs; and

**WHEREAS**, the City is authorized to enter into PLAs pursuant to State law including, but not limited to, Public Contract Code section 2500; and

**WHEREAS**, City staff reviewed the PLAs between the San Diego Building and Construction Trades Council and other local agencies, including the Port of San Diego and City of La Mesa, and there is not significant deviation among those agreements and between those agreements and the proposed PLA.

**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 the Project Labor Agreement with the San Diego Building and Construction Trades Council and Associated Craft Unions, subject to final City Attorney and City Manager approval.

**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 November, 2023.**

\_\_\_\_\_  
Ron Morrison, Mayor

**ATTEST:**

\_\_\_\_\_  
Shelley Chapel, MMC, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Barry J. Schultz, City Attorney